



**Foundation for Individual Rights in Education**

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March 8, 2010

President Robert J. Dillman  
Office of the President  
East Stroudsburg University of Pennsylvania  
200 Prospect Street  
East Stroudsburg, Pennsylvania 18301

*Sent via U.S. Mail and Facsimile (570-422-3846)*

**URGENT**

Dear President Dillman:

The Foundation for Individual Rights in Education (FIRE; [www.thefire.org](http://www.thefire.org)) 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, freedom of speech, legal equality, academic freedom, due process, freedom of conscience, freedom of religion, and freedom of association on America's college campuses.

FIRE is concerned about the serious threats to free expression and due process posed by East Stroudsburg University of Pennsylvania's (ESU's) treatment of faculty member Gloria Gadsden. Responding to dubiously "threatening" Facebook.com postings by placing her on administrative leave pending a psychological evaluation both chills expression at ESU and ignores constitutional guarantees of free speech and due process that ESU, as a public institution, is obligated to protect. Further, if ESU truly believed that Gadsden were any real threat, it would not be so slow to have her psychologically evaluated.

This is our understanding of the facts. Please inform us if you believe we are in error. On January 21, 2010, Professor Gadsden posted a message on her personal page at social networking website Facebook.com. The message, enclosed with the present letter, read in full:

Does anyone know where I can find a very discrete [sic] hitman?  
Yes, it's been that kind of day...

No reasonable person could find this posting to be a communication of a serious threat to contract a third party to harm another. On its face, the posting was not threatening to anyone and did not name anyone or any group of people, at ESU or elsewhere. That the posting was intended as a humorous expression of frustration with the daily grind was clear. Five people who had private access to the page

commented on the posting in ways showing that Gadsden's message was clearly non-threatening; all of them took the message as either humorous or as a mere expression of having had a hard day. One person remarked, "I know that day!" and another wrote simply, "ROFL!!!" (i.e., "rolling on the floor laughing"). After potentially seeing three of the comments ("ROFL!!!," "Ouch!," and "discreet? and hitman? woman has anyone ever told you, your asking for a lot...."), Gadsden herself commented, "No further comment necessary."

One month later, on Monday, February 22, 2010, Gadsden posted a new message on her personal Facebook page. Since Gadsden later removed the message, the exact punctuation and capitalization is not on record. Gadsden reportedly wrote:

Had a good day today. Didn't want to kill even one student :- ) ... Now Friday ... that was a different story.

Again, given the context of the posting—a tongue-in-cheek expression of frustration with the workaday world, sharply denoted by a "smiley face" emoticon—no reasonable reader would have construed this posting as communicating a serious intent to kill a student. Gadsden's message was clearly not threatening to anyone and did not name anyone. Nor did Gadsden note that she was referring to any particular course or group of students. In addition, the posting clearly notes that whatever negative feelings she might have had three days earlier, those feelings had already passed.

On February 24, Gadsden attended a meeting with College of Arts & Sciences Dean Peter Hawkes to discuss Gadsden's "postings on Facebook." According to Gadsden, Hawkes suggested that the comments were threatening, invoking an unrelated shooting at another college campus earlier in the month. Gadsden also has reported that ten minutes after this meeting, she was placed on leave by Hawkes, who was accompanied by a security officer. According to Gadsden, the security officer escorted her out of the building and kept watch until she reached her car in the parking lot.

According to a letter sent to Gadsden on February 26 by Interim Provost and Vice President for Academic Affairs Marilyn J. Wells as a "follow up" to the meeting with Hawkes, "The University is concerned about your **conduct** and believes that it is necessary for you to undergo a fitness for duty evaluation." (Emphasis added.) Wells' letter also stated that ESU had put Gadsden on paid administrative leave pending a mandatory "psychological evaluation [at the university's cost] to determine your fitness for continued duty and type of treatment, if any, that you may require." The university reserved discretion to "make a final determination" after receiving "the outcome of the assessment (fit or unfit for duty)" by the evaluator.

The letter also banned Gadsden from "report[ing] to your position at the University without prior authorization." Under the ban, according to Gadsden, she has missed various college-wide meetings, will miss a university-wide meeting, and is missing her five regularly scheduled classes this term, which are instead being taught by other faculty members.

Wells' letter also demanded, as a "**direct work order**" (emphasis in original), that the appointment with the psychological evaluator be made with a specific "licensed clinician, the

name of whom will be provided to you by Teresa Fritsche of Human Resources.” Wells demanded that “[t]he appointment must occur on or before Friday, March 19, 2010.” As of today, however, Gadsden has reported that although she is willing to prove her complete fitness for duty and has asked for the clinician’s name, she has not been given the clinician’s name.

The exclusion of Gadsden from her university position and the mandatory psychological evaluation are in violation of ESU’s moral and legal obligation to uphold the First Amendment. We trust you understand that as a public university, ESU is legally bound by the United States Constitution’s guarantee of freedom of speech, especially regarding the non-threatening, off-campus speech of faculty members. Faculty members at ESU enjoy this right in full. 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 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’” (citation omitted). *Healy v. James*, 408 U.S. 169, 180 (1972). Even less may ESU police the private feelings and expressions of its faculty members when they are off campus.

One further marvels at how far Gadsden’s *expression* (not “conduct”) falls from constituting a “true threat” as defined by the Supreme Court. In *Virginia v. Black*, 538 U.S. 343, 359 (2003), the Court noted that true threats consist of only “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” Gadsden did not threaten to commit any type of violence, nor did she express any sense of serious intent. Nor did Gadsden target a particular individual or group; the most specificity in her postings at all is a reference using the word “student.” Therefore, it remains mystifying that anyone could construe Gadsden’s postings as communicating a true threat or any sign of being “unfit for duty.”

Moreover, ESU’s actions indicate that the university does not even believe that Gadsden is any threat at all. If ESU did think so, only incomprehensible negligence and incompetence would explain the lengthy delay in even providing the name of the clinician for the mandatory evaluation. Nor would ESU give Gadsden, supposedly a potential killer, a full three weeks to complete the evaluation. Real concern for the safety of ESU students, if someone really were threatening to kill them, might include a ban on any presence on campus, contact with the police to evaluate the potential threat, and immediate psychological evaluation if recommended after appropriate review by the police. ESU apparently has done none of these things. Instead, ESU has merely taken actions that give the appearance of taking a potential threat seriously. In the end, it appears that ESU has decided that the appearance of responding to minor utterances on Facebook is more important than the rights of its own faculty members.

In short, it is untenable for ESU, a public university, to deny its faculty the right to freely express their feelings off campus without fear of being put on leave and forced to undergo mandatory psychological evaluations with clinicians chosen by the university, the results of which must be reported to the university. In light of the First Amendment, ESU must make clear, in no

uncertain terms, that individuals and faculty members are free to engage in such speech, which the First Amendment protects. No reasonable person would see Gadsden's postings as a danger to the campus, ESU itself apparently does not truly believe she is a danger, and the fact that another faculty member elsewhere had recently shot some of her colleagues should have no bearing whatsoever on the analysis of Gadsden's postings.

While Gadsden is out of the classroom, ESU is denying her students' expectation that they will be taught by the professor with whom they chose to study. ESU must reverse Gadsden's administrative leave and ban from teaching, remove Wells' letter and related materials from Gadsden's personnel file, and make clear that such innocent expression as Gadsden's will not lead to mandatory psychological evaluations or other punitive actions in the future.

FIRE hopes to resolve this matter amicably and swiftly, but we are prepared to use all of our resources to see this situation through to a just and moral conclusion. We request a response from you by 9:00 a.m. on Monday, March 15, 2010, so that Gadsden may return to the classroom as soon as possible.

Sincerely,



Adam Kissel  
Director, Individual Rights Defense Program

Encl.

cc:

Peter Hawkes, Dean, College of Arts & Sciences  
Marilyn Wells, Interim Provost and Vice President for Academic Affairs  
Teresa Fritsche, Director, Human Resource Management