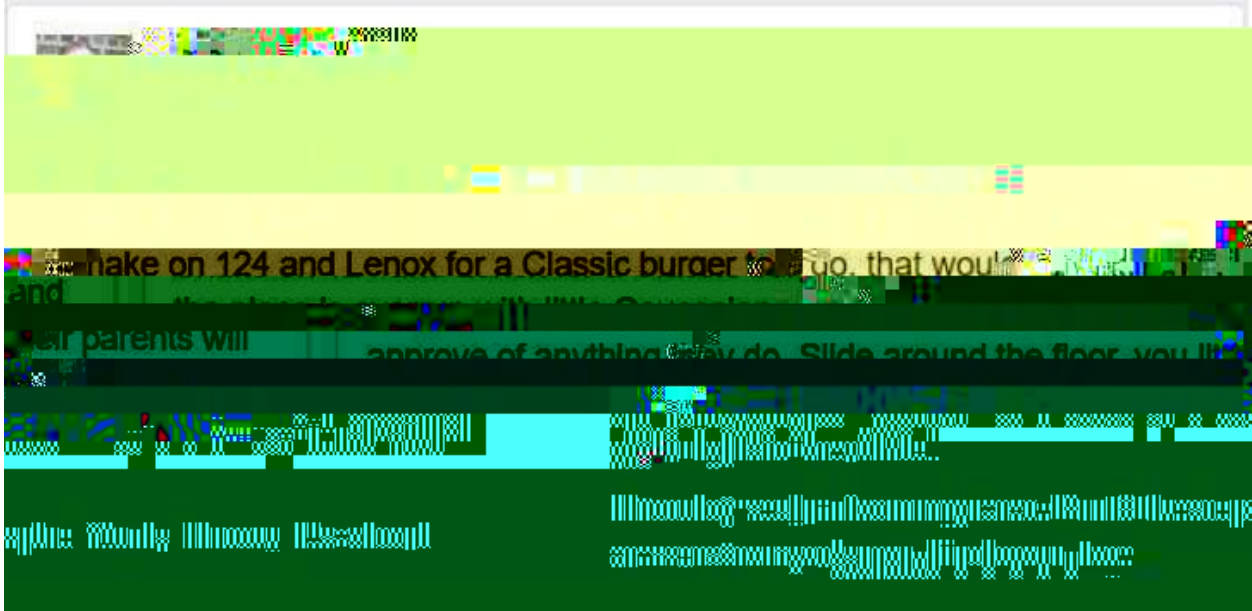
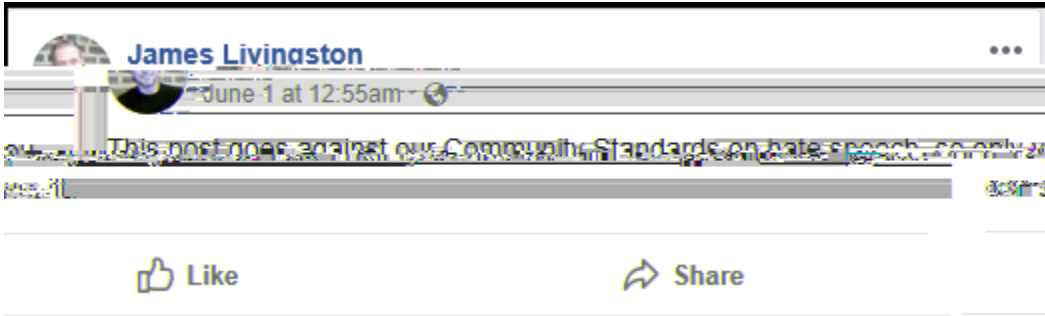


R



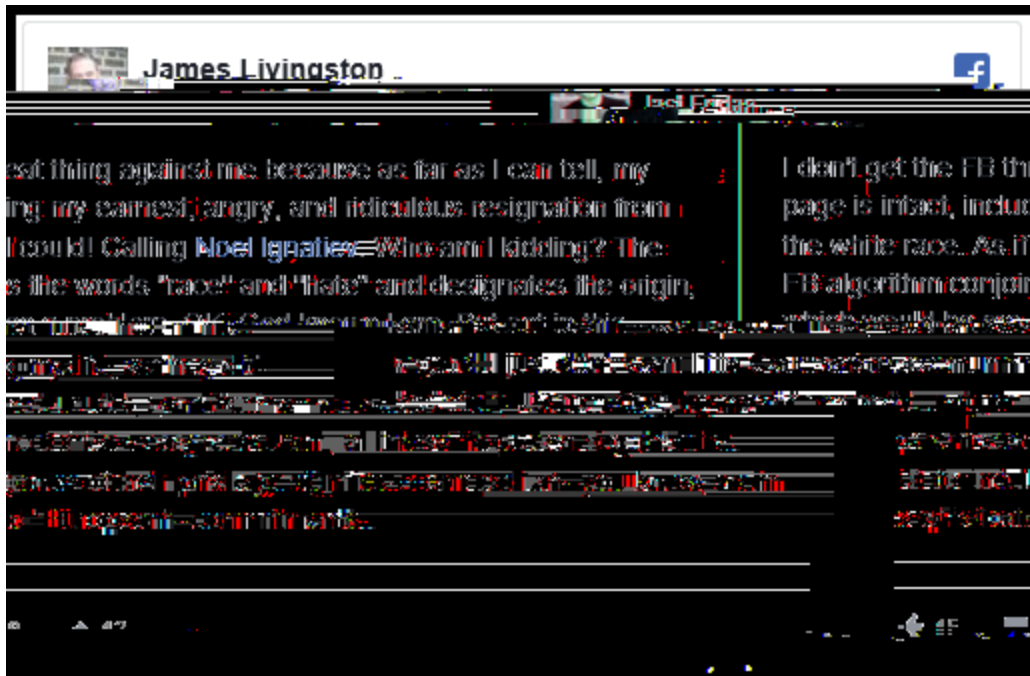
Professor Livingston explained during his OEE interview that he meant the post to be satirical, as it is obvious he cannot “resign” from being white. He stated that he only wished to convey his dismay at the gentrification of his neighborhood.

The following day, Facebook removed his post for violating its Community Standards on hate speech, which it defines as: “direct and serious attacks on any protected category of people based on their race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or disease.”¹



In response, Professor Livingston wrote the following on his Facebook page:

¹ See <https://www.facebook.com/notes/facebook-safety/controversial-harmful-and-hateful-speech-on-facebook/574430655911054>



III. Analysis on Remand

The university's Policy Prohibiting Discrimination and Harassment ("Policy"), Section 5 (A), defines "discrimination" as:

... an intentional or unintentional act which adversely affects employment or educational opportunities on the basis of membership in one or more protected classes. Rutgers provides equal employment opportunity to all its employees and applicants for employment regardless of their race, religion, color, national origin, ancestry, age, sex, sexual orientation, pregnancy, gender identity and expression, disability, genetic information, atypical hereditary cellular or blood trait, marital status, civil union status, domestic partnership status, military service, veteran status, and any other category protected by law.²

The Policy further defines "harassment" in Section 5 (B) as:

... conduct directed toward an individual or group based on membership in one or more protected classes. Such conduct must be sufficiently *severe or pervasive* to alter an individual's employment conditions, or a student's educational opportunities which, in turn, creates an unreasonably intimidating, offensive, or hostile environment for employment, education, or participation in University activities. (emphasis added)

² Policy Prohibiting Discrimination and Harassment – 60.1.12 available at <http://uhr.rutgers.edu/sites/default/files/userfiles/policyprohibitingdiscrimin.pdf>.

Harassment can include, among other things, racial slurs or offensive or derogatory remarks about a person's race or color. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal and a violation of University Policy when it is so frequent or severe that it creates a hostile or offensive work environment or

iii. *Whether threatening, humiliating, intimidating, or otherwise went beyond rudeness or casual joking*

While Professor Livingston alleged that he was attempting to make a humorous commentary on gentrification, his language was offensive and racially-charged. I maintain that his comments went beyond the bounds of rudeness or casual joking.

iv. *Whether the harassment was directed at more than one individual*

Professor Livingston's statements were arguably directed at "white people" generally. However, he did not reference any individual specifically or comment on University students or employees. Indeed, his comments were directed at small children and their parents

Weighing all the factors set forth above, I find that Professor Livingston did not violate the University's Policy Prohibiting Discrimination and Harassment.

Given the absence of a Policy violation, the issue of Professor Livingston's First Amendment protections to make such statements need not be addressed.