



April 10, 2017

Mr. Glenn I. Kerbs
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1715 Central Avenue
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**Re: Dodge City Community College's English-only Policy for Cosmetology Students
Our File No.:17-0008101**

Dear Mr. Kerbs:

Thank you for your letter dated March 22 in response to my letter of concern and open records request dated March 14. I have now had a chance to review the Dodge City Community College ("DCCC" or "college") cosmetology program's student handbook and the forms that the college requires its cosmetology students to sign. I have also had a chance to gather additional facts concerning the implementation of the cosmetology program's English-only rule.

Facts

Here are the facts as I currently understand them:

1. DCCC admits a maximum of 25 students into the cosmetology program each semester, specifically in August and January. The vast majority of recently admitted DCCC cosmetology students (between 80 and 85%) are Hispanic.
2. All cosmetology students are licensed as apprentices by the Kansas State Board of Cosmetology.
3. The cosmetology program requires students to clock in and out each day.
4. For day students, the cosmetology program's hours are 8:00 a.m. until 4:00 p.m., Monday, Tuesday, Wednesday, and Friday, and 8:00 a.m. until 5:30 p.m. on Thursday. Night students' hours typically start at 3:30 p.m.
5. Students get a 45 minute lunch break from 11:30 to 12:15 each day. In addition, "[i]f scheduling allows, there will be two fifteen-minute breaks given each day."
6. DCCC's cosmetology students have three separate learning environments: a) a classroom in which they study the theory of cosmetology using standard pedagogical methods; b) a hands-on learning classroom in which they practice cosmetology techniques using mannequins; and c) a salon in which they perform cosmetology services on live clients.

7. Students attend theory classes from 8:15 to 11:30 a.m. on Monday, Tuesday, and Thursday.
8. An instructor is normally present throughout all of the classroom time devoted to the teaching of cosmetology theory.
9. During the practice time using mannequins, the students are usually by themselves, and an instructor is not normally present. In that setting, instructors pop in and out of the room occasionally.
10. During the time cosmetology students spend on the salon floor, an instructor is normally present.
11. The DCCC's Cosmetology Student Handbook for Spring semester 2017 includes the following policy:

LANGUAGE OF APPRENTICE

Students of Cosmetology are licensed apprentice. As such, students are directed to converse in the Language of Apprentice with clients and fellow students. This means students will converse in English during school hours, unless the client receiving services indicates that she/he prefers not to converse in English. During breaks or student's own time, this rule does not apply.

12. All DCCC cosmetology students are required to sign a form acknowledging the above-quoted policy. The acknowledgement form states that "apprentices (students) are directed to extend the courtesy to converse in the *Language of Apprentice* with clients and their fellow students." It also provides that "Our students shall converse in English *during school hours* unless the client receiving services from them indicates that she/he prefers *not* to converse in English" and that "This rule will not apply during a student's breaks or student's own time."
13. While the students are in the hands-on learning classroom, they often speak Spanish to one another because that is the primary language of the majority of the students currently enrolled in the cosmetology program. When an instructor pops into the classroom and hears students speaking Spanish, the instructor typically upbraids the students involved by saying "no Spanish, English-only" or words to that effect.
14. Many of the clients of the salon speak Spanish as their first language. In fact, it is quite possible that a majority of the salon's clients speak Spanish as their first language since the cosmetology program's staff strongly encourages students to recruit their family members and friends to come to the salon for their cosmetology needs and since those family members and friends often prefer to speak Spanish.

15. When cosmetology students walk to the restroom from the hands-on learning classroom, they must walk through the salon. If they speak Spanish while they are passing through the salon on the way to the restroom, the teacher in the salon typically says “no Spanish,” “English-only,” or words to that effect.

Continuing Concerns

As an initial matter, the “Language of Apprenticeship” policy is vague and inherently contradictory.

First, although the policy provides that “students are directed to converse in the Language of Apprenticeship with clients and fellow students,” it does not define the operative term, “Language of Apprenticeship.” Because a student could reasonably interpret that term to mean the student’s first language, which might be a language other than English, the policy is vague.

Second, the policy directs students to “converse in English during school hours, unless the client receiving services indicates that she/he prefers not to converse in English.” But the policy does not define “school hours.” Students may reasonably interpret “school hours” to mean all hours during which they are at DCCC, for instance 8:00 a.m. until 4:00 p.m. on Monday, Tuesday, Wednesday, and Friday. Although the policy does state that “[d]uring breaks or student’s own time, this rule does not apply,” the policy does not define “student’s own time.” In addition, it is unclear whether “this rule” refers to the general English-only requirement or the *proviso* that allows students to speak another language with a client who “prefers not to converse in English.”

The main problem, however, is that the English-only rule is unconstitutional and unlawful as written and enforced. As I noted in my original letter, college students have much broader rights of free speech under the First Amendment than do primary and secondary school students. *Compare Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (high school students’ constitutional rights “are not automatically coextensive with the rights of adults”) with *Healy v. James*, 408 U.S. 169 (1972) and *Papish v. Board of Curators*, 410 U.S. 667 (1973) (free speech clause applies with full force to college students). In addition, people in the United States have a constitutional right to speak a language other than English. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bartels v. Iowa*, 262 U.S. 404 (1923); *Farrington v. Tokushige*, 273 U.S. 284 (1927).

Moreover, Title VI of the Civil Rights Act prohibits national origin discrimination. 29 U.S.C. § 2000d. The Equal Employment Opportunity Commission (EEOC) has restricted English-only policies in regulations enforcing the national origin discrimination prohibition of Title VII of the Civil Rights Act. *See* 29 C. F. R. § 1606.7. The EEOC’s regulation recognizes that “[t]he primary language of an individual is often an essential national origin characteristic” and that “[p]rohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual’s employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.” 29 C. F. R. § 1606.7(a). An English-only policy that applies only at

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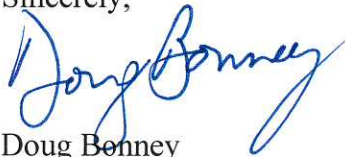
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certain times is permissible “if the employer can justify the rule by showing business necessity.” *Maldonado v. City of Altus*, 433 F.3d 1294, 1305 (10th Cir. 2006), citing 29 C. F. R. § 1606.7(b). Although these EEOC regulations do not directly control the application of Title VI to DCCC’s English-only rule, courts have looked to the EEOC regulation in considering Title VI challenges to English-only rules. *See Silva v. St. Anne Catholic Sch.*, 595 F. Supp. 2d 1171, 1183 & n.2 (D. Kan. 2009).

Because English-only rules often visit harm on students whose first language is not English, the ACLU asks that DCCC reconsider and revise its English-only policy. At the very least, the administration should rewrite the policy so that it is clear in its directions to students. In addition, however, the ACLU believes that the administration should limit any English-only rule to situations in which the college’s real interests and educational necessities require the speaking of one language. Specifically, the ACLU acknowledges that DCCC has such an interest when the cosmetology students are in a regular classroom environment learning cosmetology theory. The ACLU also acknowledges that DCCC has a business necessity for requiring students working in the salon to speak the language preferred by the client. But, in the hands-on learning environment where students work on mannequins and have very limited supervision and instruction by teachers, DCCC lacks the required educational necessity to require that students speak English-only. Furthermore, cosmetology teachers and staff should not reprimand students who speak Spanish while passing through the salon on their way to the restroom because at those times the students are on their “own time” and should be free to speak Spanish or whatever language they prefer.

Please contact me if you have any questions about this letter. I would be happy to discuss these issues with you at any time, and I look forward to a further response from the college regarding the points I have raised here.

Sincerely,



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