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April 19, 2005

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rights, feelings, and considerations of others. We need to recognize that speech has consequences for which we must account.

Your remarks sweep broadly enough (especially when combined with the content of Dean James Larimore's May 11, 2001, letter) to restrict freedom of speech in exactly the same manner as a formal speech code. The reasons for this assessment are contained in FIRE's February 28, 2005, letter to Dartmouth trustee T. J. Rodgers (attached). Moreover, the inclusion of the letters in a prominent place on Dartmouth's website gave the clear impression that the letters were, in fact, policy statements rather than merely aspirational expressions of a personal philosophy.

However, three events give FIRE cause to consider reevaluating its rating of Dartmouth. First, you have recently made statements on the subject of speech that indicate that your administration will actively protect rights to free speech and academic freedom. In these remarks, taken from your September 24, 2004, convocation address, you stated,

[There are] two values central to our

forth policies that led to that decision.) The assertion that the letters constituted official “policies” subjecting students to penalties for discriminatory or unpopular speech per se is incorrect.

Taken together, these three developments indicate that neither your May 10, 2001, letter nor Dean Larimore’s May 11, 2001, letter represent binding statements of college policy, and they cannot be relied upon to support any student or faculty complaints based on the content or viewpoint of controversial speech. FIRE respectfully requests that you confirm this understanding and that you confirm that Dartmouth’s excellent statement of Freedom of Expression and Dissent (contained on page 9 of the Student Handbook) is the college’s definitive declaration of student rights to free speech.

Contrary to recent statements from your administration, FIRE is not an “interest group.” As you can see from our Board of Directors and Board of Advisors (and as you know from personal experience and interaction), FIRE is a nonpartisan organization made up of civil liberties leaders from across the political spectrum. Our only “interests” are free speech, religious liberty, due



February 28, 2005

Mr. T. J. Rodgers
President and Chief Executive Officer
Cypress Semiconductor Corporation
3901 North First Street
San Jose, California 95134-1599

Re: Dartmouth's Speech Policies

Dear Mr. Rodgers:

Thank you very much for your February 7, 2005, letter requesting that FIRE
"review and upgrade Dartmouth's free speech rating" on our website,
www.speechcodes.org. As you know, Dartmout

expression of school policy. FIRE also requests that Dartmouth rescind any speech-related punishment administered under the terms of that letter.¹

The May 10, 2001, letter, if issued by the president of a public university, would constitute an unconstitutional speech code. President Wright's letter conditions free speech on the reactions of the least tolerant listener, is vague and ambiguous, and clearly singles out certain kinds of speech for punishment simply because they advocate allegedly unacceptable points of view.

The letter contains the following statement:

In a community such as ours, one that depends so much upon mutual trust and respect, it is hard to understand why some want still to insist that their "right" to do what they want trumps the rights, feelings, and considerations of others. We need to recognize that speech has consequences for which we must account.

Note that President Wright clearly places the "feelings" of others over the "right" to free speech. When a person's subjective feelings can trump the objective right to speak, then no one's speech is free. At Dartmouth, if a student wants to make a controversial argument on an emotional topic (such as affirmative action, abortion, or the war on terror), that student must take great care that no one in class or in earshot will be offended by the content of his or her speech. A person is simply not free to speak if he or she can be punished based on complaints from even the most thin-skinned member of the community.

Multiple cases have held that colleges (and even high schools) cannot condition free speech rights on listener reactions. See, for example, *Sypniewski v. Warren Hills Regional Board of Education*, 307 F.3d 243 (3rd Cir. 2002) (striking down secondary school speech regulations because the focus of the regulations was "entirely on the reaction of listeners.... [B]y itself, an idea's generating ill will is not a sufficient basis for suppressing its expression"); *Saxe v. State College Area School District*, 240 F.3d 200 (3rd Cir. 2001) ("In any case, it is certainly not enough that the speech is merely offensive to some listener"); *Dambrot v. Central Michigan University*, 839 F. Supp. 477, 482 (E.D. Mich. 1993) aff'd 55 F.3d 1177 (6th Cir. 1995) (striking down Central Michigan's "discriminatory harassment" policy because the policy's language prohibited – in the Court's words – "any behavior" that "offends any individual"); and *Doe v. Michigan*, 721 F. Supp. 852 (E.D. Mich. 1989) (striking down the Michigan speech code and holding: "Nor could the University proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people.") All these cases are simply following the Supreme Court's clear guidance: "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

¹ The letter at issue can be found on Dartmouth's website at <http://www.dartmouth.edu/~sli/documents/president010510.html>. In spite of President Wright's recent convocation address, there is no indication on the site that the letter no longer expresses presidential policy, nor is there an indication that any punishments imposed in furtherance of this policy have been rescinded. Thus, FIRE considers this letter to be an expression of college policy and evaluates it as such.

society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

Further, President Wright’s letter is not limited to targeting speech that hurts the feelings of other students. Speaking of a conversation with members of Dartmouth’s fraternity and sorority community, Mr. Wright states:

Specifically, I said that I expected them to take action to address allegations of conduct that was demeaning to women and others, that was racist, or that was homophobic. As a community committed to fairness, respect, and openness, we have no patience with or tolerance for bigotry or demeaning behavior. I affirm here, with deep personal conviction, that Dartmouth is and will be an actively anti-sexist, anti-racist, and anti-homophobic institution and community.

President Wright condemns “bigotry” and “demeaning” behavior without defining these terms. How is a student to know if his or her speech is defined as “demeaning” or bigoted? FIRE has seen far too many examples of how such limitations are used to punish even the tamest expression. There is simply no objective definition of bigotry or of demeaning speech, and there is thus no way for a student to be certain that he or she is complying with Dartmouth policy – unless that student merely parrots President Wright’s views or shuts his or her mouth entirely.

In 2003, the U.S. District Court for the Middle District of Pennsylvania struck down a university policy similar to President Wright’s statement. Shippensburg University had enacted a “Racism and Cultural Diversity Policy Statement” that provided:

It is the unequivocal position of Shippensburg University to prohibit racism/ethnic intimidation and harassment; and to affirm cultural diversity, social justice and equality.

Racism shall be defined as the subordination of any person or group based upon race, color, creed or national origin. It shall be a violation of

As a private college, Dartmouth is of course free to set its own speech policies, but it is unfortunate and unacceptable that it has exercised this freedom in such a manner as to rob students of the right to participate in a truly free marketplace of ideas. As I have said to you before, Dartmouth is more than ju

opportunity to become a national leader in defending free speech and academic freedom. As the Harvard faculty considers censuring a president for engaging in provocative dialogue and as the Colorado Board of Regents takes the unusual and dangerous step of examining a professor's writings to determine whether he will be term

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