



PEN America

PRINCIPLES ON CAMPUS FREE SPEECH

PEN America's Principles on Campus Free Speech were originally developed as part of our landmark 2016 report, *And Campus for All*. We add to these principles here to reflect changing dynamics and new challenges on U.S. campuses.

OVERVIEW

- While free speech is alive and well on campus, it is not free from threats, and must be vigilantly guarded if its continued strength is to be assured.
- Current campus controversies merit attention and there have been a significant number of troubling instances of speech curtailed amid what seems to be an increasingly tense campus environment. But these controversies in many cases represent campus communities sorting out differences in values, however heatedly. They represent an area of serious concern but not a wholesale “crisis” for free speech on campus.
- At times, protests and forms of expression are treated as if they are incursions on free speech when in fact they are manifestations of free speech.
- Many of today's campus controversies that implicate free speech and the First Amendment are fueled by legitimate concerns about racism, discrimination, inclusion, and inequality. The failure at times to recognize these factors may impair efforts to defuse conflict and safeguard free speech.
- Free expression should be recognized as a principle that will overwhelmingly serve not to exclude or marginalize minority voices, but rather to amplify them. Free

speech protections have been essential to the movements to counter racism, redress inequalities and advance social justices.

- By acknowledging and addressing legitimate concerns regarding racism and bigotry in the context of free speech debates, universities can help ensure that the defense of freedom of expression is not misconstrued as a cause that is at odds with movements for social justice.

THE CAMPUS CLIMATE

- Administrators must look hard at how physical barriers, historical traditions, inequalities, prejudices, and power dynamics can weigh against openness, and take concrete steps to alleviate those burdens.
- Campus discourse should be predicated on the presumption of respect for differences, including differences of view that cause disagreement.
- Respect entails an obligation to listen to understand what words may cause offense to others and why, and to conscientiously consider avoiding such words when no offense is intended.
- The duty of care involved in understanding different perspectives and learning to anticipate where offense might be caused is heightened for administrators and faculty when they are

carrying out institutional duties.

- Violence, threats, and harassment are never appropriate. However, vociferous, adamant, and even contentious argument and protest have their place.
- College should be acknowledged as a time for students to engage with new ideas and participate in robust debates, which can involve testing boundaries and experimenting with forms of speech and activism. As such, consequences for errors of judgment should be commensurate, and geared toward the possibility of learning and future improvement.
- An environment where too many offenses are considered impermissible or even punishable becomes sterile, constraining, and inimical to creativity.
- So-called “free speech zones,” wherein schools limit activities such as pamphleteering or spontaneous demonstrations to contained areas on campus, may violate the First Amendment and contravene principles of free speech.
- Schools should refrain from establishing policies or imposing facially neutral rules that either intend or have the effect of discriminating against speakers based upon the content of their speech.
- Administrators should ensure equitable space and opportunities

for diverse political perspectives and thought.

HATEFUL SPEECH

- Hateful speech that is intended to menace, intimidate or discriminate against an individual based upon a personal characteristic or membership in a group can impair equal access to the full benefits of a college education and the ability of all students to participate in campus discourse.
- In an environment of rising incidences of hateful speech and hate crimes nationally, the potency of individual instances of hateful speech on campus can be heightened, increasing the psychological harm that such speech can cause and underscoring the importance of effective institutional responses.
- That some individuals may experience offense or insult or negative feelings such as anger, resentment, frustration, or discouragement in response to others' speech is not sufficient grounds to limit that speech, because by its nature speech frequently does give rise to such feelings.
- Conflating the expression of controversial or even offensive viewpoints with hateful speech can result in the suppression of open discourse and trigger a backlash from groups whose expression is deterred or punished despite not being intentionally hateful.
- Administrators have an imperative to be responsive to threats, hateful intimidation, and students' encounters with overt racism and other forms of discrimination. This responsiveness is imperative to nurturing an environment where

all feel empowered to participate in the free exchange of ideas and opinions.

- Effective responses to hateful speech include counter-messaging, condemnations, direct support to targeted individuals and groups, dialogue, and education. In the case of hate crimes, harassment and any other conduct that violates the law, aggressive disciplinary response is warranted.

CAMPUS SPEAKERS

- Campuses, both public and private, should keep their platforms accessible to a wide variety of academic and popular opinions, while fostering a culture where speech and reasoned debate are seen as the best tools for confronting mistaken, wrongheaded or hateful ideas.
- A decentralized approach to campus speakers, where student groups, academic departments, classroom teachers and others are free to invite whom they wish to campus without having to receive prior administrative approval can help foster exposure to the widest breadth of ideas, although student groups will usually benefit from consultation with a faculty adviser.
- When an invited speaker is likely to be controversial, those issuing the invitation should consider whether outreach to other stakeholders, facilitating counter-speech or other measures are appropriate to ensure that the speech is aired without negative repercussions.
- Once a body has decided to extend an invitation to a campus speaker, the decision by

administrators' to override that choice and rescind the invitation should be made only in the rarest of circumstances.

- Except in the most extreme cases, concerns over threats of violence or the potential outbreak of violence should not be grounds for withdrawing an invitation or canceling a controversial speech or event.
- That a campus event may meet with protests should not be considered a reason to suspend it.
- Wherever possible, campuses should not allow security costs to be grounds for withdrawing a speaking invitation, recognizing that such costs are unavoidably linked to the anticipated reaction to the content of speech and are thus viewpoint specific.
- If security costs for campus events are born by inviting organizations or speakers themselves, they must be apportioned based on content and viewpoint neutral policies.
- When a speaking invitation sparks protests, those who object and wish to protest should have an opportunity to make themselves heard.
- Protesters should not be permitted to shutdown, shout-down or obstruct speech, preventing others from hearing the speaker.
- Some speakers invited to campus fall into the category of professional provocateurs, whose primary aim is to shock, offend, and build their own notoriety when they are silenced or censored. While there is no obligation to invite such speakers, when invitations are made through proper, authorized



campus channels such speakers should be permitted to speak.

- When a university provides a platform to a figure who contradicts its values, leaders should strenuously and unequivocally affirm their values, explaining their position in considerable detail, while still permitting the speaker to speak.

CALLS TO PUNISH SPEECH

- Institutions should be careful to avoid any form of discipline or punishment solely for legally protected speech.
- While demands for punishment themselves constitute protected speech, calls to punish speakers for their speech have a chilling effect and are usually inimical to an open environment for ideas.
- As forums and guardians of open debate, campuses must resist pressure from external actors and campus constituencies to curtail and punish speech. Campus leaders should engage legitimate complaints through dialogue, counter-speech and support while defending the rights of speakers to voice their opinions without fear of official reprimand or discipline.
- Administrators and campus leaders must be consistent in coming to prompt, full-throated defense of a faculty member's right to exercise academic freedom without fear of dismissal, retaliation, or loss of position even when the speech in question is controversial.
- When campus constituents are targeted by doxxing, online harassment or other unofficial reprisals for speech, they should enjoy the support of campus

administrators in safeguarding themselves from such reprisals, including through the pursuit of disciplinary action against those responsible.

- Universities should not shy away from commenting on or denouncing the content of a faculty member's speech when it contravenes a university's stated values. It does not constitute retaliation or chilling for a university president or leader merely to criticize, without seeking punishment, the content of a faculty member's speech in such cases. Such counter-speech can be an effective reassurance to various university constituencies when hateful speech arises from faculty. Doing so, however, should never preclude the campus from doing everything in its power to shield faculty from threats to their safety or position as a result of such speech.

FACULTY SPEECH AND EXPRESSION

- With the rise of social media and new methods of recording and distributing information, faculty members should not expect privacy when it comes to their public online speech and expression and should recognize that anything they say may be construed to reflect upon their ability to carry out their institutional responsibilities.
- When considering a response to faculty speech, universities should take into account whether a faculty member had a reasonable expectation of privacy in expressing his or her views.
- Academic freedom is a core tenet of the academy and faculty should be encouraged to push the bounds of knowledge without fear of retaliation for

exploring ideas that might offend.

- Extramural speech by faculty members is considered protected by most definitions of academic freedom. Administrators should resist pressures to engage in disciplinary actions in response to such speech except in instances where the content of the speech calls into question whether a faculty member can adequately execute their duties.
- Where faculty members serve in an institutional capacity that may be negatively affected by the content of speech that raises questions about their ability to fulfill duties fairly and with equal respect for all students, universities should strive to ensure that any reallocation of duties is not punitive do not spill over to impair the faculty member's academic career.

MICROAGGRESSIONS AND THE LANGUAGE OF HARM

- The increasing diversity of college populations requires a wider conscientiousness of how words are understood by different groups of listeners.
- The task of fostering a more inclusive environment—and calling out language that undercuts it—cannot be left only, or even primarily, to students who are members of marginalized groups.
- University administrators should encourage all students to be sensitive to the ways that their words can unintentionally hurt others and should show sensitivity in their own communications.
- The onus to consider the impact of words, images and messages on diverse groups of students is heightened for administrators

and faculty in that their professional duties encompass the creation and maintenance of an open and equal learning environment.

- University policies regulating everyday speech or attempting to define insults for the entire community are intrusive and risk prohibiting or even simply disfavoring permissible speech.

TRIGGER WARNINGS

- If professors wish to offer students a preview of troubling content to come in a syllabus, the university should not prevent them from doing so.
- Universities cannot and should not position themselves institutionally to ensure that every possibly upsetting encounter with course material is averted.
- Universities should therefore leave the question of trigger warnings or any other sort of alerts about course material up to individual faculty members.

SAFE SPACES

- It is the obligation of the university to foster an environment in which violent, harassing, and reckless conduct does not occur and respect is encouraged.
- It is neither possible nor desirable for the campus to offer protection from all ideas and speech that may cause a measure of damage.
- Campuses should acknowledge and respond to the impact of hateful speech and hate crimes in terms of creating an environment of safety and belonging on campus, taking affirmative steps

to make sure that affected students are supported and that the campus culture fosters mutual respect for individual differences.

- It is reasonable to designate some spaces “safe” for particular groups on a campus but these must always be entered into voluntarily by those wishing to associate with the group. It is unreasonable to impose such constraints on public or communal areas of a campus as a way to exclude certain words or ideas.
- Campuses should enable and even support the creation and protection of spaces established by students—such as clubs, organizations, or even small gathering areas based on common themes and lifestyles.
- The campus as a whole and segments thereof that are intended for all—such as dorms, residential colleges, classrooms, and cafeterias—must be kept physically safe but intellectually and ideologically open.

SPEECH AND SEXUAL HARASSMENT

- There is no contradiction between advocating for more stringent measures to address sexual harassment and assault on campus and insisting on measures to protect free speech and academic freedom.
- Universities should reiterate the centrality of academic freedom when they address issues of harassment.

EDUCATION AND DIALOGUE

- There is both a need and an opportunity for expanded

education and mobilization on issues of free speech on campus.

- All groups supportive of free speech should redouble their efforts to ensure that campus free speech is a cause that engages students from across the political spectrum.
- Institutions and funders with an interest in supporting free speech should invest in the next generation by underwriting grants for work to build awareness and appreciation for free speech on campus.
- Whether it is on racial, gender, ethnic or ideological grounds, those who may feel marginalized in campus discourse should be supported by the universities in finding avenues for full participation in campus life.
- Campuses should take full advantage of the diversity of their student bodies to ensure opportunities for dialogue are maintained for students who have different views from one another. Principles of free speech should be adhered to as central to such endeavors.

CAMPUS SPEECH LEGISLATION

- State and federal bodies invested in defending speech on campus should take care to avoid overreach, especially in the form of guiding campuses’ responses to various free speech incidents. This includes ensuring campuses are free to affirm and articulate the values of open discourse, academic freedom, diversity and inclusion, and other principles integral to the institutional role of the university in society.
- Legislation seeking to address



College students in dialogue. PEN America event at NYU in November 2018, co-sponsored with the Penn Project for Civic Engagement and NYU Steinhardt

free speech on campus should avoid the use of overbroad and vague definitions that have the potential curtail free speech or otherwise render legitimate topics of academic deliberation effectively off-limits.

- Legislation should not dictate disciplinary requirements or penalties, and should leave decisions

about discipline to the discretion of school administrators who have a full understanding of the context in which events have occurred.

- Legislation should preserve the ability of public colleges to prevent discrimination based on race, ethnicity, religion, or other protected class by publicly

funded student organizations.

- Legislative efforts to address campus free speech should include or be accompanied by the appropriation of funds for orientation and ongoing education on the importance of free expression.