



Position Statement on Penn State's Motion to Dismiss

The Pennsylvania State University recently filed a motion to dismiss the *Harris v. Portland, Curley, and The Pennsylvania State University* lawsuit.

In the official brief the University argues that Penn State policies, including AD42 that contains the nondiscrimination statement and harassment policies, does not apply to Harris through the Penn State-Portland contract. The brief clarifies that University policies at issue in the case were not actually part of the employment contract between Penn State and Rene Portland; thus, Portland is somehow exempt from this condition of employment. Further, the University asserts "Mere administrative provisions in a personnel manual or policy handbook simply do not rise to the level of agreement by which an employer must provide" (p.33). What, then, constitutes the foundations upon which people are held accountable to University principles?

While the official legal position of the University selectively attempts to free Rene Portland and the institution from legal culpability, it also broadly calls into question historically held interpretations of policies which are central to the mission of the University. Furthermore, this move suggests a morally relative landscape upon which discriminatory acts may be justifiable and left unchecked by institutional practices. The Commission on Lesbian, Gay, Bisexual and Transgender Equity (CLGBTE) has a clear stake in addressing the current situation. In December 2005 the commission urged the University to uphold its nondiscrimination and harassment policies and offered its support to the University and community.

The legal grounding currently employed by University legal counsel, and endorsed by administrators, must be critically examined. The language used in this brief raises significant ethical issues that concern all members of our community. There are actual consequences to the language used in the brief, including the weakening of standards by which students, staff, faculty and administrators are implicitly and explicitly expected to abide. Unfortunately, such consequences are not evenly experienced or perceived across all levels of our institutional hierarchy. The effect of such language cannot be overlooked. As an academic institution that claims to operate from ethical principles, those empowered to make decisions on behalf of Penn State must be willing and capable of addressing recent questionable actions. The integrity of our work as students and educators is at stake.

The University seems to recognize the need for communication with the University community about the recent filing. In a statement released on Wednesday, February 22, 2006, the University said, "The recent filing in federal court of a Motion to Dismiss on

behalf of the University is in no way inconsistent with the University's continuing commitment to affirmative action and nondiscrimination." However, further discussion is necessary to clarify, because on the surface, it appears as though these are inconsistent. We recommend further open discussion on the University's official legal position. This is, at minimum, a place from which to begin restoring integrity to our communities. Those who are persistently dedicated to addressing discrimination and harassment deserve opportunities to safely voice their concerns.

The CLGBTE reiterates its commitment to challenging discrimination and harassment and asks that all members of our University examine "The Penn State Principles" (www.psu.edu/ur/principles.pdf) to ensure that we are doing our part to make Penn State a safe and welcoming place for everyone. Simply tolerating people who are perceived to be different is not enough; we have to learn to respect one another. The ethical issues raised by the University's brief provide an opportunity for the entire community to practice diligence in becoming more respectful of those who are in some way different from what we are accustomed.

The commission encourages and welcomes questions and concerns on topics related to LGBTQA communities, as well as all traditionally underrepresented groups.

Meetings are open to the public and the schedule can be found at www.equity.psu.edu/clgbte.