



Foundation for Individual Rights in Education

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November 20, 2006

President Lou Anna K. Simon
Office of the President
Michigan State University
450 Administration Building
East Lansing, MI 48824-1046

Sent by U.S. Mail and Facsimile (517-355-4670)

Dear President Simon:

As you can see from our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, due process, the right of conscience, and academic freedom on America's college campuses. Our web page, www.thefire.org, will give you a fuller sense of our identity and activities.

I write to express our grave concern about the threat to the freedoms of speech and conscience—as well as to individual liberty, dignity, and autonomy—posed by MSU's Student Accountability in Community seminars (SAC). The SAC program was designed not only to unconstitutionally police protected speech and to punish students showing signs of aggressiveness, but also compel students to speak about their actions in ways deemed appropriate by administrators in pseudo- psychological mandatory sessions. The SAC program forces students to accept fundamental assumptions with which they might disagree under the threat of expulsion. The seminars are truly chilling to anyone who cares about the sanctity of private conscience; as bad as it may be to tell a citizen what they cannot say, it is still worse to tell them what they *must* say or believe. Such utter disregard for the autonomy and agency of others is the hallmark of totalitarianism and has no place at an institution of higher learning in any free society, let alone a public university in the state of Michigan.

FIRE's concerns about the SAC program are informed by personal experience. I attended the seminar "How to Increase Student Accountability in Your Campus Community" at the Association for Student Judicial Affairs (ASJA)'s International Conference, held in Clearwater, Florida in 2002. Richard Shafer, Holly Rosen, and Peter Hovmand led the seminar. (To be sure that the content I

saw remains representative of the SAC program today, a FIRE intern contacted Mr. Shafer, who assured us that the program has not changed significantly since that time.) Based on first-hand knowledge and primary materials from the 2002 ASJA handout, my notes from that seminar, the SAC Brochure, and a more updated copy of the “participant packet” which states that it was last revised in October 11, 2002, the following is my understanding of the program.

According to the SAC brochure, “[e]xamples of situations that would generally be appropriate for SAC” include, among other things, “[h]umiliating a boyfriend or girlfriend,” “disrespecting other students’ academic freedom,” “[i]nsulting instructors or teaching assistants,” “making sexist, homophobic, or racist remarks at a meeting,” and, with regard to student organizations (which implies that entire student organizations may be forced to attend an SAC program), “failing to understand how members’ actions affects [sic] others.” Admirable or not, statements humiliating a significant other, criticisms of teachers, and even “sexist” remarks are clear instances of protected speech under the First Amendment, by which MSU is legally and morally bound. Indeed, this program violates MSU’s obligations under the federal constitution. The SAC program not only establishes a vague and overbroad speech code—like the code overturned in your own state in the landmark case *Doe v. Michigan*, 721 F.Supp. 852 (E.D. Mich. 1989)—but it also sets up an insidious system for enforcing it. Sadly, this glaring constitutional problem is just one of the myriad legal and ethical problems posed by the SAC program.

As you may well know, the SAC program was started in August 1998 out of “a desire to intervene with male students who were being abusive toward other members of the university community.” In fact, according to the seminar and the materials, the SAC program was originally intended to deal only with male students and issues like “male/white privilege.” MSU’s Judicial Affairs Office and the MSU Safe Place program collaboratively developed the SAC program’s model, drawing primarily from approaches used to deal with perpetrators of domestic violence. As the ASJA handout makes clear: “The basic philosophy of SAC is rooted in batterer intervention groups using an accountability model.”

While MSU employs a number of euphemisms to describe the program (e.g., an “alternative educational sanction”), one cannot deny that the SAC program is a punishment. Examples given of behavior that might get a student sentenced to mandatory SAC seminars include a girl slamming a door after a fight with her boyfriend, a student being rude to a dormitory receptionist, and a student being rude to a taxi driver. For these offenses, students must pay fifty dollars out of their own pockets to attend four SAC sessions. Failure to attend these sessions results in a hold on the student’s account, which is, for all intents and purposes, expulsion from the university, as the student will no longer be able to register for classes.

Once in the program, students are instructed to answer a series of written questionnaires. In their answers, students must specifically describe their “full responsibility” for their offensive behavior and must do so using language that the director of the session deems acceptable. Indeed, most students will be asked to fill out this questionnaire multiple times, slowly inching closer to what administrators deem to be “correct” responses. An example given at the conference was of a student who had been sentenced to mandatory SAC program “training” for being rude to a dormitory receptionist. His initial explanation of what he had done wrong was “I should’ve been more polite.” The leaders of the ASJA session, however, explained that this was

not an adequate response, stating that the eventual “correct” answer was “I feel entitled to be in the residence hall and that’s wrong.” However, given how much students have to pay to stay in dormitories at most colleges, perhaps his initial answer—that he simply should not have been rude to the receptionist—was indeed the right answer.

After filling out the first two forms, recounting what happened in their own words, and listing the “10 behaviors” they engaged in during the incident in question, students are given the “Power and Control Wheel” (see attached), a chart which categorizes negative behaviors that are equated with forms of violence. These “behaviors” include: “putting someone down,” “making someone afraid by using looks, actions, gestures,” “[u]sing Priviledge [sic]: defining people’s role based on social groups,” and “using others to relay messages.” It is useful to note that the Power and Control Wheel was developed by the Domestic Abuse Project and the Alternatives to Domestic Aggression Catholic Social Services of Wastenaw County. When someone is convicted of domestic abuse, it may or may not be useful for therapeutic purposes to examine if they “put people down” or “use others to relay messages.” However, examining the exceedingly normal behavior of a student accused of doing something as trivial as slamming a door in a fight with her boyfriend is as misguided as it is invasive.

After being shown the wheel and the list of definitions of negative behaviors (which include using “white privilege,” using “heterosexual privilege,” “any action that is perceived as having racial meaning,” or “obfuscation,” which it defines as “[a]ny action of obscuring, concealing, or changing people’s perceptions that result in your advantage and/or another’s disadvantage”), participants must then confess the negative types of power and control they exhibited during the reported incident.

Students may not deny or justify their behavior; rather, they are asked to identify specific alternative behaviors that would have been more desirable, using the “Equality Wheel.” This chart corresponds to the “Power and Control Wheel,” but categorizes acceptable ways of dealing with conflict. The list of “non-violent” approaches includes “Economic Partnership,” defined as “making money decisions together, making sure both partners benefit from financial and academic arrangements,” and “Respect,” defined as “listening to someone non-judgmentally,” “being emotionally affirming,” and “being a positive role model for children.” Surely, many might consider these positive attitudes, but it is not the role of state institutions to enforce conformity of belief on such personal issues. These policies are reminiscent of the worst kind of *in loco parentis* attitudes of college administrations from a bygone age.

One of the two most chilling moments in the presentation occurred when an audience member asked if it was appropriate to constructively expel a student for being unwilling to take part in this kind of thought reform. Richard Shafer answered that he didn’t like that the audience member would characterize the SAC program procedures as telling students they *had to* attend SAC seminars. He reasoned that because the goal of the program was to increase accountability, students should recognize that they had *the choice* of going or being effectively expelled, but that was their choice to make. This was a stunning answer. Under no standard of fair dealing or law would this be considered a free choice, and Shafer’s answer to this question was the best demonstration of “obfuscation” the ASJA audience would see that day.

The second example, perhaps more disturbing, came when an audience member asked, “How do I deal with people with religious beliefs that ‘justify’ their anger?” Amazingly, Holly Rosen responded that “religious beliefs may be a form of obfuscation.” This was one of many responses that indicated that the hosts of the program seemed to believe that no outright expression of anger or hostility could be justified. This conceptualization of human behavior would utterly reject ideas like “righteous rage,” “just wars,” or even non-violent protest. Making such categorical assumptions about the nature of propriety and reality revealed the program to be shockingly narrow-minded and monoculturalist, in addition to being remarkably invasive and utterly unconstitutional.

Adding insult to already substantial injury, students’ responses are not confidential and may be reported to the school’s formal sanctioning body if behavior is deemed more serious than previously indicated.

Based on these facts, and viewed in its totality, the SAC program denies students due process, unconstitutionally compels students to express opinions and beliefs with which they might fundamentally disagree, and generally shows an appalling lack of respect for the individual autonomy and right of private conscience of MSU students.

Like all public institutions of higher learning, MSU must conduct its disciplinary programs within the bounds of the Bill of Rights. As Supreme Court Justice Robert Jackson wrote with lasting eloquence more than sixty years ago in *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943), “[I]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” The SAC program exists in stark contrast to these essential constitutional principles.

To be quite frank, I could continue exploring the innumerable ways in which this program violates the law and common ethical principles for dozens of pages. In fact, I had originally intended to develop the legal problems posed by such an invasive program into an extensive law review article. Given FIRE’s tremendous workload, this project was delayed; by the time I was prepared to reopen the research, I had hoped that the SAC program had gone the way of the dodo. Sadly, as we learned this summer, that was not the case. Before proceeding with the planned law review article, or embarking upon a public campaign to expose this program, however, we decided it would be best to inform MSU of our objections in order to give you the opportunity to eliminate this program.

The legal problems posed by the SAC program are staggeringly vast. Possible claims against MSU for operating such a program include federal and state constitutional claims for having and enforcing an unconstitutional speech code, for compelling people to speak against their will (something that has been anathema to free societies since long before the *Barnette* case), for basic denial of due process, and even—given the statements of the hosts of the ASJA seminar and the specific assumptions required by the “power wheels”—for possible violations of both the constitutionally protected freedom of religion, and, according to at least one legal analyst who examined the policy, the establishment clause. Further, the SAC program arguably violates MSU’s contractual promises of free speech and due process, forces students to unlawfully self-

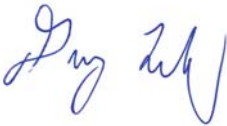
incriminate under threat of expulsion, violates both state and federal privacy laws. Simply put, the SAC program is a legal minefield.

To be clear, FIRE is not a litigation organization, and our objection to this program is not solely legalistic. What makes this program so offensive is its utter disregard for autonomy, dignity, and individual conscience. As aggressive as civil liberties watchdogs like FIRE may seem, at the heart of all concepts relating to freedom of the mind is a recognition of our own limitations—like us, those in power are neither omniscient nor omnipotent, and therefore have no right to dictate to others what their deepest personal beliefs must be. Concern for free speech and freedom of conscience is rooted in the wisdom of humility and restraint. The SAC program, which presumes to show students the specific ideological assumptions they need to be better people, crosses the boundary from punishment into invasive and immoral thought reform. We can conceive of no way in which the SAC program can be maintained consistent with the ideals of a free society.

We ask nothing less than the immediate and total dismantling of the SAC program.

If MSU wishes to continue its sociological and psychological experiments, it should seek its test subjects elsewhere. FIRE asks for your response by December 11, 2006. We look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Lukianoff".

Greg Lukianoff
President

cc:

Kim A. Wilcox, Provost, Michigan State University

Robert A. Noto, General Counsel and Vice President for Legal Affairs, Michigan State University

Lee N. June, Vice President for Student Affairs and Services, Michigan State University

Fred L. Poston, Vice President for Finance and Operations, and Treasurer, Michigan State University

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Encl.