



January 17, 2022

David L. Eisler  
Ferris State University  
Office of the President  
1201 S. State Street  
Timme Center, CSS 301  
Big Rapids, Michigan 49307

**URGENT**

*Sent via U.S. Mail and Electronic Mail (President@ferris.edu)*

Dear President Eisler:

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 Ferris State University's decision to place Professor Barry Mehler on administrative leave and investigate him for the introductory video he recorded for students in his five history classes.

Mehler's colorful, dynamic, clearly tongue-in-cheek syllabus day routine is protected by the First Amendment, which grants faculty members at public universities such as Ferris State broad discretion to deliver course content as they see fit without administrative interference. Thanks to the First Amendment and principles of academic freedom, faculty members are not constrained to deliver dry and monotone lectures like the economics teacher in *Ferris Bueller's Day Off*, even at the movie's namesake university. Rather, they have the freedom to experiment with and use pedagogical techniques that both instruct and engage their students.

We call on Ferris State to immediately restore Mehler to the classroom, cease its investigation of his protected expression, and affirm the First Amendment rights of its faculty.

**I. Professor Mehler Posts Introductory Video for His Courses, Notes He Is 'Beholden to No Human Cocksucker'**

The following is our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

On January 9, 2022, Mehler uploaded an introductory video for students in the five classes he was slated to teach in the spring semester.<sup>1</sup> Mehler turned the 15-minute video into a performance, peppering it with jokes, characters, hyperbole, a commercial break, video clips, and cultural references. For instance, the video begins with Mehler appearing in a space helmet, pretending to have just arrived on Earth from another planet. Referencing *Star Trek*, Mehler says, “I just got in from Rigel VII, and the intergalactic internet is all abuzz about this planet.” He tells students there is a “deadly virus” and “your civilization is collapsing and life on your planet is going extinct,” before wryly adding, “Anyway, welcome to the new season of my show.”

Later in the video, Mehler delivers a short profanity-laced soliloquy adapted from the popular television western *Deadwood* for the purpose of discussing plagiarism. He substitutes a vulgar *Deadwood* character’s rant about the government and other characters with an equally colorful rant about administrators and students. Right after finishing the monologue, Mehler explains its origin and shows the relevant clip from *Deadwood*, noting that if he had not put it to students’ attention, it would have been plagiarism. He emphasizes the importance of properly citing sources, as “it’s one of the most common reasons that students end up with a B on a term paper instead of an A.”

Mehler then turns to his grading system, which he jokingly explains is based on the Calvinist doctrine of predestination, saying “if it was good enough for Calvin, it’s good enough for me.” Mehler adds, “None of you cocksuckers are good enough to earn an A in my class. So I randomly assign grades before the first day of class. I don’t want to know shit about you, I don’t even want to know your name. I just look at the number and I assign a grade.”

Finally, Mehler addresses his attendance policy, telling students “classes are all designed to be taught remotely and everything you need to earn an A is available to you on our canvas page.” Noting he is nearly 75 years old, Mehler says, “If you won’t expose your grandpa to a possible infection with COVID then stay the fuck away from me. If you don’t give a shit about whether grandpa lives or dies, by all means, come to class.” He then adds, in a comment dripping with sarcasm, “I will not take questions in class because I’m wearing this fucking helmet in order to stay alive,” and concludes by telling students they have the option to come to class to “enjoy the show.”

On January 11, Ferris State placed Mehler on administrative leave pending an investigation into allegations that Mehler’s video violated the university’s “Employee and Student Dignity” policy.<sup>2</sup> In response to Ferris State’s disciplinary action and the widespread attention the video received online, Mehler offered an explanation:<sup>3</sup>

---

<sup>1</sup> Barry Mehler, *Week 1 Gen Intro 010922*, YOUTUBE (Jan. 9, 2022), <https://www.youtube.com/watch?v=RrOzY86YcEM>. The courses are American History from 1877 to Present, Michigan History, and Genocide in the Modern World.

<sup>2</sup> Letter from Randy Cagle, Dean, Coll. of Arts, Scis. and Educ., Ferris State Univ., to Barry Mehler, Prof., Ferris State Univ., Jan. 11, 2022 (on file with author).

<sup>3</sup> PredestinationProf, REDDIT (Jan. 13, 2022), [https://old.reddit.com/r/IAMa/comments/s37fnz/i\\_am\\_a\\_history\\_prof/hsizeqk/?context=3](https://old.reddit.com/r/IAMa/comments/s37fnz/i_am_a_history_prof/hsizeqk/?context=3).

On Tuesday morning I found that most of the students in my class showed up despite the video in which I said, among other things that they should think of me as their grandpa and if they wouldn't want to expose grandpa to COVID, they should pay me the same respect, "but if you don't give a shit whether grandpa lives or dies, by all means, come to class." They all came. (except the dozen who are down with COVID). I laughed and said, so I see none of you really gives a shit about grandpa, well welcome to my show. Obviously, they understood that the video was scripted and the soliloquies they contained were like the soliloquies one sees in a theatre or movie production. The person on stage might be screaming obscenities at you but you know it is a performance. It is also the way I have been teaching for over a decade. I was granted a Merit Promotion in 2014 based on my teaching method. I was nominated for a Distinguished Teaching Award and was a finalist in the competition.

Mehler said he has been using this teaching method for around twenty years.

## **II. The First Amendment Bars Ferris State from Punishing or Investigating Mehler for the Speech at Issue**

Under principles of academic freedom protected by the First Amendment, Mehler has broad discretion to use his knowledge and experience as an educator to deliver course content in the manner he deems most effective. Such speech does not lose First Amendment protection because it is profane or because others find it offensive. While Mehler's unusual teaching style might not be to everyone's tastes, his dramatic "performance" in the video and joking manner of discussing class policies clearly did not amount to harassment or any other unprotected speech, but was simply an attempt to introduce his students to his courses and his colorful personality in a humorous, irreverent way that students might find engaging and memorable.

It has long been settled law that the First Amendment is binding on public universities like Ferris State.<sup>4</sup> Accordingly, the decisions and actions of a public university—including the pursuit of disciplinary sanctions<sup>5</sup>—must be consistent with the First Amendment.

Academic freedom is of "special concern to the First Amendment."<sup>6</sup> The Supreme Court of the United States has recognized that the "vigilant protection of constitutional freedoms is nowhere more vital" than in institutions of higher education, as the "classroom is peculiarly the 'marketplace of ideas[.]'"<sup>7</sup> In the classroom context, a professor's lectures, materials, or

---

<sup>4</sup> *Healy v. James*, 408 U.S. 169, 180 (1972).

<sup>5</sup> *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

<sup>6</sup> *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967).

<sup>7</sup> *Id.* (quoting, in part, *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

remarks, “however repugnant” to students or others, are “protected by the First Amendment” when they are “germane to the classroom subject matter.”<sup>8</sup>

Here, Mehler was simply offering a short introduction to his courses, and he undoubtedly has wide discretion to do so in the manner of his choosing. He decided to take what might normally be a dull, tedious review of class rules and policies and instead convey that information through a dramatic performance or “show” that would entertain and amuse his students—a routine he apparently has performed for years without incident. No reasonable person could watch Mehler’s full video and come away thinking he was actually insulting or harassing his students, or that comments he made about grading and the attendance policy were meant to be taken seriously.

Mehler’s comments about grading his students according to the Calvinist doctrine of predestination were obviously tongue-in-cheek and satirical, poking fun at the doctrine. At two other points in the same video, Mehler spoke about how students could earn an A, rendering frivolous any argument that he was serious about assigning students grades randomly. Mehler’s *Deadwood*-inspired soliloquy had the clear pedagogical purpose of warning students in an entertaining way about plagiarism and proper citation. And no less protected were Mehler’s comments at the end of the video about COVID-19 and attendance. Mehler’s tone and presentation throughout the entire video—right from the beginning when he took a space helmet off of his head and pretended he was arriving from another planet—made it obvious that he was performing and playing characters, not sincerely berating his students, telling them they would all fail, or prohibiting them from coming to class. And apparently students took Mehler’s video the way it was intended, as his first in-person classes were full of students.

Mehler’s use of profanity does not cause his speech to lose First Amendment protection.<sup>9</sup> He did not use profanity in an abusive manner. Again, the context of the video makes clear that Mehler was not using profane language to *actually* insult his students or others, but rather as part of a lighthearted performance to boost the entertainment value of a syllabus day lecture that might otherwise put students to sleep. To be sure, some may find Mehler’s style offensive or obnoxious, but that is not enough to render his speech unprotected. A diverse faculty body is bound to result in diverse teaching styles, and no instructor has an obligation to conform to a prim and proper method of teaching.

### **III. Conclusion**

Professor Mehler has the freedom to stand in his classroom beholden to no human censor. His pedagogical choices, however eccentric, are protected by the First Amendment and provide

---

<sup>8</sup> *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671, 683 (6th Cir. 2001).

<sup>9</sup> See *Snyder v. Phelps*, 562 U.S. 443, 448, 461 (2011) (First Amendment protected protesters holding insulting signs outside of soldiers’ funerals, including signs that said “God hates fags”); *Cohen v. California*, 403 U.S. 15, 25 (1971) (First Amendment precluded punishment for wearing a jacket emblazoned with the words “Fuck the Draft”); *Hardy*, 260 F.3d at 675, 679, 683 (6th Cir. 2001) (First Amendment protected instructor’s use of words “lady” “girl,” “faggot,” “nigger,” and “bitch” in course on “language and social constructivism,” as they were relevant to the instructor’s lecture).

no justification for administrative intervention. Any contrary conclusion can be reached only by willfully ignoring the full content and context of his lecture.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, January 21, 2022, confirming that Ferris State will immediately cease its investigation of Mehler and return him to the classroom.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Terr", written in a cursive style.

Aaron Terr  
Program Officer, Individual Rights Defense Program and Public Records

Encl.

## Authorization and Waiver for Release of Personal Information

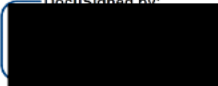
I, Barry A. Mehler, do hereby authorize Ferris State University (the "Institution") to release to the Foundation for Individual Rights in Education ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights in Education, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

DocuSigned by:  


Signature

1/15/2022

\_\_\_\_\_  
Date