



April 28, 2021

Dr. Miles K. Davis
Office of the President
Linfield University
900 SE Baker Street
McMinnville, Oregon 97128

URGENT

Sent via Electronic Mail (president@linfield.edu)

Dear President Davis:

The Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE is deeply concerned by Linfield University's abrupt termination of a tenured faculty member, Professor Daniel Pollack-Pelzner, following his public criticism of you and other senior leaders of the university. Linfield—which referred to Pollack-Pelzner's termination as “extraordinary”—urges that it has no obligation to provide due process because procedural protections are only afforded in cases of termination related to a professor's duties. This assertion appears to have no basis in Linfield policy, and the university's procedural departure to terminate a faculty critic presents an obvious conflict of interest.

I. Background

Our understanding of the facts is drawn from Linfield's public statements and media reports.¹ We appreciate that you may have additional information to offer and invite you to share it with us.

¹ Maxine Bernstein, *Linfield University fires professor who spoke out against sexual misconduct, raised allegations against president*, OREGONIAN, Apr. 27, 2021, <https://www.oregonlive.com/education/2021/04/linfield-university-fires-professor-who-spoke-out-against-sexual-misconduct-raised-allegations-against-president.html>; Colleen Flaherty, *Linfield Fires Jewish Professor Who Accused It of Anti-Semitism*, INSIDE HIGHER ED, Apr. 28, 2021, <https://www.insidehighered.com/quicktakes/2021/04/28/linfield-fires-jewish-professor-who-accused-it-anti-semitism>.

Professor Pollack-Pelzner has raised serious concerns about Linfield University’s response to allegations that four members of the university’s Board of Trustees engaged in inappropriate conduct, and that three of those trustees remained on the board. The fourth had resigned—according to an email from Board Chair David Baca, “due to health concerns”—after allegations arose that he had sexually assaulted a student after a board meeting, for which he has since been indicted.² Pollack-Pelzner—who is Jewish—has also alleged that Linfield leaders made anti-Semitic comments; specifically that you made remarks about the length of “Jewish noses” in a one-on-one meeting with him in 2018, and that Baca, in January 2020, accused him of pursuing a “secret agenda to grab power.”³

Two faculty members have since come forward with similar allegations, alleging that, in commenting on forthcoming staffing cuts, you remarked: “You don’t send Jews to the showers with soap.”⁴ You did not dispute having made the remark and acknowledged having heard a variation on it from a “professor and consultant.”⁵

An outside law firm retained by Linfield conducted an investigation into Pollack-Pelzner’s allegations that you and Baca made anti-Semitic remarks, concluding that there was “no way to prove” whether the remarks were made.⁶ That investigation concluded that the situation was a “he said/she said” issue that could not be substantiated.⁷ In a letter to the Anti-Defamation League, you asserted that “outside law firms” had conducted such an investigation, and you complained about a Twitter thread posted by Pollack-Pelzner, arguing that he “has been engaged in a smear campaign toward me and the administration . . . that has caused harm to the university and our community.”⁸

² Maxine Bernstein, *Longtime Linfield College trustee faces felony indictment stemming from student’s sexual abuse complaint*, OREGONIAN, May 8, 2020, <https://www.oregonlive.com/crime/2020/05/longtime-linfield-college-trustee-faces-felony-indictment-stemming-from-students-sexual-abuse-complaint.html>.

³ Maxine Bernstein, *Linfield University President Miles K. Davis made anti-Semitic comments, professor says; Davis alleges ‘smear campaign’*, OREGONIAN, Apr. 12, 2021, <https://www.oregonlive.com/education/2021/04/professor-says-linfield-president-miles-k-davis-made-anti-semitic-comments-davis-alleges-smear-campaign.html>.

⁴ *Oregon Board of Rabbis calls on Linfield president, board chair to resign amid allegations of anti-Semitism*, OREGONIAN, Apr. 15, 2021, <https://www.oregonlive.com/education/2021/04/oregon-board-of-rabbis-calls-on-linfield-president-board-chair-to-resent-amid-allegations-of-anti-semitism.html>.

⁵ *Id.*

⁶ LINFIELD UNIV., *FACTS ABOUT LINFIELD AND HARASSMENT, DISCRIMINATION, AND INTOLERANCE*, <https://inside.linfield.edu/internal-communications/community-updates/index.html> (last visited Apr. 28, 2021).

⁷ Bernstein, *supra* note 3.

⁸ Letter from Miles K. Davis, Pres., Linfield Univ., to Miri Cypers, Regional Dir., Anti-Defamation League (Apr. 9, 2021), *available at* <https://documentcloud.org/documents/20612983-adl-response-letter-april-9-2021>.

During the week of April 19, Linfield’s arts and sciences faculty voted 59 to 11 that they had “no confidence” in your or Baca’s leadership.⁹ Others have joined in this criticism, including calls for resignations by the Oregon Board of Rabbis.¹⁰

On Monday, April 26, citing the “request of many faculty,” Linfield announced it was “pausing access” to “global and college/school emails [*sic*] lists due to the use of these lists to send unsolicited messages,” and that broadly-distributed correspondence is subject to prior review by a senior Linfield administrator.¹¹

On Tuesday, Pollack-Pelzner was directed, by email, to meet with Susan Agre-Kippenhan, Linfield’s provost, at 4:00 p.m. to “discuss your employment at Linfield.”¹² At 5:06 p.m., Agre-Kippenhan sent a community-wide email announcing the “extraordinary step” of terminating Pollack-Pelzner for “serious breaches” of duties to Linfield.¹³ The email asserted that Linfield “unequivocally supports academic freedom and a diversity of opinion.”

In response to media inquiries, Linfield said it terminated Pollack-Pelzner for “conduct that is harmful to the university,” including “false and defamatory statements,” refusal to comply with unidentified university policies, and divulging information subject to the attorney-client privilege—allegations Pollack-Pelzner denies. Asked about whether there was a process for terminating tenured faculty members, Linfield asserted that process is afforded “when the reason is related to their responsibilities and duties as a professor” such as “[t]eaching effectiveness, professional achievement, service, etc.,” but that the “process does not apply here, as this was termination for cause.”¹⁴

II. Linfield’s Termination of a Tenured Faculty Critic Violates its Commitments to Freedom of Expression and Due Process

Linfield’s process-free termination of Pollack-Pelzner cannot be reconciled with the robust procedural protections it promises to its faculty. It is also difficult to square Linfield’s actions with the university’s strong policies committing it to protect its faculty members’ freedom of expression, which shields Pollack-Pelzner’s speech unless it falls into one of the narrow exceptions to that rule. Linfield’s express refusal to turn over the matter to independent review by Linfield faculty heightens our concern that the university cannot demonstrate that Pollack-Pelzner’s comments are unprotected defamation.

⁹ Colleen Flaherty, *No Confidence Vote and Planned Faculty Trustee Changes at Linfield*, INSIDE HIGHER ED, Apr. 21, 2021, <https://www.insidehighered.com/quicktakes/2021/04/21/no-confidence-vote-and-planned-faculty-trustee-changes-linfield>.

¹⁰ *Id.*

¹¹ Colleen Flaherty, *Linfield Cuts Off Mass Faculty Emails Amid Controversy*, INSIDE HIGHER ED, Apr. 27, 2021, <https://www.insidehighered.com/quicktakes/2021/04/27/linfield-cuts-mass-faculty-emails-amid-controversy>.

¹² Flaherty, *supra* note 1.

¹³ E-mail from Susan Agre-Kippenhan, Vice President for Academic Affairs/Provost, Linfield Univ. (Apr. 27, 2021, 5:06 PM), *available at* <https://www.oregonlive.com/education/2021/04/linfield-university-fires-professor-who-spoke-out-against-sexual-misconduct-raised-allegations-against-president.html>.

¹⁴ E-mail to Maxine Bernstein (on file with author).

A. Pollack-Pelzner’s Speech is Protected by Linfield’s Commitment to Expressive Freedom

Although Linfield is a private institution, it promises its community members that they are “entitled to use speech to convey disagreement, agreement, inquiry, or commentary in keeping with the principles underlying constitutionally protected free expression.”¹⁵ Likewise, Linfield specifically promises its faculty members that “[d]ismissal will not be used to restrain faculty members in their exercise of academic freedom or other rights of American citizens.”¹⁶

Linfield’s public statements aver that it terminated Pollack-Pelzner for “conduct that is harmful to the university,” including “false and defamatory statements,” refusal to comply with unidentified university policies, and divulging information subject to the attorney-client privilege—allegations Pollack-Pelzner denies. Linfield has not substantiated any of these assertions before a hearing committee.

With respect to Linfield’s principal focus—that Pollack-Pelzner’s speech is “false and defamatory”—we have serious doubts that Linfield can prove that it falls within the narrow exception for defamation. Speech is defamatory, and therefore unprotected, only where it can be shown that a speaker’s statements are “provably false” and concern “objectively verifiable facts.”¹⁷ With respect to public figures, even false speech remains protected unless it is shown that the speaker “subjectively” acted with actual malice—that is, the speaker had “actual knowledge” of the falsity of their statement or “in fact entertained serious doubts” about its veracity.¹⁸ Importantly, this showing must be made by “clear and convincing” evidence,¹⁹ a standard of proof more arduous than the preponderance standard applied in most civil matters—and one required by Linfield policies regarding adequate cause for dismissal.²⁰

We doubt that the university can prove that Pollack-Pelzner’s allegation that you made a remark about “Jewish noses”²¹ is false, as the outside investigation—touted by the university in its public statements—did not conclude that the statements were *not* made, only that there was “no way to prove” whether they were made or not, as it was a “he said/she said” situation.

Even assuming that Linfield could prove that Pollack-Pelzner’s assertions are mistaken or false, the university’s independent investigation neuters the university’s ability to

¹⁵ LINFIELD UNIV., FACULTY HANDBOOK Appx. IV.3 (Fall 2020) (“HANDBOOK”), *available at* https://inside.linfield.edu/_files/academic-affairs/2020-21-FACULTY-HANDBOOK-01-06-21.pdf.

¹⁶ HANDBOOK at Appx. C, § 5(a).

¹⁷ *Point Ruston, LLC v. Pac. Nw. Reg’l Council of the United Brotherhood of Carpenters & Joiners of Am.*, No. C09-5232BHS, 2010 U.S. Dist. LEXIS 95239, at *22 (W.D. Wash. Sept. 13, 2010).

¹⁸ *Dodds v. Am. Broad. Co.*, 145 F.3d 1053, 1060–61 (quoting, in part, *Harte-Hanks Comms. v. Connaughton*, 491 U.S. 657, 688 (1989)).

¹⁹ *Id.* at 1060.

²⁰ HANDBOOK at Appx. C §5(c)(8).

²¹ Because Linfield failed to provide a statement of charges as required by policy, it is not immediately clear *which* statements Linfield believes to be defamatory.

demonstrate—with “clear and convincing” evidence—that the allegations were made with subjective knowledge of their falsity. To the contrary, the report found otherwise, concluding that Pollack-Pelzner “subjectively” believed you had made anti-Semitic remarks.²²

B. Pollack-Pelzner’s Process-Free Termination is Contrary to Linfield Policy

If any of Pollack-Pelzner’s speech or conduct provides just cause for his termination, Linfield has purposefully avoided the robust procedure it sets out in “for cause” terminations of tenured faculty members.

Linfield’s faculty handbook provides in no uncertain terms that “[d]ismissal of a faculty member” with tenure “will be preceded by” informal settlement discussions, an informal inquiry by a faculty committee, and a “statement of charges, framed with reasonable particularity” by the university’s administration.²³ Adequate cause for such a dismissal lies only where the conduct is “related, directly and substantially, to the fitness of the faculty member in their professional capacities as teachers or researchers.”²⁴ In such a case, it is followed by a statement of charges, the right to appear before an unbiased faculty hearing committee, and notice of charges at least twenty days before the hearing.²⁵

Instead of adhering to these bright lines, Linfield’s administration has drawn its own to rid itself of a troublesome professor. It proclaims that where its asserted rationale for termination is unrelated to “responsibilities and duties as a professor” and the termination is “for cause,” it does not need to provide any process. That is precisely the opposite of the standard laid out by Linfield’s policies and contrary to the conception of tenure, which provides procedural protection for *any* alleged misconduct. No reasonable administrator could credibly assert otherwise.

The conflict of interest inherent in Linfield’s acts—jettisoning the independent review of an unbiased faculty committee and assigning to itself the right to determine whether a tenured faculty critic is correct in his criticisms of the institution—is obvious. Both its shocking departure from written procedure and the conflict of interest it has indulged are contrary to the standards of Linfield’s accreditation by the Northwest Commission on Colleges and Universities. Those standards require, among other things, that Linfield “adhere[] to clearly defined policies that prohibit conflicts of interest on the part of” board members and administrators.²⁶

²² Colleen Flaherty, *Allegations of Anti-Semitism at Linfield*, INSIDE HIGHER ED, Apr. 19, 2021, <https://www.insidehighered.com/news/2021/04/19/allegations-anti-semitism-linfield>.

²³ HANDBOOK at Appx. C §5(b).

²⁴ HANDBOOK at Appx. C §5(a).

²⁵ HANDBOOK at Appx. C §5(c).

²⁶ NORTHWEST COMM’N ON COLLEGES AND UNIVERSITIES, NWCCU 2020 STANDARDS §2.D.3, *available at* <https://nwccu.org/accreditation/standards-policies/standards>.

III. Conclusion

The egregious nature of terminating a faculty critic without process cannot be overstated, nor can the chilling effect on student and faculty expression that will follow Linfield's reckless conduct. Further, the avoidance of due process will itself drain any trust in the accuracy or sincerity of Linfield's assertions: In intentionally avoiding the scrutiny afforded by an unbiased faculty committee, Linfield suggests that it is cognizant that its assertions about Pollack-Pelzner would not withstand scrutiny.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, May 7, 2021, confirming that Linfield is rescinding Pollack-Pelzner's termination.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc: Susan Agre-Kippenhan, Vice President for Academic Affairs/Provost