



Office of the President

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VIA FACSIMILE AND U.S. MAIL

November 14, 2005

Peggy A. Lautenschlager
Attorney General
17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857

Re: Resident Assistants at UW-Eau Claire

Dear Attorney General Lautenschlager:

I am writing concerning the practices of the University of Wisconsin-Eau Claire ("University") with regard to resident assistants (RAs) leading certain activities in the dormitories where they are employed. RAs are university employees who are responsible for providing support and assistance to dormitory residents, and for supervising and enforcing rules within the residence halls. For a number of years, the University has prohibited RAs from leading, organizing or recruiting students for certain activities in their own dormitory rooms and in the residence halls in which they work. This prohibition applies to all activities, regardless of viewpoint, including such activities as partisan politics, religious studies or "sales party" events. RAs remain free to participate in, or lead, any such activities or organizations elsewhere on campus. They may also participate in activities within their dormitories, outside their own rooms.

While the practice at the University has not been reduced to writing, it has been reiterated in the training provided for RAs at the beginning of each academic year (Attachment 1). Similarly, the University Wisconsin-Madison House Fellow Manual (Attachment 2) specifies the conditions of employment for house fellows (a group having responsibilities like those of RAs), which includes restrictions on leading and organizing activities within the particular residence halls unit where they work. There is, however, no uniform UW System policy on this subject, and practices appear to vary from institution to institution.

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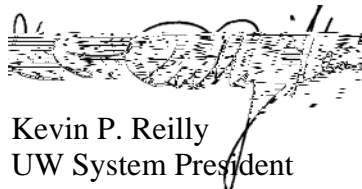
they are required to be "on call" for the students they serve when they are present in the dormitory. Organizing and leading student activities from their own rooms and residence halls might well result in residents feeling undue pressure to participate, and might undermine the resident assistant's employment responsibility to provide a welcoming and supportive environment for all residents.

Recently, however, it has been suggested that such practices or policies might interfere with rights of RAs protected under the First Amendment to the United States Constitution. Specifically, concerns have been raised as to whether, to the extent that they would preclude RAs from conducting Bible studies in their dormitory rooms, such practices or policies constitute improper viewpoint discrimination (Attachments 3 and 4) or would infringe on the free exercise of religion by RAs. Related concerns are whether, or to what degree, permitting religious activity in the circumstances of RA employment, might contravene the establishment clause of the First Amendment.

Consistent with the decision of the United States Supreme Court in *Widmar v. Vincent*, 454 U.S. 263 (1981), the University and all UW System institutions have made available campus facilities for use by student religious organizations. Moreover, in light of *Rosenberger v. Rectors and Visitors of the University of Virginia*, 515 U.S. 819 (1995) and *Southworth v. Board of Regents*, 529 U.W. 217 (2000), the UW System and its institutions have taken care to avoid viewpoint discrimination among student organizations and to assure that student fees are distributed in a viewpoint neutral manner. In addition, the UW System is committed to ensuring that its policies are consistent with such employment law decisions as *Employment Division v. Smith*, 1210 S. Ct. 1595 (1990), Title VII of the Civil Rights Act of 1964, as amended, and the Wisconsin Constitution.

Recognizing the importance of the issues involved here, the University has indicated that it will review, clarify and reduce to writing its own RA employment practices during this academic year. Given the apparent similarity between the University practice and some policies elsewhere in the UW System, however, and to provide guidance for all UW institutions, I am requesting your written opinion as to whether the University's practice is consistent with First Amendment standards.

Sincerely,



Kevin P. Reilly
UW System President

Attachments

cc: Regent President David Walsh
Interim Chancellor Vicki Lord Larson