



March 11, 2019

Provost Steve Herbert  
Assistant Provost Todd Bruce  
University Committee on Administrative Policies  
John Carroll University  
1 John Carroll Boulevard  
University Heights, Ohio 44118

*Sent via U.S. Mail and Electronic Mail (herbert@jcu.edu; rbruce@jcu.edu)*

Dear Provost Herbert and Assistant Provost Bruce:

As you know, 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.

FIRE is concerned by the apparent contradiction between John Carroll University's (JCU's) stated promises of freedom of expression and its proposed Speakers and Events Policy (the "Proposed Policy"). We write to encourage JCU to avoid confusion regarding its commitment to free expression by declining to adopt the Proposed Policy.

While a private Jesuit college such as JCU may impose speech-restrictive standards on students and faculty in furtherance of its own mission and values, it is morally and contractually bound to honor its own promises of freedom of expression.<sup>1</sup> Ambiguity regarding expressive rights should be avoided so that prospective faculty and students may make fully informed decisions about whether to matriculate to your institution.

JCU has made repeated and clear commitments to maintaining an environment of free expression for its faculty and students. In fact, JCU holds as "[a]mong its central values . . . the

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<sup>1</sup> See, e.g., *McAdams v. Marquette Univ.*, 2018 WI 88, ¶ 84 (2018) (private Catholic university breached its contract with a professor over a personal blog post because, by virtue of its adoption of the 1940 AAUP Statement of Principles on Academic Freedom, the blog post was "a contractually-disqualified basis for discipline"); *Awad v. Fordham Univ.*, 2019 NY Slip Op 32353(U), ¶ 16 (Sup. Ct.) (holding that a Jesuit university with a mission statement guaranteeing freedom of inquiry may not refuse to recognize a student group the administration feared would be "polarizing.").

right of each person to hold and express one’s viewpoint.”<sup>2</sup> JCU further welcomes “the perspectives and participation in [its] mission of . . . students . . . of all faiths and no faiths[.]”<sup>3</sup> and also “welcomes other approaches and expects and honors the right to question” Catholic values.<sup>4</sup> The university’s commitment to freedom of expression is also critical to its accreditation by the Higher Learning Commission of the North Central Association of Colleges and Schools, the standards of which require that accredited institutions be “committed to freedom of expression and the pursuit of truth in teaching and learning.”<sup>5</sup>

Based on JCU’s own policies and value statements, as well as its accreditation, it would be entirely reasonable for a student to assume that at JCU, he or she would enjoy approximately the same free speech rights as those of students at public colleges bound by the First Amendment.

JCU’s published promises, however, would be contradicted by the Proposed Policy, which prohibits events that “serve as a platform to denigrate or disrespect the Jesuit Catholic identity or mission of the University[.]” or that “include expression that is obscene, indecent, or grossly offensive on matters such as race, ethnicity, religion, sex, sexual orientation, or any other characteristic protected by applicable law or University policy.”<sup>6</sup> Further, the Proposed Policy would require events hosted by students and faculty to be submitted for administrative approval at least two months in advance, and would generally give university officials wide latitude to prohibit certain student- or faculty-organized events.<sup>7</sup>

A policy banning offensive speech is antithetical to commitments to free expression and inquiry, as the principle of freedom of speech exists precisely to protect speech that some or even most members of a community may find controversial or offensive.<sup>8</sup> *See, e.g., Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 670 (1973); *Texas v. Johnson*, 491 U.S. 397, 414 (1989).<sup>9</sup>

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<sup>2</sup> John Carroll Univ., Community Standards Manual (2019–2020), [https://jcu.edu/sites/default/files/2019-08/Community\\_Standards\\_Manual\\_2019-2020.pdf](https://jcu.edu/sites/default/files/2019-08/Community_Standards_Manual_2019-2020.pdf).

<sup>3</sup> John Carroll Univ., Mission, Vision, and Core Values, <https://jcu.edu/about-us/values-and-jesuit-tradition/mission-vision-and-core-values> (last visited Mar. 3, 2020).

<sup>4</sup> John Carroll Univ., John Carroll University Catholicity Statement, <http://webmedia.jcu.edu/mission/files/2011/05/JCUCatholicandJesuitStatement.pdf> (last visited Mar. 3, 2020).

<sup>5</sup> Higher Learning Comm’n, Criteria for Accreditation (rev. June 2014), <https://www.hlcommission.org/Policies/criteria-and-core-components.html>.

<sup>6</sup> John Carroll Univ., Speakers and Events Policy Draft, <https://jcu.edu/sites/default/files/2020-02/DRAFT%20Speakers%20and%20Events%20Policy.pdf> (last visited Mar. 3, 2020).

<sup>7</sup> *Id.*

<sup>8</sup> For further discussion regarding the free speech implications of prohibiting subjectively offensive speech, please see our letter of Sept. 10, 2019 to President Johnson, which is enclosed.

<sup>9</sup> While JCU is a private institution not bound by the First Amendment or related jurisprudence, the Supreme Court’s interpretation of the First Amendment guarantee of “freedom of speech” provides a useful baseline for understanding what students would reasonably expect from an institution that promises those freedoms.

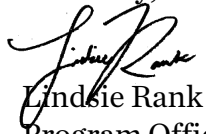
Notably, the Proposed Policy also includes statements promising free expression, indicating that “speakers and events may generate conversations or ideas that are difficult or uncomfortable or that espouse differing viewpoints in order to foster the pursuit of truth and the expansion of knowledge[.]” creating internal inconsistency.<sup>10</sup> This inconsistency is buttressed by the “Guiding Principles for Mission-Related Consideration for Speakers and Events” included in the Proposed Policy, which further reaffirm the university’s commitment to free expression.<sup>11</sup>

If the Proposed Policy were to be instituted, JCU would appear to be trying to present itself publicly as committed to free expression while also retaining the right to “decline[.]” “reschedule, relocate, or cancel” events involving speech that it deems subjectively offensive or disrespectful to Catholicism—speech that would be protected by any common understanding of the principle of free expression. This would render the status of free expression at JCU unclear to faculty, students, prospective students, and their families.

Private universities are free to set their own rules. But those rules—particularly when they implicate students’ and faculty members’ most fundamental rights—must be clear, giving prospective students and faculty the ability to make informed decisions about whether to become a part of a particular institution. For this reason, we recommend you do not adopt the Proposed Policy in order to remain clear in your commitment to freedom of expression. If JCU does adopt the Proposed Policy, it must amend the Proposed Policy itself, its value statements, and its other policies to reflect a choice to prioritize other values above the value of maintaining an environment of free inquiry and expression.

We request a response to this letter by the close of business on April 15, 2020, and we look forward to hearing from you. If you need additional time to respond in light of the strains created by the COVID-19 crisis, please don’t hesitate to let us know when you expect to be able to respond.

Sincerely,



Lindsie Rank

Program Officer, Individual Rights Defense Program

Encl.

Letter from Lindsie Rank, Foundation for Individual Rights in Education, to President Michael D. Johnson, John Carroll University (Sept. 10, 2019).

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*