



## Foundation for Individual Rights in Education

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November 26, 2008

President Lou Anna K. Simon  
Office of the President  
Michigan State University  
450 Administration Building  
East Lansing, Michigan 48824-1046

### URGENT

Sent via U.S. Mail and Facsimile (517-355-4670)

Dear President Simon:

As you know, 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, [www.thefire.org](http://www.thefire.org), will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to free expression posed by Michigan State University's (MSU's) charges against student Kara Spencer for her e-mails to faculty members regarding proposed changes to MSU's Academic Calendar and Fall Welcome schedule. The fact that MSU is considering punishment of Spencer simply for exercising her right to contact selected faculty members by e-mail shows a disturbing disregard for students' freedom of expression.

This is our understanding of the facts. Please inform us if you believe we are in error.

On September 11, 2008, members of the Associated Students of Michigan State University (ASMSU) held an emergency meeting in order to work on a response to recommendations from MSU's University Committee on Academic Policy regarding changes to MSU's Academic Calendar and Fall Welcome schedule. A number of ASMSU students as well as faculty members (Neelam Kher, Kathy Petroni, and Janice Bukovac-Phelps) and administrators (Denise Maybank, Lee June, Rick Shafer, and Tom Rios) engaged in an e-mail discussion about the content and recipients of the response. At least one faculty member, Kathy Petroni, directly contributed to the content of the letter, e-mailing her edits to the group.

On September 14, Spencer notified the group that

I compiled a database of all faculty on campus and will be sending out an informational email this afternoon regarding the proposed changes and including contact info for faculty reps on Faculty Council should they choose to be heard on the issue. In line with the approach taken with the Board of Trustees, this email will not identify me as a part of UCSA [University Committee on Student Affairs] or ASMSU, so I will be “speaking” as a concerned student/member of the university community.

None of the administrators or faculty members objected to this plan. Indeed, in an e-mail from Petroni to Spencer on September 14, Petroni wrote, “[T]hanks for spreading the word!”

According to Spencer, on or about September 15, she carefully selected about 391 faculty members out of MSU’s approximately 5,000 faculty, and she e-mailed the 391 faculty members the letter that she had worked on with the ASMSU group.

The letter stated, in part:

The Provost has proposed changes to the Academic Calendar and Fall Welcome schedule which are slated for final approval on September 23, 2008. Faculty, administrators, and students have voiced concerns regarding the process of the proposal. As concerned students we feel that adequate time has not been given to address the multitude of issues the proposed changes raise.

In discussions with members of the university community, we have discovered that many are unaware of the impending changes, or the likely repercussions, which will greatly affect both faculty and students alike....

We believe that an inclusive dialogue among members of the University community and a comprehensive evaluation of all available information are imperative before any proposal can be adopted. Such a review would require that the Provost’s proposal not be implemented for the 2009-2010 academic year.

Given the immediacy of the situation, we request that any faculty wishing to be heard on this issue contact their  
<<https://www.msu.edu/unit/acadgov/faculty/FacultyCouncil07-08.html>>Faculty Council representative or the Provost’s office.

Professor Katherine Gross complained about receiving this e-mail to Information Technology administrator John Gorentz, who forwarded the complaint to MSU Network Administrator Randall J. Hall.

On September 16, Spencer received an e-mail from Hall summoning her to a mandatory meeting with Hall “for investigation” of her e-mail as a possible violation of MSU’s Network Acceptable

Use Policy. Spencer met with Hall on or about September 17, and Hall subsequently alleged that Spencer had violated three MSU policies:

1. GSR-3.04 No student shall represent a group falsely or use the resources of a group without proper authorization.
2. GSR-4.05 No student shall use any University facility, equipment, or materials except for their authorized purposes.
3. Network Acceptable Use Policy.

These charges appeared on a “Disciplinary (Allegations) Form” submitted by Hall on September 17. Hall called Spencer’s e-mail “SPAM” and alleged that she

broke the [MSU] Acceptable Use of Computing Systems, Software, and the University Digital Network (administrative ruling) and the Guidelines for use of bulk e-mail by sending unsolicited emails to users of the MSU Network.

Hall even went so far as to suggest that Spencer had violated additional policies, “GSR 4.08 and 5.02” (unspecified on the form),

as bulk email is often likened to the electronic equivalent of junk mail, billboard[,] posters[,] etc. and is considered a disruption of the activities of the person receiving the email[.]

On October 28, Spencer was summoned by Assistant Director of Student Life Cathy Neuman to a mandatory meeting scheduled for October 31. At that meeting, Spencer denied that she had broken MSU policy, disagreed with Hall’s characterization of their meeting as reported on the Disciplinary (Allegations) Form, and requested a hearing before the MSU Student-Faculty Judiciary. On November 19, Spencer received an e-mail from the Judicial Affairs Office regarding the hearing and the formal charges against her. According to that e-mail, the maximum penalty for her alleged infractions is suspension from MSU. Spencer’s hearing is scheduled for December 2, 2008, at 6:15 p.m.

This situation is both legally and morally unacceptable.

First of all, the First Amendment protects citizens from punishment for engaging in protected expression—precisely what Spencer did when she invited a selected group of faculty members to consider points of concern that were clearly relevant to those faculty members. As a public university, MSU is bound to uphold this constitutional protection. As the Supreme Court noted in *Healy v. James*, 408 U.S. 169, 180 (1972), “[s]tate colleges and universities are not enclaves immune from the sweep of the First Amendment;” indeed, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” It is a particularly grievous violation of this principle when, as in this case, a student is threatened with suspension for having contacted a small percentage of MSU faculty members about a matter of common concern. The Supreme Court has held that “speech concerning public affairs is more

than self-expression; it is the essence of self-government,” reflecting “our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964) (internal quotations omitted).

Moreover, it is troubling that, according to Hall, members of the MSU community may be punished for sending unsolicited e-mail under the mistaken claim that receiving such an e-mail “is considered a disruption of the activities of the person receiving the email.” Perhaps most troubling of all is Hall’s implication that the receipt of paper junk mail and the mere sight of billboards and posters are inherently disruptive. Such ideas, if enforced, would be especially ludicrous violations of the First Amendment, as well as common sense.

FIRE calls on you, as President of MSU, to immediately renounce and reverse your administration’s erroneous prosecution of Kara Spencer, who has been under investigation for more than two months for her clearly protected expression. If e-mailing faculty members about common concerns is outside the parameters of acceptable speech at MSU, surely no member of the MSU community can feel safe contacting another about any relevant matter of concern. Is this truly the lesson that MSU wishes to teach to students who will soon be entering into civil society at large?

MSU must immediately end its investigation of Spencer. While much damage to free expression has already been done, you have an opportunity now to reassure the ASMSU and all MSU students that they are free to criticize university policies and to engage faculty members in campus debate. Please spare MSU the embarrassment of fighting against the United States Constitution, by which it is legally and morally bound.

With this letter we enclose a signed FERPA waiver from Kara Spencer, authorizing you to discuss these matters with FIRE.

FIRE hopes to resolve this matter amicably and swiftly, but we are prepared to use all of our resources to see this situation through to a just and moral conclusion. Because of the urgency of this situation, we request a response before the time of Spencer’s hearing on December 2, 2008.

Sincerely,



Adam Kissel  
Director, Individual Rights Defense Program

cc:

Lee N. June, Vice President for Student Affairs and Services, Michigan State University

Randall J. Hall, Network Administrator, Michigan State University

Denise Maybank, Senior Associate Vice President for Student Affairs and Services and Director of Student Life, Michigan State University

Cathy Neuman, Assistant Director of Student Life, Michigan State University