



**Foundation for Individual Rights in Education**

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January 23, 2006

President Dennis H. Holtschneider  
DePaul University  
1 East Jackson Blvd  
Chicago, Illinois 60604

**URGENT**

*Sent by U.S. Mail and Facsimile (312-362-6822)*

Dear Father Holtschneider:

It is with deepening regret that FIRE writes to you for the second time in three months and the third time within a year regarding matters of freedom of expression at DePaul University. FIRE is profoundly concerned by reports that DePaul administrators recently shut down an “affirmative action bake sale” protest held on campus. This bake sale constituted a form of satirical protest—a type of political expression that should be allowed at any institution that claims to value its students’ freedoms. Further, FIRE has been informed that student Michael O’Shea is to be investigated for “harassment” for his involvement in the bake sale. As FIRE has done throughout the past year, we ask that DePaul honor its commitments to academic freedom, free inquiry, and open debate on campus, in this case by allowing dissenting views to be peacefully voiced and by refusing to use policies meant to deter and punish harassment to silence students’ political expression.

This is our understanding of the facts. Please inform us if you believe we are in error. On January 17, 2006, the DePaul Conservative Alliance (DCA) held an “affirmative action bake sale” satirical protest on campus. Students purchasing cookies were charged suggested prices depending on their race or gender; certain racial minorities and women were asked to pay lower prices while Asian and white students were asked to pay higher prices for the same items. Such protests have been held on campuses across the country in an effort to protest what the organizers believe is the unfairness inherent in affirmative action programs.

According to a January 20, 2006, article in *The DePaulia*, DCA leader Michael O’Shea and other students began their event at a table in the Student Center

around 2:30–3:00 p.m. on January 17. They displayed a sign listing suggested prices for cake and cookies, ranging from one dollar for white and Asian males to 25 cents for black, Hispanic, and Native American females. While the DCA reports that a maximum of five of its members were at the sale at any one time, the *DePaulia* reports that it drew a crowd of up to 50 people, with heated words being exchanged but no instances of violence. O’Shea reports that about an hour into the protest, Dean of Students Greg MacVarish shut down the bake sale, claiming that the sign was “inappropriate” and that the group did not correctly register for the event. The DCA, which had a permit to hold a bake sale, peacefully complied with MacVarish’s request and ended the protest.

On January 20, O’Shea received an e-mail from Associate Vice President for Student Affairs Cynthia M. Summers informing him that he needed to meet with her on January 24 to discuss “concerns regarding the DePaul University Anti-Discriminatory Harassment Policy and Procedures.” When O’Shea responded, objecting that he had not done anything that could be construed as harassment, Summers sent back a copy of DePaul’s harassment policy and made it clear that O’Shea was under investigation for harassment, stating, “[T]his meeting is an opportunity for me to gather information regarding a campus incident that was brought to my attention. By policy I am the investigator in this matter, and I am interviewing a variety of students and staff who were present at the time so as to determine next steps, if any.” Neither O’Shea nor the *DePaulia* article describes or recalls anything taking place at the bake sale event that could be called harassment or discrimination in any meaningful sense.

Both the shutting down of the bake sale protest, as well as the harassment investigation of O’Shea, indicate a dismaying disregard for freedom of expression and open debate at DePaul. “Affirmative action bake sales” are not intended as commercial endeavors but as political statements. This was made evident by the actions of the organizers of the bake sale, who, after all, listed only suggested prices on their sign. Any reasonable observer would immediately recognize that such an event is a satirical protest of university and government policy on the issue of racial preferences. To categorize such an event as “discrimination” or “harassment” either ignores or willfully misinterprets the expressive purpose of the event.

Indeed, “affirmative action bake sales” are a form of satirical political protest—a category of protected expression that is at the very heart of our country’s honored traditions. Devices such as satire and parody exist to challenge, to amuse, and even to offend. With the ongoing discussion of the merits of affirmative action on campus spurred by Supreme Court decisions on the issue, the DePaul administration’s decision to suppress debate on this topic is particularly worrisome. Students at DePaul should be free to engage in debate on issues of crucial public importance and concern, not fearful that what they say might result in being silenced or, worse, charged with a campus crime.

Like many private universities, DePaul has committed itself to the basic principle of freedom of expression. As FIRE has previously stated, DePaul’s student handbook states that “[s]tudents have the right to their own ideas, beliefs and political associations. Students have the right to ask

questions and express their opinions...” Likewise, DePaul’s mission statement guarantees that the university “endorses the interplay of diverse value systems beneficial to intellectual inquiry. Academic freedom is guaranteed both as an integral part of the university’s scholarly and religious heritage, and as an essential condition of effective inquiry and instruction.” Further, the 2001–2002 version of the faculty handbook (the latest available on DePaul’s website) makes the following promises to DePaul students as an integral part of its protections for academic freedom:

Not only the faculty, but students and other members of the university community enjoy this freedom as they participate in the various forms of open inquiry and debate, as for example, classroom presentation and discussion, research and publication, public statements made as a citizen in one’s own name, and other forms of creative expression.

Unfortunately, DePaul’s “Anti-Discriminatory Harassment Policy and Procedures,” under which O’Shea is apparently being investigated, contradicts DePaul’s commitment to the freedoms listed above. While it gives lip service to academic freedom, the policy goes on to say that “[u]nlawful harassment includes any behavior (verbal, written, or physical) that abuses, assails, intimidates, demeans or victimizes or has the effect of creating a hostile environment for any person based on any of [a long list of protected characteristics].” This statement is both incorrect and frightening. The policy is so broad that nearly any person speaking on a controversial topic takes a risk that he or she will say something that someone else may find “abusive,” and so vague that the speaker would have no idea whether DePaul administrators would determine a particular utterance to be “harassment” or not.

If DePaul truly values open and honest discourse, the university must accept that those on opposite sides of a contentious issue are likely to vehemently disagree with each other. Such disagreement during an hour-long protest hardly fits any reasonable definition of harassment. Indeed, by defining harassment to include aspects of vehement argumentation, DePaul places at risk those students who might be experiencing genuine harassment. If mere insults can be called “harassment” at DePaul, why should anyone take any charge of harassment at DePaul seriously?

DePaul’s record on freedom of expression within the last year has been abysmal. From the dismissal of Professor Thomas Klocek without due process for arguing with students, to DePaul’s attempts to prevent the College Republicans from protesting Ward Churchill’s lecture, and now with this new assault on the freedom of the DCA’s leadership, DePaul has lurched from one embarrassing foray into censorship to another. It has not escaped either FIRE or the public that in each instance, it is people with nominally conservative views who have drawn the university’s ire. If it is DePaul’s intention to protect the rights of and make its campus safe for only some students and faculty members, DePaul must make this clear publicly so that those who wish not to attend such a university can avoid it. FIRE urges DePaul, however, to take another course and to recommit itself to equal treatment for students and faculty members with all political viewpoints.

FIRE requests that DePaul University disavow its cessation of the DCA's affirmative action bake sale protest and end the harassment investigation of Michael O'Shea that is based on his or the DCA's expression of their political opinions during the event. Once again, we ask that you let your students exercise their basic moral and human rights; let them dissent as their consciences dictate. Because of the urgent nature of the situation and the ongoing investigation of Michael O'Shea, we request a response as soon as possible.

I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Robert L. Shibley". The signature is written in a cursive style.

Robert L. Shibley  
Program Manager

cc:

Greg MacVarish, Dean of Students, DePaul University

Cynthia M. Summers, Associate Vice President for Student Advocacy and Community Relations, DePaul University

Suzanne Kilgannon, Director of Student Life, DePaul University

Denise Mattson, Assistant Vice President for Public Relations, DePaul University

Michael O'Shea