FIRE
Foundation for Individual Rights in Education

October 29, 2014

President Frederick Keating
Rowan College at Gloucester County
Office of the President
1400 Tanyard Road
Sewell, New Jersey 08080

Sent via U.S. Mail and Facsimile (856-468-1983)

Dear President Keating:

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 is greatly concerned by the threats to freedom of speech, academic freedom, and due process presented by Rowan College at Gloucester County's (RCGC's) termination of Professor Dawn Tawwater for refusing to agree to the college's demand that she refrain from using "indecent language"—a demand that violates her rights as a professor. In terminating Tawwater, RCGC repeatedly ignored concerns for her First Amendment and academic freedom rights and denied her numerous basic due process protections, a perfect storm of injustice that ensured her unjust and illegitimate termination. We call on RCGC to immediately reinstate Tawwater, in accordance with its moral and legal duties as a public institution bound by the First Amendment.

The following is our understanding of the facts; please inform us if you believe we are in error.

Dawn Tawwater was hired as a tenure-track, Level I instructor in RCGC's sociology department effective September 1, 2014. In the current semester she was teaching five sections: three sections of Sociology 101 ("Principles of Sociology") in addition to one section each of Sociology 102 ("Sociology of the Family") and Sociology 104 ("Social Problems"). Prior to her hiring by RCGC, Tawwater taught at Austin Community College,

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Dallas Community College, Collin County Community College, Tarrant County College-Fort Worth, and Iona College. In all, Tawwater has taught college-level sociology for roughly 20 years.

On September 29, after teaching one of her Sociology 101 sections, Tawwater returned to her campus office, where she received a note from Dean of Liberal Arts Paul Rufino requesting that she meet with him at 10:00 that morning. In this meeting, which Tawwater states lasted for roughly 15 minutes, she was informed of two student complaints regarding her teaching. Tawwater was given information about only one of these complaints, which concerned her use of profanity during class sessions. (Rufino briefly mentioned that the second complaint had been filed with Linda Martin, Vice President of Academic Services, but provided no further details.) The complaint also criticized her screening of a feminist music-video parody of Robin Thicke's popular song "Blurred Lines," which Tawwater had screened for two of her Sociology 101 sections. The music video for the parody—called "Defined Lines"—is similar in style and execution to the video for "Blurred Lines," but with the gender roles reversed; the "Defined Lines" video features men in their underwear, whereas the "Blurred Lines" video featured topless women. The parody itself is a critique of the original's controversial messages regarding sexual consent and female objectification. Tawwater reports having shown this video dozens of times to classes in her previous teaching positions, without incident or complaint, and explained to Rufino that she had shown the video as part of an introductory lesson on postmodern theory.

Rufino noted that the complaint about the music video specifically referenced the student's discomfort with the underwear-clad men featured in the video (whose presence is central to the video's critique). Rufino suggested that Tawwater consider warning students in advance of screening the video because of its content, a proposal to which Tawwater objected. Rufino also suggested that while some profanities were not objectionable, Tawwater should refrain from saying or using material with the word "fuck" in her classroom. Despite her belief that her First Amendment and academic freedom rights protected this expression, Tawwater told Rufino that she would be more mindful of her language in the classroom. Only at the end of this discussion, after Tawwater insisted on knowing RCGC's procedure for handling student complaints, did Rufino inform Tawwater that the complaint had been made in writing. Tawwater was given a brief opportunity to view it, although she was not permitted to keep a copy. Rufino informed Tawwater that no procedure existed in writing regarding student complaints.

On October 1, Rufino emailed Tawwater and asked her to meet with him and with Almarie T. Jones, Executive Director for Diversity & Equity, at 10:00 the following morning "to discuss a student complaint." Tawwater replied that she would attend and then contacted New Jersey Education Association (NJEA) campus president and RCGC professor Oron Nahom to seek union representation for the meeting. Nahom wrote to Jones that evening, informing her that no NJEA representative would be available before the following afternoon to satisfy Tawwater's request for representation, and therefore requesting that the meeting be rescheduled.

Tawwater received no further communications from RCGC, and learned from Nahom only around 10:15 the next morning that RCGC planned to proceed with the meeting as scheduled despite the request to reschedule. Tawwater arrived at the meeting at approximately 10:30, at which point the administrators present decided to reschedule the meeting for the afternoon of October 6. Tawwater was briefly informed that the administration had received two new complaints since her September 29 meeting with Dean Rufino.

On October 3, Tawwater emailed Danielle Morganti, Executive Director of Human Resources, requesting "a copy of whatever process we are now institutionally traversing," noting that she could find no written guidance from RCGC's published policies. Tawwater also requested "a copy of any policy governing student complaints and faculty rights during the complaint process," which she also had been unable to locate. Finally, Tawwater requested copies of the student complaints that had been filed against her.

In response, Morganti provided only a link to the RCGC policy website, noting in particular that Tawwater should be familiar with Administrative Procedure 7065, concerning "Employee Conduct and Work Rules." This policy, however, lists only various conduct violations and the recommended sanctions for each violation based on the number of offenses. Morganti did not provide copies of the complaints to Tawwater or give any specific details about them. Morganti only noted that "several formal written complaints" had been filed and that her case had "risen to the level that a formal investigation must occur." Morganti did not provide any details on what constitutes a formal investigation other than to say that "[w]hen a complaint is brought . . . we are obligated to address it and in a formal manner."

At the hearing on October 6—at which roughly eight to ten administrators were present—Tawwater was not provided with copies of or allowed to view any of the complaints against her, and was informed of their contents only verbally. The issue of Tawwater's use of profanity in the classroom was raised again in one or both of the complaints; in all or nearly all of these instances, the administrators did not provide any context for any of the alleged uses of profanity. Tawwater was also informed of complaints about her alleged cancellation of one class and early dismissal of another,[1] as well as about a complaint from a student (a mother of a disabled child) who claimed Tawwater had treated her insensitively.[2]

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[1] Tawwater responded to this complaint this by noting that her lateness to the first class section occurred when her discussions with a student in that same section regarding a term paper assignment had run late and that they hurried to the classroom at this realization, arriving less than ten minutes late. Most of the roughly 35 students enrolled in the class section had left by this point, and Tawwater held class for the roughly five students that had stayed or arrived late. In the next section of that class, she began by chastising the students for having left the previous session before her arrival. Tawwater then turned to the session's planned topic and lectured for roughly 35–40 minutes. She let the class go early, as they had covered all the planned material for the day.

[2] Tawwater responded that she had gone out of her way to accommodate this student, including allowing the student to keep her cellular phone in view on her desk, against the usual classroom rules. She also noted that the student had been frequently disruptive in class and that her behavior had drawn complaints from other students.

Tawwater estimates that she was allowed to speak in her own defense for 10–15 minutes of the approximately 45-minute meeting. After speaking, she was presented with a "Last Chance Agreement" requiring her, among other things, to "refrain from using indecent language in the classroom" and to "publicly apologize to the affected classes." Per the agreement's terms, Tawwater would also be required to "participate in a training program approved by the College, which includes effective teaching methodologies, sensitivity training, and effective communication." The agreement also stipulated that "any future student complaint of violation of the agreements listed above will result in immediate termination." Tawwater asked if the prohibition of "indecent language" would include the use of media or other materials containing language that might be considered such; the administrators replied that it would.

Tawwater refused to sign the agreement, and Nahom stated that he would not recommend that she sign the agreement, either. The administrators refused to amend the agreement other than to slightly modify one provision stating that her agreement would be removed from her personnel file after 24 months if there were no further incidents; they offered to reduce this period of time to 12 months. Tawwater again refused to sign the agreement, at which point she was ordered to clean out her office and return. When she returned, she was given a letter informing her of her termination. The letter specified the reasons for her termination as:

- Four student complaints filed within the first 30 days of employment for using indecent language and inappropriate behavior in the classroom
- Being late to one class that resulted in the class cancellation for that day, and subsequently dismissing the same class early on the next scheduled meeting date without informing your Dean.

Tawwater was then given a printed copy of Administrative Procedure 7065, with several highlighted sections apparently indicating Tawwater's alleged violations. These highlighted portions covered "[i]ndecent or abusive language or gestures"; "[l]eaving assigned work area without permission"; "[p]articipating in any activity that interferes with normal operations, or attempting to influence or persuade others to engage in such activities"; "[r]ude or discourteous behavior to a student"; "[f]ailure to adhere to the rules, regulations and/or statutes"; "[m]aking . . . vicious or malicious statements concerning any . . . student"; " and "[i]nsubordination, including the refusal to follow a supervisor's instructions." Tawwater was not informed which of her alleged offenses applied to any of the specific highlighted violations.

Tawwater's treatment is an affront to faculty rights, displaying remarkable indifference to academic freedom and freedom of speech and an alarming disregard for due process.

That the First Amendment is fully binding on public institutions like RCGC is settled law. *See Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be

there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities."); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'"). The Supreme Court has made clear that academic freedom is a "special concern of the First Amendment," stating that "[o]ur Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). The current RCGC faculty collective bargaining agreement reflects this commitment, granting faculty members the "freedom of discussion in the performance of his or her faculty responsibilities and in the classroom, provided the discussion is relevant to the course."

The Supreme Court has also repeatedly held that speech may not be punished merely because many may find it to be offensive, disrespectful, or, as alleged in this case, "indecent." *See Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."); *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) ("[T]he 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.'"); *Cohen v. California*, 403 U.S. 15, 25 (1971) ("Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us . . . [W]hile the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.").

FIRE is alarmed at the apparent lack of effort by RCGC to verify the legitimacy of the course-related claims made against Tawwater or to weigh them against her First Amendment and academic freedom rights, both of which enjoy robust protection. Indeed, it seems that the mere fact that complaints were filed against Tawwater was sufficient for them to count against her record and ultimately result in her termination—a disturbing prospect for any faculty member whose course discussions may veer into controversial territory or challenge students' beliefs.

Students, of course, are free to register concerns or complaints about their professors with the administration. The college, however, bears the obligation to thoroughly investigate such complaints and assess their merit in light of faculty members' rights. RCGC's claims against Tawwater on the basis of her class content and language fail by a significant margin. There can be very little question that the First Amendment protects the occasional use of profanity by professors in the public college classroom. Tawwater's classes consist of adult students who are more than able to endure the occasional use of coarse language in the normal give-and-take of a college lecture.

Additionally, the teaching of sociology itself is bound to venture into sometimes-uncomfortable territory—covering, among many other topics, violence and social deviance as well as deeply contested matters of race, gender, and sexuality. The fact that occasional discomfort is all but inevitable should have no bearing on a professor's right to select his or her materials and use them as he or she sees fit. Tawwater's First Amendment and academic freedom rights protect her screening of the parody music video in her class, the subject of at least one student's complaint. As Tawwater has demonstrated, the video was entirely germane to the subject matter. RCGC has not provided a remotely plausible or compelling explanation as to why the complaints over her language and course content should not be dismissed. Allowing such complaints to result in Tawwater's termination will have a profoundly chilling effect on faculty expression and academic freedom. Indeed, it will render "academic freedom" virtually meaningless at RCGC.

FIRE is further concerned by RCGC's attempt to coerce Tawwater into signing the "Last Chance Agreement" prohibiting the use of "indecent language" in her classroom. This is simply unacceptable and further disregards the principles of free speech and academic freedom, which RCGC is bound to uphold. RCGC's prohibition on "indecent language" is also impermissibly vague. A policy or regulation is said to be unconstitutionally vague when it does not "give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The agreement provides no indication as to what constitutes "indecent language," though given the facts of this case it seems likely that any language subjectively believed by complaining students to be "indecent" would have been so judged, no matter how unreasonable the complaint.

In addition to RCGC's disregard for its faculty's right to free speech and academic freedom, the procedures resulting in Tawwater's termination were rife with defects that denied her fundamental fairness and a meaningful opportunity to defend herself. We note, as Tawwater did repeatedly, that RCGC appears to keep no written policies or procedures to inform faculty about disciplinary processes, even in cases where a faculty member faces termination. That Tawwater in nearly all instances was disallowed from reviewing any of the complaints against her in writing, despite repeated requests, fundamentally violates the principles of due process and basic fairness. RCGC did not even provide Tawwater with a list of the policies she was alleged to have violated until after it had rendered its decision to terminate her. RCGC provided no explanation of which complaints corresponded with each of the highlighted violations, nor did it give any indication of the number of violations Tawwater is alleged to have committed in each category. In total, these procedural failings indicate that RCGC may well have predetermined that it would terminate Tawwater and engaged in a deliberate course of conduct designed to allow the college to achieve these ends expediently and without accountability. We note particularly that the college prepared its "Last Chance Agreement" for Tawwater to sign in advance of her hearing, signaling that the college had determined her guilt before she ever had a chance to defend against the allegations.

RCGC's treatment of Tawwater is inexcusable and utterly unbefitting of an institution of higher education. It cannot be allowed to stand. Tawwater's rights have been so compromised by the college's failures that the only moral course of action is for RCGC to reverse her termination and return her to teaching immediately. In addition to ending Tawwater's unjust termination, we further call on RCGC to clearly establish and publish procedures that will fully inform faculty members of their due process rights and ensure that faculty members aren't left unable to defend themselves in the manner Tawwater was. We hope Rowan College at Gloucester County will be deterred by the prospect of gaining a public reputation as a college that recklessly disregards faculty rights.

We have enclosed with this letter a signed waiver from Dawn Tawwater, permitting you to freely discuss her case with FIRE.

We request a response to this letter by November 7, 2014.

Sincerely,

Peter Bonilla
Director, Individual Rights Defense Program

Encl.

cc:
Linda Martin, Vice President for Academic Services
Paul Rufino, Dean, Liberal Arts
Danielle Morganti, Executive Director, Human Resources
Almarie T. Jones, Executive Director, Diversity & Equity