



## Foundation for Individual Rights in Education

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May 6, 2009

President Warren J. Baker  
California Polytechnic State University  
San Luis Obispo, California 93407

*Sent via U.S. Mail and Facsimile (805-756-1129)*

### Re: CARE-Net Bias Incident Reporting Program

Dear President Baker:

While I am glad that several years have passed since we last wrote you, FIRE is gravely concerned about the threats to free speech and due process posed by the university's new CARE-Net bias incident reporting program.

The following is our understanding of the facts. Please inform us if you believe we are in error.

According to California Polytechnic State University's website, CARE-Net is an initiative that will allow students to report "bias-related incidents," defined as "any speech, act, or harassing incident or action taken by a person or group that is perceived to be malicious or discriminatory toward another person or group based on bias or prejudice relating to such characteristics as race, color, sex, sexual orientation, gender identity, national origin, ancestry, ethnicity, religion, age or mental or physical disability." Currently, students are directed to report bias-related incidents to "CARE-Net advocates," but the website provides that anonymous reporting will soon be available through EthicsPoint, an online reporting system.

Lest the definition of a bias-related incident leave any shred of doubt that this initiative targets speech as well as conduct, Jessica Cresci, one of the "CARE-Net advocates"—the group of students, faculty, and staff who will receive and respond to these bias incident reports—told the *Mustang Daily* on May 3 that one of the targets of the CARE-Net program will be the "teacher who isn't politically correct or is hurtful in their actions or words."

The program's definition of a "bias-related incident"—which includes any "speech" that is "perceived to be malicious" if it is based on certain personal characteristics—unquestionably violates the First Amendment, by which Cal Poly, a public institution, is legally bound. While the university may legitimately prohibit discriminatory harassment from occurring on its campus, most speech

that is “malicious”—let alone merely “perceived to be malicious”—will not rise to this level. The U.S. Supreme Court has held that for student conduct to be considered constitutionally unprotected hostile environment harassment, it must be “so severe, persistent, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). “Malicious,” “biased,” or “prejudiced” speech that falls short of this standard is constitutionally protected, however offensive it may be to some on campus. Cal Poly may not prohibit—or even take any action that would seriously chill—constitutionally protected expression in the name of protecting its student body from “bias.”

Beyond the unconstitutional definition of a “bias incident,” a CARE-Net program administrator’s public statement that the program will target teachers whose expression is not “politically correct” will have a terrible and impermissible chilling effect on the classroom speech of Cal Poly’s faculty. In fact, FIRE has already been contacted by three members of Cal Poly’s faculty who are deeply concerned about the program’s potential impact on the faculty’s free speech and academic freedom rights.

The idea that Cal Poly, a public institution, is going to allow students to anonymously report and trigger investigations of faculty members whose speech does not meet their subjective standards of “political correctness” would be laughable if it did not pose such a serious threat to academic freedom, candor, and the very qualities that make a university the paradigmatic “marketplace of ideas.”

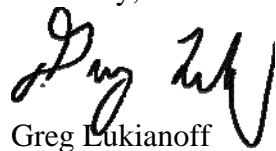
FIRE urgently requests that Cal Poly suspend the implementation of the CARE-Net program pending review and revision of the unconstitutional definition of a “bias-related incident”; eliminate the option of anonymous reporting; and immediately reassure Cal Poly’s faculty that they will not be subject to any investigation or discipline for “politically incorrect” or any other constitutionally protected speech.

Cal Poly has legal, moral, academic, contractual, and constitutional obligations to the rights of its students and faculty. If this program is implemented, students and faculty will live in insecure possession of what should be their common human, legal, and academic rights as members of a public university. It would be a great shame if Cal Poly waited for one lawsuit after another to force it to repudiate its unconstitutional actions and policies.

FIRE hopes we are able to resolve this dispute swiftly, although we are committed to using all of our resources to support the rights of Cal Poly’s students and faculty and to see this matter through to a just and moral conclusion. Please spare Cal Poly the embarrassment of fighting against the Bill of Rights, by which it is morally and legally bound.

We urgently request a response from you on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Lukianoff". The signature is stylized and cursive.

Greg Lukianoff  
President

cc:

Robert D. Koob, Provost and Vice President for Academic Affairs

Jean DeCosta, Dean of Students

Cornel Morton, Vice President for Student Affairs

Ken Barclay, Director, Student Life and Leadership

Maria Arvizu-Rodriguez, Academic Advisor, Student Academic Services, and CARE-Net Advocate

Christopher Bickel, Assistant Professor, Social Sciences Department, and CARE-Net Advocate

Camille P. O'Bryant, Chair, Kinesiology Department, and CARE-Net Advocate

Renoda Campbell, Coordinator of Multicultural Programs and Services and CARE-Net Advocate

Jessica Cresci, student and CARE-Net Advocate

Erin Echols, Coordinator, The Pride Center, and CARE-Net Advocate

Christina Firpo, Assistant Professor, History Department, and CARE-Net Advocate

Bradley Kyker, Advising Resource Specialist, College of Agriculture, Food & Environmental Sciences, and CARE-Net Advocate

Kent Macdonald, Lecturer, Architecture Department, and CARE-Net Advocate

Loracious Presley, student and CARE-Net Advocate

Markel Quarles, Career Counselor, Career Services, and CARE-Net Advocate

Shannon Stephens, Director of Academic Services, Athletics Department, and CARE-Net Advocate

Krystin Thomas, student and CARE-Net Advocate

John Soares, Chair, 2008–2009 Executive Committee, Academic Senate

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