



Foundation for Individual Rights in Education

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March 25, 2009

Dr. Charles W. Steger
Office of the President
210 Burruss Hall
Virginia Polytechnic Institute and State University
Blacksburg, Virginia 24061

Sent by U.S. Mail and Facsimile (540-231-4265)

Dear President Steger:

As you can see from the list of our Directors and Board of Advisors, FIRE unites civil rights and civil liberties leaders, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, due process, legal equality, freedom of association, religious liberty and, in this case, freedom of speech and conscience on America's college campuses. Our website, www.thefire.org, will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the threat to freedom of conscience posed at Virginia Polytechnic Institute and State University (Virginia Tech) by the College of Liberal Arts and Human Sciences' proposed policy of evaluating a faculty member's worthiness for promotion and tenure with "special attention" to the candidate's "involvement in diversity initiatives." This emphasis requires faculty to adopt fundamental viewpoints with which they might not agree in order to be eligible for promotion and tenure.

Virginia Tech's proposed "Promotion and Tenure Review Process" states that "university and college committees require special attention to be given to documenting involvement in diversity initiatives." The policy makes clear that the reviewing committee "expects all dossiers to demonstrate the candidate's active involvement in diversity." Similarly, the Virginia Tech Guidelines for Promotion and Tenure Dossiers state that candidates "should address accomplishments and significant contributions pertinent to the candidate's field," including "Diversity initiatives or contributions" amongst "Publications," "Courses taught," "Competitive grants," and other areas of professional contribution.

Finally, the Office of the Provost's "Reporting Diversity Accomplishments in the Faculty Activities Report" instructions provide extensive guidance on how these criteria are to be construed, and what kinds of activities might be considered

appropriate to report. Under the heading of “Self-Education, Increasing Your Own Awareness,” possible activities to report include:

Participation in diversity awareness workshops on campus or off, attending harassment prevention training from EO Office, participation in CEUT reading group on multicultural/diversity topics, attending diversity-related programs to learn more about groups other than your own (Diversity Summit, identity group celebrations, Campus Climate Checkup, MLK events, special speakers, annual AdvanceVT and Scholarship of Diversity conferences, events hosted by Cranwell Center or Disability Services, special programs in your discipline or association, etc.); participating in an Undoing Racism workshop; learning another language (including American sign language) so that you might speak to current or prospective students, parents, or community members.

Similarly, under the heading of “Incorporating diversity-related scholarship in courses, readings, programs, service learning activities, and your own research/scholarship,” possible activities to report include:

Revising a course reading list to incorporate concepts, readings, and scholarship on issues of gender, race, and other perspectives relevant to the course material; rethinking or adapting workshops, lectures, or publications to incorporate multicultural or gender perspectives; creating classroom discussions about the Principles of Community; creating an extension program to address needs in the Hispanic community; developing a service learning experience to introduce students to issues of concern to residents of the Appalachian region; using/doing diversity research to help inform university programs and problem solving; inviting and hosting a diversity-related speaker for the department; facilitating educational programs in the residential halls; assisting students in planning cultural events related to courses; securing research grants or industry funds to support diversity initiatives or research; facilitating a staff training activity on diversity, bias reduction, or celebration of diversity.

Not only do such evaluative criteria unacceptably interfere with faculty members’ moral and intellectual agency, but these statements also contain vague language that causes confusion and invites abuse. Although requiring candidates to demonstrate “involvement in diversity initiatives” may seem admirable and innocuous, in practice this requirement amounts to an ideological loyalty oath to an entirely abstract concept—“diversity”—that can represent vastly different things to different people. This flexibility might seem to be a virtue until professors realize that they are to be judged on the quality of their commitment to such an abstract concept. “Diversity,” in current academic life and as described above to some degree in Virginia Tech’s own documents, reflects a worldview that very commonly involves a particular set of opinions on topics such as race and gender—topics on which reasonable scholars strongly disagree. These viewpoints are noticeably not explicit in the policies quoted above. Yet does anyone believe that scholarship that reaches conclusions *against* affirmative action for women and minority groups will be counted as “diversity-related scholarship”? Does anyone believe that “bias reduction” efforts to reduce anti-Catholic bias because of the Catholic position against homosexual activity

will be seen to have the same merit as “bias reduction” efforts to reduce anti-gay bias among Catholics?

If Virginia Tech truly believes in tolerance (leaving aside issues of academic freedom) it simply cannot require professors to incorporate a political orthodoxy into their courses, no matter how much the university may believe in the tenets of that orthodoxy and wish others to embrace those tenets. Presumably, faculty are employed by Virginia Tech for the purpose of “discovery and dissemination of new knowledge” (quoting Virginia Tech’s “Statement of Mission and Purpose”), not to demonstrate fealty to an abstract and ill-defined participatory ideal. Their prospects for promotion and tenure should be evaluated accordingly.

As a public institution, Virginia Tech is legally and morally bound by the First Amendment and the decisions of the Supreme Court concerning academic freedom at public colleges and universities. In *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) the Supreme Court 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.” This being the case, the Court further explained that the First Amendment “does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [which] is peculiarly the ‘marketplace of ideas.’” In the landmark case of *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) the Court made clear the importance of freedom of conscience in our liberal democracy: “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” The Court concluded that “the purpose of the First Amendment to our Constitution” was precisely to protect “from all official control” the domain that was “the sphere of intellect and spirit.”

That the First Amendment’s protections fully extend to public colleges like Virginia Tech is settled law. See, e.g., *Keyishian v. Board of Regents*, 605–06 (1967) (“[W]e have recognized that the university is a traditional sphere of free expression so fundamental to the functioning of our society that the Government’s ability to control speech within that sphere by means of conditions attached to the expenditure of Government funds is restricted by the vagueness and overbreadth doctrines of the First Amendment”); *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools’”).

Furthermore, dictating political beliefs by requiring that faculty demonstrate a commitment to “diversity initiatives” opposes the principles and statements of the American Association of University Professors (AAUP). The AAUP guidelines of 1915 state:

To the degree that professional scholars, *in the formation or promulgation of their opinions*, are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at

large fails to get from its scholars in an unadulterated form the peculiar and necessary service which it is the office of the professional scholar to furnish. (Emphasis added.)

In short, universities must not tell their professors what they must believe, or even what they should believe, lest the whole process of intellectual inquiry and innovation end before it even starts. Does Virginia Tech disagree with this formulation of a professor's right to think and teach as he or she will? By requiring candidates for promotion and tenure to demonstrate an active involvement in "diversity initiatives," Virginia Tech impermissibly forces faculty members to confess both by word and by act their faith in the opinion that "diversity" was essential to their teaching and academic life. Does Virginia Tech truly wish to violate academic, moral, and constitutional prohibitions against such coercion?

The AAUP further noted, "it is not only the character of the instruction but also the character of the instructor that counts; and if the student has reason to believe that the instructor is not true to himself, the virtue of the instruction as an educative force is incalculably diminished. There must be in the mind of the teacher no mental reservation. He must give the student the best of what he has and what he is." Must instructors at Virginia Tech who do not share the university's assumptions about bias, race, gender, and culture be made exceptions to that ringing declaration of the meaning and value of true academic freedom?

Moreover, in its groundbreaking 1940 statement on academic freedom, the AAUP declared: "Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject." A dissenting professor at Virginia Tech is twice the victim of violations of this core AAUP principle. First, the university would dictate what sociological issues they must address in teaching literature or sociology or another area of their expertise. Second, the university itself would force them to introduce controversial matter that may have no relation to the subject. Please pause and think about this, substituting, in your minds, any politicized agenda other than the "diversity" agenda that Virginia Tech currently favors.

Your policy, in short, requires professors to affirm that their classes incorporate assumptions about bias, race, gender, other group identities, and cultural differences. This is no different from requiring that instructors demonstrate their belief in Americanism, empiricism, biological determinism, or creationism. These may be perfectly valid intellectual viewpoints, but viewpoints may not be imposed at a public institution (and should not be imposed by any institution devoted to academic freedom) by fiat through official requirements.

Accordingly, FIRE would defend with equal fervor the rights of faculty at Virginia Tech and elsewhere to be protected from prohibitions *against* involvement in diversity initiatives, or inquisitions into their love of country or celebration of Americanism if, in a change of ideological climate, a public university sought to demand such conformity. Virginia Tech has a right to evaluate a candidate with broad discretion, but its inquisition into "involvement in diversity initiatives," as stated above, imposes one fashionable agenda among many, reflecting an unacceptable orthodoxy that intrudes upon the private thought and conscience of free

individuals in a free society. This truly does violate the university's constitutional obligation of content neutrality, and it truly is a "loyalty oath" inimical to academic and intellectual freedom.

It is a human failing common to us all that we rarely see our own abuses of power, and no one, right, left, or center, is innocent of that failing. Once these abuses are called to consciousness, however, it becomes a moral imperative to restrain ourselves and to grant to others the academic freedom that we would demand for ourselves. The sad days of "loyalty oaths" to political ideologies have already once darkened the academy. Let us not revive them ourselves or tolerate their resurrection by others.

We ask that Virginia Tech's existing and proposed evaluative criteria for promotion and tenure candidates be revised to accord with the First Amendment and common sense.

FIRE hopes to resolve this situation amicably and swiftly; we are, however, prepared to use all of our resources to see this situation through to a just conclusion. We request a response by April 15, 2009.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

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