



Foundation for Individual Rights in Education

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December 22, 2011

President Dana L. Gibson
Sam Houston State University
The Office of the President
Box 2027
Huntsville, Texas 77341

ent n F c s e 4 4

Dear President Gibson:

I write today because FIRE is concerned about a policy in force at Sam Houston State University (SHSU) that unconstitutionally restricts the speech rights of SHSU students.

Specifically, SHSU's Code of Student Conduct defines disorderly conduct, in relevant part, as the use of "abusive, indecent, profane or vulgar language." This impermissibly broad definition restricts a staggering amount of constitutionally protected expression and fundamentally violates the First Amendment rights of all SHSU students. Continued maintenance of this policy chills expression on campus and betrays freedoms that SHSU, a public university, is legally bound to protect. Moreover, the policy undermines the mission of an institution presumptively committed to intellectual rigor, robust debate, and a free and vibrant community. **For these reasons, FIRE named this policy our "Speech Code of the Month" for October 2011.**

SHSU's policy prohibits "abusive, indecent, profane or vulgar language." Yet most speech that may be characterized as "abusive," "indecent," "profane," or "vulgar"—however one chooses to define these amorphous terms—is

after all, can be singularly effective in disseminating a particular message, and the same holds true for the type of expression prohibited by SHSU's policy.

Please be advised that federal and state courts across the country have consistently struck down unconstitutional speech codes, often masquerading as harassment or civility policies, at colleges and universities over the past twenty years. In addition to *Ree*, see *Cuevas v. First of the Mountains*, 618 F.3d 232 (3d Cir. 2010) (invalidating university speech policies, including harassment policy, on First Amendment grounds); *DeJohn v. IPeds*, 537 F.3d 301 (3d Cir. 2008) (striking down unconstitutional sexual harassment policy); *Dobrot v. Centennial College*, 55 F.3d 1177 (6th Cir. 1995) (declaring university discriminatory harassment policy facially unconstitutional); *Thurston County College District*, 694 F. Supp. 2d 610 (N.D. Tex. 2010) (invalidating "cosponsorship" policy due to overbreadth); *Roberts v. Hargis*, 346 F. Supp. 2d 853 (N.D. Tex. 2004) (finding university sexual harassment policy unconstitutionally overbroad); *Bruppensburg v. First of the Mountains*, 280 F. Supp. 2d 357 (M.D. Pa. 2003) (enjoining enforcement of university harassment policy due to overbreadth); *Boher v. Board of Regents*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. Jul. 21, 1998) (finding university sexual harassment policy void for vagueness and overbreadth); *Corrigan v. First of the Mountains*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.) (declaring "harassment by personal vilification" policy unconstitutional); n. LEXIS 114fiC3.15789(-)10.4986(c)3.15789

