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# FIRE and the State of Speech on Campuses

In their annual “Spotlight on Speech Codes” released last month, the Foundation for Individual Rights in Education (FIRE) brought to light some troubling information regarding students’ rights on college campuses. According to the report, more than 70% of colleges and universities violate the U.S. Constitution by maintaining policies that restrict the speech of their students.

FIRE pointed out that “the overwhelming majority of speech is protected by the First Amendment.” While the Supreme Court has “carved out some narrow exceptions: speech that incites reasonable people to immediate violence; fighting words; harassment; true threats; intimidation; obscenity; and libel,” universities will often “misuse these exceptions to punish constitutionally protected speech.”

For example, some universities hide their speech codes in their harassment policies. “Hundreds of universities persist in maintaining ludicrously broad definitions of harassment that include large amounts of constitutionally protected speech,” reads FIRE’s study. Northern Illinois University, for instance, defines harassment as the “intentional and wrongful use of words, gestures and actions to annoy, alarm, abuse, embarrass, coerce, intimidate or threaten another person.”

Actual harassment, according to FIRE, “is extreme and usually repetitive behavior—behavior so serious that it would interfere with a reasonable person’s ability to receive his or her education.” The speech must go above and beyond mere annoyance.

FIRE places universities into one of three categories: red, yellow, and green. These denote the level of restrictions placed upon speech.

A “green-light” campus maintains no policies that could be construed as problematic from a constitutional perspective. Currently, only eleven universities—Carnegie Mellon University, Cleveland State University, Dartmouth College, Grinnell College,

Shippensburg University of Pennsylvania, the College of William & Mary, the University of Nebraska, the University of Pennsylvania, the University of South Dakota, the University of Tennessee at Knoxville, and the University of Utah – receive a “green-light” rating from FIRE.

Conversely, a “red-light” university maintains policies that substantially restrict speech. “The threat to free speech at a red-light institution is obvious on the face of the policy and does not depend on how the policy is applied.”

Seventy-one percent of the schools examined by FIRE were given red-light ratings. One such school is SUNY Brockport, which was given FIRE’s dreaded “red light” label in response to a policy banning all uses of email that “inconvenience others.” “Inconveniencing” others includes “offensive language or graphics (whether or not the receiver objects, since others may come in contact with it).” Another “red-light” school is New York University, which proffers egregious policies such as one which openly prohibits “insulting, teasing, and even inappropriate jokes when they are based on a legally protected status such as race, gender or religion.”

The middle ground is the “yellow-light” rating. Binghamton University, according to FIRE’s website, is a “yellow-light” institution, meaning that the University maintains “at least one ambiguous policy that too easily encourages administrative abuse and arbitrary application.”

FIRE cites several policies as cause for BU’s “yellow-light” rating. Take, for example, the university’s policy regarding hate crimes. “In addition to preventing and prosecuting hate/bias crimes, New York State University Police, staff in the Division of Student Affairs, the University Ombudsman and the Affirmative Action Office assist in addressing bias-related activities that do not rise to the

level of a crime. These activities, referred to as bias incidents and defined by the University as acts of bigotry, harassment or intimidation directed at a member or group within the Binghamton University community based on national origin, ethnicity, race, age, religion, gender, sexual orientation, disability, veteran status, color, creed or marital status, may be addressed through the State University of New York’s Discrimination Complaint Procedure or the Rules of Student Conduct.” This wording is so vague and all-inclusive that almost any action can be construed as a “bias incident.” Who defines what an “act of bigotry” is?

Another “yellow-light” policy of ours tackles the issue of advertisement and posting on campus. “Advertisements should avoid demeaning, sexist or discriminatory portrayal of individuals.” It seems that the university has placed this rule on students as a way of ensuring that no one gets their feelings hurt. I think someone should call the administration out on their bullshit. Wait, am I not allowed to say that? Or would that be considered “demeaning”?

Then there is the university’s definition of harassment, which according to the student handbook, is “conduct intended to harass, annoy, threaten or alarm another person.” FIRE considers this broad and problematic from a free-speech perspective.

While there have not yet been cases of free-speech violations based off of these policies, the potential for abuse does still exist due to the vague and broad nature of our code of conduct. Hence, our “yellow-light” rating stands for another year.

Being politically correct is all well and good—in fact I encourage it—but not to the point that it restricts the rights of another human being. I truly hope that within the upcoming years, Binghamton will see its status change from “yellow” to “green” by simply rewriting the questionable parts of our handbook. ◀