

May 29, 2020

President Lyle D. Roelofs
President's Office
210 Lincoln Hall
Berea College
101 Chestnut St.
Berea, KY 40404

Dear President Roelofs,

I write concerning a former member of the faculty of Berea College, Professor David B. Porter of the Psychology Department. As you know, Dr. Porter has sued Berea College for breach of contract, for employment discrimination resulting in his wrongful suspension and termination, for defamation against him perpetrated by Dr. Tyler Sergent, a college employee, and for illegal retaliation against him by the college. I write to urge Berea College to withdraw its suspension and termination of Dr. Porter and to vindicate his professional good name.

Although I believe that Dr. Porter has a strong legal case,¹ I write to you as an interested outside party rather than as a lawyer. The National Association of Scholars has for more than thirty years concerned itself with protecting academic and intellectual freedom in colleges and universities. We have played a role, sometimes publicly visible, often not, in helping to resolve many cases where academic administrators acted against the guiding principles of higher education.

Unlike the AAUP, we do not maintain a public list of colleges and universities that we believe have erred. Our goal is to seek resolution of such disputes in a manner that respects the dignity of individuals and institutions. Legal disputes, of course, have their own dynamic, in which both sides tend to dig in their heels, and in which public controversy often makes the intransigent even more so. NAS takes matters like this public only as a last resort. We much prefer to counsel all parties to resolve matters in the spirit of seeking the common good.

I should also say that we involve ourselves in only a handful of cases each year. Those are cases which, after due diligence, we judge to need some kind of counterweight to the seemingly settled outcome. The Porter case fits that description. We have spent several months reviewing documents and interviewing individuals who have first-hand knowledge of the situation. We are not working for Dr. Porter or his attorney and we have no financial interest in his case.

¹ *Dr. David B. Porter v. Dr. F. Tyler Sergent and Berea College* (2019). Commonwealth of Kentucky Madison Circuit Court Civil Action File No. 19-CI-19-CI-00060 Division I and Civil Action File No. 19-CI-00200 Division I Consolidated Action.

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Berea College is, of course, a private institution, and as such enjoys considerable latitude in setting its own policies. I respect your college's freedom to do so.

That, however, is not the whole of the matter. Colleges are also enjoined to adhere to basic principles of respect for the life of the mind and the intellectual independence of the faculty. It is highly unusual when a faculty member is fired for professional incompetence, and colleges rarely engage in such actions. Even where they can establish their legal right to do, they usually impose lesser sanctions, not least so as to preserve the good will and mutual forbearance that is one of the prerequisites of academic freedom. Berea College, as any American college, should aspire to live up both to the legal protections afforded to faculty members and to the customs of charitable interpretation of the law that make academic community possible.

I note that Berea College did not investigate the charges against Professor Porter. The college administration also rebuffed Professor Porter's efforts to respond to the main complaints against him and to discuss the matter and find a compromise.

Dr. Porter was fired, and deemed incompetent, which appears to be the only basis for firing a tenured faculty member according to the college's *Faculty Manual*. According to that source, dismissals are predicated on demonstrated incompetence, but no evidence of such incompetence was presented at Professor Porter's trial. Indeed, your announcement to the campus community indicated that he was being dismissed for "professional misconduct."

That conduct consisted of his distributing a survey questionnaire that Berea College argued had no academic justification and that it was meant to harass his colleagues. Yet many of Professor Porter's peers believed the survey was academically sound and in no way contributed to a hostile environment. These differences in judgement within the community should have been taken as a strong caution against reaching a hasty conclusion.

In fact, the ensemble of evidence strongly suggests that Dr. Porter was harassed rather than harassing, and that the claims that he was the perpetrator are badly supported. Then too, Berea seems to have violated its contractual guarantees of administrative due process in the proceedings by which it fired Dr. Porter and deemed him incompetent. All these circumstances, ably summarized in *Porter v. Sergeant and Berea College* (2019), argue that Berea acted unjustly.

As a private institution, Berea College may see itself as exempt from due process considerations. The faculty contract suggests otherwise, but let's assume that Berea is exempt from due process in the legal sense. Is it nonetheless a good idea to allow anger or indignation over a seeming transgression to override the customary respect due to a long-serving and well-regarded faculty member? Something more than due process is at stake here. It is the duty of any college to model self-restraint, sober deliberation, and fair-mindedness.

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I understand the dynamic of this case, in which Dr. Porter was seen as violating confidentiality presumably out of his zeal to defend a colleague's reputation. From an outsider's perspective, I would say the College faced an emotionally charged situation in which both sides believed they were defending key principles. Ideally, this could have been resolved with strict impartiality on the part of the College. But that ideal, unfortunately, does not always prevail. The College ended up leaning heavily in one direction and became party to purging an honorable dissenter.

It is not too late to set this right. Berea College should live up to the best standards of higher education. Berea's conduct toward Dr. Porter has not comported with those standards. I urge Berea College to rescind its decision to terminate Dr. Porter.

I do not urge Berea College to undertake this action just because it is required by law or the prudent exercise of institutional self-interest. I urge Berea College to do this because it is right. Berea College should live up to its own highest ideals.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Peter Wood", with a long, sweeping flourish extending to the right.

Peter Wood
President
National Association of Scholars