



May 23, 2017

President Daniel A. DiBiasio
Office of the President
Ohio Northern University
Lehr Memorial Room 202
525 South Main Street
Ada, Ohio 45810

Sent via U.S. Mail and Electronic Mail (president@onu.edu)

Dear President DiBiasio,

As you will remember from our previous correspondence, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

FIRE wrote to you on October 25, 2016 concerning the "Faculty Expectations" provision of the Ohio Northern University (ONU) *Faculty Handbook*. We were disappointed not to receive a response, and we are disappointed to write you again today.

FIRE remains concerned about the "Faculty Expectations" provision, which specifies, in relevant part:

Faculty are expected to comply with institutional rules or policies requiring confidentiality concerning oral or written communications. In particular, faculty must respect the confidentiality of personnel matters, evaluations of student performance, and matters of departmental, college or university finance, governance or assessment. These expectations are in addition to any requirement of confidentiality or privacy imposed by law or regulation.

As we explained in our previous letter, this vague and overbroad policy runs the risk of impermissibly chilling the speech of faculty members by restricting them from commenting on a broad range of issues. FIRE does not wish to remove the needed prohibition against disclosing confidential student information, but the prohibition against speaking about "matters of departmental, college or university finance, governance or assessment" could be easily construed by ONU to censor any speech critical of the university administration. Such a restriction on speech—on matters of core importance, at that—is untenable and inappropriate.

ONU is a private institution and therefore not legally bound by the First Amendment. Nevertheless, the institution promises its faculty members academic freedom and open discourse. The *Faculty Handbook* provision on academic freedom, Section 2.2, ¶ 2, states, in relevant part, that

[a] faculty member is entitled to freely study, discuss, investigate, teach and publish. . . . As a member of the community, the faculty member has the rights and obligations of any citizen.

ONU is morally and likely legally bound to live up to this laudable promise. Having received no response to our previous correspondence, FIRE remains deeply concerned that ONU is failing to do so.

The Supreme Court of the United States has made clear that protecting freedom of speech and academic freedom on the college campus is of the utmost importance. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967), the Court remarked that the university setting is “peculiarly the marketplace of ideas.” The Court further noted 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.” *Id.* This pronouncement must still hold true at institutions like ONU, which commit themselves to the important principles of academic freedom.

Unfortunately, since our last writing, FIRE has been made aware of additional issues with the *Faculty Handbook*. The 2016-2017 *Faculty Handbook* contains a policy requiring “civility” and “collegiality.” Such a policy further contradicts both ONU’s stated commitment to the principles of free speech, academic freedom, the free exchange of ideas at your institution.

Section 2.3, ¶ 4, Responsibilities to Colleagues, specifies in relevant part that “[f]aculty members are expected to treat colleagues and staff with civility and respect” This policy may seem innocuous in intent, but in practice it chills academic discourse and scholarship. Freedom of speech and academic freedom do not simply protect speech that is not controversial. On the contrary, controversial speech is that which needs the *most* protection, and the Supreme Court has held as much: “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973).

Even speech that is offensive to many is still protected by the First Amendment. In *Snyder v. Phelps*, 562 U.S. 443 (2011), the Court upheld the right of protesters to picket the funerals of fallen soldiers. That holding was predicated on the fact that “[a]s a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” *Id.* at 461. This choice is nowhere more important than on the campus of a college or university, especially so when a school proclaims its commitment to free speech.

Dissenting in *Gitlow v. New York*, 268 U.S. 652, 673 (1925), Justice Holmes remarked that “[e]very idea is an incitement.” Passion is important in speech, and the emotional value of such passion is one of the many methods by which we are persuaded. Professors must be free to speak and teach

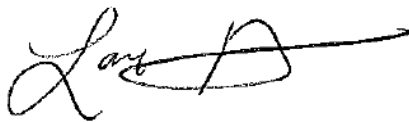
with passion, so that they may inspire their students to do great things, and challenge their colleagues in the pursuit of truth and greater knowledge. To do anything less would do a disservice to the whole purpose of academia, in addition to being an outright denial of ONU's professed values.

Civility policies such as this one bear too great a risk of being weaponized to shut down any viewpoint with which one disagrees as being "uncivil." That result, too, is untenable on a college campus, and places upon ONU's professors too great a restriction in the name of decency alone.

FIRE is also concerned about the possible retroactive application of post-tenure review, as detailed in Appendix 17, ¶ 9, of the *Faculty Handbook*. A retroactive policy change of this nature is fundamentally unfair, as it fails to provide faculty members notice of ONU's expectations. The precedent set by altering the *Faculty Handbook* to allow for post-tenure review in the middle of one's employment will only further chill faculty speech and restrict academic freedom, as professors will self-censor out of fear that their speech will be punishable by policies that exist now, as well as any policy that could be conceived of and implemented in the future. This concern is particularly acute with regard to the potential retroactive application of ONU's "civility and respect" policy, given the inescapably subjective judgments involved with the policy's application.

ONU must revise these policies immediately in order to live up to its stated commitments. FIRE remains, as always, ready to help ONU with such revisions, and looks forward to a swift and amicable resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Beltz", with a long horizontal flourish extending to the right.

Laura Beltz
Program Officer, Policy Reform

cc: Maria L. Cronley, Provost and Vice President for Academic Affairs