



November 17, 2014

Mark Dorman
Chair, Board of Trustees
Lewis & Clark College
615 Southwest Palantine Hill Road, MSC 33
Portland, Oregon 97219

Sent via U.S. Mail and Facsimile (503-768-7688)

Dear Mr. Dorman:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE writes to you and the Board of Trustees of Lewis & Clark College (LCC) today to bring to your attention a distressing matter regarding freedom of speech and due process rights with implications for the entire LCC student community. Dishearteningly, the serious concerns brought to LCC's attention by FIRE, echoed by a sizeable contingent of LCC's faculty, have been met with silence from the administration. We call on the LCC Trustees to rectify the college's serious errors in this case and restore its fundamental commitments to student rights.

FIRE's concerns stem from a November 23, 2013, party at an on-campus residence hall, at which several members of LCC's football team were present. At the party, two friends on the football team—one white and one African-American—greeted each other using an inside joke in which they each professed to believe in “white power.” One student greeted the other by saying, “How about a ‘white power?’,” with the other student replying, “White power!” Additionally, during a game of “beer pong,” the African-American student jokingly called his team “Team Nigga,” and would exclaim the team's name every time it scored a point.

These students' verbal exchanges were overheard by a student not present at the party were and ultimately reported to LCC's Campus Living and Campus Safety divisions. The

Campus Safety division investigated allegations of “racial and biased” comments, and the students were both interviewed and lectured by Campus Safety officers and made to defend their speech.

LCC charged both students with “Physical or Mental Harm,” “Discrimination or Harassment,” and “Disorderly Conduct” in part based on the language overheard and reported from the party. However, LCC also dramatically expanded the scope of its investigation to include a multitude of other alleged instances of the use of such language, effectively turning its investigation of a particular incident into a campaign aimed at rooting out all instances of allegedly biased language between the students and within the football program. Despite the expanded scope of LCC’s investigation, the college provided the students with no documentation or other information concerning allegations from outside the November 23 party.

Unsurprisingly, given the uneven playing field the students faced, LCC found both students responsible for all charges, accusing the students of “caus[ing] the reasonable apprehension of harm in our community” and “contribut[ing] to the creation of a hostile and discriminatory environment.”

FIRE wrote to LCC President Barry Glassner on April 18, 2014, calling on LCC to dismiss its charges against the two students, which were brought in violation of their free speech and due process rights. As we noted in our April 18 letter, LCC ignored its institutional commitments to free speech and misapplied the legal standard for student-on-student harassment established by the Supreme Court, which requires conduct that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.” *Davis v. Monroe County Board of Education*, 529 U.S. 629, 651 (1999). LCC does its students a grave disservice by setting the bar of what constitutes “harassment” so low as to expose friends enjoying an inside joke to investigation and punishment simply because it was overheard by a third party who, lacking context, took offense.

Despite FIRE’s intervention, criticism of LCC’s actions in the local and national media, and an open letter to the college from 40 faculty members criticizing LCC’s “questionable treatment of free speech and of our students’ right to due process,” the college has refused to provide any meaningful response to FIRE’s concerns. The entirety of LCC’s engagement of FIRE’s concerns consists of a May 1 letter to FIRE from Vice President, Secretary, and General Counsel David Ellis, stating:

The President’s office has referred your letter to me for review. I may be back in touch when that review is completed.

The wrongly punished students in this case—and by extension *all* LCC students—deserve better than Ellis’ dismissive response. LCC has displayed a lack of regard for the principles

of free expression and a willingness to undermine due process to achieve its desired ends—a course of action with chilling implications for the fundamental rights of LCC students.

Given the LCC administration's apparent unwillingness to fulfill its duty to protect the free speech and due process rights of its students, it is incumbent on the LCC Board of Trustees to do so in its place. We ask that the LCC Trustees see that the unjust charges and sanctions against these two students are dismissed and expunged from their student records. Further, we ask that the Trustees work with the administration to ensure that LCC will not use its disciplinary process as a tool for waging campaigns to eliminate "offensive" speech at the expense of students' basic rights.

We have enclosed copies of FIRE's April 18, 2014, letter to Lewis & Clark College, Vice President David Ellis' May 1 response, and the LCC faculty members' open letter concerning the students' treatment and the administration's silence. We request a response to our letter by December 8, 2014.

Sincerely,



Peter Bonilla
Director, Individual Rights Defense Program

Encl.

cc:

Lewis & Clark College Board of Trustees
Barry Glassner, President
David Ellis, Vice President, Secretary, and General Counsel
Anna Gonzalez, Dean of Students
Kelly Hoover, Director of Campus Living
Latricia Brand, Associate Dean for Student Engagement
Charlie Ahlquist, Assistant Director for Residential Education