



September 24, 2019

Craig A. Cook
General Counsel and Secretary of the Institute
Troy Building, Third Floor
Rensselaer Polytechnic Institute
110 8th Street
Troy, New York 12180-3590

Sent via U.S. Mail and Electronic Mail (cookc5@rpi.edu)

Dear Mr. Cook:

Over the course of 2017 and 2018, FIRE¹ wrote to Rensselaer Polytechnic Institute (RPI) to share our concerns with the use of vague or non-existent policies to burden or suppress student expression. Those policies and their use were contrary to RPI's express promises to grant students freedom of expression and its accreditation by Middle States.

We were particularly concerned by RPI's assertion that students' distribution of flyers and letters amounted to "solicitation," and that students could hand out written materials only if they first received administrators' permission. Concerns have also been raised by the New York Civil Liberties Union,² RPI students, and the *Times-Union*, which implored RPI's administration to do some "soul-searching" with respect to students' freedom of expression.³ RPI has twice found itself on FIRE's list of the worst institutions for freedom of expression.

You can understand our disappointment to learn that RPI has revised its policies to make them even more restrictive of student speech.

¹ As you will recall, the Foundation for Individual Rights in Education 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.

² Letter from Kathy Manley, Vice President, Capitol Region Chapter, New York Civil Liberties Union, to Travis Apgar, Assistant Vice President and Dean of Students, Rensselaer Polytechnic Inst. (Dec. 21, 2017), *available at* <https://www.thefire.org/new-york-civil-liberties-union-letter-to-rensselaer-polytechnic-institute-december-21-2017>.

³ *Editorial: Crossing a clear blue line*, ALBANY TIMES-UNION, Apr. 25, 2018, <https://www.timesunion.com/opinion/article/Editorial-Crossing-a-clear-blue-line-12865180.php>.

I. RPI now requires students to receive an administrator’s advance permission to distribute written materials on campus.

Both FIRE and the NYCLU criticized RPI’s assertion that its policies required students to get permission before distributing flyers. The NYCLU, in its 2017 letter, noted that this policy did “not actually seem to exist.” FIRE has explained that such a policy, even if it existed, would not be consistent with RPI’s promises or accreditation.⁴

RPI has now written that policy, adding it to the latest edition of the student handbook. In an email to students introducing the policy, RPI described the new solicitation policy as “added” in order to “reflect existing processes for the distribution of materials on campus,” implicitly conceding that—contrary to RPI’s claims—no written policy previously required as much.⁵

RPI’s new solicitation policy provides, in pertinent part:

Only Institute administrative unit or departments, and recognized student organizations with express permission, may conduct fundraising or solicitation activities on the Rensselaer campus, or distribute materials on campus property, including but not limited to the residence halls. . . .⁶

This policy clearly prohibits any RPI student from distributing any “materials” on campus unless (1) they do so under the auspices of a recognized student organization *and* (2) they get “express permission” to distribute the materials. This policy applies to all parts of campus, indoor and out. The policy does not attempt to identify any criteria by which “permission” is to be granted or denied, leaving RPI’s administration with unfettered discretion to decide what written materials students may share on its campus.

Requiring students to ask an administrator before handing out a letter cannot be squared with freedom of expression. As the Supreme Court has observed, “It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse [one] must first inform [authorities] of her desire to speak to her neighbors and then obtain a permit to do so.”⁷ Because the use of permits to control expressive activity “has the potential for becoming a means of suppressing a particular point of view,” licensing schemes are permissible only where they do “not delegate overly broad licensing discretion” to the issuing authority.⁸

⁴ See, e.g., *Rensselaer Polytechnic Institute: We want a ‘controlled environment’ for student speech*, FIRE, Mar. 26, 2018, <https://www.thefire.org/rensselaer-polytechnic-institute-we-want-a-controlled-environment-for-student-speech>.

⁵ E-mail from Travis Apgar, Assistant Vice President for Student Life & Dean of Students, Rensselaer Polytechnic Institute (Aug. 29, 2019), available at <https://bit.ly/2kGfC09>.

⁶ RENSSELAER POLYTECHNIC INST., RENSSELAER HANDBOOK OF STUDENT RIGHTS & RESPONSIBILITIES 41 (Aug. 29, 2019), available at <https://info.rpi.edu/sites/default/files/Handbook-of-Student-Rights-and-Responsibilities-Rev-August-29-2019.pdf>.

⁷ *Watchtower Bible and Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 165–66 (2002).

⁸ *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 130 (1992).

When FIRE previously raised these concerns, RPI demurred, arguing that it would consider criticism only if it were raised by unidentified “student leaders.” Yet even if this were a defensible reason to remain willfully blind to the defects in *existing* policies, it cannot justify establishing a *new* policy with the purpose of restricting student expression.

II. RPI’s new policy on Unmanned Aerial Vehicles needlessly grants a public relations administrator control over photography and video use.

A second new policy concerns Unmanned Aerial Vehicles.⁹ While much of that policy is unobjectionable, advancing legitimate interests in protecting public safety, other parts of the policy reflect RPI’s predilection for censorship.

Students who wish to use a UAV must receive permission from (1) a relevant dean and (2) campus police. These requirements reasonably advance public safety goals. However, students who wish to also take photographs or video¹⁰ must *also* receive written permission from RPI’s Vice President for Strategic Communication and External Relations—a public relations administrator.

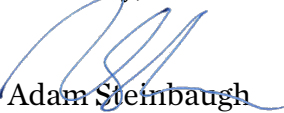
This requirement advances only RPI’s public relations goals; there is no safety rationale advanced by requiring a public relations administrator’s permission to take video or photos. Like the policy concerning written materials, the UAV policy does not provide objective criteria to determine whether permission will be granted. We’re sure you will agree that RPI should encourage, not burden, student journalists’ creative use of emerging technologies.

III. RPI must abandon its continued efforts to suppress student speech.

RPI’s persistence in abdicating its legal and moral obligations is puzzling. Suppressing student speech needlessly jeopardizes RPI’s accreditation and exposes it to legal liability. Nevertheless, FIRE remains committed to defending the rights of RPI students and faculty even as RPI’s administration continues to fail them.

We request receipt of a response to this letter by the close of business on October 8, 2019.

Sincerely,



Adam Steinbaugh
Director, Individual Rights Defense Program

Cc:

Shirley Ann Jackson, President, Rensselaer Polytechnic Institute
Arthur F. Golden '66, Chairman, Rensselaer Polytechnic Institute Board of Trustees

⁹ HANDBOOK, *supra* note 6 at 29–30.

¹⁰ Notably, students used a UAV to record the unauthorized protests of 2016 and 2017.