



Foundation for Individual Rights in Education

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May 8, 2012

Chancellor Kenneth E. Peacock
Appalachian State University
Office of the Chancellor
B.B. Dougherty Administration Building
Boone, North Carolina 28608

Sent via U.S. Mail and Facsimile (828-262-3024)

Dear Chancellor Peacock:

The Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, academic freedom, due process, freedom of speech, and freedom of conscience on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is concerned about the threat to academic freedom, free expression, and due process posed by Appalachian State University's (App State's) investigation of a professor for controversial classroom speech. All of App State's faculty members must be held to clear and consistently applied academic standards, particularly when controversial material is involved.

This is our understanding of the facts relevant to FIRE's concerns; please correct us if you believe we are in error. In a letter on March 16, 2012, App State Vice Provost for Faculty Affairs Anthony Gene Carey notified tenured professor Jammie Price that four students had made various allegations about the conduct of her class, Sociology 1000, Introduction to Sociology. Two of the students had dropped her class. According to the ASU Department of Sociology, Sociology 1000 is

An introduction to the field of sociology and the sociological perspective. Gives students a basis for understanding how society operates. Topics include, [sic] groups, family, bureaucracies, social class, power, deviance, minority relations, community and social change.

According to Carey's letter, the allegations against Price included "repeatedly criticiz[ing] the university administration"; "disparaging, inaccurate remarks

about student athletes” that “created a hostile environment for the student athletes” in Price’s class; spending class time discussing topics “wholly unrelated to the topics outlined in the syllabus”; showing the class “a documentary on pornography” without “introduc[ing] the film or explain[ing] that the material may be objectionable or upsetting to students”; and other allegations.

Carey’s letter stated that App State was placing Price on paid administrative leave pending the completion of an investigation by the university’s Office of Equity, Diversity and Compliance (EDC) and pending a review of Price’s “ability or willingness to abide by University regulations, directives, and processes.” In addition, Carey’s letter prohibited Price from having any contact “with students, former students, or colleagues concerning this matter.”

Price responded with a letter on April 3, arguing that her discussion of student athletes was intended to proceed “in an informed and intellectual manner”; that her deviations from the syllabus were nevertheless related to the topics of the course; that her comments about the university were germane to the sociological topic of “institutionalized racism”; and that the documentary about pornography, *The Price of Pleasure: Pornography, Sexuality and Relationships*, involved “core concepts in an introductory-level sociology class.”

In a letter on April 30, Provost and Executive Vice Chancellor Lori Stewart Gonzalez informed Price that the EDC investigation had determined that Price had “created a hostile learning environment for a significant number of students in your classes.” Contributing to this environment, according to student reports cited by Gonzalez, were allegations that Price in class “often commented about an allegedly racist environment at Appalachian and about student athletes,” “repeatedly criticized students for attending Appalachian,” and commented about her “personal life and challenges.”

As a result, Gonzalez stated that Price must successfully complete a number of “corrective actions” regarding her “classroom approach and pedagogy” and be subject to “[r]andom peer reviews.” Gonzalez’s letter stated that these actions would constitute a “professional development plan” with a minimum of five parts and several subparts.

Many of these parts and subparts, such as the requirement of an “[a]ttendance policy,” appear to have no relation to remedying an alleged hostile learning environment under App State’s Harassment, Discrimination and Retaliation policy (Policy 602.2). Additionally, several of the parts and subparts focus on how Price must teach “sensitive topics.” These include “[i]ndividual class objectives which allow for framing conversations that deal with sensitive topics”; professional development education activities including “[d]ealing with sensitive topics in the classroom” and “[s]ensitivity training”; and

Fully developed syllabus which includes disclaimers should controversial materials be used. Further, a planning document should be developed if sensitive materials are to be used. The document should provide the class session objectives, information regarding the steps to be taken to contextualize the information and the debriefing process. ... [I]t is a requirement to implement responsible approaches to pedagogy.

Gonzalez's letter added that Price must comply with the professional development plan and that "[n]oncompliance can lead to serious sanctions, up to and including discharge." Price remains on administrative leave.

The Supreme Court of the United States has held that academic freedom is a "special concern of the First Amendment" and that "[o]ur nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned." *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). As the Court observed in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. ... Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

As a public university, App State is bound by the First Amendment as well as by its own promises. These include the promises in its Faculty Handbook of "academic freedom" and the "freedom to teach." Section 3 of App State's Faculty Handbook, "Academic Freedom and Responsibility of Faculty," specifies and reads in full:

3.3.1 It is the policy of Appalachian State University to support and encourage **within the law full freedom of inquiry, discourse, teaching**, research, and publication for all members of the academic staff of this institution. Members of the faculty are expected to recognize that accuracy, forthrightness, integrity, and dignity befit their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as speaking for Appalachian State University.

3.3.2 Appalachian State University will not penalize or discipline members of the faculty because of the exercise of academic freedom **in the lawful pursuit** of their respective areas of scholarly and professional interest and responsibility. All members of the faculty, whether tenured, untenured, or non-tenure track, have the protection of academic freedom. [Boldface added.]

App State's treatment of Price presents several serious threats to academic freedom, free expression, and due process.

First, it is not clear that Price has ever been provided in writing with the statements that she allegedly made that contributed to or constituted an allegedly hostile environment (with one exception: "The [App State] mascot is a white man."). It is additionally troubling that Price was not provided with the investigator's report until last Friday. Furthermore, broadly prohibiting Price from contacting potential witnesses from her class for her defense, as well as members of her own department who could help explain the academic relevance and pedagogical

significance of her classroom statements, severely limits her ability to defend herself and receive a fair adjudication of her case.

Second, the statements involved must actually contribute to or constitute a hostile environment. Even if Price made such statements, criticism of App State as allegedly racist, criticism of the apparent race and gender of the App State mascot, statements critical of App State student athletes in general, showing a documentary on pornography or other “sensitive” material in class, and comments in class about one’s “personal life and challenges” all generally enjoy First Amendment protection. Further, such expression is protected under the tenets of academic freedom when it is germane to the class, as Price has argued, and a determination of scholastic and pedagogical relevance is best made by Price’s faculty peers, not the EDC.

In addition, App State must follow applicable federal guidance in determining whether Price’s conduct constituted hostile environment harassment. In the educational context, the Department of Education’s Office for Civil Rights (OCR)—the federal agency tasked with implementing federal anti-discrimination statutes—addressed faculty-on-student harassment in its 2001 publication *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (“2001 Guidance”). In discussing hostile environment sexual harassment in the *2001 Guidance*, OCR stated that “the conduct must be sufficiently serious that it adversely affects a student’s ability to participate in or benefit from the school’s program” and that “the totality of the circumstances in which the behavior occurs [] is critical in determining whether a hostile environment exists.” Specifically, OCR states:

In other situations, i.e., when an employee has created a hostile environment, OCR will consider the following factors in determining whether or not the harassment has taken place in this context, including:

- The type and degree of responsibility given to the employee, including both formal and informal authority, to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally;
- the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place;
- where and when the harassment occurred;
- the age and educational level of the student involved; and
- as applicable, whether, in light of the student’s age and educational level and the way the school is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

Unless there are circumstances of which FIRE is unaware, it is far from clear that Price’s “controversial” classroom statements rose to the level of hostile environment sexual harassment as understood by OCR. Only a showing that Price’s classroom statements were “sufficiently serious to deny or limit the student in [his or] her ability to participate in or benefit from [App State’s] program” (quoting the *2001 Guidance*) will be sufficient to support a finding of hostile environment harassment.

Third, Price was never provided with clear notice that her choice of pedagogy was unacceptable at App State—which, again, is mainly the prerogative of the faculty. App State’s general statements about teaching responsibilities in the Faculty Handbook as well as in the Department of Sociology’s “Policy on Annual Review, Promotion and Tenure” are far too vague to justify a post hoc determination that Price’s teaching was unacceptable. Rather, the department’s policy states that the department requires no “single model of performance” but merely “define[s] general expectations” and “indicate[s] the varied ways in which individual faculty members ... may strive for excellence.” The department scarcely specifies anything beyond the “Baseline Performance Expectations” that faculty must “contribute in the area of instruction” and “be effective classroom instructors.”

Fourth, the development plan appears to be a severe encroachment on faculty prerogatives of shared governance and academic freedom. App State promises its entire faculty “within the law full freedom of inquiry, discourse, teaching, research, and publication.” While App State must take reasonable action to remedy a good-faith finding of harassment and prevent its recurrence, this cannot justify restricting Price’s pedagogy in a way that limits her academic freedom. For example, there seems to be no relationship between remedying an allegedly hostile environment and requiring “the method to take attendance during class” as stated in the development plan.

Furthermore, the development plan uniquely and greatly restricts Price’s pedagogy concerning “sensitive topics” and “controversial materials”—even if one overlooks the impossibly vague nature of such terms. Demanding a “planning document” and “disclaimers” under the rationale of “responsible approaches to pedagogy” reaches far into the details of Price’s syllabus and course planning and intrudes upon “determination[s] left to the faculty” (to quote Gonzalez’s letter)—the academic prerogatives of the faculty to engage in peer review and development of a faculty member’s courses.

Conversely, if App State is to insist that such specific pedagogical requirements are a matter of faculty responsibility in general, it must make clear that these new pedagogical responsibilities will be imposed on all faculty. If App State imposes pedagogical restrictions on its faculty (in a context of shared governance), these restrictions must be clear, the faculty must have notice of them, and they must be applied fairly and evenly. Such a plan is likely to prove intensely difficult. “Controversial” and “sensitive” topics and materials are part and parcel of many courses and perhaps of entire fields of study. How to present them (or “fram[e] conversations” about them) will inevitably differ by content, course, discipline, and pedagogical context, and it is far from clear how the university might impose clear, reasonable, and generally applicable restrictions in this area.

Fifth, it is unclear what process App State is actually using to prosecute Price. If the university is using the Faculty Handbook, the idea of a “development plan” is mentioned only in the section on a “comprehensive” post-tenure review, which has not occurred in the context of this case. Instead, if the university is following the Harassment, Discrimination and Retaliation policy, it appears (as mentioned above) that the proposed development plan far exceeds the university administration’s authority to impose “remedial action” after a finding of harassment.

FIRE asks that Appalachian State University ensure that Price is provided with the documents and access she needs to properly defend herself, including a written statement of the specific speech at issue here, access to witnesses and colleagues, and a description of the official process and policies App State is following in this case. FIRE further asks that App State clarify specifically how Price's alleged comments constitute hostile environment harassment as understood under relevant federal guidance. FIRE also asks that App State lift its unique restrictions on Price's pedagogy insofar as they are irrelevant to addressing a finding of harassment, should App State continue to believe that harassment has occurred. In addition, should App State choose to impose new restrictions on the faculty, to initiate a post-tenure review of Price, or to impose a professional development plan on Price in accordance with a post-tenure review, FIRE asks that App State do so following all of the appropriate policies and shared governance principles in official App State documents. Finally, FIRE asks that App State clarify its commitment to freedom of expression and academic freedom, given the deeply troubling inclusion of Price's criticism of the university and other protected speech within its investigation.

FIRE requests a response by May 29, 2012. I look forward to hearing from you.

Sincerely,



Adam Kissel

Vice President of Programs

cc:

Lori Stewart Gonzalez, Provost and Executive Vice Chancellor

Anthony Gene Carey, Vice Provost for Faculty Affairs

Anthony Calamai, Dean, College of Arts and Sciences

W. Edward Folts, Chair, Department of Sociology

Linda M. Foulsham, Director, Office of Equity, Diversity and Compliance