



March 22, 2022

Kathy Weiss
Board of Trustees
Nassau Community College
Administrative Tower Building, 10th Floor
One Education Drive
Garden City, New York 11530

Sent via U.S. Mail and Electronic Mail (kathyb.weiss@gmail.com)

Dear Ms. Weiss:

FIRE¹ is disappointed by your failure to respond to our letter of January 11, and writes again to express our continued concern about attempts to silence Nassau Community College faculty criticism of the Board of Trustees and former NCC President Jermaine Williams. The First Amendment protects faculty members' right to speak on matters of public concern, including the performance and departure of public university presidents. Instructing faculty to refrain from exercising that right is unconstitutional. Accordingly, neither you nor any NCC Board member may encourage college leadership to file "bullying" complaints against faculty for engaging in constitutionally protected speech.

The concerns voiced in our previous letter—regarding the Board's December 23, 2021 letter ordering faculty to stop criticizing Williams—have only increased since we last wrote. On December 14, 2021, the Nassau Community College Federation of Teachers (NCCFT) posted a letter by union president Faren Siminoff criticizing Williams and other NCC administrators. On December 21, Williams filed a complaint against Siminoff, alleging bullying in violation of NCC's Anti-Bullying and Anti-Stalking policy, based on several allegations.²

Williams first suggested Siminoff sent a campus security officer to his house, and wrote the following:

¹ As you may recall from our last letter, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Faren Siminoff, Photograph of SUNY – Nassau Community College Complaint Form (Dec. 21, 2021) (on file with the author).

[A] Public Safety Officer was sent to the residence on campus where I live with my family to see if we were still living in the house. After I shared that we were, he informed me that he was also requested to ask me when I was planning to leave the house and if we needed any help vacating the premises. Again, as I understand, the PSO was following orders from his supervisor.³

Williams also alleged Siminoff and NCCFT contacted the college to which Williams recently transitioned and spread false information about him.⁴ These allegations were not supported by any documentation or supplemental information from NCC in the complaint, and Siminoff maintains they are false.⁵ While NCC has not punished Siminoff for the charges, the case remains active and open in her file, and NCC has refused to provide Siminoff with a written copy of Williams' complaint.

An email you sent to Williams and other members of the Board on the very day Williams brought his bullying charges suggests they were submitted with a retaliatory purpose. Specifically, an anonymous sender forwarded Siminoff a December 21 email where you solicited suggestions from other members of the Board on how to get faculty members to stop voicing criticism, writing: "If anyone has any suggestions on how to get the faculty to cease & desist from making disparaging comments & sharing non-truths, please let me [sic]."⁶

Again, and to be clear: The First Amendment bars NCC from policing speech by faculty on matters of public concern, absent an interest that outweighs the faculty's vital interest in speaking. The NCC leadership's performance is plainly a matter of public concern, and an interest in avoiding public criticism or controversy during the college's transition in leadership is insufficient to overcome faculty's expressive rights. Faculty must be free to speak out—without fear of consequences like those threatened in the Board's December 23, 2021 letter—about Williams' performance, the Board's leadership search, or any future leadership NCC may install.

Additionally, the bullying complaint against Siminoff appears retaliatory, with the intent of discouraging her and other faculty from criticizing college administrators. The United States Court of Appeals for the Second Circuit, whose decisions bind public institutions like NCC, has held unconstitutional retaliation against employees has occurred where they can show "(1) constitutionally protected speech, (2) an adverse action, and (3) a causal connection between that adverse action and the protected speech."⁷ Employees can establish a causal link between their speech and the employer's actions through circumstantial factors like proximity in time, or direct evidence of retaliatory intent.⁸ The Second Circuit has also acknowledged retaliation claims are not restricted to only situations where employees faced

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Email from Kathy Weiss to Carl Henry Denaud, Donna Tuman, Ed Powers, George Siberon, John DeGrace, John Durso, Jorge L. Gardyn, Linda Green, and Wanda Jackson, CC'ing Donna M. Haugen and Jermaine Williams (Dec. 21, 2021, 2:58 PM) (on file with the author).

⁷ *Weinstein v. Univ. of Conn.*, 753 F. App'x 66, 67 (2d Cir. 2018).

⁸ *Morris v. Lindau*, 196 F.3d 102, 110 (2d Cir. 1999).

retaliatory dismissal, but may also lie in other adverse acts, such as where the employee’s “reputation, opportunities for advancement and earning potential have been impaired by the acts of the defendant.”⁹

It does not take a leap of logic to conclude Siminoff’s protected activity—her public criticism of Williams and the actions of the college’s leadership, on behalf of her union—was a substantial or motivating factor of the bullying complaint. This is evidenced not only by the timing of the complaint—submitted days after Siminoff’s criticism, without evidence to substantiate its claims—but also by your email sent the same day to Williams and other Board members that explicitly solicited ways to suppress protected faculty expression. Though the college has yet to punish Siminoff, the fact that the complaint remains open in her file threatens her with potential consequences as severe as suspension without pay, loss of tenure, or dismissal, and hurts her reputation in the academic community as well.

Harm from the complaint against Siminoff also extends to other faculty. It surely chills faculty speech where opinions that could be seen as critical of NCC administrators, including commentary on their performance, provoke disciplinary complaints. The notion that a faculty member may face such consequences for engaging in protected expression is unconstitutional and inimical to the college environment.¹⁰

FIRE once again calls on you and the Board to rescind the directive that faculty stop all criticism of college leadership. We also insist that you cease any back-channel attempts to silence Siminoff or other faculty members, and urge that you reassure NCC faculty that the administration will respect their expressive rights. Failing to comply would represent a continued and flagrant violation of NCC’s legal obligations under the First Amendment.

We request receipt of a response to this letter by the close of business on March 31, 2022.

Sincerely,



Anne Marie Tamburro
Program Officer, Individual Rights Defense Program

Cc: Nassau Community College Board of Trustees

⁹ *Bernheim v. Litt*, 79 F.3d 318, 325 (2d Cir. 1996).

¹⁰ *Pickering v. Bd. of Educ.*, 391 U.S. 563, 571–73 (1968); *Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).