



Colorado State University System

Colorado State University ■ Colorado State University – Pueblo

Office of General Counsel
410 Seventeenth Street, Suite 2440
Denver, Colorado 80202
Phone: (303) 534-6290
Fax: (303) 534-6298

March 28, 2007

Samantha K. Harris
Foundation for Individual Rights in Education
601 Walnut Street, Suite 510
Philadelphia, PA 19106

Dear Ms. Harris:

President Penley received your letter of March 12, 2007, in which you raise concerns about three specific policies at Colorado State University regarding free speech and expression. Due to the complex legal nature of the issues raised in your letter, President Penley has asked me to review your concerns and respond on his and the institution's behalf. Moreover, University staff members, including an attorney from my office, are currently collaborating with the Associated Students of Colorado State University regarding any student questions and concerns about freedom of expression.

Colorado State University is committed to upholding its long-standing commitment to the free exchange of ideas on campus and to an environment that encourages dialogue, debate and peaceful assembly and protest among students and members of the community. This commitment is evidenced not only by the written policies of the institution in the General Catalog and Student Conduct Code, but also in the firm belief by the CSU administration and faculty that the freedom of expression and inquiry is the cornerstone of education. Because of this commitment, we take your concerns seriously and have undertaken a careful review of the issues raised in your letter.

The "Hate Incidents" policy applies only to behavior in the residence halls and is intended to protect and preserve the well-being and privacy that our students enjoy in their own residences. Indeed, the U.S. Supreme Court has held that the "State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Frisby v. Schultz*, 487 U.S. 474, 484 (1988.) "A special benefit of the privacy all citizens enjoy within their own walls, which the state may legislate to protect, is an ability to avoid intrusions." *Id.* The Supreme Court has repeatedly held that "individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom." *Id.* The intent and application of this policy is to prohibit speech or behavior directed against a specific individual that amounts to harassment based upon protected characteristics.

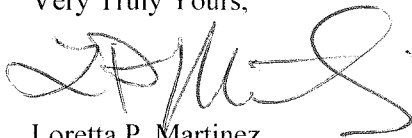
Should we determine that there are genuine concerns from students about either the intent of the policy or its application, we will certainly consider clarifying the language of the policy and education efforts directed towards student and residence hall staff.

The "Peaceful Assembly at CSU" policy designates the Plaza as the "*primary* (emphasis added) Public Forum space for Colorado State University - open to all individuals for the purpose of free speech." Neither this policy, nor any other at CSU, restricts CSU students only to the Plaza location for their speech or expression. There are numerous locations on campus and other off-campus venues, such as the CSU football stadium, where students may and have in the past spoken and protested freely without interfering with the functioning of the University. Because the Plaza is the most central and popular location on campus, however, CSU simply allows students and others to specially reserve space on the Plaza for their activities so they do not have to compete with other groups for the space they want. If a group does not wish to reserve space on the Plaza, or set up any structures, they may spontaneously speak and express themselves there with no pre-registration or notice to the University. It is our understanding that CSU students understand and utilize the policy as written and we have received no complaints from students about problematic application of the policy. Please note that the word "primary" was added to the policy in March, 2003, to clarify that the Plaza is just one area on campus that is available for free speech activities. After receiving your letter, we did realize that an outdated version of the policy was still on the Lory Student Center webpage and we have corrected that oversight. The March 2003 version of the policy, however, has been distributed to all student groups every year since 2003.

Finally, with regard to the "Advertising" policy regulating handbills in the residence halls, the intent of the provision prohibiting references to alcoholic beverages or drugs is to prevent the posting of handbills that advertise the availability or sale of alcohol or illegal drugs to an underage population and are likely to encourage illegal behavior. As you are no doubt aware, the issues associated with underage drinking, excessive alcohol consumption and use of illegal drugs are some of the most difficult faced by institutions of higher education. Moreover, it is worth noting again that the residence halls are our students' homes and a balance must be struck between the freedom to speak and appropriate regulation of materials that may constitute harassment. In our continued efforts to strike a proper balance between this myriad of interests, we do intend to review this policy and make revisions and would be happy to share the revised policy with you upon completion.

Thank you for bringing your concerns to our attention.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Loretta P. Martinez". The signature is fluid and cursive, with a large initial "L" and "M".

Loretta P. Martinez
General Counsel

cc: President Larry E. Penley, James T. Dolak, Michael E. Ellis, Blanche Hughes