

FILED
JOHN P. ...
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION - COLUMBUS

ISAAC SMITH,
c/o Santen & Hughes LPA
600 Vine Street, Suite 2700
Cincinnati, OH 45202

Plaintiff,

v.

RODERICK J. MCDAVIS,
JENNY HALL-JONES, and
MARTHA COMPTON,
c/o Office of Legal Affairs
Ohio University
160 West Union Street Office Center
Suite 150
1 Ohio University
Athens, Ohio 45701

Defendants.

Case No.

2:14 CV - 670

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND DAMAGES

MAGISTRATE JUDGE ABEL

JURY TRIAL DEMANDED

Plaintiff Isaac Smith complains of Defendants and alleges:

I. INTRODUCTION

1. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). Accordingly, the United States Supreme Court has held that "state colleges and universities are not enclaves immune from the sweep of the First Amendment." *Healy v. James*, 408 U.S. 169, 180 (1972). Nevertheless, Ohio University ("OU") officials have adopted and enforced a Student Code of Conduct that, among other vague and overly broad provisions, forbids any "act that degrades, demeans, or disgraces" another, thus restricting and chilling student speech.

2. This prohibition strikes at the core mission of any university educating students. Someone could violate this policy for using any language an administrator considers to be

demeaning, degrading or disgraceful. This could include pointing out a logical fallacy in another student's argument or error in a mathematical problem. Student discussions concerning any of our country's most pressing political, moral, and social issues could trigger enforcement, were one participant (or simply someone within earshot) to feel "degraded, demeaned, or disgraced," no matter how unreasonably. Under this subjective, unbounded policy, a debate about same-sex marriage, immigration policy, philosophy, or feminism could easily constitute grounds for punishment.

3. Plaintiff Isaac Smith is a member of Students Defending Students ("SDS") at OU, a campus group that (at no cost) assists students accused of disciplinary infractions in campus tribunals. OU officials ordered Plaintiff and other SDS members not to wear a t-shirt with the humorous play on words "We get you off for free," claiming the slogan was offensive. Asserting that the words "objectified women" and "promoted prostitution," Defendants commanded Smith and others: "I don't want to see you wearing that t-shirt again." Fearing sanctions under OU's Student Conduct Code, Plaintiff and his fellow members of SDS stopped wearing the t-shirt. They also feared punishment if they failed to obey a "legitimate directive" from an administrator because the same university officials who told them not to wear the t-shirt would determine whether that directive was "legitimate."

4. The United States Supreme Court has made clear that fundamental societal values are truly implicated even in cases that "otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege." *Cohen v. California*, 403 U.S. 15, 25 (1971). It has held that the First Amendment protects students who wear armbands as a form of dissent, *Tinker v. Des Moines Indpt. Comm. Sch. Dist.*, 393 U.S. 503 (1969), protesters who wear jackets emblazoned with crude references to government policies, *Cohen*, 403 U.S. at 26, and university students who publish inflammatory underground newspapers. *Papish v. Board of Curators of*

the Univ. of Missouri, 410 U.S. 667 (1973). Far from being trivial, such cases uphold the principle that it is not a legitimate function of government to enforce what an administrator may regard as “a suitable level of discourse within the body politic.” *Cohen*, 403 U.S. at 23. In this case, as implemented and applied, OU’s policies violate the well-established rule that “the mere dissemination of ideas – no matter how offensive to good taste – on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Papish*, 410 U.S. at 670.

5. Accordingly, this is a civil rights action to protect and vindicate the First and Fourteenth Amendment rights of Isaac Smith and his fellow students at OU. By policy and practice, Defendants unlawfully restrict OU students’ constitutional rights to free expression, and have acted in the past to restrict the Plaintiff’s constitutional rights. OU’s policies and enforcement practices are challenged on their face and as applied to Plaintiff Smith. This action seeks declaratory and injunctive relief, damages, and attorneys’ fees.

II. JURISDICTION AND VENUE

6. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988.

7. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§ 1331 and 1343.

8. This Court has authority to grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

9. This Court has authority to issue the requested injunctive relief pursuant to 42 U.S.C. § 1983 and Federal Rule of Civil Procedure 65.

10. This Court has authority to award attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

11. Venue is proper in the United States District Court for the Southern District of Ohio pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the instant claim occurred within this District and because at least one Defendant resides in this District.

III. PLAINTIFF

12. Plaintiff Isaac Smith is, and was at all times relevant to this Complaint, a resident of Athens, Ohio. He is presently a student at Ohio University pursuing a Bachelor of Arts degree in political science and Spanish. He is the Associate Director of Students Defending Students, a subsidiary of the Ohio University Student Senate that assists students through the university judicial process but does not provide legal advice.

IV. DEFENDANTS

13. Defendant Roderick J. McDavis is, and was at all times relevant to this Complaint, President of Ohio University. He is OU's chief executive officer, responsible for OU's administration and policy-making, and has authority to approve the policies and procedures in the Student Conduct Code challenged herein that were applied to deprive Plaintiff Smith of his constitutional rights. Defendant McDavis acquiesced in and sanctioned the policies that were enforced against Plaintiff. Defendant McDavis acted under color of state law when he violated Plaintiff's constitutional rights to free expression. Defendant McDavis is sued in his official capacity. *Ex parte Young*, 209 U.S. 123 (1908).

14. Defendant Jenny Hall-Jones is, and was at all times relevant to this Complaint, Associate Vice President for Student Affairs & Dean of Students at Ohio University. She is responsible for overseeing all registered independent student groups, which includes implementing the policies and procedures challenged herein that were applied to deprive Plaintiff Smith of his rights. Defendant Hall-Jones acted under color of state law when she violated

Plaintiff's constitutional rights to free expression. Defendant Hall-Jones is sued both in her personal and official capacities. *Ex parte Young*, 209 U.S. 123 (1908).

15. Defendant Martha Compton is, and was at all times relevant to this Complaint, the Director of the Office for Community Standards and Student Responsibility at Ohio University. She is responsible for developing, disseminating, interpreting, and enforcing campus regulations, including the policies and procedures challenged herein that were applied to deprive Plaintiff Smith of his constitutional rights. Defendant Compton acted under color of state law when she violated Plaintiff's constitutional rights to free expression. Defendant Compton is sued both in her personal and official capacities. *Ex parte Young*, 209 U.S. 123 (1908).

V. STATEMENT OF FACTS

A. Specific Violations

(1) Fall 2013 Student Orientation Incident

16. August 25th, 2013, Plaintiff Smith participated in OU's Campus Involvement Fair, which takes place annually after the Freshman Convocation on the College Green, the "heart of campus." First-year students are able to visit numerous tables where other students provide literature about the various student organizations, which attempt to sign up new members.

17. Plaintiff attended the Fair with two other students to hand out information about SDS and to recruit new members. Plaintiff is the Associate Director of SDS. SDS is a subsidiary of the Student Senate that assists students who are facing charges under OU's student disciplinary system.

18. While he was at the Involvement Fair, Plaintiff sent out a message via Twitter announcing the presence of SDS, hoping that it would help spread the word about the group and prompt more people to seek out further information.

19. Plaintiff attached a photograph to the tweet, depicting the back of another student who was wearing a SDS t-shirt with the slogan “We get you off for free.” (*See Exhibit A*). SDS began using this slogan in the 1970s and decided to include it in their more recent t-shirt design to boost interest in the organization.

20. Within six minutes, the message was “manually retweeted” from the Twitter account of the Ohio University Student Community Standards Office but without the photograph. In addition, Defendant Martha Compton manually retweeted the message from her personal account, but she also removed the photograph. A manual retweet allows the sender to resend someone else’s content, with the expectation that the message will not be materially altered.

21. In this case, on information and belief, Defendant Compton stripped the photograph and sent the message out again from the Office of Community Standards. She then repeated the process with her personal Twitter account.

22. Defendant Compton also sent a screenshot of the original tweet with the photograph to Defendant Jenny Hall-Jones, who was also attending the Involvement Fair.

23. As the event was ending, Defendant Hall-Jones approached Plaintiff Smith and stated that she had received a screenshot of his tweet with the photograph from Defendant Compton, who was very concerned about it.

24. Plaintiff responded that it was his understanding that the Student Senate had approved the t-shirt design and that Defendant Hall-Jones had agreed with that decision. Plaintiff also pointed out that SDS members had paid for the t-shirts personally rather than using organizational funds.

25. Defendant Hall-Jones repeated her concern about the slogan “We get you off for free.” She informed Plaintiff Smith that she did not wish to see SDS members wearing the t-

shirts again because the message did not exhibit professionalism and contained inappropriate sexual innuendo. Plaintiff responded that the sexual innuendo was “the point,” but Defendant Hall-Jones did not respond favorably or change her directive.

26. Based on this encounter, SDS members stopped wearing the shirts because they feared that they or the organization would be punished.

27. Specifically, Plaintiff and other members of the group feared that wearing the t-shirt would leave them subject to discipline under the OU Code of Conduct, which states, in part, that it is an “offense” to “fail[] to comply with legitimate directives of university officials”

28. Plaintiff, who through his work as a student advocate is well-acquainted with OU’s disciplinary precedents, was concerned that an OU hearing officer would interpret the statement “I don’t want to see you wearing those again” as an enforceable “directive” under the Code of Conduct, because a reasonable person would interpret it as a command from a university official. As an officer of SDS, the Plaintiff is not aware of any instance in which a hearing officer has found that such a command, or even suggestion, given by a university official was not “legitimate.”

29. The then-Director of SDS, Katlyn Patton, met with Defendant Compton in person on or about the first week of September 2013.

30. Following that meeting, Patton told SDS members that Compton had raised concerns about the content of the t-shirts at their meeting and directed SDS members to not wear them, especially near the Community Standards office or during any SDS functions. Patton explained that Defendant Compton said the t-shirts were unprofessional and “inappropriate.” Therefore, Patton advised the group not to wear the t-shirts so as to avoid trouble with University officials.

(2) Continuing Controversy About the T-shirts

31. Following the orientation incident, Defendants Hall-Jones and Compton repeatedly have criticized the SDS t-shirts and emphasized that Defendant Compton considered them to be “shocking” and “upsetting.”

32. On March 13, 2014, at a meeting between SDS and the Community Standards Office to introduce new members of SDS, Nick Oleksy, a new Assistant Director at the Community Standards Office, inquired about the status of the t-shirts. Plaintiff Smith explained how the t-shirt had been approved but that the group had subsequently been asked not to wear it. This prompted Defendant Compton to comment that the shirts objectified women, were sexually inappropriate, and were “encouraging prostitution.”

33. Defendant Compton again told the SDS members present that they should not wear the t-shirts because of the content of the message.

34. Plaintiff is concerned that Defendant Compton’s comments implicate section A-4(f) of the Student Code of Conduct, which sanctions “any act which demeans, degrades, disgraces any person[.]”

35. As a direct result of Defendant Hall-Jones’s and Defendant Compton’s remarks, Plaintiff and other SDS members have refrained from wearing the t-shirts for fear of being punished under University policies.

36. Therefore, Plaintiff Smith and other SDS members have curtailed their expressive activities out of fear of being punished pursuant to policies set forth in the University’s Student Conduct Code.

B. Ohio University’s Policy

37. The President of OU appoints Standing Committees, including the Review and Standards Committee, which advises the Vice President for Student Affairs on the University

judicial system and Student Code of Conduct. Pursuant to this system, OU adopted and published its Student Code of Conduct. (*See Exhibit B*).

38. OU lists Code A Offenses” as including “any act which demeans, degrades, disgraces any person.” The policy does not define the terms “demean,” “degrade,” or “disgrace.”

39. The Student Code of Conduct vests Defendants with unbridled discretion to expand or restrict the definitions of “demean,” “degrade,” or “disgrace” to sanction speech they do not like or allow speech with which they agree.

40. Code A of the Student Code of Conduct also prohibits “taking any reckless, but not accidental, action from which mental or bodily harm could result to another person.” The terms “reckless” and “mental harm” in this section are not defined.

41. The Student Code of Conduct states that the “student conduct process is a learning experience” and that it is “rooted in the philosophy of educational discipline.” Therefore, students cannot assume that any legal definition of “reckless” applies.

42. The Student Code of Conduct vests Defendants with unbridled discretion to expand or restrict the definitions of “reckless” and “mental harm” to sanction speech they do not like or allow speech with which they agree.

43. Code B specifies that “Failure to Comply” includes, but is not limited to, any “failure to comply with legitimate directives of university officials.” The term “directive” is not defined.

44. If students do not conform their expressive activity with the comments of a university official, whether made in a formal or informal setting, they are potentially subject to discipline.

45. The OU Student Code of Conduct does not provide standards or definitions to guide the discretion of the public officials of OU tasked with determining whether a student's actions or speech can be properly sanctioned.

46. OU public officials are empowered to administer the Student Code of Conduct arbitrarily or on the basis of impermissible factors, such as the viewpoint communicated by a student's expression.

47. Students are subject to disciplinary action for violating any provision of the Student Code of Conduct. Students who violate Code A are subject to "the full range of sanctions," including reprimand, disciplinary probation, suspension, or expulsion. Students found responsible for a Code B violation are subject to a range of sanctions that do not include suspension or expulsion.

48. The Student Code of Conduct also states that OU may also add "conditions" to imposed sanctions, including: "educational seminars; reflective essays; restrictions on right of access to campus facilities and programs; restitution for damage; community restitution (community service); room changes, and/or other sanctions that are educational in nature."

49. The "Community Expectations" policy of the Student Code of Conduct states that students and student organizations "are expected to be responsible members of a diverse community, and to honor and respect differences of culture, lifestyle, and religion." It also requires "civility in disagreement."

50. These "Community Expectations" do not specify what it means to "honor and respect differences" or how the University will enforce principles of "civility in disagreement." The policy does not specify or limit the extent to which these "expectations" may be enforced through the Student Code of Conduct.

51. The Student Code of Conduct labels “Community Expectations” as a “policy” and further states: “Students and student organizations of Ohio University accept the responsibility to abide by all Ohio University policies. Proven failure to meet these obligations will justify appropriate disciplinary sanctions.”

52. By conditioning free speech on “honor[ing] and respect[ing] differences of culture, lifestyle, and religion” and requiring “continuous acceptance of freedom of ideas and expression and civility in disagreement,” the Community Expectations policy has a chilling effect on Plaintiff Smith’s rights, and those of all OU students, to engage freely and openly in expressive activities. It furthermore implicates academic discussion, as its requirement to “honor and respect” all differences, is not limited to non-academic activities.

53. Smith wishes to engage in expressive activities in and outside of the classroom on the OU campus without censorship by university officials, and without fear of disciplinary action.

54. Smith fears Defendants will apply the Code A provision prohibiting “any act which demeans, degrades, disgraces any person” and other University policies and “Community Expectations” against him and any other SDS members who wear the t-shirt with the slogan “We get you off for free.”

55. As interpreted and enforced by the Defendants, the Ohio University policies enable administrators to punish any speech on campus that may cause subjective offense. Given these circumstances, Smith has had to curtail his expressive activities on campus.

56. Defendants’ policies and actions create a hostile atmosphere for free expression inside the classroom and elsewhere on campus, chilling the speech of other OU students who are not before the Court.

VI. CAUSES OF ACTION

COUNT I

**As-Applied Violation of Plaintiff's Right to Free Speech Under
the First and Fourteenth Amendments (42 U.S.C. § 1983)
(Defendants Hall-Jones and Compton)**

57. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

58. The First and Fourteenth Amendments extend to campuses of state colleges and universities. *Healy v. James*, 408 U.S. at 180.

59. The First Amendment allows speakers to choose how they phrase their messages. The Supreme Court has long recognized that “words are often chosen as much for their emotive as cognitive force,” and that “we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.” *Cohen*, 403 U.S. at 26. The First Amendment forbids the government from censoring speech based on “personal predilections,” and “the State has no right to cleanse the public debate to the point where it is grammatically palatable to the most squeamish among us.” *Id.* at 21, 25.

60. All of the acts of Defendants were undertaken under the color of law.

61. By stopping the members of SDS from wearing a t-shirt with an expressive message on the OU campus, Defendants have explicitly and implicitly chilled OU students' free expression.

62. Defendant Hall-Jones and Defendant Compton violated a clearly established constitutional right of which all reasonable college administrators and staff should have known, rendering them liable to Plaintiff under 42 U.S.C. § 1983.

63. The denial of constitutional rights is irreparable injury *per se*, and Plaintiff Smith is entitled to declaratory and injunctive relief. Additionally, Plaintiff experienced emotional injury as a consequence of being denied his First Amendment rights.

64. Because Defendants' actions constituted a callous disregard of established rights, Plaintiff is entitled to an award of punitive damages against the Defendants for violating his rights protected by the First Amendment to free expression.

65. Plaintiff is entitled to a declaration that Defendants violated his First Amendment rights. Additionally, he is entitled to damages in an amount to be determined by the evidence and this Court, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

COUNT II

Facial Challenge to Violation of Right to Free Speech Under the Plaintiff's First and Fourteenth Amendment Rights (42 U.S.C. § 1983) (All Defendants)

66. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

67. Defendants may not punish "a 'substantial' amount of protected free speech, 'judged in relation to the statute's plainly legitimate sweep[.]'" *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). Any regulation that does so is invalid "'until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression[.]'" *Id.*

68. Code A of the Student Code of Conduct is unconstitutional because it prohibits "any act which demeans, degrades, disgraces any person." Under the plain language of this overbroad policy, a student cannot call Bernie Madoff a swindler. Nor could a student complain about the bad habits of a roommate or point out in class the logical flaws or mistakes in someone else's presentation.

69. By requiring "continuous acceptance" of "civility," the OU policies stifle robust debate and disregard the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964). Furthermore, the policy impermissibly imposes "special prohibitions on those

speakers who express views on disfavored subjects,” namely those whose opinions are believed to dishonor the “culture, lifestyle, or religion” of others. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 391 (1992).

70. The First Amendment “leaves no room for the operation of a dual standard in the academic community with respect to the content of speech.” *Papish*, 410 U.S. at 671.

71. OU’s policies governing expression are unconstitutionally overbroad, do not serve a significant governmental interest, are not narrowly drawn, and impermissibly restrict student expression. They burden far more speech than is necessary to serve the asserted interest of maintaining an environment conducive to learning.

72. A state enactment also is void for vagueness if the prohibitive terms are not clearly defined such that a person of ordinary intelligence can readily identify the applicable standard for inclusion and exclusion. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

73. Defendants’ policies restricting speech fail adequately to notify the students subject to discipline of the obligations the policies create and are unconstitutionally vague on their face in violation of the First Amendment and of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution.

74. Defendants’ policies restricting speech fail to provide notice of the obligations the policies create, and are unconstitutionally vague on their face in violation of the First Amendment and of the due process guarantee of the Fourteenth Amendment to the U.S. Constitution.

75. Code A’s prohibition of “any act which demeans, degrades, disgraces any person” is an unascertainable standard. The policy does not indicate whether the subjective feeling of the listener determines whether speech is demeaning, degrading, or causes disgrace. *Coates v. Cincinnati*, 402 U.S. 611, 614 (1971) (striking down ordinance prohibiting “annoying” conduct

as vague because it subjected exercise of First Amendment rights “to an unascertainable standard”).

76. Code A prohibits “taking any reckless, but not accidental, action from which mental or bodily harm could result to another person.” Neither “reckless” nor “accidental” is defined, meaning that the distinction that the policy draws between the two concepts is impossible to discern, especially with regard to “mental harm.”

77. The term “mental harm” is also undefined in the Student Code of Conduct, leaving students to guess as to whether hurt feelings or offense are sufficient to trigger the policy or whether “harm” means that the listener has to require counseling or some other remedial intervention.

78. Defendants’ policies do not provide standards to guide the discretion of public officials at the University as to whether the Student Code of Conduct applies to particular acts of free expression. This empowers such public officials to administer the policy on the basis of impermissible factors or through arbitrary application.

79. The undefined language of the Student Code of Conduct leaves enforcement up to the discretion of individual hearing officers, giving speakers no idea of how these terms will be interpreted and thus exercising a chilling effect on speech.

80. The Student Code of Conduct requires students to obey any “legitimate directive” by a University official. However, Code B fails to define “directive,” leaving students unable to determine whether a remark by an official is friendly advice, a general comment, or an order directed specifically at a student or student group. It also fails to define “legitimate,” forcing students to obey directions from University officials that violate the Constitution or are otherwise unreasonable or risk being punished because a University official or hearing board subjectively determines that the order was “legitimate” after all.

81. The Student Code of Conduct gives OU officials unbridled discretion to determine the legitimacy of a colleague's directive and provides no criteria that enable students to understand what a "legitimate directive" might entail.

82. As a direct result of the Defendants' Student Conduct Code policies, students at OU are deprived of their right to free speech under the First and Fourteenth Amendments to the Constitution.

83. As a legal consequence of the Defendants' violation of Plaintiff's and other similarly situated students' First and Fourteenth Amendment rights, as alleged above, which is irreparable injury *per se*, Plaintiff is entitled to declaratory and injunctive relief, damages, and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

COUNT III

Violation of the Due Process Clause of the Fourteenth Amendment (Defendants Hall-Jones and Compton)

84. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

85. Defendants' policies limit constitutionally-protected speech and conduct without providing any objective guidelines by which Plaintiff or other students can guide their speech and behavior.

86. Defendants, pursuant to OU policies and practice, violated Plaintiff's right to due process under the Fourteenth Amendment to the United States Constitution by preventing him from engaging in expressive activities by instructing him not to wear the SDS t-shirt, threatening him with disciplinary action, and failing to provide him with notice and an opportunity to be heard.

87. Because the law is clearly established in this area, and because Defendants had fair warning that by denying Plaintiff the right to free expression, as well as a fair and open

process before denying him that right, Defendants are individually and personally liable for violating Plaintiff's rights protected by the Fourteenth Amendment.

88. The denial of constitutional rights is irreparable injury *per se*, and Plaintiff is entitled to declaratory and injunctive relief, damages, and the reasonable costs of this lawsuit, including their reasonable attorneys' fees.

COUNT IV

Declaratory Judgment and Injunction (28 U.S.C. § 2201, et seq.)

89. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

90. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning Plaintiff's rights under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to Counts I through III above.

91. Plaintiff desires a judicial determination of his rights against Defendants as they pertain to Plaintiff's right to speak without being subjected to Student Conduct Code regulations that are overbroad, that are not narrowly tailored to serve a substantial governmental interest, and that are vague.

92. To prevent further violation of Plaintiff's constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C. § 2201 and Fed. R. Civ. P. 57, declaring Ohio University's Student Conduct Code policies unconstitutional.

93. Pursuant to 28 U.S.C. § 2202 and Fed. R. Civ. P. 65, this Court should issue a permanent injunction prohibiting the Defendants from enforcing their restrictions on Plaintiff's expressive activities to the extent they are unconstitutional, to prevent the ongoing violation of Plaintiff's constitutional rights. Plaintiff and his fellow students are suffering irreparable harm

from continued enforcement of Ohio University's unconstitutional policies, monetary damages are inadequate to remedy their harm, and the balance of equities and public interest both favor a grant of injunctive relief.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Isaac Smith respectfully requests that the Court enter judgment against Defendants and provide Plaintiff the following relief:

A. A declaratory judgment stating that Defendants' speech codes are unconstitutional facially and as-applied, and that they violate the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

B. A permanent injunction restraining enforcement of Defendants' unconstitutional speech codes and enforcement practices;

C. A declaratory judgment that Defendants' censorship of Plaintiff's expressive activity violated his First and Fourteenth Amendment rights;

D. Monetary damages in an amount to be determined by the Court to compensate for the Defendants' censorship and threat of punishment that chilled Plaintiff's expressive activity;"

E. An award of punitive damages against the Defendants for callously violating Plaintiff's rights protected by the First Amendment to free expression and the Fourteenth Amendment right to due process.

F. Plaintiff's reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988, and other applicable law; and

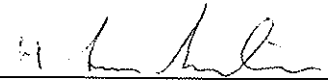
G. All other further relief to which Plaintiff may be entitled.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues properly triable by jury in this action.

DATED: July 1, 2014

Respectfully submitted,

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EXHIBIT A

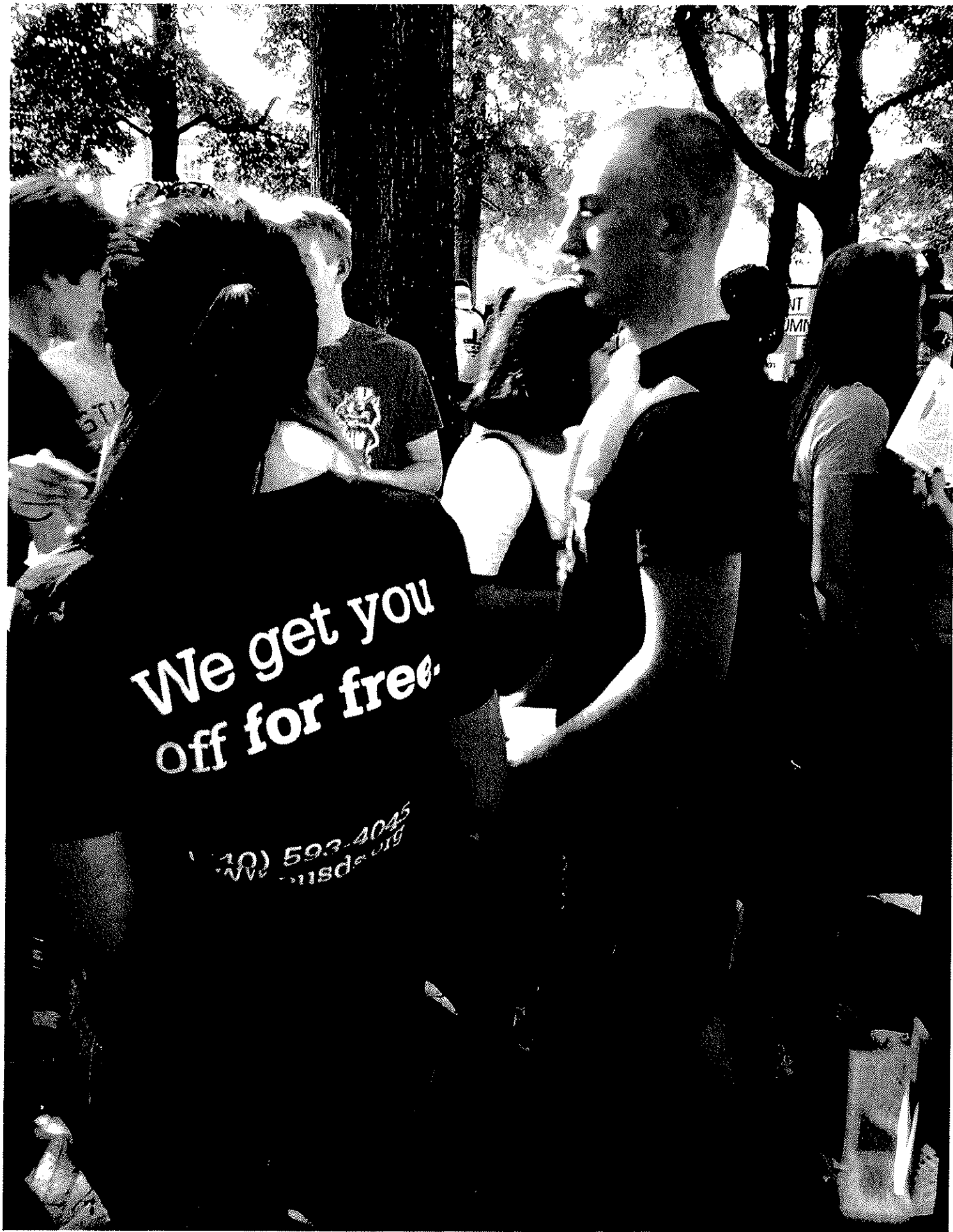
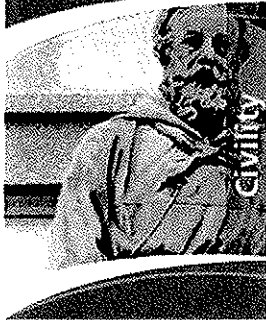


EXHIBIT B



Division of Student Affairs

DIVISION OF STUDENT AFFAIRS


[Ohio University](#) > [Community Standards](#) > [Code](#)

Community Expectations

Ohio University has long celebrated its commitment to being an academic community. This legacy includes care, cooperation, and an adherence to standards of behavior for all invited to be part of the *community*. In order for this community to flourish, the following expectations of behavior have been established:

1. Ohio University and surrounding communities bring educational activity and living arrangements together as a coherent whole. Given this close and constant interaction, Ohio University expects responsible conduct by students and student organizations both on and off the campus as a necessary condition for continued membership at Ohio University.
2. Students and student organizations are expected to be responsible members of a diverse community, and to honor and respect differences of culture, lifestyle, and religion. 3. Academic integrity and honesty are basic values of the university. Students and student organizations are expected to follow student code of conduct standards of academic integrity and honesty.
4. The Ohio University community is an open forum involving the free exchange of ideas and opinions. For exchange to occur there must be a continuous acceptance of freedom of ideas and expression and civility in disagreement.
5. The Ohio University campus, its grounds, facilities, and equipment are provisions largely from the people of Ohio for students at Ohio University. Students and student organizations are expected to respect and use responsibly these resources of the library, residence halls, classroom buildings, laboratories, and the campus as a whole.

[About Us »](#)
[Code of Conduct Policies »](#)
[Code of Conduct](#)
[Procedures »](#)
[The Student Conduct](#)
[Process »](#)
[Conduct Off-Campus](#)
[Parental/Guardian](#)
[Notification](#)
[Academic Misconduct »](#)
[Sexual Misconduct](#)
[Disciplinary Records Policy](#)
[Statistics](#)
[Sanctioning Guidelines »](#)
[Medical Emergency](#)
[Assistance Program](#)
[Common Forms and](#)
[Handouts](#)




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Division of Student Affairs

DIVISION OF STUDENT AFFAIRS

[Ohio University](#) > [Community Standards](#) > [Code](#)

Code A Offenses

A student or student organization found to have violated any of the following offenses will be subject to the full range of sanctions (reprimand, disciplinary probation, suspension or expulsion). Being under the influence of drugs and/or alcohol does not diminish or excuse a violation of the student code of conduct.

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1. **Academic Misconduct** - Dishonesty or deception in fulfilling academic requirements. If includes, but is not limited to: cheating, plagiarism, un-permitted collaboration, forged attendance (when attendance is required), fabrication (e.g., use of invented information or falsification of research or other findings), using advantages not approved by the instructor (e.g., unauthorized review of a copy of an exam ahead of time), knowingly permitting another student to plagiarize or cheat from one's work, or submitting the same assignment in different courses without consent of the instructor. Note: An instructor may impose a grade penalty for academic misconduct and/or file a disciplinary referral.

2. **Dishonesty** - Conduct covered by this offense includes but is not limited to:

- a. furnishing false information to the university by forgery, alteration or misuse of documents or records;
- b. furnishing to the university a written or oral false statement;
- c. furnishing false identification to a university or civic official.

3. **Mental or Bodily Harm to Self** - Conduct that causes harm or has the potential to harm one's self. Conduct covered by this offense includes but is not limited to:

- a. intentionally inflicting mental or bodily harm upon one's self;
- b. taking reckless, but not accidental, action from which mental or bodily harm could result to one's self (e.g., abuse or alcohol or other drugs).

4. **Mental or Bodily Harm to Others** - Conduct that causes harm or has the potential to harm another. Conduct covered by this offense includes but is not limited to:

- a. intentionally inflicting mental or bodily harm upon any person;
- b. attempting to inflict mental or bodily harm upon another person;
- c. taking any reckless, but not accidental, action from which mental or bodily harm could result to another person;
- d. causing any person to believe that the offender may cause mental or bodily harm;
- e. sexual misconduct; [Please see Ohio University Policy 03.004 & Sexual Misconduct Statement](#)
- f. any act which demeans, degrades, disgraces any person;
- g. coercing another to engage in an act of membership in a student organization that causes or creates a risk of mental or bodily harm to any person (e.g., hazing).

5. **Discrimination** - Civilly, criminally or administratively prohibited unequal treatment of a person on the basis of race, age, gender, creed, religion, national origin, ability, veteran status or sexual orientation.

6. **Disruption/Obstruction** - Obstructing or interfering with university functions or any university activity.

7. **Civil Disturbance** - Conduct which involves disturbing the peace in conjunction with a civil disturbance. Disturbing the peace under such circumstances can be defined as, but is not limited to:

- a. disorderly conduct;

- b. failure to comply with the directives of law enforcement or university officials;
- c. failure to comply with an order of dispersal and other such conduct which can reasonably be construed to involve disturbing the peace and good order of the community during such an occurrence.

8. False Report of Emergency - Causing, making or circulating a false report or warning of fire, explosion, crime or other catastrophe.

9. Destruction of Property - Intentionally or recklessly, but not accidentally, damaging, destroying, defacing or tampering with university property or the property of any person or business.

10. Theft or Possession of Stolen Property or Service - Conduct covered by the offense includes but is not limited to:

- a. taking without consent the property or service of the university, another person, business or organization;
- b. possessing property that can reasonably be determined to have been stolen from the university, another person, business or organization.

11. Trespassing - Forcible or unauthorized entry into any university, public or private facility, room or grounds.

12. Possession of Dangerous Weapons or Materials - Unauthorized possession of a dangerous weapon or material, including, but not limited to firearms, compressed-air guns, pellet guns, BB guns, illegal knives, explosive devices, incendiary devices, fireworks, ammunition or any other dangerous ordnance as defined by Ohio law.

13. Manufacture, Distribution, Sale, Offer for Sale, Possession or Misuse of Drugs or Narcotics - Conduct covered by this offense includes but is not limited to:

- a. manufacture, distribution, sale, offer for sale, possession, or use of any illegal drug or narcotic, including but not limited to barbiturates, hallucinogens, amphetamines, cocaine, opium, heroin or marijuana except as defined by offense B-6;
- b. misuse or abuse of legal drugs or narcotics;
- c. possession of a device (drug paraphernalia) that has been used to ingest an illegal drug or narcotic, other than marijuana as defined in offense B-6.

14. Violation of Criminal Law - Alleged violation of any federal, state or local criminal law where the conduct of a student or student organization interferes with the university's exercise of its educational objectives or responsibilities.

15. Misuse or Abuse of Computers or Computer Networks - Misuse, alteration, tampering with or abuse of any computer, computer system, service, program, data, network, cable television network or communication network including telephone or computer lines and wireless networks. (See Ohio University Policy and Procedures 91.003: Computer and Network Use Policy.)

16. Misuse of Safety Equipment - Unauthorized use or alteration of firefighting equipment, safety devices or other emergency safety equipment.

17. Aiding or Abetting - Helping, procuring or encouraging another person to engage in the violation of a Code A offense.

18. Violation of Disciplinary Probation - Violation of the student code of conduct while on disciplinary probation or violation of the terms of one's probation.



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Code B Offenses

A student or student organization found to have violated any of the following offenses will be subject to a sanction or reprimand or disciplinary probation. Being under the influence of drugs and/or alcohol does not diminish or excuse a violation of the student code of conduct.

1. **Unauthorized Use of Property or Service** - Unauthorized use of property or service or unauthorized possession of university property or the property of any person, organization or business.
2. **Disturbing the Peace** - Disturbing the peace and good order of the university and surrounding communities.
3. **Failure to Comply** - Conduct covered by this offense includes but is not limited to:
 - a. failure to comply with legitimate directives of university officials (including residence life staff), law enforcement, or emergency personnel in the performance of their duties (e.g. failure to identify one's self when so requested);
 - b. violation of the terms of a disciplinary reprimand.
4. **Unauthorized Use of University Keys or Other Access Devices** - Unauthorized use, distribution, duplication or possession of any key or other access device issued for any university building, structure, room or facility.
5. **Misuse of Identification** - Transferring, lending, borrowing or altering university identification.
6. **Possession or Use of Marijuana** - Conduct covered by this offense includes but is not limited to:
 - a. possession of marijuana when such possession would constitute a minor misdemeanor;
 - b. use of marijuana;
 - c. possession of a device (drug paraphernalia) that has been used to ingest marijuana.
7. **Unauthorized Use of Alcoholic Beverages** - Violation of state law or university regulations in accordance with the use or sale of alcoholic beverages.
8. **Violation of Rules Regarding Residence Halls and Dining Facilities** - Violation of the Ohio University Housing Contract, Guide to Residential Living or other published rules and regulations of university residence halls and dining facilities.
 - a. Noise
 - b. Visitation Violation
 - c. Illegal Items
 - d. Dining Hall Violation
 - e. Empty Alcohol Containers in an Underage Room
 - f. Throwing Objects/Taking Screens Out of Windows
 - g. Smoking
 - h. Pet Visitation Policy
 - i. Improper Room Change
 - j. Other
9. **Aiding or Abetting** - Helping, procuring or encouraging another person to engage in a Code B

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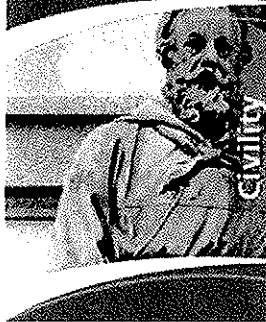
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Sanctions

Students and student organizations of Ohio University accept the responsibility to abide by all Ohio University policies. Proven failure to meet these obligations will justify appropriate disciplinary sanctions. Disciplinary sanctions are defined as follows:

1. **Reprimand** is an official notification of unacceptable behavior and a violation of the student code of conduct. Any further misconduct may result in more serious disciplinary sanctions.
2. **Disciplinary Probation** is a conditional status imposed for a designated period of time. Further violation of the student code of conduct while on probation will be viewed not only as a violation based upon the act itself, but also as an A-18 (Violation of Disciplinary Probation) which may result in further action up to and including suspension or expulsion. Disciplinary probation may place specific restrictions on the student or student organization. These may vary with each case and may include restriction from participating in intercollegiate athletics, study abroad programs, extracurricular and/or Residential Housing activities.
3. **Suspension** is the loss of privileges of enrollment at Ohio University for a designated period of time and prohibits a student from being present without permission on the property of any campus of Ohio University. A student's suspension shall not exceed one calendar year following the effective date of the sanction.
 - a. A student organization's suspension is a temporary revocation of university recognition. A student organization suspension will not exceed five years.
 - b. Suspension may be considered for A level offenses.
 - c. Please refer to the Suspension FAQ Sheet under "Forms and Handouts".
4. **Expulsion** is the permanent loss of privileges of enrollment at Ohio University and prohibits a student from ever being present without permission on the property of any campus of Ohio University. Expulsion will be noted on the student's permanent record. A student organization expulsion is the permanent revocation of university recognition of that organization.
 - a. Expulsion may be considered for A level offenses.
 - b. The sanction of expulsion is the only disciplinary sanction reflected on a student's official academic transcript.

Note: Other areas of the university, such as academic units, student employment, and student activities, may place specific restrictions on students or student organizations who are on disciplinary sanctions. Notification of a sanction will be made in accordance with Ohio University Student Code of Conduct Section 12: Release of Disciplinary Records.

Please also view our [Sanctioning Guidelines for Drug and Alcohol Offenses](#) and our [Sanctioning Guidelines for Sexual Assault](#) under "Sanctioning Guidelines".

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OHIO: COMMUNITY STANDARDS | SANCTIONS





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Conditions of Sanctions

As a component of a disciplinary sanction, hearing authorities may impose conditions that are educational in nature and reflect the nature and gravity of the offense. Conditions of a sanction may include, but are not limited to:

1. Educational seminars;
2. University based intervention programs for alcohol and other drugs;
3. Reflective essays;
4. Restrictions on right of access to campus facilities and programs;
5. Restitution for damage;
6. Community restitution (community service);
7. Room changes, and/or;
8. Other sanctions that are educational in nature.

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Alcohol and Drug Education Courses

Prime for Life

Prime for Life is a 5 hour risk reduction program based on the Lifestyle Risk-Reduction Model. The first goal is to help each participant reduce risk for any type of alcohol problem. The second goal is to help participants understand and accept the need to make change to protect the things most valuable in their lives.

This is an educational program for students who have been sanctioned by the Office of Community Standards and is accepted as a court-ordered educational program within the State of Ohio. Classes are offered several times per quarter. If students are required to complete the Prime for Life alcohol education course as a condition of judicial sanction, students must register for the next available class by the date and time provided by the Community Standards hearing officer. Failure to do so will be considered a violation of disciplinary probation and will result in additional conduct charges and possible suspension from Ohio University.

Students will need to come to the Office of Community Standards & Student Responsibility, Baker University Center 349, between 8 a.m. and 5 p.m., Monday through Friday, to register for Prime for Life using [this waiver](#).

Once officially registered for the next available class, there is a \$100 fee to reschedule this class. This re-registration fee applies both for rescheduling an upcoming class or rescheduling a class missed. Exemptions to the \$100 rescheduling fee are rare. If an exemption is requested, students must provide proof based on the following criteria:

1. Death in the family (students must provide a dated obituary or program from the funeral).
2. Medical emergency (students must provide dated proof of services received from a healthcare provider).
3. Unique extenuating circumstances (students must contact the Director of Community Standards to explain why the situation is unique at least one week prior to the scheduled Prime for Life class. Corroborating documentation of this circumstance must be provided. If an exemption is made, students will be required to register for the next scheduled Prime for Life class).

BASICS

BASICS is a two-session program, consisting of an initial two-hour assessment session, followed by a two-week period of self-monitoring, and finalized in a one-hour feedback session. It typically takes two weeks for the entire process. The BASICS Program provides:

1. A confidential, safe setting for students to openly explore their alcohol and other drug involvement.
2. An assessment of risk for continued alcohol and other drug related problems. Personalized written and verbal feedback to promote reduced risk for alcohol and other drug related problems.
3. A letter of completion/incompletion to the Office of Community Standards, or court, or probation officer regarding a student's participation in BASICS.

The BASICS Program DOES NOT:

1. Conduct a comprehensive biopsychosocial assessment of alcohol and drug use.
2. Transmit personal information or details about a student's participation in the program to outside referral sources. This creates a level of safety that most students need in order to honestly assess their alcohol use problems.
3. Result in treatment recommendations or diagnosis that might be required by your court or probation officer; you will need to seek this type of service elsewhere.

More information regarding BASICS can be located on the Counseling and Psychological Services webpage. Students may sign up on the 3rd floor of Hudson Health Center, Monday through Friday between 8am and 4pm using [this waiver](#).