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DoE Letter Hailed as Having 'Significant' Impact on Campus Speech

By Lawrence J. Smith

HUNTINGTON - Despite the claims of some college officials, defenders of Constitutional freedoms for college students say a U.S. Department of Education memo will have a "very significant" impact in the way the First Amendment is treated on campus

On August 8, the department's Office for Civil Rights sent a letter to college and university presidents nationwide making clear OCR's support for the First Amendment. Assistant Secretary for Civil Rights Gerald Reynolds said the memo was a result of "inquiries regarding whether OCR's regulations are intended to restrict speech activities that are protected under the First Amendment."

Throughout the United States, many colleges and universities have interpreted language in OCR guidelines on harassment as a reason for prohibiting speech deemed "offensive." Reynolds was unequivocal in saying that OCR guidelines are not to be used as an excuse for administrators to enact "speech codes."

"I want to ensure you in the clearest possible terms that OCR's regulations are not intended to restrict the exercise of any expressive activities protected under the US Constitution," Reynolds said.

"OCR has consistently maintained that the statutes that it enforces are intended to protect students from invidious discrimination, not to regulate the content of speech."

Harvey Silverglate, a Boston, Mass. defense attorney and co-founder of the Foundation for Individual Rights in Education (<http://www.thefire.org>) - a Philadelphia, Penn.-based legal and educational organization - hailed the letter as "very significant" in protecting free-speech of college students.

"The recent letter from OCR makes it clear that speech is merely disturbing or unwelcome, even offensive, is constitutionally protected, and that in order to qualify as 'harassment' it must meet certain criteria," Silverglate said.

"College administrators will no longer be able to say 'the government forces me to censor students'."

Some college officials in West Virginia said the letter wouldn't change much on their respective campuses.

"As far as Glenville State College (<http://www.glenville.edu>) is concerned, we already had policies in place that pretty much paralleled the guidelines from the Office for Civil Rights," said Glenville interim president Robert Freeman.

"I suspect most of the colleges and universities in the state already had most of these in place as well."

Likewise, Michael J. McGuffey, assistant to Marshall University (<http://www.marshall.edu>) President Dan Angel said, "it is unlikely that the letter would require a change in Marshall's 'code' [of Student Rights and Responsibilities]." However, he said Dean of Student Affairs Steve

Hensley was reviewing the letter and Angel would make faculty, staff and students aware of it "as they return to campus for the Fall 2003 semester."

Silverglate said Freeman's and McGuffey's assertions that the memo would have little impact is a common refrain from college administrators from across the country. He said the mere fact OCR had to draft the letter makes their claim "ring hollow."

"The administrators claim that they to not censor, and hence they are in compliance with the OCR letter," Silverglate said.

"But it all depends on how one defines 'censorship.' In fact, the administrators do censor only they do not openly admit it."

Attempts were made to get a comment from West Virginia University (<http://www.wvu.edu>) President David Hardesty, who favored restricting First Amendment activities into designated "free-speech zones" on the main campus last year. He was unavailable for comment and did not return repeated requests for a comment.

Silverglate did not mince words in chiding Hardesty for his apparent failure in supporting free-speech on the state's flagship institution of higher education.

"I don't think David Hardesty takes free-speech seriously," Silverglate said.