



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

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November 28, 2006

President William Brody
Johns Hopkins University
Office of the President
242 Garland Hall
3400 N. Charles Street
Baltimore, Maryland 21218

URGENT

Sent via U.S. Mail and Facsimile (410-516-6097)

Dear President Brody:

The Foundation for Individual Rights in Education (FIRE) is disappointed to write to Johns Hopkins University (JHU) about the second serious threat to liberty on your campus within one year. We write today to express our grave concern over JHU's extreme reaction to the Sigma Chi fraternity's "Halloween in the Hood" party.

This is our understanding of the facts; please inform us if you believe we are in error. On October 26, 2006, Sigma Chi Social Chair Justin Park posted an advertisement for the "Halloween in the Hood" party on Facebook.com. After students filed a report with JHU Campus Security claiming that the ad was offensive, Director of Greek Affairs Robert Turning directed Sigma Chi President Richard Boyer to remove the ad. On October 27, Park removed the advertisement. After receiving several inquiries into whether the party would indeed take place, Park posted a different advertisement, omitting the language that he assumed Turning found offensive.

On October 28, Sigma Chi held its "Halloween in the Hood" party. At around 1:40 a.m., Campus Security arrived to shut the party down. Associate Dean of Students Dorothy Sheppard sent Park a letter on November 6 stating that the two Facebook.com advertisements "contained offensive racial stereotyping" and that "there were offensive decorations at the party." That letter notified Park that JHU had charged him with:

- failing to respect the rights of others and to refrain from behavior that impairs the university's purpose or its reputation in the community;
- conduct in violation of the university's anti-harassment policy;

- failure to comply with the directions of a university administrator;
- conduct or a pattern of conduct that harasses a person or group;
- intimidation of any person which results in limiting his/her full access to all aspects of life at the university.

The Student Conduct Board held a hearing on November 9. On November 17, Sheppard notified Park that the Student Conduct Board found him guilty of all charges. **Park currently faces suspension from the university until January 2008, during which time he cannot even set foot on campus; completion of 300 hours of community service; an assignment to read 12 books and do a reflection paper on each; and mandatory attendance at a workshop on diversity and race relations.**

The severe, life-altering sanctions imposed upon Park are grossly disproportionate to any supposed violations of university policies. The Facebook.com invitations represented the fraternity's attempt to humorously and hyperbolically advertise a themed party. Park himself has stated that the invitation "was so ridiculous that I thought nobody could take such a thing seriously." The "offensive decorations" at the party reportedly consisted of a skeleton dressed in pirate garb hanging from a noose above the entrance to the fraternity house. The attribution of a racist animus to that decoration is patently unfounded.

Because JHU is a private university, it is not constitutionally bound to refrain from censorship. However, JHU is morally and contractually bound by its own policies, which explicitly protect students' right to free expression. JHU's Undergraduate Student Conduct Code requires students to "protect the university as a forum for the free expression of ideas." (Undergraduate Student Handbook, p. 35.) A university that advertises itself as a forum for the free expression of ideas cannot ruin a student's life for expressing ideas that are repugnant to others in the university community. If JHU does not in fact protect the free expression of ideas, then it is engaging in false advertising.

The Student Conduct Board found Park guilty of "harassment" and "intimidation," but Park's invitation bears no relationship whatsoever to the legal meaning of those terms. The laws that parallel these rules require far more than simply using objectionable words in an online post. The facts do not describe intimidation, which requires the communication of a future harmful action. Nor do the facts describe harassment, which requires consistently repeated, severe, and objectively outrageous and directed acts—not a single offensive online post.

Highly offensive material is protected under the First Amendment and should be protected on any campus that claims to protect its students' right to free expression. In *Hustler Magazine v. Falwell*, the U.S. Supreme Court ruled that the First Amendment protects even an extraordinarily offensive parody—in that case, a cartoon suggesting that the Reverend Jerry Falwell lost his virginity in a drunken encounter with his mother in an outhouse. The First Amendment protects offensive material, farce, profanity, and exaggeration. No campus that claims to take seriously the free speech rights of students can retaliate against a student merely for using offensive words.

In addition to JHU's unconscionable treatment of Justin Park, FIRE is also deeply troubled by the implementation of a new policy that threatens the free speech rights of all students at JHU.

You stated in a letter to the JHU community that in response to the “Halloween in the Hood” party, you have introduced a number of initiatives to “build a stronger community.” Paramount among these initiatives is the institution of the “Principles for Ensuring Equity, Civility and Respect for All” (hereinafter “the Principles”), which set forth JHU’s “unyielding expectations” for the conduct of the entire university community. The regulations contained in that document are both vague and overbroad, and rather than demonstrating that JHU values respect and diversity, they pave the way for viewpoint discrimination and administrative abuses.

The Principles provide that:

- The Johns Hopkins University is an environment in which all people behave in a manner that engenders mutual respect, treating each other with courtesy and civility regardless of position or status in the academy. ***Rude, disrespectful behavior is unwelcome and will not be tolerated.***
- Our community is one where we demonstrate respect for each other; we accept our individual differences; and we provide opportunities for everyone to maximize his or her potential. ***Every member of our community will be held accountable for creating a welcoming workplace for all.***

(Emphasis in original).

If JHU were a public university, its requirement of civility and its ban on “rude” and “disrespectful” behavior would be laughably unconstitutional. As the U.S. Supreme Court has stated, “[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U.S. 576, 592 (1969).

Further, the Principles are unacceptably susceptible to arbitrary enforcement by the college. To cite just one example, Justin Park claims that he was treated both rudely and with disrespect at the meeting of the Black Student Union (BSU) to which he was invited in the wake of the Halloween controversy. Does JHU plan to investigate and possibly prosecute the BSU members who reacted angrily to Park at that meeting? Unless JHU plans to prosecute all instances of rudeness or disrespect on its campus, this policy will necessarily be applied arbitrarily and at the discretion of administrators—a recipe for severe injustice.

FIRE requests that JHU immediately rescind all of the current sanctions against Justin Park and remove any record of this incident from Park’s file. FIRE also requests that JHU revise the sections of the Principles cited in this letter to protect the expressive rights of students and faculty at JHU.

FIRE hopes that we can resolve this situation thoroughly and swiftly; however, we are committed to using all of our resources in support of Justin Park’s expressive rights and to seeing this process through to a just and moral conclusion.

As this is a matter of utmost urgency, we ask for a response to this letter by the close of business on Tuesday, December 5, 2006. I look forward to receiving your response.

Sincerely,



Samantha Harris
Director of Legal and Public Advocacy

cc:

Robert Turning, Director of Greek Affairs, Johns Hopkins University

Dorothy Sheppard, Associate Dean of Students, Johns Hopkins University

Caroline Laguerre-Brown, Associate Director for Compliance and Conflict Resolution, Johns Hopkins University

Dennis O'Shea, Executive Director of Communications and Public Affairs, Johns Hopkins University

Susan Boswell, Dean of Students, Johns Hopkins University

Ralph Johnson, Assistant Dean of Students, Johns Hopkins University

Linda Robertson, Vice President for Government, Community and Public Affairs, Johns Hopkins University

Stephen Dunham, Vice President and General Counsel, Johns Hopkins University

Justin H. Park