



Foundation for Individual Rights in Education

601 Walnut Street, Suite 510 • Philadelphia, Pennsylvania 19106
T 215-717-3473 • F 215-717-3440 • fire@thefire.org • www.thefire.org

Greg Lukianoff
PRESIDENT

Robert L. Shibley
SENIOR VICE PRESIDENT

William Creeley
DIRECTOR OF LEGAL AND
PUBLIC ADVOCACY

Sean M. Clark
VICE PRESIDENT OF
OPERATIONS

Alisha C. Glennon
DIRECTOR OF
DEVELOPMENT

Alan Charles Kors
CO-FOUNDER AND
CHAIRMAN EMERITUS

BOARD OF DIRECTORS

Harvey A. Silverglate
CO-FOUNDER AND
CHAIRMAN

Barbara Bishop
Rebecca Dunn
Richard Losick
Joseph M. Maline
Marlene Mieske
Daphne Patai
Virginia Postrel
Daniel Shuchman

BOARD OF ADVISORS

Lloyd Buchanan
T. Kenneth Cribb, Jr.
Candace de Russy
William A. Dunn
Benjamin F. Hammond
Nat Hentoff
Roy Innis
Wendy Kaminer
Woody Kaplan
Leonard Liggio
Herbert London
Peter L. Malkin
Muriel Morisey
Steven Pinker
Milton Rosenberg
John R. Searle
Christina Hoff Sommers
Lawrence H. Summers

January 4, 2013

President Susan A. Cole
Montclair State University
Office of the President
College Hall 235
Montclair, New Jersey 07043

URGENT

Sent via U.S. Mail and Facsimile (973-655-7195)

Dear President Cole:

FIRE is disappointed to be writing to you for the second time in two years regarding threats to Montclair State University students' fundamental rights.

Today, FIRE is deeply concerned with Montclair State University's placement of an illiberal and unconstitutional gag order on MSU student Joseph Aziz's expression and with its subsequent suspension of Aziz for allegedly violating the unconstitutional order. MSU must immediately remedy these grave violations of Aziz's rights.

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

On August 7, 2012, Joseph Aziz attended an on-campus lecture by Steve Lonegan, director of Americans for Prosperity–New Jersey. A video recording of a portion of that lecture, containing an interaction between Lonegan and an MSU student, was posted to YouTube on September 20, 2012. Aziz subsequently posted two comments on the video. According to Aziz, the first comment described MSU student [REDACTED] as having "legs that resembled a pair of bleached hams." The second comment concerned [REDACTED]'s weight and the weight of her boyfriend, who was featured in the video posted to YouTube.

On October 9, 2012, MSU Coordinator of Student Conduct Jerry S. Collins sent Aziz an email notifying him that he was to have no contact with [REDACTED]. The University No-Contact Order (UNCO) cited "information, which indicates you may have been involved in a situation involving one or more violations of University policies or community standards." The UNCO did not cite any specific instances of alleged misconduct, nor did it specify which MSU policies Aziz was

suspected of violating. The UNCO prohibited Aziz from all physical, verbal, and electronic contact with █████, and prohibited the posting of “any social media regarding Ms. █████.”

Aziz and Collins met and discussed the terms of the UNCO on October 11. Aziz was shown copies of the two comments he had posted on the YouTube video. According to Aziz, Collins cited no other incidents or behavior as bases for the UNCO.

Shortly after this meeting, Aziz posted a number of comments related to this incident—in which he mentioned █████ by name—to the wall of a private Facebook group of which █████ was not a member. On October 10 he wrote, “trolling is illegal.... I love trolling.... The only reasonable solution is suicide by repeatedly ramming my skull into █████ car[.]” On October 15 he wrote that “what I did to █████ was trolling[.]” Finally, on October 17 he wrote, “i covered myself in butter and slipped through █████’s tyrannical ham lock.” (All spelling and grammar in originals.)

On November 29, Aziz received a notice from Assistant Director for Housing Assignments Kevin Schafer summoning him to a Conduct Conference Meeting “regarding an incident that was reported on November 24.” This report alleged that Aziz had violated MSU’s policies on “Disruptive Conduct,” “Failure to Comply,” “Harassment,” “Violation of Written University Policy, Regulations and Announcements,” and “Abuse of the Conduct System.” The notice contained no information on the specific incidents or behaviors underlying the allegations. Aziz asked Schafer via email on multiple occasions to provide specific information on MSU’s reasons for charging him. Schafer refused to provide Aziz with any such information other than to say, in a December 3 email, that “[t]he violations are in relation to a report that you violated a University No Contact Order.”

Aziz attended the Conduct Conference Meeting on December 6, at which time Schafer formally charged him with these conduct violations. Aziz elected to proceed directly to a University Administrative Hearing at this meeting. Schafer also conducted the University Administrative Hearing. Schafer notified Aziz of the results of the hearing on December 13, finding him responsible for the charges of “Failure to Comply” and “Violation of Written University Policy, Regulations and Announcements.” Aziz was found “not responsible” for the other three conduct charges. Aziz was suspended from MSU from January 2, 2013 to June 1, 2013, during which time he was to be considered *persona non grata* on the MSU campus and subject to arrest for criminal trespassing if he entered the campus. As part of his sanctions, Aziz was also required as part of his sanctions to complete two educational “modules” on “Personal Decision Making” and “Cyber-Citizenship 101.”

The December 13 letter explicitly stated that Aziz violated the UNCO “by posting messages regarding Ms. █████ on social media,” and that, according to the terms of the UNCO, “there was to be no social media posting in regards to Ms. █████, regardless of where they were posted.” The disciplinary letter also stated that “[a]s the University has a clear commitment to the civility of its community, your actions are not tolerable.”

Aziz appealed the sanction on December 16. On December 20, he received a letter via email from Vice President for Student Development and Campus Life Karen Pennington, rejecting his appeal. (The letter itself is dated December 18.) In rejecting Aziz’s appeal, Pennington upheld

his spring semester suspension, effective January 2. The UNCO prohibiting any contact with [REDACTED] including any social media posts referencing her, remains in effect.

While it is highly questionable whether MSU, as a public university, had the right to issue a no-contact order based on Joseph Aziz's YouTube comments, that is beyond the scope of today's letter. Rather, we write today because what MSU calls a no-contact order is in fact an unconstitutional gag order that prohibits Joseph Aziz from speaking about a matter that profoundly affects his life. Aziz has been suspended from the university not for contacting Ms. [REDACTED], but for posting statements about the incident in a private Facebook group of which Ms. [REDACTED] was not a member. This is a clear violation of his First Amendment rights, and it cannot stand.

MSU has a legal and moral obligation to prohibit harassment, which is defined in the educational setting as conduct "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." *Davis v. Monroe County Board of Education*, 526 U.S. 629, 652 (1999). But the university has already determined that Aziz's conduct did not constitute harassment, as decided by Kevin Schafer at Aziz's December 6 hearing. Rather, Aziz's suspension appears to be based solely on the fact that he violated a university directive ordering him not to reference Ms. [REDACTED] on social media—a directive that violates his First Amendment rights. Indeed, the directive is so broadly written—preventing any mention of Ms. [REDACTED] on social media—that it appears to be not only aimed at preventing harassment but also at preventing Aziz from discussing the matter at all.

MSU's treatment of Joseph Aziz also raises issues of fundamental fairness because the punishment imposed upon him—a semester-long suspension during which time he may not even set foot on campus—is grossly disproportionate to any supposed violations of university policies.

FIRE requests that MSU immediately rescind Joseph Aziz's suspension and revise the UNCO to eliminate the social media prohibition. FIRE hopes that we can resolve this situation thoroughly and swiftly; however, we are committed to seeing this process through to a just and moral conclusion.

We have enclosed a signed FERPA waiver from Aziz, permitting you to freely discuss his case with FIRE. As this is a matter of utmost urgency, we ask for a response to this letter by the close of business on January 9, 2013. I look forward to receiving your response.

Sincerely,


Samantha Harris

Director of Speech Code Research

Encl.

cc:

Jerry S. Collins, Coordinator of Student Conduct
Shannon Gary, Associate Dean of Students
Karen L. Pennington, Vice President for Student Development and Campus Life
Kevin Schafer, Assistant Director for Housing Assignments
Valerie Van Baaren, University Counsel

