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NCSA, UNC Accused of Restricting Free Speech

By William Davis

A report published recently by the Foundation for Individual Rights in Education (FIRE) criticized the UNC system, including the North Carolina School of the Arts, of violating the right to free speech guaranteed in the first amendment. In the report dated January 10, 2006, FIRE called the UNC system "...one of the most likely places to find rules and regulations that restrict expression or dictate matters of conscience...." The report, entitled The State of the First Amendment in the University of North Carolina System, identifies policies stated in the UNC Board of Governors handbook, as well as in 13 of the 16 UNC system schools, that "...have at least one policy that both clearly and substantially restricts freedom of speech." Included in these schools was NCSA, which was flagged for its harassment and disorderly conduct policies stated in its college handbook.

According to the report, "[the] North Carolina School of the Arts maintains a harassment policy that could be used to suppress protected speech. Although it defines harassment as 'behavior based on another person's status that creates an intimidating, hostile, or offensive working or educational environment,' it goes on to provide examples of harassment that could have a serious chilling effect on campus speech." All though the policy on harassment in the student handbook has been revised since the report was published, examples still exist, such as "[o]ffensive or mean-spirited comments or jokes", "[a]ttributing objections to any of the above to 'hypersensitivity' of the targeted individual or group," or simply "[s]preading rumors."



NCSA also bans "[d]is-orderly conduct including, but not limited to, verbally abusive or inappropriate behavior. For example: discrimination against another student by using offensive speech or behavior of a biased or prejudiced nature related to one's personal characteristics, including race, color, national origin, gender, religion, disability, age or sexual orientation." According to Samantha Harris, the Director of Legal and Public Advocacy for FIRE, policies such as this one are considered constitutionally over-broad. "A ban on offensive speech... encompasses certain types of speech, like harassment, that are not constitutionally protected, but it also encompasses other types of speech, such as speech that offends someone but doesn't rise to the level of harassment, that is actually constitutionally protected. As a public university, North Carolina School of the Arts is actually legally obligated to uphold the first amendment." According to the Supreme Court decision in Street v. New York, "[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." Therefore, by prohibiting offensive speech, NCSA is restricting rights guaranteed in the constitution.

Though it might seem like the schools in the UNC system are being singled out, Ms. Harris says that many other public universities are in the same boat. "A lot of schools... have policies that are constitutionally overbroad. I think that these policies are almost always well intentioned- schools want the campus to be a positive environment, and that's a good thing. The problem is when they infringe on students' free speech rights in pursuit of that goal, and when they move from simply encouraging things like tolerance and civility and not offending other people, to actually prohibiting speech that, for example, offends other people." Although NCSA shares a campus with many minors, that in no way reduces NCSA's responsibility to protect free speech. "The rules you apply to high school students shouldn't be applied to adults just because they are in the presence of minors." Ms. Harris also made it clear that "...all that the red light means is that a school has written policies which restrict free speech, not that they actually punish students in practice."

In order to meet FIRE's standards as a school which does not restrict free speech, NCSA would have to change its rules to more closely match universities such as Elizabeth City State University, also a UNC school, which passed FIRE's scrutiny and has been given a speech code rating of green. Says Anne White, the Vice Chancellor for Student Life, "I had hoped that we had finally corrected any policies and rules that they had found objectionable already. We went through our handbook about a year and a half ago with our school attorney and we had believed that we had now gotten all our policies appropriately addressing conduct rather than speech, so I did not know that we would get flagged again this time.... I am ...grateful to know that this is still an issue, and we will correct it.... We in no way want to violate anybody's speech rights." However, she does hope the college community continues to remember that they share the campus with students as young as 10 who come to NCSA to take part in the preparatory programs. ●

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