

The AFCON Sentinel

Newsletter of the Academic Freedom Coalition of Nebraska

Volume 28, Number 3

June 2024

“Dear Colleagues” New Guidance on Civil Rights and Free Speech in Education

David Moshman

The U. S. Department of Education Office for Civil Rights has just issued a “Dear Colleagues” letter providing new guidelines on matters at the intersection of civil rights (Title VI of the Civil Rights Act of 1964) and free speech (First Amendment law) with a focus on current issues of Israel, Palestine, and charges of antisemitism. The letter seems to me admirably clear that civil rights law can and must be enforced in a manner consistent with full respect for First Amendment rights, and provides many interesting examples of how this plays out with respect to these current issues.

The letter begins as follows:

“I write to share information about federal civil rights obligations of schools and other recipients of federal financial assistance from the U.S. Department of Education (Department) to ensure nondiscrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics, under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI). These protections extend to students and school community members who are or are perceived because

of their shared ancestry or ethnic characteristics to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry. This guidance responds to recent increases in complaints filed with the Department’s Office for Civil Rights(OCR) alleging discrimination on these bases in schools serving students in preschool through grade 12 and colleges and universities, and public reports of such discrimination. To be clear, Title VI’s protections against discrimination based on race,color, and national origin encompass antisemitism and other forms of discrimination when based on shared ancestry or ethnic characteristics. OCR vigorously enforces these protections.”

The letter includes the following section on First Amendment considerations (citations omitted):

“Nothing in Title VI or regulations implementing it requires or authorizes a school to restrict any rights otherwise protected by the First Amendment to the U.S. Constitution OCR enforces the laws within our jurisdiction consistent with the First Amendment.

“The fact that harassment may involve conduct that includes speech in a public setting or speech that is also motivated by political or religious beliefs, however, does not relieve a school of its obligation to

respond under Title VI as described below, if the harassment creates a hostile environment in school for a student or students.

“Schools have a number of tools for responding to a hostile environment—including tools that do not restrict any rights protected by the First Amendment. To meet its obligation, a university can, among other steps, communicate its opposition to stereotypical, derogatory opinions; provide counseling and support for students affected by harassment; or take steps to establish a welcoming and respectful school campus, which could include making clear that the school values, and is determined to fully include in the campus community, students of all races, colors, and national origins. OCR does not interpret Title VI to require any recipient to abridge any rights protected under the First Amendment. For instance, if students at a public university engage in offensive speech about members of a particular ethnic group and that speech contributes to a hostile environment within an education program about which the university knows or should know, the university has a legal obligation to address that hostile environment for students in school. The university may, however, be constrained or limited in how it responds if speech is involved.

“The age of the students involved and the location or forum may affect how a school can respond in a manner consistent with the First Amendment. Students of all ages have free speech rights, but courts have afforded greater flexibility to elementary and secondary school administrators as they work to ensure an appropriate learning

environment considering a child’s age and maturity. Public elementary and secondary schools have more leeway to regulate student speech, for example, if it could substantially disrupt or interfere with the work of the school or other students’ rights, is lewd or indecent, or is school-sponsored speech.”

For the full letter, see <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>

-----David Moshman, a professor emeritus of educational psychology at UNL, has served on the AFCON board of directors since 1988.



Law Clinic at UNL Will Defend First Amendment Rights

In the fall of 2023, the University of Nebraska College of Law established a First Amendment Clinic for third-year law students. More about that here <https://law.unl.edu/node/4548/>

Director Daniel Gutman updated AFCON on what their students have been working on last semester.

- Our students represented a journalist who was fighting to obtain exhibits offered and received in a criminal trial;
- They filed an amicus brief in the Eighth Circuit Court of Appeals in a criminal case involving a person who was convicted and sentenced to prison for speech-related conduct;
- We currently represent a private individual in a case involving freedom of speech issues on social media platforms; and
- We finished up our first case on behalf of an elected official who was sanctioned by her elected board for speech related conduct.

AFCON

www.academicfreedomnebraska.org

The Academic Freedom Coalition of Nebraska was founded in 1988 to promote intellectual freedom in Nebraska education and research, including freedoms of belief and expression and access to information and ideas.

AFCON Board of Directors

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From the AFCON Constitution, Article I:

The purpose of AFCON shall be to promote academic freedom in Nebraska, defined as intellectual freedom in educational and research contexts. This includes freedoms of belief and expression and access to information and ideas. In pursuit of this general goal, AFCON shall:

1. Support application of the First Amendment in academic contexts, including schools, colleges, universities, and libraries.
2. Educate Nebraskans in and out of Academic settings, citizens and professionals, parents and students about the meaning and value of intellectual freedom, intellectual diversity, mutual respect, open communication, and uninhibited pursuit of knowledge, including the role of these ideals in academic contexts and in democratic self government.
3. Assist students, teachers, librarians, researchers, and others confronted with censorship, indoctrination, or suppression of information or ideas in academic settings.
4. Act as liaison among groups in the State of Nebraska that support academic freedom.

JOIN OR RENEW

Rod Wagner, Treasurer

If you are interested in defending and expanding academic freedom in Nebraska, we welcome you or your organization as a member of AFCON. Annual dues are \$120 for institutions, \$15 for individuals, and \$5 for students. Individual life memberships are available for \$150. You can pay by visiting our website at <https://www.academicfreedomnebraska.org/>

Memberships and donations can also be made by check (payable to AFCON). Send check to AFCON Treasurer, 3901 S. 27th St.,#47, Lincoln NE 68502.

Organizational members are entitled to a representative on the AFCON board. We also have at-large board members. You may express your interest to the president to be considered for appointment to the board.

Local Links

History Nebraska Bill to Shift Agency Control to Governor is Amended to Guard Academic Freedom

<https://www.newsfromthestates.com/article/history-nebraska-bill-shift-agency-control-governor-amended-guard-academic-freedom>

National Links

“Scary”: Public School Textbooks the latest Target as US Book Bans Intensify

<https://www.theguardian.com/us-news/article/2024/may/19/us-public-schools-texas-book-bans>

Interview with Greg Lukianoff of FIRE

https://www.nytimes.com/2024/05/06/opinion/greg-lukianoff-campus-speech.html?unlock_ed_article_code=1.qE0.uSyo.AXx2ZahdCysG&smid=nytcore-ios-share&referringSource=articleShare

With Schools in Ruins, Education in Gaza Will Be Hobbled for Years

<https://www.nytimes.com/2024/05/06/world/middleeast/gaza-schools-damaged-destroyed.html>

FIRE’s Statement on Violence and Arrests on Campus

<https://go.thefire.org/webmail/869921/1641530487/81ad09a900d19bcbc55310a1892ad26485d56a7381456df5eeea738481b6e1a5>

These New Attacks on Academic Freedom May Be Just the Beginning

<https://www.newagebd.net/post/opinion/235647/these-new-attacks-on-academic-freedom-may-be-just-the-beginning>

**Academic Freedom Coalition of Nebraska
Board of Directors Meeting
Via Videoconference
May 11, 2024**

Present:

Peggy Adair, secretary, legislative liaison

Nancy Comer, representing Nebraska State Literacy Association

Bob Haller, chief baker, director at large

Dave Moshman, policy coordinator

Wyatt Packard, president-elect, representing Nebraska Library Association

Todd Schlechte, webmaster, director at large

Rod Wagner, treasurer, representing Nebraska Center for the Book

Vicki Wood, immediate past president, director at large

MINUTES

President-elect Wyatt Packard called the meeting to order at 10:04 a.m.

MINUTES: A motion was made by Moshman, second by Schlechte, to approve minutes of the AFCON board meeting held on March 9, 2024. Motion carried on a voice vote.

TREASURER'S REPORT: Wagner presented the treasurer's report. Balance on hand as of May 10, 2024, is \$3,209.04.

STATE BOARD OF EDUCATION REPORT: Comer reported upcoming elections this year could shift the dynamics of the state board and also of local boards of education.

POLICY COORDINATOR: Moshman reported the recent UNL student-led event focusing on the Israel-Gaza war went well and followed UNL policy. Moshman refreshed the board on UNL's problematic free expression policy, which, Moshman noted, is mostly about limiting free expression. Moshman reported the college demonstrations across the country, in general, are a legitimate exercise of free speech but are no substitute for serious academic discussion. Universities cannot stop the war, but they have an obligation and opportunity to educate people on controversial topics. Moshman suggested AFCON should closely monitor how schools in Nebraska and across our nation are offering forums for education and expression on the Israel-Gaza conflict.

PAST PRESIDENT'S REPORT: Wood reported she spoke at a League of Women Voters' Lunch and Learn event and was wildly received by a crowd of 80 raucous people.

SENTINEL: Wood reported the deadline for articles to be published in the June edition of the *Sentinel* is May 24, 2024.

MEMBER ORGANIZATIONS:

Nebraska Library Association – Packard reported Advocacy Day garnered excellent attendance. The NLA is working to grow the organization through strategic planning. Packard has been selected to represent Nebraska in his capacity as public librarian to attend the ALA Law for Librarians training program in Chicago. (Congrats!)

There being no further business, the AFCON board meeting adjourned at 11:00 a.m.

Respectfully submitted,
Peggy Adair, Secretary



The AFCON Sentinel is the newsletter of the Academic Freedom Coalition of Nebraska, published bimonthly in February, April, June, August, October, and December. Unless otherwise indicated, articles represent the views of the authors. All issues of the AFCON Sentinel are available here:

<https://www.academicfreedomnebraska.org/the-sentinel.html>

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