



Foundation for Individual Rights in Education

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March 1, 2010

Chancellor Jimmy G. Cheek
Office of the Chancellor
The University of Tennessee–Knoxville
527 Andy Holt Tower
Knoxville, Tennessee 37996-0184

Sent via U.S. Mail and Facsimile (865-974-4811)

Dear Chancellor Cheek:

As you can see from the list of our Directors and Board of Advisors, the Foundation for Individual Rights in Education (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, freedom of religion, freedom of speech, due process, and academic freedom on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

We write to express our serious concern about the threat to free expression posed by recent revisions to The University of Tennessee–Knoxville's (UTK's) Acceptable Use of Information Technology Resources policy, Policy No. IT0110. The current version of this policy, revised in March 2009, prohibits any online "activities that harass, degrade, intimidate, demean, slander, defame, interfere with, or threaten others." By contrast, the relevant portion of the previous version of the policy prohibited only the "[u]se of the university's information technology resources to transmit abusive, threatening, or harassing material, chain letters, spam, or communications prohibited by state or federal laws." Given the high volume of communication that now takes place electronically, this new broad and vague restriction on the content of electronic communications will seriously chill free speech at the university.

The expansion of this policy to prohibit "degrad[ing]" or "demean[ing]" communications and communications that "interfere with" others renders the policy unconstitutionally overbroad and vague. A policy is overbroad if, in addition to its legitimate restrictions (such as the prohibition of harassment and defamation), it also restricts a substantial amount of constitutionally protected expression. While degrading or demeaning expression might offend members of the campus community, it is (unless it rises to the level of, for example, harassment or defamation) protected expression under the First Amendment. 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 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.” Similarly, the Court wrote in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) 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 new language also prohibits online activities that “interfere with” others, without providing any guidance as to what that means. Without further definition, it could mean almost anything, from causing someone minor annoyance or inconvenience to materially affecting someone’s ability to obtain an education at the university. A regulation is said to be unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). This is precisely the problem with UTK’s prohibition on electronic communications that “interfere with” others—since it is impossible to know exactly what the regulation means, it is also impossible to know how to comply with its requirements.

FIRE rates universities as “red light,” “yellow light,” or “green light” institutions based on how much free speech an institution’s written policies restrict. We publicize our ratings on our website, as well as in our annual report on campus speech codes. Last year, UTK received FIRE’s most favorable, green-light rating, indicating that UTK’s policies did not seriously imperil free speech on campus. This designation should be a source of considerable pride for UTK, as it put your university in rare company shared by only ten other colleges and universities nationwide.

If this revised IT policy remains in force, however, we will have to change that designation to a “red light” to reflect the fact that UTK now has a policy that both clearly and substantially restricts free speech on campus. Rather than simply make such a drastic change, we wanted to first raise our concerns with you. We realize that policies like this one are frequently revised within an administrative department without the necessary input from a university’s general counsel and other relevant administrators, and that may well be the case here. It is our hope that this matter can be resolved directly and that we can continue to give The University of Tennessee–Knoxville our most favorable free-speech rating.

We would like a response to our letter by March 22, 2010. Of course, we are available to answer any questions you may have and to assist you with correcting the policy. We have also enclosed a copy of our recently published handbook for “Correcting Common Mistakes in Campus Speech Policies.” Thank you for your attention and sensitivity to these important concerns.

Sincerely,



Samantha Harris

Director of Speech Code Research

cc:

W. Timothy Rogers, Vice Chancellor for Student Affairs

Maxine T. Davis, Dean of Students

Michelle Espinosa, Director, Judicial Affairs