



Foundation for Individual Rights in Education

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March 18, 2011

Jackie L. Fisher, Sr.
Superintendent/President
Antelope Valley College
Office of the President
3041 West Avenue K
Lancaster, California 93536

Sent via U.S. Mail and Facsimile (661-722-6333)

Dear President Fisher:

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 free speech and academic freedom presented by Antelope Valley College's (AVC's) punishment and censorship of Emergency Medical Technician (EMT) program professor Lance Hodge. AVC required that Hodge write a ten-page paper on issues of diversity and discrimination, and required that Hodge devote one hour of class time to a lesson on "cultural diversity," because of his protected classroom speech. AVC then censored Hodge by threatening him with punishment if he gave the lecture on cultural diversity that he had prepared.

The following is our understanding of the facts. Please correct us if you believe we are in error.

Lance Hodge, a licensed paramedic for about 31 years who estimates that he has responded to roughly 15,000 emergency calls as a fire department paramedic, is a tenured faculty member at AVC. As part of a routine faculty evaluation, three peer-review team members audited his EMT 101 class during March and April 2010. On April 22, 2010, Karen Cowell, Dean of Health Sciences at AVC, attended one of Hodge's lectures to evaluate him. At one point, according to Hodge, he recalled an experience he had had as a paramedic, when he had arrived at a family home to find family members placing heated coins on a child's body, and another experience where family members were shaking carved dolls and

chanting, which he described as looking like a “witch doctor” ceremony. He evoked the scene by re-enacting it in part, waving his arms as had one of the people there. Hodge did so in order to help EMT students understand the kinds of situations they might face and the need to act professionally in those situations. He did not deprecate the cultural beliefs of the people he was describing, and his examples of real experiences were directly relevant to the subject under discussion.

On May 27, 2010 (revised July 17, 2010), the Tenured Faculty Evaluation Report of Hodge’s performance described that part of the lecture in subjective terms:

In one classroom observation Mr. Hodge described two cultural practices related to patient care. The tone and gestures that Mr. Hodge used to describe the practices were flippant. At the conclusion of the description of the practices, Mr. Hodge stated that one should “not mess with their belief system.” The observer suggested that Mr. Hodge use a neutral tone and respectful language when discussing cultural beliefs.

In the report, Cowell rated Hodge’s performance in the sub-category of “Sensitivity to Diversity” as “Needs Improvement.” Cowell mandated that Hodge write a ten-page paper “addressing California and federal laws related to discrimination and Antelope Valley College Board Policy 7100 regarding commitment to diversity” and how Hodge would implement Board Policy 7100 in his classes.¹ Cowell also required Hodge to “include a one hour class on cultural diversity in [a future] EMT 101 lecture,” which he was required to submit to AVC for review at least two weeks ahead of the lesson.

On October 28, 2010, Hodge submitted his paper and lesson plan. He titled the lesson “Political correctness vs. the real world: The EMT and professionalism in the face of offensive language or behavior and our understanding of stereotyping and prejudice.” As required by AVC, the lesson contained much material on cultural diversity. (I have enclosed a copy of the lesson. Please see, in particular, pages 1, 2, 9, 10, 11, 12, and 13.) For example, on the first page, Hodge wrote:

We all have somewhat different upbringings, cultural differences, beliefs, and sensitivities; and we should remember that diversity, and tolerance is about understanding those differences, and treating each other with appropriate respect and dignity The EMT will find themselves working in an environment where people of virtually every conceivable culture, race, color, background, upbringing, and sensitivity will be part of their emergency response

¹ Board Policy 7100 is a human resources policy concerned with hiring and staff development. How a professor plans to implement a human resources policy in the classroom appears to be a strange topic. The policy states in full:

The District is committed to employing qualified administrators, faculty, and staff members who are dedicated to student success. The Board recognizes that diversity in the academic environment fosters cultural awareness, promotes mutual understanding and respect, and provides suitable role models for all students. The Board is committed to hiring and staff development processes that support the goals of equal opportunity and diversity, and provide equal consideration for all qualified candidates.

Refer to Chapter 3, AP 3420 for Equal Employment Opportunity practices.

On October 28, 2010, Hodge filed a grievance against both Cowell and Sharon Lowry, Vice President of Academic Affairs, challenging his punishment as a violation of his academic freedom under Board Policy 4030 on Academic Freedom.² This policy states that the right to freedom of expression “is especially important in the academy. Academic freedom in the pursuit and dissemination of knowledge in an educational environment shall be ensured and maintained.” Board Policy 4030 also states that instructors are not to be sanctioned or punished merely for expression which may be “controversial or unpopular”:

[F]aculty shall not be subjected to censorship or discipline solely on the grounds that he or she has expressed opinions or views, or provided access to opinions or views, which are controversial or unpopular.

In addition to these protections, the policy gives faculty members the rights of citizens while they are on campus, stating that “**Within** ... the academic community, a faculty member is **free to speak or write, as a citizen, without fear** of institutional censorship or discipline.” (Emphases added.)

On November 24, 2010, AVC Assistant Superintendent/Vice President Shane Turner responded to Hodge, adding entirely new allegations. In particular, Turner wrote that Hodge’s April 22 lesson had implicated the Antelope Valley Community College District’s vague “ethics” policy, namely its provisions that District employees

[Are] [f]air and respectful in all interactions with ... students.
 Address issues and work with people without prejudice.
 ...
 Respect the personal values, beliefs and behaviors of others.
 Maintain a working and learning environment free from harassment.
 ...

Turner added that if a professor has “deprecated cultural beliefs” in class, the code of ethics “requires” the kind of punishment that Hodge has suffered. To support his argument, Turner invoked an inapplicable court case, *Garcetti v. Ceballos*, 547 U.S. 410 (2006), which in fact does not trump a professor’s academic freedom in the classroom, as Hodge amply explained in his November 30, 2010, grievance appeal. Indeed, *Garcetti* explicitly *does not* rule on whether a public college may strip a professor of First Amendment rights, including academic freedom, in the classroom. *Id.* at 425. Further, in *Sheldon v. Dhillon*, No. C-08-03438 RMW (N.D. Cal. Nov. 25, 2009), a federal district court ruled that a professor did not lose her First Amendment rights merely because her answers to students’ questions about sexual orientation in her Human Heredity course occurred during classroom instruction. (Like Hodge, Sheldon had discussed material directly on the topic of instruction.)

In his November 30, 2010 appeal, Hodge also elaborated on Antelope Valley College’s violation of his First Amendment rights and its violation of its own binding promise of academic freedom

² Hodge resubmitted his grievance on or about November 9, 2010, explaining that the Human Resources Department had failed to provide him with the proper form the first time.

in Board Policy 4030. You denied the appeal in a letter on December 2, 2010. Later on December 2, Hodge wrote letters to all six members of the District's Board of Trustees about his situation, but to date he has received no response.

Meanwhile, in a letter to Hodge on November 23, 2010, the day Hodge had planned to deliver his lecture, Turner wrote that unnamed persons in the Antelope Valley Community College District had reviewed and rejected his lesson. Turner wrote that "the materials/lesson plans do not teach or address cultural diversity" and directed Hodge not to present the lesson. Turner added that "Failure to comply with this directive will subject you to disciplinary action."

As a public college, AVC is both legally and morally obligated to uphold the First Amendment. That the First Amendment's protections fully extend to public colleges like AVC has long been settled law, and the Supreme Court 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). And as the Court wrote 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.

Furthermore, Board Policy 4030, in addition to its protection of "controversial or unpopular" opinions, expressly yields autonomy to faculty members in the classroom with regard to "implementing the learning process":

[S]ince instructors are responsible for implementing the learning process, they therefore have the freedom to select materials, methods of application, and procedures in carrying out their job duties. A faculty member is also **free to present and discuss subject matter in a practical and relevant format.** In areas of controversy, one has the right to express an opinion related to subject matter, and an expression of differing points of view should be allowed and encouraged. [Emphases added.]

On these facts, in light of legal precedent as well as AVC's own promises, AVC violated Hodge's academic freedom and freedom of speech both by punishing him with a writing assignment and by requiring him to alter his curriculum to include a lesson on "cultural diversity," all in response to his exercise of academic freedom in the classroom. Turner further violated Hodge's academic freedom both by threatening punishment if Hodge gave a relevant lesson that he had prepared, and by invoking AVC's ethics policy against Hodge's protected expression when Turner incorrectly suggested that Hodge's protected expression involved "discrimination and harassment" and (wrongly) invoked *Garcetti*.

As the Supreme Court wrote more than sixty years ago in *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949), “[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” Hodge understandably argues that EMTs in the field are likely to encounter a wide variety of speech and that they need to learn to be prepared to act professionally rather than out of anger or misunderstanding. Instead of supporting this educational objective, AVC has interfered with its promise that professors are free to present their lessons “in a practical and relevant format” and to select the methods and procedures of instruction. AVC’s actions cannot but chill the speech of all professors, who are likely to shy away from discussing controversial topics out of fear of facing sanctions from the District.

FIRE asks that Antelope Valley College rescind its requirement that Hodge present a lecture on “cultural diversity” because of his protected classroom expression. Since no other reason was given for Hodge’s rating of “Needs Improvement,” FIRE also asks that AVC raise this rating accordingly. FIRE also asks that AVC remove from Hodge’s employment and disciplinary files all records of remediation and punishment on this matter. Finally, FIRE asks that AVC resolve Hodge’s grievance by finding that his rights were indeed violated. AVC has an obligation to respect its promises of freedom of speech, academic freedom, and due process, and must use no policy or contrivance to interfere with, restrict, or deny Hodge the full exercise of his rights.

Professor Hodge has waived his right to confidentiality with regard to communications with FIRE about this dispute; his waiver is attached. We request a response to this letter by Wednesday, April 6, 2011.

Sincerely,



Adam Kissel

Vice President of Programs

Enclosures

cc:

Karen W. Cowell, Dean of Health Sciences, Antelope Valley College
 Sharon Lowry, Vice President of Academic Affairs, Antelope Valley College
 Shane Turner, Assistant Superintendent/Vice President, Human Resources and Employee Relations, Antelope Valley College
 Steve Buffalo, President, Board of Trustees, Antelope Valley Community College District
 Earl J. Wilson, Vice President, Board of Trustees, Antelope Valley Community College District
 Betty Wienke, Clerk, Board of Trustees, Antelope Valley Community College District
 Michael Adams, Board of Trustees, Antelope Valley Community College District
 Jack Seefus, Board of Trustees, Antelope Valley Community College District
 Mayela Montano, Student Trustee, Antelope Valley Community College District