



Foundation for Individual Rights in Education

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December 4, 2007

President Paul Pai
St. Louis Community College at Meramec
11333 Big Bend Boulevard
St. Louis, MO 63122

Sent via U.S. Mail and Facsimile (314-984-7166)

Dear President Pai:

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, will give you a greater sense of our identity and activities.

FIRE is concerned about the serious threats to free expression and due process posed by St. Louis Community College at Meramec's (STLCC's) treatment of student Jun Xiao. STLCC's charge that Xiao violated hazing and other policies by emailing his classmates about his intention to withdraw from a class at STLCC both chills expression at STLCC and ignores constitutional guarantees of free speech and due process that STLCC, as a public institution, is obligated to protect.

This is our understanding of the facts. Please inform us if you believe we are in error. Xiao earned a Ph.D. from the Chinese Academy of Sciences and had postdoctoral training at Massachusetts Institute of Technology and Columbia University. In fall 2007, he enrolled at STLCC to do coursework in preparation for medical school, including organic chemistry.

On October 10, 2007, Xiao sent an email through Blackboard, educational software run by STLCC, to his classmates in his organic chemistry course. The email stated, "I am withdrawing from the class and will retake it in the spring of 2008.... Is there someone who wants to retake the class with me?" Xiao emailed his classmates again on October 21, stating his intention "to take [P]rof. Hauser's classes for Org. Chm I lecture and lab (I will withdraw [from] these current course[s] before 11/9)." The October 21 email also invited his classmates to join him in taking Organic Chemistry II at another college:

Do you want to take Org. Chm II lecture and Lab next semester? I went to St. Charles Community College yesterday and they offer both the lecture and lab for Org. Chm I and II ... Is there any one who want[s] to take [P]rof. Bookstaver's classes? We can [form] a car pool.

On October 23, Sharon Holt, secretary for Acting Vice President of Student Affairs Daniel R. Herbst, left Xiao two voicemails urging him to contact Herbst immediately, plus an email stating, "Your academic career rests on your meeting with him." Herbst also emailed Xiao on October 23, stating, "Please note, that until you have a meeting with me, that you are prohibited from sending any emails to students in any of your courses. Violation of this directive, can and will result in your immediate suspension from St. Louis Community College."

On October 24 at 7:30 am, Xiao met with Herbst, who gave him a letter stating that he had been placed on "Disciplinary Probation" effective immediately and lasting throughout the 2007-2008 academic year. The probation "includes a prohibition on the use of the email system to contact other St. Louis Community College students." The letter also stated that a future incident of "inappropriate behavior" could result in his suspension from STLCC.

Herbst's letter stated that Herbst already had found Xiao guilty of the following offenses "listed in the *FACT FINDER: Student Handbook of St. Louis Community College*":

1. Item C: Hazing, which is defined as any act that injures, frightens, endangers or degrades [an] individual;
2. Item D: Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other College-authorized activities;
3. Item K: Disorderly conduct, breach of the peace, aiding or inciting another to breach the peace, or infringement upon the rights or defamation of another either on College property or at College-authorized activities; and,
4. Item L: Failure to comply with directions of a College official acting in the performance of his/her duties.

Herbst's letter stated that the evidence for these charges was "based upon your behavior which occurred during the month of October 2007" on the basis of "information provided by a dean, a faculty member, and multiple emails from students in [Xiao's] courses." The letter provided no further information about the accusations against Xiao.

On October 26, Xiao wrote Herbst asking for a written version of the complaints against him. On October 31, Herbst replied that "I have discussed with you the nature of the complaints and do not have to provide them in writing." He also extended the deadline for Xiao's appeal to November 5.

Xiao appealed on November 5, and Herbst wrote Xiao on November 15 to state that Herbst had denied the appeal. Xiao then appealed to the Student Appellate Hearing Committee.

FIRE is gravely concerned about STLCC's violation of Xiao's rights to free speech and due process. The First Amendment enshrines our country's legal and moral commitment to freedom

of speech, including expression such as Xiao's emails to his student colleagues. 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."

Moreover, STLCC's *Student Handbook* assures each student that "As a student, you possess basic freedoms, privileges and rights guaranteed to all persons by law." In STLCC's official "Administrative Procedures," under section B.6, "Right to Free Expression," STLCC states that "St. Louis Community College wishes to uphold the first amendment rights of individuals, including their free speech rights." Section G.14.1.d of that document also warns students that "Any act which restricts an individual's right to speak is prohibited."

The Fifth and Fourteenth Amendments ensure at least minimal due process protections for persons against whom charges are brought. All persons must be treated fairly in proceedings that may affect their property, livelihood, or general well-being, broadly construed. Education and speech rights are among the most important constituents of a person's livelihood and well-being. This guarantee of fair treatment holds even when the proceedings are "quasi-judicial"—that is, not directly mandated or governed by federal or state law. In his famous and influential article "Some Kind of Hearing," Judge Henry Friendly named several elements that he deemed necessary for a hearing to satisfy due process. 123 *U. Penn. L. Rev.* 1267 (1975). Among others, these include notice of the charges, the right to present evidence and call witnesses, the right to know the evidence against you, and a written finding of fact and of the grounds for the tribunal's decision.

STLCC's treatment of Xiao to this point has violated his due process rights. He has not been provided with either the names of the complainants or the details of their complaints. Xiao's contacts with Herbst do not constitute an adequate hearing on the charges, which are serious enough to lead to disciplinary probation and restriction of his speech. In addition, Herbst's initial decision to place Xiao on disciplinary probation occurred before Xiao had any opportunity to hear the charges or respond to them.

Please let us remind you that if the Student Appellate Hearing Committee hears Xiao's appeal, the *Student Handbook* promises him the following notifications:

1. Charges against him;
2. Date, time, place and description of the violation;
3. Name of the person or persons requesting disciplinary proceedings;
4. Name of any and all known witnesses in the case; and
5. Date, time and place of the hearing.

In addition, the right to due process requires that Xiao be given the evidence that is to be used against him.

More importantly, Xiao's case never should have reached this point. The emails in question, which alert other students to Xiao's enrollment plans and invite them to join in his enrollment choices, are fully protected speech. Xiao's punishment, which prohibits him from contacting

other students by email, is yet another violation of his right to freedom of speech. And the manner in which his punishment was inflicted is a grave violation of his right to due process. Because of the ongoing, dire violations of Xiao's rights, we request that your administration immediately lift this prohibition, reverse Xiao's disciplinary probation, and remove all information about this case from Xiao's disciplinary record.

We further request that you ensure that no college policy or contrivance is used to infringe upon the rights of students at STLCC to discuss the quality of their education and their professors at STLCC and to discuss their enrollment choices with one another. Please spare STLCC the embarrassment of fighting against the First Amendment and STLCC's own promises to its students regarding freedom of speech.

With this letter we enclose Jun Xiao's signed FERPA waiver, authorizing you to discuss these matters with FIRE.

FIRE hopes to resolve this matter amicably and swiftly, but we remain prepared to use all of our resources to see this situation through to a just and moral conclusion. We are aware that STLCC has proposed a hearing date before the Student Appellate Hearing Committee of December 5, 2007—and that the hearing may take place in Xiao's absence, which would constitute yet another violation of his right to due process. Because of the time-sensitive nature of this matter, we request a response by December 7, 2007.

Sincerely,



Adam Kissel
Director, Individual Rights Defense Program

cc:

Daniel Herbst, Acting Vice President for Student Affairs, STLCC
Gloria Webb Adeyemi, Dean, Science and Technology, STLCC
Vidyullata Waghulde, Associate Professor, Chemistry Department, STLCC
Denise Sperruzza, Chairperson, Student Appellate Hearing Committee, STLCC
Andrew Langrehr, Chair, Department of Physical and Engineering Sciences, STLCC