



Foundation for Individual Rights in Education

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August 2, 2004

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R E N

Sent By U.S. Mail and Facsimile (401-456-8287)

Dear President Nazarian,

As you can see from our Directors and Board of Advisors, 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, freedom of religion, due process, freedom of speech and academic freedom on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

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FIRE is profoundly concerned about the dire threat to free speech posed by the formal hearings now proceeding at Rhode Island College against Professor Lisa B. Church, who has been accused of violating a policy on "hostile environment racism" and of "the use of intimidation" in her handling of a controversy over racially-based comments made by a parent of a student at RIC's Cooperative Preschool. The charges against Dr. Church have triggered RIC's disciplinary hearing procedures, which can lead to punishments ranging from oral reprimand to termination of employment. From the facts that we have gathered, FIRE believes these claims to be thoroughly unfounded and wholly without merit.

staff. On February 19, 2004, three mothers of students participating in the preschool engaged in a heated conversation about welfare and race. The discussion evidently ended abruptly when one mother took offense to what she felt were racist statements being made by another mother. The statements allegedly made were, “[a]ll of the Spanish people get everything because they don’t speak English...We (whites) are the minorities...We have no rights compared to Spanish and Black...I do not believe in making interracial children.” The offended mother, whose daughter has an African-American father, angrily left the preschool. One of the mothers chased after her to apologize but was ignored; the other called her at home that evening to apologize for any unintended offense, but was similarly rebuffed. Professor Church was not present during the conversation.

On February 27, the offended woman, who was also the secretary of the preschool’s board, brought the incident to Professor Church’s attention, requesting that the matter be discussed at a school meeting. Professor Church, believing that the issue involved a disagreement between private individuals rather than the entire preschool, declined to do so. Instead, Professor Church suggested mediation between the parties and a sensitivity training session for the co-op at large. The offended woman refused this suggestion and insisted that Professor Church take disciplinary action against the other mothers involved—action that would likely have violated the First Amendment’s guarantees of free speech. When Profes

According to Professor Church, Associate Dean Kane indicated that he was not interested in whether or not the RIC policy was unconstitutional. He also told her that he was uninterested in the July 2003 letter from the Office of Civil Rights of the United States Department of Education (OCR) to colleges and universities nationwide (attached), which flatly states that “OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR.” Despite

to fail the course...A boss or professor may routinely remind an employee or student of those facts and be intimidating.”

Unfortunately, Giammarco did not heed this largely accurate

dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging...That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public

Jackson in the seminal case of *West Virginia State Board of Education v. Barnette* (1943), a “mere shadow of freedom.”

Thus far, the injustice and abuse of rights connected with the disciplinary process in this c





UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 28, 2003

Dear Colleague:

I am writing to confirm the position of the Office for Civil Rights (OCR) of the U.S. Department of Education regarding a subject which is of central importance to our government, our heritage of freedom, and our way of life: the First Amendment of the U.S. Constitution.

program. Thus, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances, including the alleged victim's age.

There has been some confusion arising from the fact that OCR's regulations are enforced against private institutions that receive federal-funds. Because the First Amendment normally does not bind private institutions, some have erroneously assumed that OCR's regulations apply to private federal-funds recipients without the constitutional limitations imposed on

public institutions. OCR's regulations should not be interpreted in ways that would lead to the suppression of protected speech on public or private campuses. Any private post secondary

institution that chooses to limit free speech in ways that are more restrictive than at public