



Foundation for Individual Rights in Education

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April 27, 2010

Clyde Muse, President
Hinds Community College
Office of the President
P.O. Box 1100
Raymond, Mississippi 39154-1100

Sent via U.S. Mail and Facsimile (601-857-3518)

Dear President Muse:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to freedom of speech posed by Hinds Community College's (HCC's) decision to discipline student Isaac Rosenbloom for "flagrant disrespect" of an HCC instructor and remove him from the instructor's course because he used the word "fuck" in her presence outside of class.

This is our understanding of the facts. Please inform us if you believe we are in error.

On March 29, 2010, after their Oral Communication class on the Rankin Campus, instructor Barbara Pyle and a few students stayed after class to discuss the students' grades. At one point, according to a recording of an April 6 hearing, Rosenbloom said that his grade "is going to fuck up my entire GPA" (according to Rosenbloom) or that "this just blows my fucking average" (according to Pyle).

According to Rosenbloom's account during the hearing, Pyle began to yell and told him that his language was unacceptable and that she was giving him "detention." Rosenbloom replied that detention was not a punishment at HCC, and Pyle told him that she was sending him to the dean, presumably Dean of Students Michael J. Heindl.

Pyle submitted a disciplinary complaint against Rosenbloom which has not been made available in writing to Rosenbloom. According to her complaint, she told him emphatically:

this language **was not to be tolerated** and that he was way out of line. I told him he could not say that **under any circumstances**. He said very angrily that I could not tell him what to say because he was 31 years old and he could say what he wanted. I still told him no, not in my class **or presence or the presence of the other students**, and he still said he surely could, and showed no backing down.

According to Pyle's account, she told Rosenbloom that the incident would be reported to the dean immediately. She concluded her statement about the event by calling the interaction an incident of "**severe cursing**" and referred to Rosenbloom's expression as "**disdain and overt disrespect for my authority** and the other students in the class." (Emphasis added.)

Rosenbloom was summoned to a meeting with Heindl on March 30 and informed that he was being charged with a student conduct violation. A letter that was hand-delivered to Rosenbloom dated March 31 included a copy of the Hinds Community College Disciplinary Form, with the following charge:

D. Physical abuse or flagrant disrespect of any person on College owned or controlled property or at College sponsored or supervised functions, or conduct which threatens or endangers the health and safety of any such person or themselves. (*Demerits: 15 Suspension or Expulsion*) [sic; italics in original; underline added by person filling out the form]

At Rosenbloom's disciplinary hearing on April 6, Rosenbloom heard Pyle's statement for the first time. He did not have any chance to prepare a response to her statement in advance. Pyle's statement called him "belligerent" and stated that he had interrupted other students while waiting for his turn to discuss his grade. The hearing, however, focused on Rosenbloom's use of the word "fuck" as an alleged sign of "disrespect." Heindl stated that "the bottom line issue is really ... this particular statement was made, the bottom line is that it did happen ... as a result, there was a disrespect that took place."

At the hearing, Heindl acknowledged that the Disciplinary Form was outdated and no longer matched the *2009–2010 Student Handbook*. Specifically, the phrase "flagrant disrespect" is not included in the *2009–2010 Student Handbook* under item D. Instead, the current student handbook lists item D as follows:

D. Physical abuse of any person on College owned or controlled property or at College sponsored or supervised functions, or conduct which threatens or endangers the health and safety of any such person or themselves. (*Demerits: 15 Suspension or Expulsion*) [italics in original]

Heindl nevertheless admitted that the hearing “really hing[ed] upon” the charge of “flagrant disrespect,” despite the fact that such conduct or expression is no longer prohibited under item D by HCC.

Rosenbloom was found responsible under item D. He received twelve demerits and was excluded from Pyle’s course. A copy of the college’s decision was also placed in Rosenbloom’s student file. Twelve demerits is a serious punishment, since fifteen demerits triggers “suspension from school.” Rosenbloom has appealed Heindl’s decision and is awaiting a decision from HCC.

At the hearing, Heindl justified the punishment by contending that Rosenbloom’s statement was not protected because HCC is entitled to place “time, place and manner” restrictions on speech. This is incorrect and a misapplication of First Amendment doctrine. In *Ward v. Rock Against Racism*, 491 U.S. 781 (1989), the Supreme Court allowed that public universities, as government instrumentalities, are permitted by law to enforce reasonable time, place and manner restrictions on the exercise of the First Amendment right to free expression on campus. However, any such restrictions must be content-neutral, must be narrowly tailored to serve a significant government interest, and must provide “ample alternative channels” for the expression at issue. Banning “flagrant disrespect” in such a way that renders a student fit for discipline for cursing outside of the classroom is not reasonable, does not serve a significant government interest, and does not allow other channels for the expression at issue. During official class time within the classroom, it is acceptable for HCC and its instructors to apply narrowly tailored restrictions on speech in the service of HCC’s educational interests, but these restrictions may not constitutionally be applied to all times and places on campus.

As the Supreme Court famously stated, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969). Elsewhere, the Court has noted that “the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted). See also *Widmar v. Vincent*, 454 U.S. 263, 268-69 (1981) (“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities”).

In addition, HCC maintains speech policies that are unconstitutional. Item J in the student handbook reads:

J. Disorderly conduct, flagrant disrespect or lewd (vulgar), indecent (offensive manner/morals), licentious (lacking moral or sexual restraint), or obscene conduct or expression on College owned or controlled property

or at College sponsored or supervised functions. (*Demerits: 10 minimum - 15 maximum*) [italics in original]

Item T reads:

T. Public profanity, cursing and vulgarity.(1st offense \$25 fine, 2nd offense \$50 fine plus demerits: 10 minimum - 15 maximum, 3rd offense suspension from college) [sic]

Outside of official class time, there is no significant disruption to HCC caused by a student who engages in “profanity, cursing and vulgarity” or in “flagrant disrespect or lewd (vulgar), indecent (offensive manner/morals), [or] licentious (lacking moral or sexual restraint) ... expression.” These restrictions, even if they were acceptable during official class time, are unconstitutionally overbroad because they apply far beyond the classroom. A policy is overbroad if, in addition to its legitimate restrictions, it also restricts a substantial amount of constitutionally protected expression. While “flagrant disrespect,” “profanity,” “cursing,” “vulgarity,” and expression that is “lewd,” “offensive,” “indecent,” or “licentious” might offend various members of the campus community, it is protected expression under the First Amendment almost everywhere at HCC, if not also during official class time.

The principle of freedom of speech does not exist to protect only uncontroversial or polite speech; indeed, it exists precisely to protect speech that some members of a community may find controversial or “offensive.” The Supreme Court has held frequently that language cannot be prohibited simply because it is vulgar or indecent. In *Cohen v. California*, 403 U.S. 15 (1971), the Supreme Court overturned the conviction of a man who wore a jacket bearing the words “Fuck the Draft” into a county courthouse. In holding that his expression was entitled to constitutional protection, the Court wrote that “one man’s vulgarity is another’s lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.” *Id.* at 25. The Court reiterated this principle in the university context in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973), when it wrote that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” The Supreme Court also stated in *Texas v. Johnson*, 491 U.S. 397, 414 (1989) that “[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

Hinds Community College must immediately reverse its punishment of Rosenbloom for his protected speech and remove the disciplinary letter from his file. Further, HCC must revise its unconstitutional policies and make clear to its students that they will not be punished for their protected speech. FIRE is committed to using all of our resources to ensure a moral and just conclusion.

We have enclosed a signed FERPA waiver from Isaac Rosenbloom, permitting you to freely discuss his case with FIRE.

We request a response to our letter by May 11, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kissel". The signature is fluid and cursive, with a large initial "A" and "K".

Adam Kissel

Director, Individual Rights Defense Program

Encl.

cc:

Sue Powell, Vice President, Rankin Campus

Michael J. Heindl, Dean of Students, Rankin Campus

Gary Fox, Academic Dean, Rankin Campus

Barbara Pyle, Speech Instructor, Rankin Campus