



3 July 2018

Via U.S. Mail & Electronic Mail at
flamas@csufresno.edu

Dr. Frank R. Lamas
Vice President for Student Affairs
California State University, Fresno
5150 North Maple
Fresno, California 93740

Via U.S. Mail & Electronic Mail at
ccocon@csufresno.edu

Dr. Carolyn V. Coon
Associate Vice President for Student
Affairs & Dean of Students
California State University, Fresno
5150 North Maple
Fresno, California 93740

Re: Refusal to Disclose Disciplinary Action to Victims

Dear Drs. Lamas and Coon:

We represent Fresno State Students for Life and its president, Miss Bernadette Tasy, and we recently learned that your office refused to reveal to our clients what disciplinary action was taken against a California State University, Fresno ("Fresno State") student who destroyed their fliers due to the content and viewpoints those fliers expressed. As this information is not protected under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, we respectfully insist that you release this information immediately.

By way of introduction, Alliance Defending Freedom is an alliance-building, non-profit legal organization that advocates for the right of people to live out their faith freely. The ADF Center for Academic Freedom is dedicated to ensuring that religious students, faculty, and staff at public universities enjoy rights to speak, associate, and learn on campus on an equal basis as those of other perspectives so that everyone can freely participate in the marketplace of ideas. As you may know, we recently concluded litigation against a Fresno State professor who interfered in our clients' expression and violated their constitutional rights.¹

FACTUAL BACKGROUND

On the morning of April 10, 2018, Miss Tasy and two other members of Fresno State Students for Life were posting fliers on the "general posting" bulletin boards in the Engineering East Building when they heard the unmistakable sound of one of their fliers being torn down and then saw one missing. When they attempted to replace it, a Fresno State student walked around the corner, ripped a second flyer out of their hands, and then walked down the hallway, tearing down at least two more. Miss Tasy reported this vandalism to President Castro, Dr. Coon, and Chief Huerta. In the following weeks, campus police investigated, seeking to identify the student culprit. On June 10th, Lt. Watson informed Miss Tasy that this matter had been referred to Student Affairs.

On June 20th, Miss Tasy contacted the Office of Student Conduct, asking what disciplinary action had been taken against the student vandal. The next morning,

¹ Alliance Defending Freedom, *Fresno State Prof to Pay \$17K, Undergo Free Speech Training after Censoring Students' Pro-Life Expression*, Nov. 9, 2017, available at <http://www.adfmedia.org/News/PRDetail/10413> (last visited Jun. 26, 2018).

that office responded via e-mail, saying that the “information you have requested cannot be provided” because “[a]ll students’ disciplinary records are confidential.”

LEGAL ANALYSIS

To the extent the Office of Student Conduct relied on FERPA in making this statement, its officials are mistaken. The regulations interpreting FERPA make it clear that an educational institution may release an education record if the “disclosure . . . is to a victim of an alleged perpetrator of a crime of violence.” 34 C.F.R. § 99.31(a)(13). It goes on to say that this “disclosure may only include the final results of the disciplinary proceeding conducted by the institution,” *id.*, the very information Miss Tasy requested. Even if Fresno State exonerated this student, it “may disclose the final results of the disciplinary proceeding, regardless of whether [it] concluded a violation was committed.” *Id.*

In addition, these regulations make it clear that Miss Tasy and her fellow Fresno State Students for Life members qualify as a victim of a “crime of violence.” After all, this term is defined to include “[d]estruction/damage/vandalism of property.” 34 C.F.R. § 99.39. This student vandal destroyed fliers that Miss Tasy and her organization had paid to print. Hence, they are entitled to “the name of the student, the violation committed, and any sanction imposed by the institution against the student.” *Id.* And the “violation committed” includes the “rules or code sections that were violated and any essential findings supporting [Fresno State’s] conclusion that the violation was committed.” *Id.*

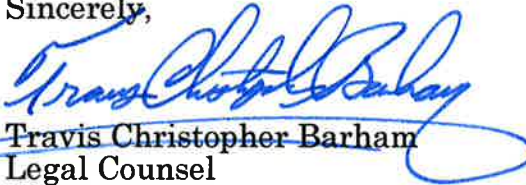
DEMAND

In sum, FERPA does not prevent Fresno State from revealing the information that Miss Tasy, a victim of a crime of violence, requested. If you believe that other statutes or regulations prevent the disclosure of this information, please identify all such statutes or regulations and the reasons you believe they apply to this situation. Otherwise, by the close of business on 3 July 2018, please provide Miss Tasy the following information:

1. The name of the perpetrator;
2. The rules or code sections the perpetrator violated;
3. The essential findings supporting Fresno State’s decision in whether and how to discipline the perpetrator; and
4. What discipline (if any) Fresno State imposed on the perpetrator.

So far, Fresno State has been admirably solicitous of the constitutional rights of our clients,² and we trust that it will be similarly concerned about respecting their statutory rights. Accordingly, we look forward hearing from you and to resolving this matter quickly and amicably.

Sincerely,



Travis Christopher Barham
Legal Counsel
ALLIANCE DEFENDING FREEDOM

Cc:

- Mr. Mike Renberg, PARICHAN, RENBERG & CROSSMAN (local counsel)

² See, e.g., President Joseph Castro, Statement on Fresno State Students for Life’s Lawsuit, 11 May 2017, available at https://twitter.com/Fresno_State/status/862769523698442240 (last visited Jun. 26, 2018).