



October 6, 2017

Elizabeth H. Gorman, Esq.  
Assistant General Counsel  
Rowan University  
201 Mullica Hill Road  
Glassboro, NJ 08028

*Sent via U.S. Mail and Electronic Mail (gormaneh@rowan.edu)*

Dear Ms. Gorman:

As you know, 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 writes today to acknowledge the improvements made to Cooper Medical School of Rowan University's (CMSRU's) Social Networking policy in response to FIRE's May 9 letter. FIRE was especially pleased to see that CMSRU removed the troubling language targeting "potentially offensive language," "personal photographs or photographs of others that may reasonably be interpreted as condoning . . . sexual promiscuity," and "[p]osting potentially inflammatory or unflattering material on another individual's website." However, CMSRU could still further improve its Social Networking policy to meet First Amendment standards.

This letter will discuss FIRE's recommendations for revising the aforementioned policy to fully protect students' freedom of expression. Furthermore, FIRE would be pleased to offer our assistance with the university's review and revision of any other policies that may implicate student speech.

CMSRU's revised Social Networking policy, found in the Student Handbook, is attached to this letter for reference.

First, and most importantly, it is unclear whether the policy is a guideline or a requirement. The policy first states that it intends to show students "what [is] discouraged and what appropriate social media behaviors are," but then defines "professionalism" as a "formal requirement for CMSRU" students. Later, in the provided examples of inappropriate social media use, the policy offers scenarios in which student use of social media is inappropriate,

but fails to note whether these actions are simply “discouraged” or if they would lead to disciplinary action.

Students should be able to easily discern if the Social Networking policy is meant to provide a recommendation for best practices or if they could face punishment for violating those practices. Currently, the “Discipline” section of the policy only states that students will face punishment for violating HIPAA or FERPA policies pertaining to social media, but it is silent on broader concerns about “professionalism.” CMSRU could greatly improve the policy by adding a disclaimer noting that students’ free speech rights will not be abridged, and that the policy only intends to punish speech found in violation of federal or state law. FIRE would be pleased to offer model language CMSRU could adopt to clarify its policy.

The provided examples deserve a closer review as well. In one example, “[a] CMSRU medical student writes in her blog, naming an attending physician who did minimal teaching and recommending that other students not take clinical electives with that physician.” The policy warns that this is “inappropriate,” noting that “[l]egitimate critique of an educational activity is appropriate, so long as professionalism is maintained. There are more effective and less public mechanisms for relaying this type of information.” CMSRU should revise this policy so that an explanation of what constitutes a “legitimate critique” is defined, and so that students are not barred from “public” discussion of CMSRU’s faculty or facilities.

A policy or regulation is said to be unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). Students encountering this policy are likely to be confused and uncertain as to whether their “critique” may or may not be considered “legitimate,” and—given that the term is left undefined and at the discretion of CMSRU officials—many may consider self-censorship rather than risk possible disciplinary action. CMSRU should be careful to ensure that students do not choose to stay silent on important issues affecting classmates and patients out of fear that they will be punished for speaking out.

Finally, CMSRU should also revise the example where “[a] CMSRU medical student wearing a CMSRU t-shirt is tagged in a photo taken at a local bar and posted on a friend’s Facebook page. The medical student is clearly inebriated.” Again, because the distinction between formal requirement and “guideline” is unclear, the university could use this policy to punish students who are tagged in photographs where alcohol is present. Thus, the policy effectively places restrictions on whether students can drink alcohol in public—after all, students cannot control who will post a photograph of them to the internet. While CMSRU can suggest to students that they make efforts to carefully manage their social media pages, they cannot threaten students with punishment for content they did not have a role in posting.

These changes would address FIRE's remaining concerns with CMSRU's Social Networking policy and, by making these revisions, CMSRU could show that it takes seriously its students' First Amendment rights.

Thank you for your attention to these concerns. FIRE would be pleased to work with your office to revise these policies to meet First Amendment standards, as well as any other policies currently maintained by Cooper Medical School of Rowan University that may affect student speech.

We request a response to this letter by October 20, 2017.

Sincerely,

A handwritten signature in cursive script that reads "Sarah McLaughlin". The signature is written in black ink and is positioned above the typed name.

Sarah McLaughlin  
Senior Program Officer, Individual Rights Defense Program

Encl.