



December 20, 2024

Kimberly Andrews Espy
Office of the President
Wayne State University
656 West Kirby
4200 Faculty/Administration Building
Detroit, Michigan 48202

Sent via U.S. Mail and Electronic Mail (president@wayne.edu)

Dear President Espy:

FIRE, a nonpartisan nonprofit that defends free speech,¹ is concerned about the due process issues with Wayne State University's continued use of a 2019 letter of reprimand to punish Professor Barrett Watten. FIRE wrote WSU previously in 2020 concerning FERPA issues raised by the disciplinary process against Watten.² We write to you today because, despite WSU having made no finding that Watten violated university policy at that time or in the years since, the letter imposed severe discipline on Watten, has remained in Watten's file since 2019, and is continually invoked against him—even in the absence of an adequate university procedure to determine whether he violated university policy. We urge WSU to cease relying on the letter in its discipline of Watten in the absence of any final determination that he has violated university policy, and to return him to his normal teaching duties.

On November 12, 2019, Dean Stephanie Hartwell imposed an initial set of disciplinary measures on Watten, which included removing him from teaching and mentoring responsibilities and moving his office to a location outside the English department.³ According to a disciplinary notice, the university had determined that Watten “engaged in a [sic] hostile

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and other individual rights on America's college campuses. You can learn more about our mission and activities at thefire.org.

² Adam Goldstein, *FIRE Letter to Wayne State Univ.*, FIRE (Apr. 20, 2020), <https://www.thefire.org/research-learn/fire-letter-wayne-state-university-april-20-2020>.

³ This situation was publicized at the time in a news article. Megan Zahneis, *This Professor Was Accused of Bullying Grad Students. Now He's Being Banned From Teaching*, CHRON. HIGHER EDUC. (Dec. 11, 2019), <https://www.chronicle.com/article/this-professor-was-accused-of-bullying-grad-students-now-hes-being-banned-from-teaching/>. This recitation reflects our understanding of the pertinent facts. We appreciate that you may have additional information and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

environment/sexual harassment against a graduate student” in violation of a Board of Governors code, engaged in “inappropriate email/voice mail communications with another graduate student,” and engaged in “targeted hostility” against another graduate student.⁴

Importantly, however, WSU imposed these disciplinary measures without ever holding a hearing with Watten present or issuing a finding concerning the allegations articulated in the letter. The disciplinary notice also faulted Watten for violating policies that WSU acknowledged were not actually university policy, claiming he had violated the American Association of University Professors’ “Joint Statement on Rights and Freedom of Students” and “Statement on Professional Ethics.”⁵ The notice informed Watten that while “AAUP Statements do not represent formal WSU policy, they are national standards set forth by your peers regarding the norms of behavior to be expected of responsible faculty.”⁶ Further, the letter made unsubstantiated claims that Watten had “a much longer history of incendiary behavior.”⁷

WSU’s local AAUP chapter (now the Wayne Academic Union) filed a grievance just two days after WSU imposed these sanctions in 2019.⁸ In that grievance, the chapter articulated the serious due process concerns raised by punishing Watten without either a fair hearing or even a determination that he had violated policy.⁹ The chapter rightfully characterized Dean Hartwell’s actions as “arbitrary and capricious,” constituting “discipline without due process or just cause.”¹⁰

Following this grievance, an arbitrator reviewed the disciplinary measures and determined that while the sanctions did not violate the university’s Collective Bargaining Agreement with the union, the indeterminate timeframe of the sanctions was improper.¹¹ The arbitrator decided the university must conduct an annual review and modification of the sanctions in light of any new evidence.¹²

In the five years since the disciplinary notice, the WAU has filed a total of five grievances on Watten’s behalf, because the university has repeatedly failed to be transparent in conducting that yearly review and modification.¹³ For example, on August 17, 2021, the university declined

⁴ Letter from Stephanie Hartwell, Dean, to Barrett Watten, professor (Nov. 12, 2019) (on file with author).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ AAUP-AFT, Local 6075 Grievance filed on behalf of Dr. Barrett Watten and the AAUP-AFT Union by AAUP-AFT President Charles J. Parrish, Local 6075 (Nov. 14, 2019) (on file with author).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *In re* the Arbitration between Wayne State Univ. Chapter, AAUP-AFT, Local 6075 and Wayne State Univ., Grievance Nos. 382, 384 & 387 (Nov. 24, 2020) (on file with author).

¹² *Id.*

¹³ *See, e.g.*, AAUP-AFT, Local 6075 Grievance No. 382 filed on behalf of Watten by Parrish (Aug. 20, 2019) (on file with author) (objecting to Watten’s initial suspension prior to the imposition of the sanctions); Local 6075 Grievance No. 387 filed on behalf of Watten by Parrish (Feb. 3, 2020) (on file with author) (objecting to

to modify the sanctions without explanation.¹⁴ On July 20, 2022, former provost and senior vice president for academic affairs Mark Kornbluh allowed Watten to teach one upper-level undergraduate class in the Winter 2023 semester but maintained the other sanctions, again without any explanation.¹⁵ On August 9, 2023, Kornbluh decided that Watten would be allowed to teach a full course load of undergraduate courses in the coming school year, but kept the other sanctions in place, including the office relocation and removal of mentoring opportunities.¹⁶ Once again, the university did not provide any insight into its reasons for this decision. In July of this year, Laurie M. Lauzon Clabo, the new provost and senior vice president for academic affairs, allowed Watten to teach a full course load of undergraduate courses at the discretion of his department.¹⁷ However, she also informed him that his office would only return to the English department if it would not “inconvenience others in the department[.]”¹⁸ Once again, Clabo did not explain anything about the university’s review process.

In the university context, institutions must provide faculty members with, at a minimum, an opportunity to present a defense before imposing any sort of punishment.¹⁹ WSU failed to do so when initially imposing the sanctions against Watten, and only exacerbates this due process violation by repeatedly failing to justify his continued punishment.²⁰ Basic procedural safeguards ensure fairness and impartiality in misconduct proceedings—which, in turn, lend legitimacy to proceedings and confidence to institutions, complainants, respondents, and members of the public. Those safeguards include notice of charges and an opportunity to substantively respond before the imposition of severe discipline.²¹

Wayne State has significantly muddied the waters regarding Watten’s disciplinary status at the university over the past five years. By failing to initially adjudicate whether a university policy

Wayne State’s relocation of Watten’s office outside of his department, alleging the relocation was retaliatory and damaged his reputation).

¹⁴ Post-Arbitration Review 2021, letter from Caroline Maun, Associate Professor & Chair of English, to Watten (Aug. 17, 2021) (on file with author).

¹⁵ Letter from Mark Lawrence Kornbluh, Provost & Senior Vice President for Academic Affairs, to Watten (July 20, 2022) (on file with author).

¹⁶ Letter from Kornbluh to Watten (Aug. 9, 2023) (on file with author).

¹⁷ Letter from Laurie Lauzon Clabo, Provost & Senior Vice President for Academic Affairs, to Watten (July 22, 2024) (on file with author).

¹⁸ Barrett Watten annual review regarding restrictions from Lauzon Clabo to Watten (Jul. 22, 2024) (on file with author).

¹⁹ *See Due Process on Campus*, FIRE, <https://www.thefire.org/research-learn/due-process-campus>. Courts have established that the “opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985).

²⁰ *See, e.g.*, Request to review and remove sanctions, from Watten to Jennifer Wareham, Associate Dean, and Maun (June 7, 2024) (on file with author).

²¹ Courts have recognized an exception to the rule that notice and an opportunity to respond must precede severe discipline. But this exception only applies when the accused “poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process,” a high bar that WSU has not met. *Haidak v. Univ. of Mass.-Amherst*, 933 F.3d 56, 72 (1st Cir. 2019) (citing *Goss v. Lopez*, 419 U.S. 565, 581–82 (1975)).

violation had taken place but still issuing severe discipline, the university raises serious concerns about its fealty to basic tenets of due process. This is only exacerbated by the university's budging only when required by an arbitrator who determined that the indefinite time frame of the sanctions was inappropriate. The university then violates the spirit of the arbitration by not being transparent with Watten about the remaining sanctions.

Five years of restrictions have certainly damaged Watten's ability to function as an academic. As Watten takes further steps to contest this adverse treatment, we urge WSU to belatedly cure these due process violations by lifting the sanctions and allowing Watten to fully return to his previous teaching responsibilities.²²

Sincerely,



Graham Piro
Faculty Legal Defense Fund Fellow

Cc: Laurie Lauzon Clabo, Provost

Encl.

²² In the Matter of the Arbitration, *supra* note 11.