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May 6, 2015

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Re: Polk State College /Complaint Against L.J. Russum

Dear Gentlemen:

This office is the General Counsel for Polk State College (the "College"), and I am writing in response to your letter dated May 1, 2015, addressed to Dean Donald Painter. While your letter makes a number of allegations and/or insinuations regarding Professor Russum's beliefs and conduct, the single, material allegation you raise is that Professor Russum has discriminated against your client because of her religious beliefs. In response, the College affirmatively asserts that your allegation of discrimination is baseless, without merit, and absolutely lacking any factual support.

In your letter, you discuss a number of issues, many of which are clearly intended to be inflammatory, but none of which are evidence of religious discrimination. Indeed, your only substantive allegation with a connection to the College is that the professor allegedly discriminated against your client when he gave her zeroes on four essay assignments. As discussed herein, such an allegation is clearly refuted by an objective review of the facts. Your entire letter, which is based upon this hollow and indefensible allegation, fails to acknowledge long-standing academic practice, and legally fails to establish any claim against either the College or its employee. *See Lemon v. Kurtzman*, 403 U.S. 602 (1971). *Accord C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 988 (9th Cir. 2011) ("The Supreme Court has long recognized the importance of protecting the 'robust exchange of ideas' in education, 'which discovers truth out of a multitude of tongues.'").

Initially, there is no evidence that your client has suffered any discrimination or was damaged. The fact is, as a fully online student through Florida Virtual School, your

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client received an overall grade of “A” for this class. The four assignments for which she received zeroes were part of fifteen essays required for the class, and those fifteen essays represented forty percent of the total grade for the class. Your client received excellent marks on the other work and exams that were part of the class, and the total of those grades entitled her to an overall “A” for the class. Clearly, this student has not been in any way damaged or disadvantaged by the professor’s actions.

As is common in institutions of higher education, the College has no procedure for students to challenge or appeal grades received on individual tests or assignments. Without deviating from that practice, several members of the College’s academic leadership have reviewed the four written assignments you have questioned, including the professor’s assignments and the student’s work submitted in response to the assignments. These experienced educators have agreed unanimously that in each instance the student chose to reject the specific assignment that was given, stating that she disagreed with the nature or premise of the question and then launching into an apparent effort to defend her Christian beliefs. She did not meaningfully respond to the professor’s questions, and in each instance, a grade of zero was appropriate. See *Corlett v. Oakland Univ. Bd. of Tr.*, 958 F. Supp. 2d 795, 809 (E.D. Mich. 2013)(holding that student assignment was “not entitled to First Amendment protection”); *Settle v. Dickson County Sch. Bd.*, 53 F.3d 152 (6th Cir. 1995), *cert. denied*, 516 U.S. 989 (1995)(“So long as the teacher violates no positive law or school policy, the teacher has **broad** authority to base her grades for students on the merits of the students’ work.”)(emphasis added); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)(“Courts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values.”).

The overall fallacy of your position rests singly on the premise that an instructor should not require a student to consider, discuss or present arguments that are contrary to his/her personal beliefs. Such a position shows apparent ignorance of long-standing academic practice. *Capistrano, supra* at 988 (“teachers must be given leeway to challenge students to foster critical thinking skills and develop their analytical abilities”).

It is common practice for students to be asked to research a particular proposition and to be prepared to argue either “for” or “against” that proposition as the instructor might direct. Asking a student to write from a particular perspective, or to argue in favor of a point of view that might differ from his/her personal opinion, is not discrimination. For example, an instructor could properly require a class to write papers explaining Adolf Hitler’s views on the actions of Germany’s Jewish population. Such an assignment would not be discriminatory against Jewish students or an effort to promote anti-Semitism. Rather, the assignment would be intended to help students better understand a system of thought that was critical to major events during the twentieth century. Should a

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student choose to write a condemnation of National Socialism and a defense of the Jewish people, the work would not be responsive to the instructor's assignment.

It is not discriminatory or a burden on the free exercise of religion for a teacher to require his students to comply with the terms of an assignment. *See Corder v. Lewis Palmer Sch. Dist. No. 38*, 566 F.3d 1219, 1232-33 (10th Cir. 2009) (“Neutral rules of general applicability normally do not raise free exercise concerns even if they incidentally burden a particular religious practice or belief” and action “is neutral so long as its object is something other than the infringement or restriction of religious practices.”); *American Family Ass’n v. City and County of San Francisco*, 277 F.3d 1114, 1122 (9th Cir. 2002) (“any secular purpose, no matter how minimal, will pass the [*Lemon*] test”). In Professor Russum’s fully online class, in which your 16-year-old client dual enrolled via Florida Virtual School, he announced his intent to challenge the students and to have them consider and study ideas that were possibly outside their personal beliefs. In the four specific writing assignments that you have challenged, Professor Russum gave very specific instructions that he expected his students to write from a particular perspective or about particular ideas presented in the materials read by the class. Rather than recognize the academic exercise she was being directed to undertake, your client responded by condemning the Catholic Church for negative events she acknowledged occurred in the name of Christianity, and then proceeded to explain what she viewed as “true Christianity.”

In response to the student’s failure to recognize the assignment as an academic exercise, Professor Russum went to great lengths to offer assistance and clarification. Attached is Professor Russum’s extensive response to this student’s concerns about the grades she received on these assignments. If you have not already done so, we ask that you carefully review what he has written. We contend that an objective review of that communication will conclude that he is clearly not attempting to discriminate or seeking to have the student change her beliefs. Rather, Professor Russum patiently explains to his student the nature of the academic exercise, what he expected from her, and why her papers were unresponsive to his assignment. In this correspondence he demonstrates empathy, concern and a sincere desire to help his student mature intellectually and academically. It is difficult to imagine that any objective review of that communication would conclude that the professor is attempting to discriminate or to change the student’s personal beliefs.

We note, in Dean Painter’s April 23, 2013 letter to your client’s parents, he advises them that the College has a system for students to file a formal complaint should they believe they have been a victim of discrimination, and he provides contact information for the College’s Office of Equity and Diversity. Your client obviously chose to ignore this available administrative remedy.

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Much of your letter is simply quotes lifted from the class syllabus that do not constitute any evidence of discrimination. During the time period being studied, many bad things happened and many purported Christians were involved. As an academic assignment, it is entirely appropriate to ask students to study those events, to have them consider how the events may have impacted individuals, and to require them to complete writing assignments in which they explain or assume the perspectives of particular individuals.

Your letter quotes part, but not all, of Professor Russum's directions in the Week 11 assignment. He clearly anticipates the response of some students, and he advises them accordingly:

"You are to only answer the above three questions. SECOND, and this is VERY important, I DO NOT want you to write about how wonderful you think Christianity is now because women can do A, B, or C. History is history and facts are facts and your opinion on if it is better now or not is irrelevant for this discussion. This is a HISTORICAL discussion about the middle ages. If you really feel the need to express your opinion on how you think Christianity is now for women you may email me, you may call my office or I would love for you to stop by for a nice cup of hot tea where we can talk about it but it does not belong in this assignment."

In your client's response to this assignment, she clearly chose to ignore the professor's instructions and proceeded to present her view of "true Christianity."

Also, in your letter you have included posts from Professor Russum's personal Facebook page. As a defender of constitutional rights, I am confident that you would recognize and defend everyone's right to hold beliefs and opinions that might be different than your own. Professor Russum's Facebook posts are not evidence of discrimination, but merely examples of how Professor Russum chooses to express himself outside the classroom. The U.S. Constitution protects personal expression, even when that expression offends other people. Using such information in an effort to condemn someone is a very dangerous precedent about which your organization should be particularly sensitive. *See Stein v. Dowling*, 867 F. Supp. 2d 1087, 1090 (S.D. Cal. 2012) ("Plaintiff does have First Amendment protection for his own personal views and his own personal Facebook account.").

In closing, as Circuit Judge Batchelder expressed in her *Settle* concurrence:

"The bottom line is that when a teacher makes an assignment, even if she does it poorly, the student has no constitutional right to do something other

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than that assignment and receive credit for it. It is not necessary to cram this situation into the framework of constitutional precedent because there is no constitutional question.” 53 F.3d at 158.

The College has not infringed on your client’s free exercise of religion, nor has it discriminated against your client on the basis of her chosen faith. Pursuant to this conclusion, the College’s administration does not intend to take any further action on this matter, including those actions urged in your letter.

Sincerely,



Donald H. Wilson, Esq.



W.A. “Drew” Crawford, Esq.

cc: Polk State College

At 7:42 PM on Monday, April 6, 2015, "LANCE RUSSUM"
<lance.russum@polk.desire2learn.com> wrote

Sorry for the delay, my day has been hectic returning from spring break. As promised here is the feedback for Weeks 11, 12 and now 13. I apologize for the length but I want to as definitive as I can be and most importantly I want you to understand how valuable I consider my students.

1. You are not answering the questions within the parameters of the course. By that I mean that according to the BCI the course is limited to the arts. In this class religion is addressed only from a political/philosophical/historical point of view. Your answers are never in line with the BCI. You were instructed on week one to read the BCI and in a subsequent phone conversation you agreed to follow it. As a student you are OBLIGATED to treat these topics as such. If you want to push a theological agenda or interpretation then you are being academically disingenuous.
2. At first, I chalked this up to the fact of how difficult this must be to take a college level course as a high school student. I can understand that, I can even sympathize with that. I can appreciate that your critical thinking skills are not at the level of many college students. I applaud the effort and have often found that high school students at the end of a semester become some of the better students I have the privilege of teaching. If you remember the phone conversation, you kept saying you wanted to follow the BCI but wanted to add your views on "faith" and you had to be true to your "faith." If you remember I told you that you needed to exhibit academic maturity and you said you would. Your writing however has not. You have convoluted arguments. You have no thesis statements, you write in polemics and most of your answers are filled with logical fallacies and are diatribes about things that are not even being asked of you to write. I have written you feedback of encouragement and I have even advised you on how to write. All of which you have refused. I do not know what else I can do at this point for you.
3. I want to point you to the section on course objectives in the syllabus, it states the following: **You are under no obligation to agree with classmates, authors, or the instructor, in fact, the instructor will often occupy the space of "Devil's Advocate" for the purpose of lively discussion.** Your objective as a student is to take the question, the way and with the intent it is asked, and to answer it based on the parameters of the question within the context of the course. What the above idea of "you are under no obligation to agree" means is that you do not have to hold your answers as enduring truths. For example in my ethics course I ask students to all argue, using a particular theory, for abortion now not everyone in the class would claim to be pro-choice, the point of the assignment is to get them to think critically about ideas they may not personally subscribe to. The same applies to the humanities. I am not asking you to deny your held beliefs I am just asking you to write answers to questions that are asked based on historical and scholarly opinions. This course in no way is a challenge to anyone religious "faith" because it never addresses religion from the standpoint of faith, only from philosophical/political/historical perspectives. What you hold as a faith system is your personal belief about the gods and goddesses. When you write from a faith position your writing is contrary to the BCI. The BCI is what I am obligated to grade you on. Your answers make it impossible for me to grade when you refuse to follow the course objectives. You are the student your role is to learn. You do not get to dictate the content nor the parameters of the questions that are asked of you. I am required, which I gladly adhere to and am thankful for, to follow the BCI.
4. Week 11: You wrote about current historical events. You used terms like Marxism and feminism. These are not even concepts within the minds of the Nuns of this time. All they understand is male leaders oppressing their religiosity because of their gender. The question asks you to contemplate that from their historical moment. You question the authority of a scholar like Tara Patterson who has dedicated her professional life to researching this project. You make accusations about the authenticity of the work as if you somehow have the academic credentials

to do so, all this while you fail to actually address the issue of how these nuns, in the middle ages had to deal with gender oppression.

5. Second you constantly and consistently deny historical evidence. Also in point three you outright say you cannot answer the question. Then you proceed with a discourse on the theological nature of the trinity. Again there is nothing about the theology of the trinity in the question. This is not following the directions.
6. Week 12: You spend the majority of the time defining humanism. The definition of humanism that you claim to be so "allusive" is defined for you on pages 183 to 188 of the text book. This is the definition you were to use as the frame work for the question.
7. In week 12 you claim that humanism was not the "new Faith" of the day but chapter 8 of the text book, again which you failed to use as the guiding foundation for the answer to the question, presents Christian humanism as a new faith. The whole point of Chapter 8 was that Christian humanism did allow for the very things you claim it does not. Also, you seem conflicted in equating Christianity with humanism but had you used the books definitions you would have seen the connection. You seemed to be looking for a way to disassociate the reformation from humanism. The purpose of me asking the question the way I did was so that students would have to acknowledge the power of the protestant reformation and the rational nature from which it is formed. This was an opportunity to defend the logical nature of the thinking of the reformers.
8. Week 13: All of the above apply to Luther. You do not answer the question in the context of the course BCI. You deny Luther his historical and political moment, two aspects of the course.
9. Subsequently you copy your second paragraph from week 13 from week 12's assignment. You use the same sources, this is not acceptable academic writing. This is called "recycling" and is actually a form of plagiarism.
10. Finally many of the sources you use you "cherry pick" from without actually reading the full article, chapter or book. An example would be Cheney who clearly states that Humanism is a moral philosophy which you say it is not. Also you paraphrase or put in a citation in every three lines, this is not original content and some are direct quotes with no quotation marks, again this is not evidence of acceptable college level writing. I have been lenient to a point. I think where you find yourself most lost is when you venture into unknown writings that are outside the purview of the course. I appreciate your desire to find sources, which is required, but you do it to validate an opinion that cannot be substantiated by the core course sources. Try not writing so much. For a 20 sentences minimum paper 35 to 40 sentences with 85% originality easily achieves an A quality paper. You trying to include things from which you have not had the time or training to research and it is affecting your grade. Cherry picking from sources without having done the extensive research to understand the totality of the authors point does not allow you to form a cohesive and logical argument. As I stated several sources you used in Week 13 say the exact opposite of what you have claimed or paraphrased them to mean.

() the above is what you are graded on based on the rubric. I would just like to add for the last time, I know I have mentioned this before, but your disdain for academic scholars who have spent their careers studying these topics is disrespectful. You are entitled to your own opinion and do not have to agree with anything in this course but decorum is what makes academia the place where ideas and knowledge can be exchanged. You are so young, with very limited research under your belt, I plead with you to not see these scholars as enemies but as thinkers. You are not at their level yet and are not capable of engaging them as an equal, so embrace their words for what they are, thought provoking academic resources. Soak it in. Years from now when you have done the actual research, published, received a degree, have at it, but until then be a student and enjoy the process of learning.

If you would allow me one last pedagogical moment, let me to say this, my greatest concern is your unwillingness to actually learn. The BCI is clear when it says students “study and interact with creative achievements,” your writing has not demonstrated you want to study or interact with opinions that differ from yours. You seem to make the assumption that this course is out to deny you your personal faith. I have already addressed this issue but I would like to say this about week 13 to encourage you to think about how academic writing should be but, more importantly, to help you understand how the “faith” you claim actually works. In week 13 you juxtapose history with faith and humanistic rationalism with faith. You say Martin Luther is not a product of history but that in- and-of-itself denies god the sovereignty that Luther and Calvin both claim. Luther would gladly say that he was in the right place and the right time historically because the spirit of history moves at the will of god. Read Luther’s *Bondage and Liberation of the Will*, as well as Hegel. Luther would surely claim that god called him at the exact historical moment he did, because as St Paul claims in the letter to Ephesus, it is before the foundations of the world—history goes according to plan Calvin says in the *Institutes of Christian Religion*. Secondly, faith and reason cannot be juxtaposed or your faith is of no value. When you claim that humanistic rationalism is divergent from faith you weaken faith for all of us.

Think about this: if god, who is sovereign according to the reformation, is the creator of humanity and humanity is in the image of god then the fact that human being possess the capacity to be rational then it necessarily follows that the creator of human reason is rational, that is, god must be rational because we bear gods image and we are rational. If god is rational Grace, then faith will not lead you away from reason but will be a complement to it because as image bearers of the sovereign god of the universe, as Calvin claims him to be, it is both faith and reason the define both god and humanity, *fides et ratio*. Faith then would be rational because that is how god intended it, god intended us to use our reason to explain our faith. Without reason faith cannot be defended and that is why Christian humanism spread the reformation around the world, so that people could rationalize their faith. Do not be so quick to reject that which you have not investigated simply because you fear it. If we cannot reason through questions it is not really the faith of Luther and Calvin because their faith was based in a rational god who had a logical and historical plan for humanity.

Again please address any further quarries with the dean. These are my feedback explanations and are final as far as I am concerned. I have no desire to debate the matter any further. The concluding three paragraphs are nothing more than my thoughts as a concerned professor. You are not graded based on them. I hope you accept them in the spirit in which they are given. I truly wish you the best Grace and I wished that this class could have been a better experince for you. I encourage you to finish stornng, do well on your final. These low grades have not drastically reduced your grade or jeporadized you in terms of passing. The finish line is in front of us. Happy painting and wriitng of the final, I hope you enjoy getting to “know” your artist.

Prof Lj

"The true ethical test is not only the readiness to save the victims, but also-even more, perhaps - the ruthless dedication to annihilating those who made them victims." -Slavoj Zizek