



Foundation for Individual Rights in Education

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April 11, 2006

President Katherine Haley Will
Office of the President
Gettysburg College
300 North Washington Street
Gettysburg, Pennsylvania 17325

Sent via U.S. Mail and Facsimile (717-337-6666)

Dear President Will:

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, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about Gettysburg's Sexual Misconduct Policy, which states:

All sexual interaction between any two people must be consensual. Each individual has a responsibility to obtain consent before engaging in sexual interaction. Consent is defined as the act of willingly and verbally agreeing (for example, by stating "yes") to engage in specific sexual conduct. If either person at any point in a sexual encounter does not give continuing and active consent, all sexual contact must cease, even if consent was given earlier. A person who is impaired by consumption of alcohol or drugs is considered unable to give consent.

The policy defines sexual interaction to include not merely sex acts but also "brushing, touching, grabbing, pinching, patting, hugging, and kissing."

Gettysburg's policy, while clearly intended to guard against predatory sexual behavior, instead dangerously trivializes sexual assault by equating heinous acts with innocent behaviors. It is an invitation both to mutual, unprovable allegations of the "he said/she said" variety and to the application of a double standard that would violate Gettysburg's commitment to treating its students equally. The policy is also impossibly overbroad because, in addition to prohibiting real misconduct, it also prohibits a significant amount of totally innocent behavior. It makes a criminal out of the student who, after several romantic dates, leans in to kiss his or her date without first asking "may I kiss you?" and receiving a verbal "yes." Does Gettysburg really want to place this kind of behavior on the same spectrum with forcible rape?

Further, a respect for substantive due process requires that a law must be able to be enforced without arbitrariness. Gettysburg's Sexual Misconduct Policy is unacceptably susceptible to arbitrary enforcement by the college. Taken literally, it likely prohibits most, if not all, of the sexual encounters that take place on Gettysburg's campus. (How many people of any age or in any situation request specific verbal consent before kissing their significant others?) Therefore, unless Gettysburg plans to prosecute all sexually or romantically active students on campus, its policy will necessarily be applied arbitrarily and at the sole discretion of administrators—a recipe for severe injustice.

When Antioch College implemented a similar policy in the early 1990s, it faced national ridicule. An article in the *New York Times* stated that "Antioch College in Yellow Springs, Ohio, apparently doesn't consider its students to be reasonable, thinking adults," and noted that the policy had quickly become known on campus as the "Mother, May I?" policy. An editorial in the *Chicago Tribune* called the policy a "wretched excess" and dubbed it "checklist love." An editorial in the *St. Louis Post-Dispatch* stated that at Antioch, "[i]nstead of being accompanied by a chaperon on their dates, students may find it helpful to bring their lawyers." Should Gettysburg's Sexual Misconduct Policy receive public exposure, similar ridicule would almost certainly follow.

Gettysburg's goal of protecting its students from sexual assault is laudable. The Sexual Misconduct Policy, however, is not the way to achieve that goal. It infantilizes Gettysburg's students, trivializes sexual assault by equating it with normal and legal behavior, and gives the administration an unacceptable amount of discretion with regard to enforcement. With this policy in force, students at Gettysburg risk life-altering consequences every time they have a sexual encounter. Would you want a friend, or your son, or your daughter to be subject to such a fundamentally unfair policy?

FIRE sincerely hopes that this wrong can be corrected swiftly and amicably. We are prepared to fight against this unjust policy with the principle that "sunlight is the best disinfectant," and to use all of our resources to that end. We hope, however, that this will not be necessary, and that

Gettysburg will reaffirm, without delay, its commitment to being an honest, just, open, and decent institution.

We request a response on this matter by Monday, May 1, 2006. I look forward to hearing from you.

Sincerely,



Samantha K. Harris
Program Officer

cc:

Jane North, Executive Vice President and Assistant Secretary to the Board of Trustees,
Gettysburg College

Daniel R. DeNicola, Provost, Gettysburg College

Jeff Foster, Director of Student Rights and Responsibilities, Gettysburg College

Julie L. Ramsey, Vice President for College Life and Dean of Students, Gettysburg College

Patricia A. Lawson, Associate Vice President for Communications and Public Relations,
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