



December 13, 2017

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*Sent via U.S. Mail and Electronic Mail*  
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Dear Mr. Tashjy:

We write today to commend Bunker Hill Community College for its recent policy reforms in response to our concerns regarding student speech and expressive activity on campus and to encourage further reforms at BHCC and other campuses in the Massachusetts Community College System.

## **BACKGROUND**

We initially wrote to you on May 30, 2017, to express concerns after members of our client organization, BHCC's chapter of Young Americans for Liberty, encountered difficulty gaining official club recognition and later, on May 3, were stopped by campus police while distributing free copies of the United States Constitution in a public, outdoor area of campus. We noted that BHCC's then-existing policies unconstitutionally prohibited the distribution of any literature in public areas of campus without pre-approval and an assigned location. We further noted that BHCC policies imposed content restrictions on literature distribution and prevented anonymous or spontaneous student speech on campus, in violation of student First Amendment rights. Finally, we observed that BHCC's scant policies on student club recognition failed to provide sufficient safeguards against viewpoint discrimination by giving almost no written criteria to guide or limit decision-makers' discretion over whether to approve or deny recognition.

You responded by letter on June 16 to notify us that BHCC took our concerns seriously and would review the relevant policies for compliance with the First Amendment. You acknowledged that YAL members should not have been instructed to stop distributing copies of the Constitution in an open, outdoor area of campus where their activity did not impede any traffic flow or otherwise substantially interfere with College business or operations. Accordingly, you informed us that part of BHCC's policy review would ensure that college rules did not impose a ban on students' right to distribute materials on campus or engage in spontaneous

speech absent pre-approval. Additionally, you noted that BHCC was developing objective procedures concerning the organization and recognition of student clubs.

Finally, your letter noted that BHCC was in the process of reviewing YAL's application to become a recognized student organization. YAL's application was subsequently approved.

### **BHCC REFORMS**

We commend BHCC for the significant improvements made to its policies on student expression and distribution of literature. BHCC's new Policy on Student Expression rightly removes the requirements that individuals or groups obtain pre-approval for the materials they wish to distribute and that they confine expressive activities to certain designated locations. The policy correctly adopts the presumption that peaceful student expressive activities may take place without prior approval in publicly accessible areas of college property, and focuses on restricting only conduct that is actually disruptive to campus operations such as obstructing building entrances or impeding traffic. This approach recognizes both the heavy presumption under the law against prior approval requirements, and that "time, place, and manner" speech restrictions on a public campus must be content- and viewpoint-neutral and narrowly tailored to serve specific, significant government interests.

We further commend BHCC for removing from its rules governing student club recognition the admonition that students "meeting outside of this policy" may be subject to disciplinary action. This eliminates a broad and unjustifiably onerous burden on students' right "to associate to further their personal beliefs."<sup>1</sup> BHCC also rightly removed the vague requirement that, in order to gain official recognition, a student group must "support the academic curriculum and/or mission" of the college. This requirement invited decision-makers to subjectively assess a prospective organization's message to determine if it supported BHCC's curriculum or mission, and in so doing, invited unconstitutional viewpoint discrimination.

While you indicated to us that BHCC is developing objective procedures to guide club recognition—and, presumably, to prevent decision makers from exercising their discretion to grant or deny recognition based on a group's message or purpose—we note with concern that such procedures are not currently published on BHCC's website. Rather, BHCC's Policy on Student Club Recognition refers interested students to the Student Activities Office to obtain a copy of the "club formation toolkit." Without publicly available standards, we have no means to assuage the concern expressed in our May 30 letter that the policy unconstitutionally gives unbridled discretion to decision-makers to discriminate against minority viewpoints. Requiring students to access their school's rules or policies in person instead of a generally accessible means such as BHCC's online student handbook is unreasonably burdensome and at odds with the need for transparency in institutional decision-making. Consequently, we repeat our earlier admonition that BHCC's policies must provide "narrow, objective, and definite standards"<sup>2</sup> to

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<sup>1</sup> *Healy v. James*, 408 U.S. 169, 181 (1972).

<sup>2</sup> *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 131 (1992) (citations omitted).

guide the grant or denial of club recognition and strongly encourage BHCC to put those standards on its website.

## **POLICIES AT OTHER MASSACHUSETTS COMMUNITY COLLEGES**

In light of your work engaging BHCC in good faith policy reform efforts, we undertook a review of policies at other colleges in the Massachusetts Community College System. We wished to notify you of those policies that are inconsistent with the principle that non-disruptive student speech and expressive activity, including the distribution of literature, may take place in generally accessible areas of college property without prior permission or an administrative assessment of its message. The following policies raise significant concerns on these points.

### **Bristol Community College**

Bristol Community College's (BCC's) policy on Students' Right to Assembly requires that students "primarily involved" in organizing an "assembly" present a signed, written notice of their intent to the Director of Student Life.<sup>3</sup> The Director then assigns an "appropriate" location on college property for the assembly. The policy further provides that students "may not create an intimidating, hostile, humiliating, or disorderly educational environment" and their actions must not "be disorderly, lewd, indecent, or obscene in nature."

BCC's Student Clubs and Organizations Manual states that all student organizations must register with the Office of Student Life and be recognized by the college in order to "function on campus."<sup>4</sup> Further, recognized clubs are required to notify the Office of Student Life of any "activities or events."

### **Holyoke Community College**

Holyoke Community College maintains Guidelines for Authorized Student Gatherings that require any "student gathering," including "meetings, public forums, rallies, and demonstrations," to have "a faculty/staff sponsor and a specifically designated responsible student."<sup>5</sup> The advisor and responsible student must develop "the goals and program for the event," submit an authorization form for the gathering at least four business days ahead of time, reserve the event location ahead of time, "[o]utline procedures to encourage civility during the event," publicize the event according to college procedures, and attend the entire event. The guidelines provide that "all details" about any gathering must be approved by the administration at least two days beforehand. During a gathering, participants are expected to be civil, respectful,

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<sup>3</sup> Bristol Community College Student Handbook and Academic Calendar/2017–2018, BRISTOL COMMUNITY COLLEGE at 53, <http://www.bristolcc.edu/media/2017-18,Handbook-Online.pdf> (last visited Dec. 5, 2017).

<sup>4</sup> Student Clubs and Organizations Manual, BRISTOL COMMUNITY COLLEGE at 7. <http://www.bristolcc.edu/media/bcc-website/students/studentlife/forms/Club,Manual,2017-2018,-Final.pdf> (last visited Dec. 5, 2017).

<sup>5</sup> Student Handbook, HOLYOKE COMMUNITY COLLEGE at 55–57, [https://www.hcc.edu/Documents/Publications/SHB/Student\\_Handbook\\_2017-2018\\_m2.pdf](https://www.hcc.edu/Documents/Publications/SHB/Student_Handbook_2017-2018_m2.pdf) (last visited Dec. 5, 2017).

and peaceful. Participating students in violation of these rules are explicitly subject to disciplinary action, including immediate suspension for refusal to comply with an order to disperse. Event sponsors are held responsible for the actions of any participant of a gathering.

### Middlesex Community College

Under Middlesex Community College’s policy on Activism and Demonstration, students “primarily involved in organizing [an] action,” which includes expressive activities such as protest or petitioning signatures, “must present a signed, written notice of their intent to the Dean of Students.”<sup>6</sup>

### Northern Essex Community College

Northern Essex Community College’s Assembly Policy permits *only* “small informal student gatherings” to take place without “formal scheduling” and even these gatherings must take place in a small number of “appropriate places,” including only one outdoor space, between the hours of 12 and 1 p.m., Monday through Friday.<sup>7</sup> Students at informal gatherings are further instructed to keep conversation and music at a level that does not disturb groups nearby and to maintain “sufficient quiet” during class hours.

### Quinsigamond Community College

Quinsigamond Community College’s Student Action Activity Policy requires students wishing to “provide information, collect information, or poll the campus community in general” to provide a written letter requesting permission for their activity to take place on campus property to the Director of Student Life and Leadership.<sup>8</sup> The director then provides students a “Request for Student Action Activity” form to complete prior to the expressive activity. The policy further states that any outside speakers must be “listed and pertinent to the activity” (without defining “pertinent” or “the activity”).

### Springfield Technical College

Springfield Technical College’s Solicitation on Campus Policy states that the “distribution of information and literature” must receive “clearance” from the office of Student Activities and Development and may take place only “at locations and times specifically designated by the Student Activities and Development Coordinator.”<sup>9</sup>

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<sup>6</sup> Middlesex Community College Student Handbook 2017-2018, Student Action, Advocacy, and Complaints, MIDDLESEX COMMUNITY COLLEGE, <https://catalog.middlesex.mass.edu/content.php?catoid=21&navoid=1931> (last visited Dec. 5, 2017).

<sup>7</sup> Academic Catalog 2017-2018, Assembly Policy, NORTHERN ESSEX COMMUNITY COLLEGE, <https://necc.smartcatalogiq.com/2017-2018-Updated/Catalog/College-Policies/College-Statements-Policies-and-Disclosures/Assembly-Policy> (last visited Dec. 5, 2017).

<sup>8</sup> Student Handbook 2017-2018, Student Action Activity Policy, QUINSIGAMOND COMMUNITY COLLEGE, [http://www.qcc.edu/files/president/policies/student\\_action\\_activity\\_policy\\_2015\\_0.pdf](http://www.qcc.edu/files/president/policies/student_action_activity_policy_2015_0.pdf) (last visited Dec. 5, 2017).

<sup>9</sup> Non-Academic Policies and State/Federal Regulations, SPRINGFIELD TECHNICAL COLLEGE, <https://catalog.stcc.edu/content.php?catoid=19&navoid=3671> (last visited Dec. 5, 2017).

### Analysis

For the reasons articulated in our May 30 letter, all of these policies unconstitutionally restrict the most basic exercises of protected speech by students. Each one requires pre-registration, pre-approval, and/or a waiting period before engaging in core First Amendment activities such as petitioning or literature distribution, effectively banning all spontaneous or anonymous expression. And like BHCC's previous policy, several policies cabin expressive activity to limited, assigned areas. While our clients thankfully now have the right to hand out copies of the Constitution without permission in open areas of BHCC, their counterparts on other community college campuses, by the terms of these policies, cannot do the same.

Additionally, several of the above policies impose unconstitutional restrictions on the content of student speech while engaged in activities like "assembly," "rallies," and "demonstration." These include requiring students to remain "civil" and "respectful," and prohibiting "humiliating," "lewd," or "indecent" speech. One policy requires any outside speaker invited by students to be "pertinent." All of these content-based restrictions are hopelessly vague and overbroad, sweeping up a great deal of protected speech and inescapably inviting subjective, viewpoint-based assessments of a student's message.

The First Amendment "generally prevents government from proscribing speech . . . or even expressive conduct," *R.A.V. v. St. Paul*, 505 U.S. 377, 382 (1992), unless it falls within certain well-defined categories, including obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *See United States v. Stevens*, 559 U.S. 460, 468–69 (2010).

Outside of these categories, "[c]ontent-based regulations are presumptively invalid." *R.A.V.*, 505 U.S. at 382. In particular, the Supreme Court of the United States has unequivocally held that speech cannot be restricted because its listeners find it offensive or disrespectful. *See, e.g., Cohen v. California*, 403 U.S. 15 (1971) (overturning a conviction premised upon the use of "vulgar, profane, or indecent language" in wearing a jacket emblazoned with the words "Fuck the Draft" in a courthouse hallway, and observing that "one man's vulgarity is another's lyric"); *Texas v. Johnson*, 491 U.S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit . . . expression . . . simply because" it is "offensive or disagreeable."). In *Papish v. Board of Curators of the University of Missouri*, the Supreme Court made plain that speech "on a state university campus may not be shut off in the name alone of 'conventions of decency.'" 410 U.S. 667, 670 (1973).

These policies impermissibly restrict the who, what, when, where, why, and how of student protest, assembly, petitioning, leafleting, and nearly any other exercise of First Amendment rights on Massachusetts community college campuses. They likely have prevented or chilled speech in the past and must be reformed before they do so again.

### CONCLUSION

Again, we sincerely thank you for the work you and BHCC have done to improve its policies on student expression. We strongly encourage you to address the policies identified above with the

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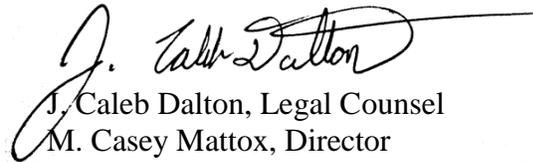
December 13, 2017

Page 6 of 6

governing bodies of the respective colleges to achieve similar reforms or to implement a system-wide policy to guarantee student First Amendment rights throughout the Massachusetts Community College System.

Please let us know what steps you will take to address these outstanding concerns. We would appreciate a response by December 20, 2017. As before, we would be pleased to work with you and provide assistance in any policy reform process.

Sincerely,



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