ALLIANCE DEFENDING FREEDOM
FOR FAITH. FOR JUSTICE.

February 23, 2022

Chancellor Randy Pembrook
Office of the Chancellor
1 Hairpin Dr.
Edwardsville, IL 62026
via e-mail: rpembro@siue.edu

Re: *Violation of student's constitutional rights*

Dear Mr. Pembrook,

Alliance Defending Freedom ("ADF") represents Ms. Maggie DeJong, a student in Southern Illinois University Edwardsville's ("the University") Art Therapy Counseling Program. ADF's Center for Academic Freedom is dedicated to ensuring freedom of speech and association for students, teachers, and professors so that everyone can freely participate in the marketplace of ideas without fear of government censorship.[1]

This letter regards three no contact orders the University's Director of the Office of Equal Opportunity, Access & Title IX Coordination ("the Office") entered against Ms. DeJong in violation of University policy and Ms. DeJong's constitutional

[1] Alliance Defending Freedom has consistently achieved successful results for its clients before the United States Supreme Court, including thirteen victories before the highest court since 2011. *See Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021) (representing Thomas More Law Center in consolidated case; striking down state law requiring charities to disclose identities of donors to government authorities); *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021) (student free speech); *March for Life Educ. & Def. Fund v. California*, 141 S. Ct. 192 (2020); *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) (overturning ruling upholding a law limiting political contributions); *Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (upholding ADF client's free speech rights against the State of California); *Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Comm'n*, 138 S. Ct. 1719 (2018) (upholding ADF client's First Amendment rights); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017) (upholding ADF client's First Amendment rights); *Zubik v. Burwell*, 578 U.S. 403 (2016) (representing Geneva College and Southern Nazarene University in two consolidated cases; upholding ADF clients' First Amendment rights); *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) (unanimously upholding ADF client's free-speech rights); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (representing Conestoga Wood Specialties Corp. in consolidated case; striking down federal burdens on ADF client's free-exercise rights); *Town of Greece v. Galloway*, 572 U.S. 565 (2014) (upholding a legislative prayer policy promulgated by a town represented by ADF); *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (upholding a state's tuition tax credit program defended by a faith-based tuition organization represented by ADF)

rights. To avoid legal action, the University must immediately rescind the no contact orders.

Factual Background

On Thursday, February 10 at 2:51 p.m., Jamie Ball notified Ms. DeJong that "the Office of Equal Opportunity, Access, and Title IX Coordination has issued a No Contact Order" prohibiting her from having "any contact" or "indirect communication" with [redacted]. At 2:52 p.m., Ms. Ball notified Ms. DeJong of an identical no contact order applying to [redacted]. At 4:32 p.m., Ms. Ball sent another email to Ms. DeJong informing her of a third no contact order applying to [redacted]

Ms. Ball offered no factual basis for any of the no contact orders other than a claim "upon information and belief that interactions between yourself and [redacted] would not be welcome or appropriate at this time." The orders are binding upon Ms. DeJong and purport to limit her speech and physical presence on and off campus through the end of the spring 2022 semester, subject to modification at the discretion of the Office.

Ms. DeJong has not engaged in any conduct toward [redacted] or [redacted] that constitutes harassment or could amount to a violation of any valid University rule. In fact, each Order acknowledges that it "is not an indication of responsibility for a violation of University policy; rather, it is intended to prevent interactions that could be perceived by either party as unwelcome, retaliatory, intimidating, or harassing."

The no contact orders are infringing upon Ms. DeJong's ability to fully participate in her educational experience and exercise her First Amendment rights. Ms. DeJong has classes with both [redacted] and she also works at the same facility as both. Because of the no contact orders, Ms. DeJong is (i) barred from fully participating in classes in which [redacted] or [redacted] are present, (ii) prohibited from participating in the group chat with other members of her cohort because [redacted] and [redacted] are also members of the group, and (iii) chilled in her ability to frequent campus for fear of encountering one of the named individuals and being accused of violating the no contact orders.

Analysis

The no contact orders do not identify the University policy authorizing the orders. But it appears that the only policy that authorizes a no contact order without a prior determination of a violation of University policy is the Title IX Policy – 2C9 &

3C8 ("the Policy"). The Policy authorizes the University to deploy "supportive measures," such as "mutual restrictions on contact between the parties," and specifies that such measures are "non-disciplinary."

But the Policy does not authorize Ms. Ball's orders in this instance. The Policy sanctions the use of "non-disciplinary" supportive measures like a no contact order only to address "a reported incident of Sexual Misconduct." Ms. DeJong has not engaged in any sexual misconduct toward any student. Nor has she directed any speech or conduct whatsoever toward [redacted] or [redacted] that could possibly qualify as "sexual misconduct."

The Policy permits "disciplinary or punitive" use of such measures, but only upon "the conclusion of the Grievance Process." The University's imposition of no contact orders against Ms. DeJong cannot possibly comply with that condition. Not only has Ms. DeJong not committed *any* misconduct, let alone sexual misconduct, the University has deprived her of even a modicum of due process. Indeed, she received no process whatsoever—up to and including being notified that complaints had been lodged against her—prior to receiving the no contact orders on February 10.

To the extent the University interprets its policies to authorize the orders, the policies are unconstitutional for several reasons. First, the policies and no contact orders impose unconstitutional prior restraints on Ms. DeJong's speech. *See Fujishima v. Bd. of Educ.*, 460 F.2d 1355, 1357 (7th Cir. 1972). Next, as Ms. Ball's implementation illustrates, the policies grant University employees unbridled discretion to impose the orders and modify their terms and duration. That too violates the First Amendment. *See Graff v. City of Chicago*, 9 F3d 1309, 1317 (7th Cir. 1993). In addition, any definition of "sexual misconduct" that might, in the University's view, apply to any of Ms. DeJong's words or actions falls woefully short of the "harassment" standard the Supreme Court articulated in *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 633 (1999). Finally, the no contact orders and related policies violate Ms. DeJong's due process rights by binding her speech and conduct under threat of discipline with "terms so vague that men of common intelligence must necessarily guess at [their] meaning and differ as to [their] application." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926).

Conclusion

Based on the above, we demand that you immediately rescind the three no contact orders issued on February 10 and assure us in writing that the University will either (a) stop interpreting and enforcing its policies in this manner or (b) revise its policies to adequately safeguard students' constitutional rights. If you fail to comply with these demands by close of business on February 25, 2022, our client will

have no option but to consider other avenues for vindicating her rights. Please immediately place a litigation hold on all email accounts, document collections, social media accounts, and all other sources of information or communications (including electronically stored information) that reference in any way Ms. DeJong, the No Contact Orders, or any of the students referenced in the No Contact Orders.

Respectfully Submitted,

s/*Tyson C. Langhofer*
Tyson C. Langhofer, Senior Counsel & Director,
Center for Academic Freedom
Greggory R. Walters, Senior Counsel
ALLIANCE DEFENDING FREEDOM
Counsel for Ms. Maggie DeJong

cc: Phyleccia R. Cole (via e-mail: pcole@siue.edu)