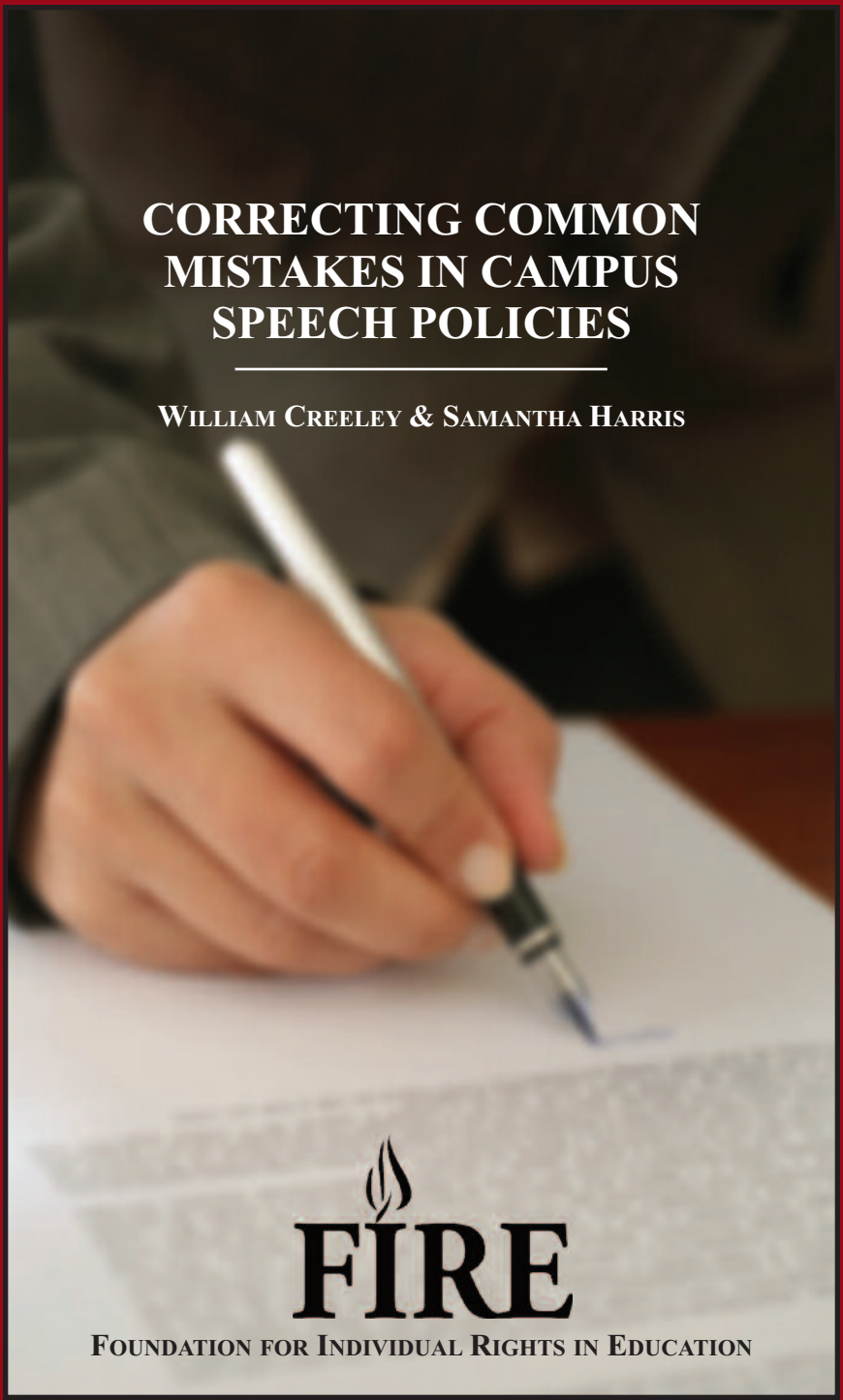

CORRECTING COMMON MISTAKES IN CAMPUS SPEECH POLICIES

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FOUNDATION FOR INDIVIDUAL RIGHTS IN EDUCATION

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Introduction

Most college students and faculty are justified in expecting the right to freedom of speech on their campuses. After all, as government entities, all public colleges and universities are legally bound by the First Amendment to the United States Constitution. And while private colleges and universities are outside the scope of the First Amendment, the overwhelming majority of them make explicit promises of free expression to students and faculty in promotional materials and school policies—promises by which they are morally, and often even legally, bound.

Despite these legal and moral obligations to protect free speech on campus, the Foundation for Individual Rights in Education (FIRE) has found in three consecutive annual national surveys that the majority of our nation's colleges and universities violate students' and faculty members' right to freedom of expression. Of the 364 institutions surveyed in our 2009 report, approximately 270 of them—74 percent—maintain policies that clearly restrict speech that would otherwise be protected by the First Amendment.

FIRE's annual report is based on a comprehensive analysis of the policies restricting speech maintained by colleges and universities. In researching school policies for the past seven years, FIRE attorneys have noticed that nearly every speech code—that is, nearly every regulation prohibiting expression that would be constitutionally protected in society at large—is an example of one of several commonly made mistakes in policy language or application. After finding the same types of mistakes at school after school, year after year, FIRE has decided to catalogue and address these common mistakes directly in an effort to help university administrations avoid them.

There are several reasons why university administrators must take seriously their legal and moral obligation to uphold students' and faculty members' free speech rights. The first is that the liberal arts university should be a haven for unencumbered intellectual exploration, and policies that punish or even simply chill free speech on campus undermine that traditional purpose. As the United States Supreme Court has stated: "For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses."[1]

1. *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 835 (1995).

Another reason universities must reform their speech codes is to avoid potential liability for First Amendment violations. Speech codes have been successfully challenged in courts around the country—indeed, of the eleven constitutional challenges brought against codes that FIRE has deemed unconstitutional, all of them have resulted either in a strong opinion overturning those codes or in the university voluntarily rescinding the code. FIRE's own Speech Code Litigation Project has been responsible for coordinating successful challenges to unconstitutional speech codes at Shippensburg University, Texas Tech University, Citrus College, the State University of New York College at Brockport, and San Francisco State University. When it comes to identifying and challenging unconstitutional codes, FIRE's 100% success rate serves as a testament to our ability to identify constitutional problems in speech policies.

Unfortunately, because too many schools continue to maintain unconstitutional codes, more litigation in the future is certain. And as the weight of legal precedent against speech codes grows stronger and stronger, the risk of liability—not only to universities, but also to individual administrators themselves—increases. Thus, undertaking these reforms benefits students at the university while protecting the university and its administrators.

Finally, in addition to the legal and academic problems they present, speech codes tend to be invoked to punish expression that is merely unpopular or inconvenient. Speech codes allow administrators far too much discretion to selectively punish speech—and once a speech code is used to silence one instance of unpopular speech, administrators will likely feel pressure from students to use it again every time feelings are hurt on campus. Further, speech codes teach students the wrong lesson about how best to answer speech with which one disagrees, emphasizing censorship over further dialogue. Allowing students to choose censorship instead of more speech robs them of the chance to understand on a practical level how participation in our liberal democracy relies on the marketplace of ideas and academic freedom to determine which ideas have merit.

Common Mistakes
Substantive and Administrative

We divide this discussion into two general categories of mistakes: mistakes in the substance of university policies and mistakes in their administration.

Put another way, substantive mistakes are restrictions on campus speech stemming from the actual language of the policies themselves. Administrative mistakes are restrictions on campus speech that are created by the way campus policies are maintained or published.

Substantive Mistakes

1. Harassment Policies

Every university must have a policy prohibiting sexual harassment and other forms of discriminatory harassment. Harassment is not protected by the First Amendment. For speech to be considered harassment, however, it must meet a very specific definition. In the educational context, harassment

must be conduct "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."[2]

This means that discriminatory harassment, properly understood and as defined by the Supreme Court, refers to conduct that is (1) unwelcome; (2) discriminatory (3) on the basis of gender or another protected status, like race; (4) directed at an individual; and (5) "so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities." Put simply, to be legally punishable as discriminatory harassment, a student must be *far* more than simply rude or offensive. Rather, they must be actively engaged in a specific type of discrimination, as defined by law.

An example of a harassment policy that comports with this standard may be found at the University of South Dakota, which maintains a sexual harassment policy that states:

Harassment shall be found where, in aggregate, the incidents are sufficiently pervasive or persistent or severe that a rea-

2. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

sonable person with the same characteristics of the victim of the harassing conduct would be adversely affected to a degree that interferes with his or her ability to participate in or to realize the intended benefits of an institutional activity, employment or resource.

In 2003, the Department of Education's Office for Civil Rights wrote an open letter to all university presidents affirming that federal harassment regulations "are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution."[3] Nonetheless, many universities maintain harassment policies which do infringe on their students' and faculty members' free speech rights. The following are the most common mistakes we see in university harassment policies.

a. Lack of a "Reasonable Person" Standard

Whether or not conduct constitutes harassment must not only be evaluated from the victim's perspective (was the conduct *subjectively* perceived as harassing?), it must also be evaluated from the perspective of a "reasonable person" in the victim's position (was the conduct *objectively* harassing?). Only if the conduct is both subjectively *and objectively* harassing can it legitimately be prohibited without infringing on the

3. First Amendment "Dear Colleague" Letter, July 28, 2003, http://www.ed.gov/about/offices/list/ocr/firstamend.html.

right to free speech.[4] Harassment policies must refer to this "reasonable person" standard; otherwise, such policies give the most sensitive members of the community veto power over speech in the educational context.

b. Lack of Severity and Pervasiveness Requirements

The United States Supreme Court has held that, in the educational context, harassment must be conduct that is "severe, pervasive, and objectively offensive." Many university harassment policies, however, contain no such requirements of severity and pervasiveness, requiring only that conduct "have the purpose or effect of interfering with an individual's educational opportunities," to take a common example. To track the applicable law, university harassment policies should specify that peer harassment must be both severe and pervasive.

c. Problematic "Examples" Lists

Another common problem with university harassment policies is that they employ a definition of harassment that tracks (or comes close to tracking) the legal standard, but then provide a laundry list of "examples of harassment" that explicitly include protected expression.

4. *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

Davidson College's sexual harassment policy is a good illustration of this problem. The policy defines sexual harassment as follows:

[U]nwelcome sexual advances, requests for sexual favors, and all other verbal or physical conduct of a sexual or otherwise offensive nature, especially where: ... such conduct has the purpose or effect of interfering unreasonably with an individual's work performance or creating an intimidating, hostile, or offensive working or learning environment.

While lacking a severity and pervasiveness requirement, this policy otherwise comes fairly close to tracking the legal standard for harassment. However, the policy then provides "verbal examples" of harassment that include, among other things, "degrading words used to describe an individual or group of persons," "hostile personal or gender related remarks," "derogatory or dismissive comments," "comments or inquiries about dating," and "patronizing remarks," such as calling an adult "girl," "boy," "hunk," "doll," "honey," or "sweetie."

Lists of examples like this are highly misleading. While it is theoretically possible that such behaviors could be components of sexual harassment if they rose to the necessary level of severity and pervasiveness, most offensive or derogatory

comments (and terms of endearment) are, in fact, protected speech. As courts have held in cases too numerous to mention, the fact that expression is offensive does not strip it of constitutional protection. To actually constitute harassment, speech must go far beyond causing offense; it must genuinely interfere with a reasonable person's ability to participate in the educational process.

d. Failure to Track Legal Standard

Too often, university harassment policies simply fail to track the legal standard at all, providing their own definitions of harassment that have little or nothing to do with the term's actual legal meaning. Unmoored from the actual meaning of harassment, these policies typically prohibit broad swaths of protected speech. It is crucial that university harassment policies prohibit only that conduct that falls outside the scope of First Amendment protection. To ensure this, policies should follow the precise legal definition of harassment provided by the U.S. Supreme Court and the Department of Education's Office for Civil Rights.

e. Importing Workplace Standards

Many schools mistakenly import language for harassment policies from the Equal Employment Opportunity Commission's (EEOC's) guidelines regarding gender discrimination.

The EEOC guidelines define sexual harassment as conduct that "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

However, the EEOC guidelines apply to harassment in the workplace; hence the focus on "work performance" and the "working environment." The guidelines are not applicable in the educational setting, which differs tremendously from the employment context in terms of speech rights. Students at public colleges and universities enjoy robust speech rights under the Constitution in order to contribute to the marketplace of ideas, learn from each other, and freely discuss and debate a wide range of issues. The same is not true for employees in a workplace, particularly a private workplace, who are subject to the restrictions of their employer.

Workplace standards fail to provide the necessary breathing room for campus speech. For example, the EEOC's "purpose or effect" prong, when instituted on a public campus, allows for a finding of sexual harassment on the sole basis of the alleged harasser's intentions, without regard to the actual impact of his or her conduct. Further, EEOC policies do not require a threshold showing of severity, pervasiveness, and objective offensiveness, as required by the U.S. Supreme Court and the Department of Education's Office for Civil Rights. Failing to meet this precise legal standard means pro-

tected speech that does not rise to the level of true harassment may be unduly subject to punishment.

In the past year alone, federal courts have found two harassment policies that closely tracked the EEOC guidelines to be unconstitutional because they did not sufficiently protect First Amendment rights on campus.[5] It is important for administrators to be aware that EEOC language regarding harassment cannot be directly imported into the campus setting without risking constitutional challenges.

f. Use of Undefined Terminology

Another, related problem in university harassment policies is the use of vague, undefined terms. For example, policies frequently prohibit "demeaning" or "degrading" conduct (including verbal "conduct," more commonly called speech), or any conduct that causes "emotional harm" or "mental harm." In addition to the fact that these policies in all likelihood encompass protected speech, they are also impermissibly vague because students will have to guess at precisely what is prohibited. Without further explanation, no one can be certain

5. *DeJohn v. Temple University*, 537 F.3d 301 (3d Cir. 2008) (holding sexual harassment policy unconstitutional in part because of overbreadth introduced by "purpose or effect" prong); *Lopez v. Candaele*, No. CV 09-0995-GHK (C.D. Cal. July 10, 2009) (Order Granting Plaintiff's Motion for Preliminary Injunction) (holding sexual harassment policy unconstitutional in part because of overbreadth introduced by "purpose or effect" prong).

what a university means by "emotional harm": Is it true emotional distress of the sort that genuinely interferes with an individual's education, or could it be applied to mere offense or hurt feelings?

For the most part, students want to avoid anything that could result in disciplinary action, which can have disastrous consequences for students' futures. Therefore, if there is any doubt as to how much speech a policy prohibits, students will err on the side of caution and refrain from any expression they believe could lead to punishment. This produces an unacceptable chilling effect on campus speech.

2. Savings Clauses

In an attempt to avoid claims of free speech violations, universities often include "savings clauses" in their policies. Savings clauses are statements such as "Speech protected by the First Amendment shall not be punished under this policy," or "Nothing in this handbook should be construed as restricting the First Amendment rights of students." These statements, which often directly contradict egregious restrictions on campus speech in the very same policies or handbooks, in no way ameliorate or correct the problematic policies published elsewhere. Rather, these "savings clauses" only worsen existing infirmities in university speech codes by injecting further confusion and uncertainty regarding

which speech is and is not subject to punishment on campus. For example, a policy might state that students may be punished for "offensive speech," but later state that no constitutionally protected speech will be punished under the policy. A student who reads that policy is just as likely (if not more likely) to believe that "offensive speech" is not constitutionally protected than she is to read the savings clause and understand that a policy that specifically prohibits "offensive speech" actually permits certain types of offensive speech. By leaving students unsure about the precise limits of their rights on campus, savings clauses have an impermissible chilling effect on campus speech, as students engage in self-censorship rather than risk crossing an unclear line. Rather than drafting clauses to try to "balance out" overbroad codes, administrations need to ensure that their codes are sound in the first place.

3. University Values: Aspirational vs. Mandatory

Many universities publish statements of institutional "principles" and "values" that, while intended to be aspirational—that is, intended to convey values the university would like students to embody, without requiring them to do so—are often not clearly identified as such. Many times, universities present these values in policy handbooks not as optional ideals, but rather as statements of mandatory policy. Indeed, many universities publish these values statements in the form

of affirmative "oaths" or "creeds" that assume students' acquiescence and agreement.

For example, the University of South Carolina's "Carolinian Creed" states: "As a Carolinian, I will respect the dignity of all persons … I will discourage bigotry … I will demonstrate concern for others … Allegiance to these ideals requires each Carolinian to refrain from and discourage behaviors which threaten the freedom and respect every individual deserves." While these values—and the values contained in similar policies at universities nationwide—may seem uncontroversial and even admirable, a university cannot require its students to categorically agree to them without violating basic rights to private conscience and academic freedom. Specifically, universities cannot require students to swear allegiance to an official set of university values. As the U.S. Supreme Court famously stated in a 1943 decision upholding the right of Jehovah's Witnesses not to salute the U.S. flag, "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[6]

Further, statements like these seem to require students to regulate their expressive activity on campus in accordance with

6. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

impermissibly vague terms—the Carolinian Creed referenced above, for example, refers to "dignity" and "concern for others"—that could, in application, mean virtually anything. These vague terms force students to guess at what expressive activity is and is not allowed on campus—and such guessing results in self-censorship and a chilling effect on student speech. Statements like these are often not only unconstitutionally vague but overbroad as well. In other words, they often prohibit students from engaging in protected speech. (The vast majority of speech that does not "demonstrate concern for others," for example, is protected by the First Amendment.)

This does not mean, however, that a university cannot share with its students, or even encourage its students to share, the values that it considers important. Institutional value statements simply must be clearly identified as aspirational and not mandatory.

An example of a clearly aspirational policy comes from Pennsylvania State University, which recently revised its Penn State Principles to clarify their aspirational nature. The preamble to the Principles states:

The Penn State Principles were developed to embody the values that we hope our students, faculty, staff, administration, and alumni possess. At the same time, the University is

strongly committed to freedom of expression. Consequently, these Principles do not constitute University policy and are not intended to interfere in any way with an individual's academic or personal freedoms. We hope, however, that individuals will voluntarily endorse these common principles, thereby contributing to the traditions and scholarly heritage left by those who preceded them, and will thus leave Penn State a better place for those who follow.

No student reading Penn State's policy would reasonably believe that he or she could be subject to punishment for failure to adopt the university's values, but a student at the University of South Carolina could certainly believe that if he or she does not display "allegiance to these ideals," there could be disciplinary consequences.

4. Civility Policies

Many university policies require all campus discourse to be "civil" or "respectful." While this may seem uncontroversial and well-intentioned, it is inappropriate for a university that claims to value free speech to require all expression to be "civil." One of the best explanations of why such a requirement violates the First Amendment comes from a court case in which a federal judge struck down a civility policy at San Francisco State University. In his opinion, the judge wrote:

[A] regulation that mandates civility easily could be understood as permitting only those forms of interaction that produce as little friction as possible, forms that are thoroughly lubricated by restraint, moderation, respect, social convention, and reason. The First Amendment difficulty with this kind of mandate should be obvious: the requirement "to be civil to one another"... reasonably can be understood as prohibiting the kind of communication that it is necessary to use to convey the full emotional power with which a speaker embraces her ideas or the intensity and richness of the feelings that attach her to her cause. Similarly, mandating civility could deprive speakers of the tools they most need to connect emotionally with their audience, to move their audience to share their passion.[7]

Thus, while a university may *encourage* its students to respect institutional values such as tolerance and civility, it cannot prohibit all expression inconsistent with those values. If a "civility statement" or similar policy is actually intended as a simple statement of values—a statement of what the university would ideally like its campus environment to be like—its aspirational nature must be clear from the language of the policy.

7. *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007).

5. Bias Reporting Sites

Many universities now maintain extensive protocols for the reporting of what are commonly called "bias incidents" on campus. While many of these protocols do not specify whether bias incidents alone can form the basis for disciplinary action, they promise to investigate all reports of such incidents. Given that the definition of a "bias incident" typically includes protected speech, a promise to investigate all such complaints necessarily means that protected expression will be subject to investigation. This, in and of itself, is enough to chill free speech on campus, since students and faculty will almost certainly wish to avoid the negative effects of being subjected to any sort of disciplinary investigation.

For example, the University of Virginia maintains a bias reporting website that defines a "bias complaint" as "a report of a threat or act of bigotry, harassment or intimidation—verbal, written or physical—which is personally directed against or targets a University of Virginia student because of that student's race, age, color, disability, national or ethnic origin, political affiliation, religion, sex (including pregnancy), sexual orientation, or veteran status." While harassment and intimidation may legitimately be prohibited, a verbal expression of bigotry—however noxious it may be—is protected speech unless it actually is part of a pattern of behavior that rises to the level of harassment. Despite the fact that

the definition of a bias complaint includes protected speech, the website provides that the university will "investigate" all bias complaints. An investigation based solely on protected expression is illegitimate at any public university or at any private university that promises free speech.

6. Computer and Network Policies

Universities often maintain impermissible restrictions on speech in their policies governing computer resources and networks. These policies are often inconsistent with the university's other policies regulating speech. FIRE suspects that at some institutions, computing policies and general conduct policies are formulated by different administrators, resulting in confusing disparities. In order to prevent such contradictions and the chilling effect that the resulting vague or uncertain policies have on campus speech, FIRE recommends that all policies that regulate expressive activity—including e-mail use—be carefully vetted by those with knowledge of the relevant law, such as the university's general counsel. All computer and network policies must be in compliance with the First Amendment at public colleges and consistent with stated commitments to freedom of expression at private colleges.

There are two recurring problems with such policies. First, many policies contain content-based restrictions on speech—for example, e-mail use policies that ban "offensive" content.

By seeking to prohibit protected speech, these policies clearly violate the First Amendment. Second, universities often maintain poorly written "spam" or "bulk e-mail" policies that, in seeking to regulate unwanted mass e-mail, also prohibit protected expression. For example, Johns Hopkins University prohibits "sending unsolicited e-mail." Any e-mail that is not sent without prior permission—that is, any e-mail communication initiated by the sender—is an "unsolicited e-mail," so while this policy may be intended to address spam, it could be applied against virtually any communication. In FIRE's experience, even seemingly innocuous, content-neutral policies can be abused to silence controversial speech. Therefore, we recommend that bulk e-mail guidelines and other content-neutral e-mail policies be carefully drafted so as not to allow for abuses of discretion.

An easy way to limit the scope of a spam policy so as to combat only truly unacceptable e-mail in a university context is to restrict the policy to target unauthorized commercial speech. Commercial speech, such as advertisements or other speech where the goal is to sell a product or service, enjoys less protection under the First Amendment and can permissibly be restricted in ways that are not acceptable when it comes to, say, political speech. Commercial speech, like ads for discount Viagra or suspicious-sounding dating services, is more along the lines of what one thinks of when referring to spam.

7. Free Speech Zones

FIRE often encounters university policies that quarantine rallies, demonstrations, speeches, and other expressive activity on campus to a tiny sliver of the university grounds. Making matters worse, these "free speech zone" policies often include pre-registration regulations, onerous monetary deposit requirements, or expensive insurance requirements. Finally, at too many schools, use of these heavily regulated areas is further restricted to a particular time on particular days.

These policies generally stem from a misunderstanding of "time, place and manner" restrictions. University administrators frequently believe that all time, place, and manner restrictions—that is, restrictions that are not based on the content of speech—are permissible. In reality, however, time, place, and manner restrictions must be narrowly tailored to achieve a significant governmental interest, and the burden on speech they cause may not be "substantially broader than necessary to achieve the government's interest."[8]

While universities have the right to maintain rules prohibiting genuine disruption of the educational process, policies that restrict free speech to just one or two areas of a large campus or that require substantial advanced registration are

8. *Ward v. Rock Against Racism*, 491 U.S. 781 (1989).

undoubtedly "substantially broader than necessary" to protect the educational process.

It is important to remember that universities already have the power, through existing rules, to prevent and punish the type of disruptive conduct they might fear would take place. The university should not simply assume before the fact that student or faculty expression will be impermissibly disruptive. Rather, the university should accept its role as the ultimate free speech zone, ensuring that free expression is celebrated, honored, and broadened—not feared, restrained, and hidden.

8. Posting Policies

Many universities maintain policies that restrict the ability of students to post or distribute published materials on campus. Posting and distribution policies often grant administrators unfettered discretion to refuse permission to students who wish to engage in expression through the distribution of leaflets, flyers, or newspapers. For example, Washington University in St. Louis' residence hall posting guidelines stipulate that "[n]o reference to alcohol, drugs, or nudity is permissible; no sexist or discriminatory materials allowed. What constitutes sexist or discriminatory materials will be left to the discretion of the Residential Life staff." Similarly,

Illinois Institute of Technology's policy maintains that "[n]o postings will be approved that could be considered offensive to others."

Unfortunately, allowing administrators to prohibit expression protected under the First Amendment without explaining their decisions to students who might be denied permission to distribute literature or newspapers is unconstitutional and in violation of basic guarantees of freedom of expression. Students who wish to distribute or post newspapers or leaflets on campus should be free to do so regardless of their political, religious, or ideological beliefs. Any "license" or "preapproval" process must be guided by narrow, objective, viewpoint-neutral, previously published, and definite standards to guide the administrator making the decision.

Administrative Mistakes

1. Problematic Auxiliary Materials

FIRE frequently sees universities maintain an official harassment policy that is acceptable, but also publish supplementary materials that confuse the issue or directly contradict the official policy. This discrepancy leads reasonable students to believe that constitutionally protected expression is prohibited. These auxiliary materials can often be found on the websites of individual offices or departments such as student

health services, public safety, or the university women's center.

When confronted about these auxiliary materials, universities frequently respond that they do not constitute official university policy. However, this does not prevent these materials from having an impermissible "chilling effect" on campus speech. When materials on official university websites contain proscriptive language ("examples of harassment include …"; "the university will not tolerate"; etc.), students reading them will believe they are statements of policy and will self-censor accordingly. As one federal judge wrote in striking down a university's speech code: "We must assess regulatory language in the real world context in which the persons being regulated will encounter that language. The persons being regulated here are college students, not scholars of First Amendment law."[9]

In other words, it is unreasonable to expect students to sort through various conflicting or proscriptive materials dealing with a subject like harassment and determine, without guidance, which constitute official statements of university policy and which are merely pseudo-policy. Any statement on an official university website that states that certain types of speech are prohibited must be treated as a statement of pol-

9. *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005, 1021 (N.D. Cal. 2007).

icy in terms of the university's obligation to uphold the right to free speech.

2. Inconsistent Policies

Another common administrative mistake is that while official university-wide policies may have gone through extensive review and been approved by the university's legal department, other departments (such as Residence Life or Student Activities) maintain their own policy manuals with policies that have not been through such an extensive vetting process. The result is restrictive policies that curtail free speech in specific areas such as university housing or in student activities, even on campuses where the university's overarching policies are appropriately protective of free speech.

For example, San Jose State University maintains a harassment policy for its residence halls that prohibits "publicly telling offensive jokes" and that states—in direct violation of federal harassment law—that claims of harassment will be "evaluated from the complainant's perspective." In reality, claims of harassment must be evaluated from the perspective of a reasonable person in the victim's position, to avoid leaving everyone at the mercy of the most sensitive members of their community.

To avoid this common problem, it is imperative that all policies that impact student and faculty speech rights be carefully vetted by people with knowledge of the relevant law to ensure that those rights are upheld.

3. Failure to Update Website

Another common problem occurs when a university revises a policy to provide appropriate protections for speech, but nevertheless leaves outdated versions on its website. Students attempting to access the current policy from URLs where an outdated policy remains published will mistakenly believe that protected speech is still prohibited, and act accordingly.

Believe it or not, this mistake happens frequently. For example, in 2007, Colorado State University students contacted FIRE about a free speech zone policy that appeared to restrict speech to just one area of the university's campus. When FIRE wrote to the university, CSU administrators responded that "after receiving your letter, we did realize that an outdated version of the policy was still on the … webpage and we have corrected that oversight." That oversight, however, was enough to lead some students to believe that free speech was still impermissibly restricted on campus, and to be concerned enough to contact FIRE. As this example illustrates, when a policy is revised, it is crucial to update all copies of that policy appearing on the university's website to reflect the changes.

4. Hidden Policies

In recent years, FIRE has been dismayed to note that a few colleges and universities, both public and private, have begun to hide policies previously published online from public view. Typically, those colleges that choose to hide their policies either condition access to the policies on entry of a password, or take the policies offline altogether and rely on interested parties to obtain printed copies.

Unfortunately, hiding policies in this manner poses a unique threat to student rights. If policies are not published or easily accessible online, students are less likely to have been apprised of their content. This lack of notice is problematic in terms of the basic considerations of due process that schools should afford their students. Students have a right to be treated fairly, with full knowledge of the policies and procedures they are expected to follow.

In addition to the lack of notice and the simple inconvenience of being unable to access school policies online, restricting access to student policies also presents a fundamental consumer information problem. If prospective students and their families cannot easily ascertain which policies the students are to be governed by upon arrival on campus, it is all but impossible for that students to make informed choices about the institution's values and priorities. Further, it is possible

that policies students learn about only upon arriving on campus may be of dubious legal enforceability, given the fact that they may fairly be deemed a type of bait and switch, contradicting the promise of freedom and tolerance that may be found in recruitment materials.

FIRE suspects that rather than maintain acceptable policies, some schools have decided to hide them. This is a deeply troubling development, but it is easily reversible.

Conclusion

While censorship on campus is a serious problem, and there sadly are those administrators who truly believe that student and faculty speech should be restricted, there are also many administrators who wish to protect student rights. We know this from the many administrators who have, over the years, responded to FIRE letters by making the necessary changes to university policy, and from yet more proactive administrators who have reached out to FIRE for assistance in revising speech-related policies. This guide is for those administrators who truly wish to understand the boundaries of free speech on campus and uphold their students' rights. We hope that this report provides the necessary guidance. Of course, FIRE staff members are always available to discuss specific issues with university administrators, faculty, students, or members of the general public.

About FIRE

The mission of FIRE is to defend and sustain individual rights at America's colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—the essential qualities of individual liberty and dignity. FIRE's core mission is to protect the unprotected and to educate the public and communities of concerned Americans about the threats to these rights on our campuses and about the means to preserve them.

America's colleges and universities are, in theory, indispensable institutions in the development of critical minds and the furthering of individual rights, honest inquiry, and the core values of liberty, legal equality, and dignity. Instead, they often are the enemies of those qualities and pursuits, denying students and faculty their voices, their fundamental rights, and even their individual humanity. The university setting is where students are most subject to the assignment of group identity, to indoctrination of radical political orthodoxies, to legal inequality, to intrusion into private conscience, and to assaults upon the moral reality of individual rights and responsibilities. Illiberal university policies and practices must

be exposed to public criticism and scrutiny so that the public is made aware of the violations of basic rights that occur every day on college campuses.

In 1998, Alan Charles Kors and Harvey A. Silverglate co-authored *The Shadow University: The Betrayal of Liberty on America's Campuses*. In response, they received hundreds of communications and pleas for help from victims of illiberal policies and double standards that violated their rights and intruded upon their private consciences. To answer these calls for help and to transform the culture, they founded FIRE.

FIRE effectively and decisively defends American liberties on behalf of thousands of students and faculty on our nation's campuses. In case after case, FIRE brings about favorable resolutions for these individuals who continue to be challenged by those willing to deny fundamental rights and liberties within our institutions of higher education. In addition to individual case work, FIRE works nationally to inform the public about the fate of liberty on our campuses.

FIRE's work to protect fundamental rights on campus concentrates on four areas: freedom of speech and expression; religious liberty and freedom of association; freedom of conscience; and due process and legal equality on campus. Ultimately, FIRE seeks to end the debilitating fatalism that

paralyzes students and faculty by bringing public attention to the issue while providing protection to those who are now helpless in the face of abuses of power on campuses across the nation.

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