



December 20, 2018

Chancellor Susan Sciame-Giesecke
Indiana University Kokomo
Hunt Hall, 212A
2300 S. Washington Street
Kokomo, Indiana 46902

Sent via U.S. Mail and Electronic Mail (sgieseck@iuk.edu)

Dear Chancellor Sciame-Giesecke:

FIRE and PEN America¹ are pleased to learn that the issues discussed in our October 22 letter have been partially addressed by Indiana University Kokomo's (IUK's) decision to restore two student sculptures previously removed in response to complaints. However, our concern for the state of freedom of expression at Indiana University Kokomo remains, due to Executive Vice Chancellor for Academic Affairs Mark Canada's suggestion that the sculptures will be taken down again if they prompt further complaints.

I. Factual Background

Our letter of October 22 more fully sets forth the relevant facts, which are incorporated by reference. As the university has chosen not to respond in writing, we assume that it does not dispute those facts. For readers unfamiliar with the matter, we will briefly summarize those facts.

In the summer of 2017, Associate Professor of Fine Arts Gregory Steel contacted the University's Capital Projects Office, which handles "procurement and installation of furniture and finishes, signage, and exterior public art,"² to request placement of several concrete pads for his students' sculptures. Over the summer of 2018, the Capital Projects Office installed the pads, which Steel intended to feature artwork from his annual summer sculpture class.

¹ As you will recall from our prior correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses and PEN America is a nonprofit organization standing at the intersection of literature and human rights to protect open expression in the United States and worldwide.

² *Capital Projects*, INDIANA UNIVERSITY KOKOMO <http://www.indiana.edu/~uao/> (last visited Oct. 18, 2018).

In July 2018, Steel worked with students in his metal sculpture class to create large-scale sculptures for display on the pads. Steel and Chair of New Media, Art and Technology Minda Douglas selected two student sculptures to display on the grassy area outside of IUK's arts building. One was crafted from metal pipes and materials, the other was a neon pink structure vaguely resembling female genitalia. Staff from IUK's Office of Physical Facilities used a lift to install the two sculptures on the provided concrete pads around July 30.

Without providing Steel warning or a justification, IUK removed the sculptures about a week after they had been posted and placed them on the landing dock outside the arts building. Steel then met with IUK Executive Vice Chancellor for Academic Affairs Mark Canada concerning the artwork's removal. Canada acknowledged that the sculptures were removed in response to complaints received by the office of Executive Vice President for Academic Affairs John Applegate, but did not provide information on the content of the complaints.

On October 22, 2018, the same day FIRE and PEN America wrote to IUK calling for the sculptures to be returned to their original location, *Kokomo Perspective* reporter Devin Zimmerman wrote about the controversy. Zimmerman interviewed Mary Ade, the student responsible for creating the sculpture resembling female genitalia:³

Mary Ade, an IUK senior, learned to weld for the summer sculpture course so she could construct the unnamed piece. The work itself, said Ade, was born of a past sexual assault and served as a way for her to heal and hopefully help others who have endured similar difficulty.

“That experience really changed my relationship with my body,” said Ade. “So a lot of the work I’ve done, and this sculpture specifically, is about coming to terms with that after sexual trauma and that sort of thing. It really is deeply personal to me, and it matters to me. And I think it should matter to other people too because I know I’m not the only one who has gone through that experience. What I’m really trying to do is make the art that I needed to see when I was 18 and didn’t know what the hell to do. That was my goal with this piece, to contribute to my personal healing process, but also hoping to reach out to other people who have gone through a similar experience.”

IUK Director of Media and Marketing Marie Lindskoog told Zimmerman the sculpture “was taken down because it didn’t go through the correct approval process” but “[t]hen it went through the correct approval process, and now they’re going back up.” Lindskoog also said that “[t]hose decisions come from [IU] Bloomington, not from this campus” and that IUK doesn’t make a “judgment call” regarding “what is appropriate and what is not appropriate.” Steel

³ Devin Zimmerman, *IUK professor cries foul after student sculpture removal*, KOKOMO PERSPECTIVE, (Oct. 22, 2018), http://kokomoperspective.com/kp/news/iuk-professor-cries-foul-after-student-sculpture-removal/article_b066ac00-d626-11e8-bff3-03a62999790d.html.

disputed Lindskoog’s claim in the *Kokomo Perspective*, explaining that he had been told that “complaints from the community” were the reason for the sculptures’ removal.⁴

As promised by Lindskoog, the sculptures were eventually returned to their original location in late October, three months after they had been removed. Steel remains concerned, however, that they will be taken down again. In an October 16 email, Canada discussed the possibility that the sculptures would be replaced, but warned that the administration “wants to make sure that IU Kokomo is a ‘good neighbor,’” and “may reconsider their placement” based on “concerns from the community.” Canada went on to explain that IUK “will be drafting a policy so that we all will be on the same page when it comes time to make decisions about future installations.” Since Canada’s email, Steel has not received any reassurance that the sculptures will remain if they provoke further controversy.

II. Analysis

A. IUK may not give censorship or curatorial power to complaints

Our October 22 letter laid out in full the importance of the First Amendment at IUK. Again, while we are pleased that IUK has restored the sculptures to their original location, IUK must still clarify that, going forward, community members’ right to engage in artistic expression will not be tempered by audiences’ preference to avoid artwork that offends them.

According to Ade, her sculpture “is about coming to terms with [her body] after sexual trauma.” Depictions of the female body and discussions of sexual assault prove uncomfortable to many viewers, but that does not mean those depictions or discussions are any less worthwhile than topics that fail to provoke similar indignation.⁵ Expressive works, by their very nature, are likely to offend someone somewhere. In fact, artists sometimes *intend* that viewers be offended. *See, e.g., Terminiello v. Chicago*, 337 U.S. 1, 4 (1949) (“[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”).

That those who encounter expression may be offended is not a justification for its censorship. *See, e.g., Cohen v. California*, 403 U.S. 15, 21 (1971) (reversing conviction of man wearing a jacket bearing the anti-draft slogan “Fuck the Draft” in a courthouse hallway because those present “could effectively avoid further bombardment of their sensibilities simply by averting their eyes.”). The same remedy is available to those who were offended by Ade’s statue as was available to occupants of the Los Angeles Superior Court offended by Cohen’s jacket: They do not have to look at it.

⁴ *Id.*

⁵ For example, microblogging platform Tumblr’s recent decision to ban, among other things, “female-presenting nipples” has been widely met with scorn from Tumblr users and commentators who oppose the site’s targeting of female nudity. *See, e.g.,* Harron Walker, *What the Hell Are ‘Female-Presenting Nipples’?*, JEZEBEL, Dec. 4, 2018, <https://jezebel.com/what-the-hell-are-female-presenting-nipples-1830829602>.

Cohen is not an outlier. The Supreme Court has repeatedly rejected the notion that expression may be limited on the basis that others might find it uncomfortable or offensive. In *Forsyth County*, for example, the Court rejected as unconstitutional security fees levied on demonstrators to maintain public order against counterdemonstrators opposed to the demonstrators' message. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 135 (1992). The Court held that "[l]isteners' reaction to speech is not a content-neutral basis for regulation," and that expression could not be "burdened, any more than it can be punished or banned, simply because it might offend" others. *Id.*

Should "concerns from the community" determine what artists can create or display, IUK risks suppressing conversations that students like Ade intend to start. While IUK's desire to be a "good neighbor" may be well-intentioned, its primary obligations are to its students; the university's neighborly ambitions cannot supersede the expressive rights of its own community.

B. IUK must provide transparency about the complaints it has received regarding its sculptures

In his August meeting with Steel, Canada mentioned complaints from the university as the reason for the sculptures' removal. In his October 16 email, Canada again invoked the possibility of complaints, which he described as "concerns from the community," as a potential reason the sculptures may need to be removed again.

Who initially complained about the sculptures, and the nature of their complaint, remains unclear. At no point has Steel been provided with the initial complaints. In response to FIRE's October 22 request under Indiana's public records law seeking documents concerning those complaints, IUK produced three records, none of which shed any light whatsoever on the content or origin of the complaints referred to by Canada. When pressed to explain the method by which IUK sought to locate documents that might corroborate the existence and nature of the complaints, IUK's counsel confirmed that she had spoken to Canada.

Whether the sculptures' removal was precipitated by complaints or motivated by concern about the process by which the sculptures were initially erected, IUK should explain those circumstances in detail. If there are records concerning those complaints, whether they originated from someone at IUK or IU Bloomington, they must be shared with FIRE in accordance with Indiana's public records laws.

III. Conclusion

In his October 16 email, Canada suggested that IUK was considering crafting new policies that would address the university's handling of future art installations. Any policies proposed by IUK must treat artwork in a viewpoint-neutral manner and ensure that artists' expressive rights will not be subordinated to complaints about content or viewpoint. FIRE would be pleased to work with IUK in developing such policies.

Again, we are pleased that IUK has made the decision to restore the sculptures to their original location, but IUK's commitment to expressive freedom obligates the university to be transparent about the circumstances surrounding the sculptures' removal and to make a firm commitment that future complaints will not yield their renewed removal.

We request receipt of a response to this letter by January 11, 2019.

Sincerely,



Sarah McLaughlin
Senior Program Officer, Legal and Public Advocacy, FIRE



Jonathan Friedman
Project Director, Campus Free Speech, PEN America

cc:

John Applegate, Executive Vice President for Academic Affairs

Mark Canada, Executive Vice Chancellor for Academic Affairs

Abby Daniels, Assistant General Counsel

Michael J. Mirro, Chair, Board of Trustees

Patrick A. Shoulders, Vice Chair, Board of Trustees

Zachary D. Arnold, Student trustee

W. Quinn Buckner, Chair, Student Relations Committee

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Melanie S. Walker, Chair, Finance, Audit, and Strategic Planning Committee