



*The Dartmouth* reports that upon receiving the bias incident report, “[Dartmouth’s Department of] Safety and Security immediately contacted the students and launched an investigation to identify the perpetrator.” Your January 24 letter to the campus, jointly authored with Dean of the College Charlotte Johnson, states that “we received a report of several students being targeted and verbally harassed,” suggesting that the case was being investigated as an incident of harassment.

Regarding Dartmouth’s investigation and possible disciplinary consequences should the student be identified, the website *Campus Reform* ([campusreform.org](http://campusreform.org)) reported on February 5, after speaking with a Dartmouth official, that expulsion would be considered:

John Cramer, Dartmouth’s Associate Director for Media Relations, told *Campus Reform* on Monday such speech would not be tolerated and that if the student is caught he could face expulsion.

“It is completely unacceptable for students to behave that way...ways that are completely offensive, period,” Cramer commented on the issue.

Other penalties could include a mandatory sensitivity course or paying a fine, he said.

Cramer said the two students did not feel threatened, but that they were offended which is enough to justify the ensuing investigation.

*Campus Reform* has further privately informed FIRE that Cramer has specified that the student, if identified, could face charges of violating Dartmouth’s Standards of Conduct, and be subject to a hearing conducted by Dartmouth’s Undergraduate Judicial Affairs Office.

Because the First Amendment would protect the student’s expression were it to take place off of campus, punishment of or investigation into this situation violates Dartmouth’s promises of free speech and expression.

As a private college, Dartmouth is not constitutionally bound to refrain from censorship. However, Dartmouth is morally bound by its own policies and promises, which explicitly protect students’ right to free expression. Dartmouth’s Student Handbook states that “Dartmouth College prizes and defends the right of free speech,” and that “freedom of expression” is “protected by College regulations.” A college that takes itself seriously as a forum for free expression cannot discipline a student simply for engaging in speech that some in the university community find offensive. If Dartmouth does not in fact protect the free expression of ideas, then it is engaging in false advertising.

FIRE is also concerned that your letter to Dartmouth students describes Liou and He as having been “verbally harassed.” This is an overstatement. In the educational setting, unprotected harassment consists of targeted, discriminatory conduct “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and

opportunities.” *Davis v. Monroe County Board of Education*, 526 U.S. 629, 652 (1999). Deeming a single offensive utterance to be “harassment” trivializes the problem of real harassment on college campuses.

While the students clearly were offended by the mock-Chinese, offensive speech is protected under the First Amendment and must be protected on any campus that claims to honor its students’ right to free expression. The Supreme Court has noted that “[t]he hallmark of the protection of free speech is to allow ‘free trade in ideas’—even ideas that the overwhelming majority of people might find distasteful or discomforting.” *Virginia v. Black*, 538 U.S. 343, 358 (2003), quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting). See also *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”) No campus that claims to take seriously the free speech rights of students can retaliate against a student merely for using offensive words.

As you may be aware, Dartmouth is one of only 16 colleges nationwide to earn FIRE’s highest, green light rating for free speech, meaning that in FIRE’s estimation, there are no policies at Dartmouth that unduly restrict students’ free speech rights. As one of FIRE’s green light schools, we routinely highlight Dartmouth as an example to colleges around the nation in upholding the principles of free expression.

But this status is called into question by the school’s “bias incident reporting” policy, which encourages students to report for investigation incidents of offensive but protected speech, particularly when combined with your administration’s suggestion that Dartmouth’s harassment policy encompasses offensive but protected speech. Dartmouth may not investigate or punish this or any other student simply because of the offense their speech may cause to the community, **and FIRE cannot continue to praise Dartmouth as a staunch defender of free expression if it does so.**

There are numerous ways for Dartmouth to engage and respond to the offense caused in this case. Indeed, Dartmouth’s Office of Pluralism and Leadership has held discussions with the student body, students have spoken out about the offense caused by the incident in the pages of *The Dartmouth*, and Dartmouth’s Inter-Community Council has initiated a “We Are Not Anonymous” campaign encouraging students to share their experiences of prejudice and discrimination. Key to all of these is the principle that offensive speech is most effectively countered not by officially punishing those expressing opinions many find offensive, but by countering such “bad” speech with more, “better” speech.

As Dartmouth works to foster an inclusive campus environment, it must do so in a manner fully consistent with the promises of free speech it makes to its students. FIRE asks that Dartmouth immediately cease any disciplinary investigation based solely on the incidents described above, and that it make clear that its bias incident reporting system and its disciplinary system will not be used to police and punish unpopular expression. We hope to see this matter quickly resolved, and to continue highlighting Dartmouth as a leader in protecting freedom of expression.

We ask for the response to this letter by March 13, 2013.

Sincerely,

*Samantha Harris*

Samantha Harris  
Director of Speech Code Research

cc:

Charlotte Johnson, Dean of the College  
Nathan Miller, Director of Undergraduate Judicial Affairs  
John Cramer, Associate Director of Media Relations