

Dickinson

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Adam B. Steinbaugh
Foundation for Individual Rights in Education
510 Walnut Street, Suite 1250
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Sent via email to: adam@thefire.org

Adam Steinbaugh,

This letter is in response to your correspondence dated April 24, 2020. In your correspondence, you allege that Dickinson College's conduct has not only violated its own policies but also Middle States regulations, 1st Amendment jurisprudence, and Commonwealth contract laws. Your assertions are based upon key unfounded assumptions and inaccurate legal interpretation, for the reasons as set forth below.

As you astutely acknowledge, Dickinson College is a private institution and, as such, is not held to the strict tenets of free speech and expression protection. You are also correct that, while we are not controlled by the 1st Amendment, we fundamentally believe in the principles espoused within it and, without fully relinquishing our rights and privileges as a private institution, we aspire to protect free speech and expression as much as reasonably prudent. What you do not fully acknowledge, however, is that we cannot allow offensive speech to stand unquestioned when it threatens the rights of female and minority students to participate in our educational programming free of harassment and intimidation. When faced with statements on the 'menofdickinson' Instagram page that reflect ideology violent towards women and hostile towards Asians amid the COVID-19 pandemic, we cannot stand idly and act deliberately indifferent without running afoul of Title VI and IX law.

Indeed, Recent [Department of Education guidance](#), issued March 16, 2020 in response to the pandemic and rising discrimination towards students of color, reinforced the notion that we are required to:

"...investigate or otherwise determine what occurred when responding to reports of bullying and harassment of students based on actual or perceived disability, race, color, or national origin. If a school's investigation reveals that bullying or harassment based on actual or perceived disability, race, color, or national origin limited or denied a

student's ability to participate in or benefit from the services, activities, or opportunities offered by a school, then the school must take prompt and effective steps reasonably calculated to end the bullying or harassment, and restore access to the educational program. The failure to do so could be a violation of Section 504 or Title VI."

As you likely know, higher education institutions receiving federal funds are regularly charged and found responsible for acting "with deliberate indifference to known acts of harassment in its programs or activities." *Davis v. Monroe Cnty. Bd. Of Educ.*, 526 U.S. 629, 633 (1999). This is especially true if the institution fails to act reasonably given the circumstances. While we can debate ad nauseum whether or not the Instagram account in question was offensive, if the account was left unchecked it was certainly headed down a severe and pervasive path of dialogue about beating and killing female students, especially those involved in the early February 2020 Title IX campus protests. In fact, Title IX concerns were raised after the 'menofdickinson' Instagram site, which surfaced shortly after the campus protests, by students who were involved in the protest and related campus reform efforts. To simply ignore these concerns in order to stand true to free speech and expression virtues would be tantamount to acting deliberately indifferent to these valid concerns.

All of this being stated, there are three important facts that warrant stating:

1. Dickinson's efforts to contact Instagram did not result in the removal of the site.
2. Dickinson has no ongoing investigation into this matter and does not intend to discipline any students involved in this matter.
3. Much of the effort to identify the student(s) who started the Instagram site was conducted by fellow students. These students identified and directly named a student they purported to have launched the site. Dickinson personnel reached out to this student not only to discuss this assertion made, but also to express care and concern for the student's well-being given the tone and tenor of the statements being made by the students who directly named this student.

As articulated in bullet point three above, Dickinson takes its role as an educational institution seriously. This role necessitates that we not only educate students in the classroom, but also in how to navigate life more generally. Civility and tolerance for different viewpoints are key components of our educational process, and to this extent we work diligently to balance the competing interests between free speech and expression and fostering an environment that is compliant with anti-harassment and discrimination laws and regulations. Thus, we have and will continue to work with all of the students involved in this matter with the care and concern that is indicative of a true Dickinson experience and education. Lastly, while this correspondence may not fully satisfy your inquiry, I trust it will impress upon you that we have acted appropriately.

Regards,



Kendall D. Isaac, JD, EdD
General Counsel