



Foundation for Individual Rights in Education

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March 8, 2012

President Gary D. Russi
Oakland University
Office of the President, 204 WH
Rochester, Michigan 48309

Sent via U.S. Mail and Facsimile (248-370-3504)

Dear President Russi:

The Foundation for Individual Rights in Education (FIRE; thefire.org) wrote you on December 16, 2011, regarding the prosecution of a student in violation of his First Amendment rights. I include a copy of that letter here.

FIRE is disappointed to have learned this week that Oakland University has chosen to continue its unlawful prosecution and punishment of student Joseph Corlett, denying his appeal. We remind you that the speech at issue in Corlett's case is protected by the First Amendment. Oakland University may not create its own definitions of terms in order to violate First Amendment rights. Yet, this is what Oakland University has done.

The Supreme Court has made it clear that “[t]he essentiality of freedom in the community of American universities is almost self-evident.” *Sweezy v. New Hampshire*, 354 U. S. 234, 250 (1957). Indeed, the Court has declared that “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’” *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted). The United States District Court for the Eastern District of Michigan, Southern Division—the jurisdiction of which includes Oakland University—has similarly stated that a public university may not “proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people,” further noting that First Amendment principles “acquire a special significance in the University setting, where the free and unfettered interplay of competing views is essential to the institution’s educational mission.” *Doe v. University of Michigan*, 721 F. Supp. 852, 863 (E.D. Mich. 1989).

Despite this clearly established and binding legal precedent, Oakland University has formulated its own definition of “unlawful individual activities” and has used it to punish Corlett’s protected expression. Indeed, in denying Corlett’s appeal, Vice President for Student Affairs and Enrollment Management Mary Beth Snyder complains that Corlett’s assertions of his First Amendment rights “are all premised upon [Corlett] presenting technical legal definitions and standards in

defense to charges that are neither technical nor legal in nature.” Despite the fact that Corlett was found guilty of “unlawful individual activities,” Snyder disregards what she characterizes as his “technical” and “legal” grounds for defense, asserting instead Oakland’s nonexistent right to define for itself what expression does not enjoy First Amendment protection and which may thus be “considered intimidating, harassing, threatening or assaultive behavior in the context of the University’s academic, educational environment.”

Oakland simply may not decide for itself what constitutes the law—that is the job of courts and legislatures—and then go on to brand Corlett a criminal when no crime has been committed. Again, Corlett’s writing journal was not unlawful and did not constitute harassment, intimidation, a threat, or any other unprotected speech.

Moreover, Oakland University violated its representation in a letter to FIRE on December 23, 2011, that due process for Corlett included “bring[ing] forth ... whatever evidence [he] deem[ed] appropriate and relevant.” At his hearing, Corlett was not permitted to bring forth exculpatory evidence including relevant explanations of protected and unprotected speech under the First Amendment, such as a 2003 document from the U.S. Department of Education’s Office for Civil Rights clarifying that free speech must be protected in cases of alleged harassment.

Further, as a result, it appears that Oakland University has not provided an equitable process and does not have one in cases like Corlett’s and therefore is in violation of Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*

As you might know, Corlett’s treatment has received national and international attention, bringing shame and embarrassment to Oakland University. Please spare the university the further embarrassment of fighting against the Bill of Rights, by which it is legally and morally bound. This is no time to force the taxpayers of the State of Michigan to fund Oakland’s continued defense of its indefensible violation of the First Amendment.

FIRE asks that you immediately intervene to correct the errors of your subordinates and vacate the findings and punishment in Corlett’s case. We respectfully ask you and Oakland’s Board of Trustees to ensure that the rights of all Oakland University students are protected. We request a response **by Monday, March 12, 2012.**

Sincerely,



Adam Kissel

Vice President of Programs

Encl.

cc:

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