



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

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December 21, 2017

Travis Apgar, Asst. Vice President & Dean of Students  
4717 Academy Hall  
Troy, NY 12180

## **Concerns Regarding Student Rights and Due Process**

Dear Dean Apgar:

The New York Civil Liberties Union has been contacted by several different individuals (including five students and two alumni) concerning recent events at Rensselaer Polytechnic Institute (RPI.) We want to express our grave concerns about credible reports that the Institute has been violating its own policies on free expression and due process in a very serious and disingenuous manner.

While we are aware that the Institute is a private university and thus the First Amendment does not explicitly apply, it is also true that the Institute is contractually bound to uphold the promises made to students in the Rensselaer Handbook of Student Rights and Responsibilities, which includes the Student Bill of Rights.

It appears that RPI has violated the Student Bill of Rights as well as the disciplinary policies contained in the Handbook, and otherwise acted improperly in various ways, including in its response to two particular incidents: the distribution of flyers in the Burdett Avenue Residence Hall (BARH) on October 2, 2017, and the peaceful protest on October 13, 2017.

### **October 2, 2017 Distribution of Fliers & RPI Response**

On October 2, 2017, approximately six RPI students were distributing Save the Union fliers in the BARH residence Hall at around 11:30 pm. There appeared to be no problem with this until four days later when Dean Cary Drescher filed an Incident Report against one of them, Michael Gardner. The Report against Mr. Gardner *did not* reference any purported policy violations, simply stating "Michael and \_\_\_ were found in Barh placing 'save the union' flyers under the doors of first year students." (Documentation is available upon request.)

On October 20, 2017, Dean Drescher wrote Michael Gardner a letter stating that he was being referred to Judicial Process for possible disciplinary action, stating that there were "possible violations of solicitation rules and universal access restrictions in the residence halls."

One day later, on October 21, 2017 another Incident Report, filed by a BARH Resident Assistant (RA) whose name is redacted (and which is labeled "UNAUTHENTICATED") stated that on October 2, several students had been distributing Save the Union Flyers in BARH, and that an RA told them to quiet down (which they apparently did) as it was after quiet hours. There did not appear to be any concern about the distribution of the flyers.

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Subsequently, a different Dean, Cynthia Smith, took over the case and wrote Mr. Gardner a letter on October 26, 2017 stating that she would be conducting his Judicial Inquiry, and stating the Grounds for Disciplinary Action were alleged violations of the policy on Operating a Business and the Visitor Policy, including links to said policies on the RPI website.

Mr. Gardner met with Dean Smith on November 3 and 17, 2017. On November 29, 2017, Dean Smith wrote him a letter, stating, “[I]t has been determined that this will be resolved informally and that no further judicial process is necessary.” However, the letter went on to state that Mr. Gardner must comply with “Institute policies, including the following”:

1. [the Visitor Policy] which the letter alleges means that permission is required from a resident or from the Office of Student Living and Learning in order to enter a residence hall;
2. *“Students and other guests must receive prior authorization from the Office of Student Living and Learning to post or distribute information in a residence hall.”*

Another student, Bryan Johns, received a letter from Michael Arno, Director of Student Rights, Responsibilities and Judicial Affairs, on December 5, 2017 with regard to the October 2, 2017 flyer distribution, which stated:

“I am writing to inform you that you were recently identified as being present at an incident that occurred in the ...BARH on October 2, 2017. Specifically it was reported that you were among a group of students that gained access to BARH and were distributing flyers without the authorization of the Office of Student Living and Learning. I am not referring this matter to the judicial process, however I did want to ...remind you that you have a responsibility to understand and comply with all Institute policies, including the following: [quoting the same two alleged policies referenced in the November 29, 2017 letter to Michael Gardner.]

A December 7, 2017 email from Michael Arno to Bryan Johns claims that the “prior authorization” policy somehow falls under the Operating a Business Policy which states

“No outside organization or person may solicit in residence halls or apartments.” Clearly, that does not apply as this was not solicitation or anything related to a business, but the distribution of information of importance to students, and was not done by outside people, but by students.

*We are concerned because (as seen in attached list of RPI Policies): 1) the alleged policy regarding prior authorization before distributing flyers in residence halls **does not actually seem to exist** and it also seems to be in violation of the Student Bill of Rights, which guarantees free expression. It is very worrisome that RPI would essentially make up a non-existent policy to try to chill free expression by students, and then resort to such absurdities as claiming it falls under the policy on Operating a Business; 2) the Visitor Policy is not clear, as it seems to apply only to visiting student **rooms**; 3) it appears that Michael Gardner and Bryan Johns may have been*



*singled out in a retaliatory manner based on prior events; 4) the Judicial Process rules indicate that the student **must agree** for a case to be resolved informally – that did not occur in Michael Gardner's case; and 5) the letters which warn that an apparently non-existent policy must be followed in the future chill free expression.*

### **October 13, 2017 Peaceful Protest**

On October 13, 2017 hundreds of students and other community members gathered for a peaceful protest organized by Save the Union. Bryan Johns had attempted to obtain a permit for the protest, but was denied a permit for any protest on that date. It was important for the group to have the protest on the 13<sup>th</sup> so that they could let alumni (there that day) know what RPI was trying to do to the Student Union.

A couple days before the 13th, RPI put up fences in an attempt to keep protestors far from the alumni. The protest occurred and according to all accounts was very peaceful and non-disruptive. Some individuals moved the fence so that the protestors could be seen by the alumni.

Michael Arno, Director of Student Rights, Responsibilities and Judicial Affairs, observed the protest and, upon information and belief, did not tell any of the protestors that they shouldn't be there, or that they shouldn't have gone through the fence. In addition, former Dean Eddie Knowles apparently invited the protestors to come closer so that they could participate in singing with him. Also, upon information and belief, an Assistant Troy Police Chief told student Dan Seel, "You've won this battle, stay on the grass and you'll be fine."

However, approximately one month later, two students (Michael Gardner and Bryan Johns – interestingly the same two who were charged with regard to the flyer distribution) were charged with disciplinary violations regarding the protest, and several other students received letters saying they had been identified as having attended the protest, and requesting that they meet with administrators to be questioned.

On November 8, 2017 Associate Dean Michael Sitterley wrote a letter to Michael Gardner stating that he was being referred to Judicial Process based on the October 13 protest. It stated:

"The reported Ground for Disciplinary Action violations are:

1. Trespassing. Grounds for disciplinary #3 as defined in the Rensselaer Handbook of Student Rights & Responsibilities.
2. Violation of a Published Rensselaer/Student Government Policy or Regulation. Grounds for disciplinary #17 as defined in the Rensselaer Handbook of Student Rights & Responsibilities. Specifically the rules for Maintenance of Public Order on Page 28 of the Handbook of Student Rights & Responsibilities.
3. Failure to Comply. Grounds for disciplinary #15 as defined in the Rensselaer Handbook of Student Rights & Responsibilities."

Mr. Gardner and Bryan Johns were provided with copies of a November 1, 2017 Incident Summary by Director Michael Arno, which stated:

“A peaceful demonstration... occurred on the Rensselaer campus on October 13, 2017. ...An application to hold this demonstration on October 13, 2017 was submitted... and denied by the Dean of Students, Travis Apgar... During the demonstration it is reported that demonstrators moved a barrier and entered a restricted area of campus in the area of the VCC [Voorhees Communication Center.] When the demonstrators entered a restricted area of campus, professional staff was instructed to identify demonstration participants. ...

Upon review of the information provided..., the information available online, and the information from the video footage, Bryan Johns and Michael Gardner appear to be involved in the leadership of the protest. Specifically, Michael Gardner is identified in online photos using bullhorn to communicate with demonstrators and Gardner is identified as a protest leader on Channel 10 news... Johns submitted the application for a peaceful demonstration, is seen in online photos present at the protest, and is featured on Channel 6 news... *There is not information provided that indicates Johns and Gardner displayed actions to prevent the demonstrators from entering the restricted area of campus or to encourage demonstrators to leave the restricted area of campus. In addition, there is no information presented that indicates Johns or Gardner, presented alternate dates to hold the demonstration/protest.*”

[The Summary ends with a redacted list of students alleged to have been at the protest.]

On December 12, 2017 both Michael Gardner and Bryan Johns received a letter from you, Mr. Apgar, stating, “Associate Dean Sitterley has asked that I share the December 1, 2017 Judicial Inquiry outcome with you,” and stating that the preponderance of the evidence *does not* support finding the students responsible for *any* of the alleged violations.

That resolution is certainly a welcome development, however, the letter goes on to state that while the Institute “respects your right to free expression....that does not mean that students who wish to speak publicly are free to do so at a time, place and manner of their choosing without regard to Institute rules designed to ensure safety and non-disruption.”

*As discussed below, we are concerned because: 1) the cited Grounds for Disciplinary Action (#3, 17 and 15 on Page 9 and 28 of the Handbook) clearly do not fit the factual allegations of attending/leading a peaceful protest; 2) the charges appear to violate the Student Bill of Rights; 3) again, it appears that Michael Gardner and Bryan Johns may have been singled out in a retaliatory manner based on prior events; 4) The Handbook states (on Page 29) that the Dean or designee shall monitor demonstrations and if s/he determines that any rules are being violated will ask the participants to modify their behavior – this was not done, likely because no rules were being violated; 5) it is chilling to charge students with failing to prevent others from doing something; 6) while the December 12 letters absolving the students are greatly appreciated, there was no apology, and there is no guarantee that false charges like this couldn’t be filed again in the future; and 7) it is chilling to send letters to students saying that they were identified as having been at a peaceful protest, and requesting to question them.*



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In conclusion, we would welcome an opportunity to meet with you to discuss this. It appears that the Institute made some serious mistakes in handling this situation. It also appears, based on the recent judicial inquiry findings (that the two students charged in regard to the protest did not actually violate any rules) that there may be a recognition that the filing of these spurious charges was inappropriate. However, we are still concerned that situations like this may arise again in the future, and we would like to work with the Institute to keep that from happening.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kathy Manley", with a long, sweeping horizontal stroke extending to the right.

Kathy Manley  
Vice President, NYCLU CRC

Enc.

Cc: Michael Gardner  
Bryan Johns  
President Shirley Ann Jackson