



FIRE

Foundation for Individual
Rights in Education

ON SPEECH CODES

THE STATE OF FREE SPEECH ON OUR NATION'S CAMPUSES

2016



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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.



EXECUTIVE SUMMARY



Student panel at the FIRE Student Network 2015 summer conference

Despite the critical importance of free speech on campus, too many universities—in policy and in practice—censor and punish students’ and faculty members’ speech and expressive activity. One way that universities do this is through the use of speech codes—policies prohibiting speech that, outside the bounds of campus, would be protected by the First Amendment.

FIRE surveyed 440 schools for this report and found that 49.3 percent maintain severely restrictive, “red light” speech codes—policies that clearly and substantially prohibit protected speech. This is the eighth year in a row that the percentage of schools maintaining such policies has declined, **and the first time in FIRE’s history that the figure is below 50 percent.** In addition, an unprecedented number of schools have eliminated all of their speech codes to earn FIRE’s highest, “green light” rating: **As of September 2015, 22 schools received a green light rating from FIRE.** This number is up from 18 schools as of last year’s report.

While speech codes declined overall, FIRE did see a continued increase in restrictive harassment policies in response to the federal government’s unprecedented intervention into universities’ handling of sexual harassment claims. Between

September 2014 and September 2015, FIRE downgraded 10 universities from a “yellow light” rating to a red light rating for adopting overly restrictive definitions of sexual harassment.

Moreover, despite the dramatic reduction in speech codes over the past eight years, FIRE continues to find an unacceptable number of universities punishing students and faculty members for constitutionally protected speech and expression. It is essential that students, alumni, faculty, and free speech advocates remain vigilant not only about campus speech codes, but also about the way universities may—even in the absence of a written policy—silence or punish protected speech.

What, then, can be done about the problem of censorship on campus? Public pressure is still perhaps the most powerful weapon against campus censorship, so it is critical that students and faculty understand their rights—and are willing to stand up for them when they are threatened.

At public universities, which are bound by the First Amendment, litigation continues to be another highly successful way to eliminate speech codes. In July 2014, FIRE launched its Stand Up For Speech Litigation Project, a national effort to eliminate



EXECUTIVE SUMMARY

unconstitutional speech codes through targeted First Amendment lawsuits. To date, we have filed 10 lawsuits, three of which remain ongoing. The seven suits completed thus far have each settled successfully, restoring the free speech rights of almost 200,000 students and securing over \$350,000 in damages and attorney's fees.

State legislatures can also play an important role. In July 2015, Missouri enacted the Campus Free Expression Act (CAFE Act), which prohibits Missouri's public colleges and universities from limiting students' expressive activities to small or out-of-the-way "free speech zones." Virginia also enacted a similar law in 2014.

Overall, supporters of free speech must always remember that universities can rarely defend in public what they try to do in private. Publicizing campus censorship in any way possible—whether at a demonstration, in the newspaper, or even in court—is the best available response. To paraphrase Justice Louis Brandeis, sunlight really is the best of disinfectants.



Students participating in the FIRE Student Network 2015 summer conference



METHODOLOGY

FIRE SURVEYED PUBLICLY AVAILABLE POLICIES AT 336 FOUR-YEAR PUBLIC INSTITUTIONS AND 104 OF THE NATION’S LARGEST AND/ OR MOST PRESTIGIOUS PRIVATE INSTITUTIONS. OUR RESEARCH FOCUSES IN PARTICULAR ON PUBLIC UNIVERSITIES BECAUSE, AS EXPLAINED IN DETAIL BELOW, PUBLIC UNIVERSITIES ARE LEGALLY BOUND TO PROTECT STUDENTS’ RIGHT TO FREE SPEECH.



RED LIGHT: A red light institution is one that has at least one policy both clearly and substantially restricting freedom of speech, or that bars public access to its speech-related policies by requiring a university login and password for access. A “clear” restriction is one that unambiguously infringes on protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of the policy and does not depend on how the policy is applied. A “substantial” restriction on free speech is one that is broadly applicable to campus expression. For example, a ban on “offensive speech” would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what would be protected expression in the larger society). Such a policy would earn a university a red light.

When a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to weigh this crucial information prior to matriculation. At FIRE, we consider this denial to be so deceptive and serious that it alone warrants a red light rating. Fortunately, since FIRE instituted the automatic red light rating for universities that require a password to access speech-related policies, two of the three universities to initially have done so have since unlocked access to those policies.¹ Only one institution—Connecticut College—currently receives a red light rating for this reason.

¹Previously, Edinboro University of Pennsylvania and Texas Tech University received red light ratings for this reason. Although Edinboro still earns a red light rating because of its restrictive policies, Texas Tech now earns an improved, yellow light rating.

²For example, Saint Louis University (SLU) explicitly provides that “speech and expression are not absolute rights at a private institution and must be examined in light of both particular circumstances and the broader values and aspirations of Saint Louis University as a Catholic, Jesuit institution. While restrictions on expression must be reluctant and limited, in some situations they may be deemed appropriate.” Saint Louis University Student Handbook, pp. 126-130, http://www.slu.edu/Documents/student_development/student_conduct/15-pdf. Such situations include, according to the Handbook, activities that “will deride, mock or ridicule the Roman Catholic Church or the University’s mission and values.” Id. at 128. It would be clear to any reasonable person reading this policy that students are not entitled to unfettered free speech at SLU.

³Of the 104 private institutions reviewed by FIRE, the following do not promise free speech: Baylor University, Brigham Young University, Pepperdine University, Saint Louis University, Vassar College, Worcester Polytechnic Institute, and Yeshiva University.

FIRE RATES COLLEGES AND UNIVERSITIES AS “RED LIGHT,” “YELLOW LIGHT,” OR “GREEN LIGHT” BASED ON HOW MUCH, IF ANY, PROTECTED SPEECH THEIR WRITTEN POLICIES RESTRICT. FIRE DEFINES THESE TERMS AS FOLLOWS:



YELLOW LIGHT: A yellow light institution maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict only narrow categories of speech. For example, a policy banning “verbal abuse” has broad applicability and poses a substantial threat to free speech, but it is not a clear violation because “abuse” might refer to unprotected speech, such as threats of violence or genuine harassment. Similarly, while a policy banning “posters promoting alcohol consumption” clearly restricts speech, it is relatively limited in scope. Yellow light policies are typically unconstitutional, and a rating of yellow light rather than red light in no way means that FIRE condones a university’s restrictions on speech. Rather, it means that in FIRE’s judgment, those restrictions do not clearly and substantially restrict speech in the manner necessary to warrant a red light rating.



GREEN LIGHT: If FIRE finds that a university’s policies do not seriously threaten campus expression, that college or university receives a green light rating. A green light rating does not necessarily indicate that a school actively supports free expression in practice; it simply means that the school’s *written* policies do not pose a serious threat to free speech.



WARNING—DOES NOT PROMISE FREE SPEECH: FIRE believes that free speech is not only a moral imperative, but also an essential element of a college education. However, private universities are just that—private associations—and as such, they possess their own right to free association, which allows them to prioritize other values above the right to free speech if they wish to do so. Therefore, when a private university *clearly and consistently* states that it holds a certain set of values above a commitment to freedom of speech, FIRE informs prospective students and faculty members of this fact.² Seven surveyed schools meet these criteria.³ In previous years, such schools were labeled “Exempt” or “Not Rated.”



FINDINGS

Of the 440 schools reviewed by FIRE, 217—or 49.3 percent—received a red light rating. 194 schools received a yellow light rating (44.1%), and 22 received a green light rating (5%). FIRE did not rate 7 schools (1.6%).⁴ (See Figure 1.)

These are significant findings. This is the eighth year in a row that the percentage of schools maintaining red light speech codes has fallen, and the first time in FIRE's history that **the percentage of universities maintaining such codes has fallen below 50%**, from a high of 75% eight years ago. Additionally, the number of green light institutions has almost tripled, from just 8 institutions eight years ago (2%) to 22 this year (5%).⁵ (See Figure 2.)

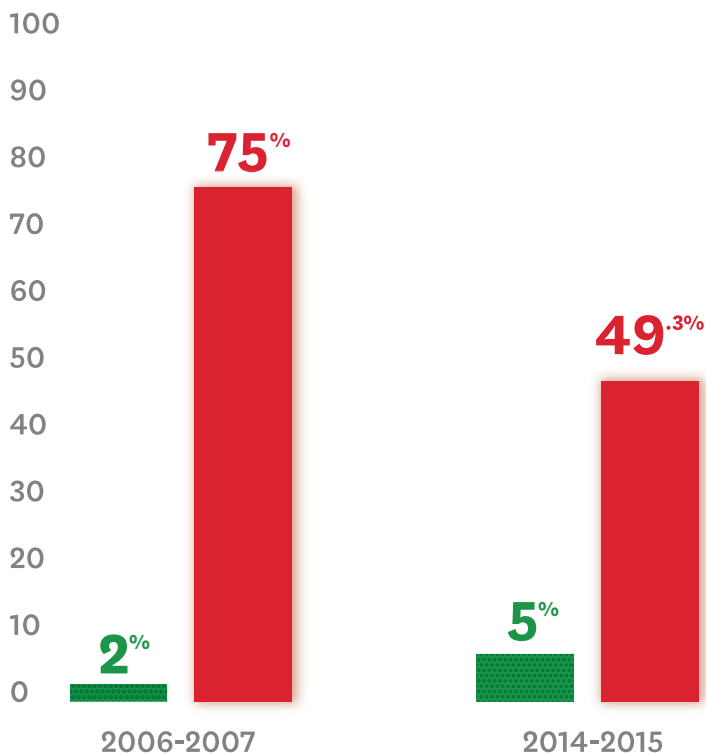


FIGURE 2 Speech Code Ratings, 2006–2007 through 2014–2015

⁴See Appendix A for a full list of schools by rating.

⁵George Mason University, Purdue University, Purdue University Calumet, the University of North Carolina at Chapel Hill, the University of North Florida, and Western State Colorado University all joined the ranks of green light schools this year. Unfortunately, Dartmouth College and the University of Nebraska–Lincoln lost their green light ratings this year.

⁶State-by-state data are provided in Appendix C for the 27 states in which FIRE has surveyed five or more universities.



FIGURE 1 All Schools by Rating



FINDINGS

The percentage of *public* schools with a red light rating also dropped below 50% for the first time in FIRE history. Eight years ago, 79% of public schools received a red light rating. This year, the figure stands at 45.8 percent.

FIRE rated a total of 336 public colleges and universities. Of these, 154 (45.8%) received a red light rating, 162 (48.2%) received a yellow light rating, and 20 (6%) received a green light rating. (See Figure 3.)

Since public colleges and universities are legally bound to protect their students' First Amendment rights, any percentage above zero is unacceptable, so much work remains to be done. This ongoing positive trend, however, is encouraging. With continued efforts by free speech advocates on and off campus, and the continuing success of FIRE-driven litigation, we expect this percentage to continue to drop.

The percentage of private universities earning a red light rating actually increased this year, from 58.7% last year to 60.6% this year—a change that is largely attributable to revised policies on sexual harassment and sexual misconduct that restrict expression and that were adopted in the wake of extensive federal government pressure. While private universities are generally not legally bound by the First Amendment, most make extensive promises of free speech to their students and faculty. Where such promises are made, speech codes impermissibly violate them.

Of the 104 private colleges and universities reviewed, 63 (60.6%) received a red light rating, 32 (30.8%) received a yellow light rating, 2 (1.9%) received a green light rating, and 7 (6.7%) were not rated. (See Figure 4.)

The data showed a wide variation in restrictions on speech among the states.⁶ In the state of Washington, 80% of surveyed schools received a red light rating, as did 77.8% of schools in Georgia and 76.9% of schools in Illinois. By contrast, only 12.5% of the schools surveyed in Virginia and 18.75% of the schools surveyed in Indiana received a red light rating.

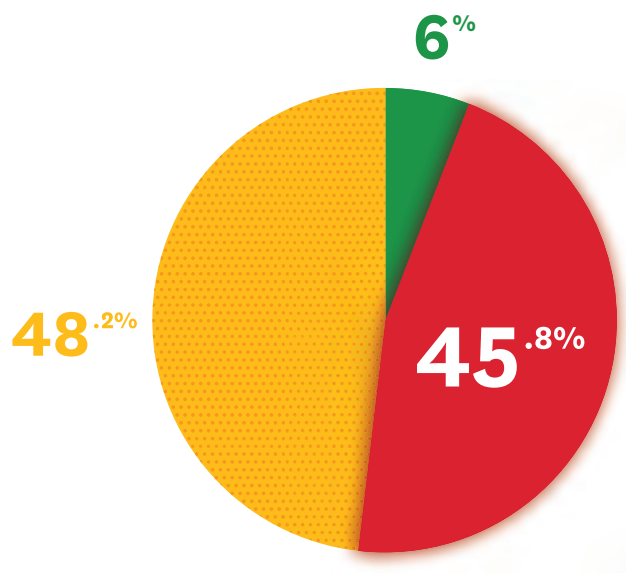


FIGURE 3 Public Schools by Rating 2014–2015

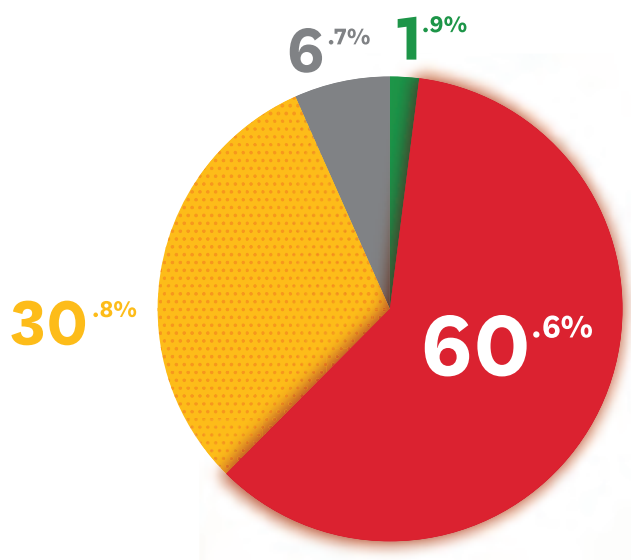


FIGURE 4 Private Schools by Rating 2014–2015

⁶State-by-state data are provided in Appendix C for the 27 states in which FIRE has surveyed five or more universities.



DISCUSSION

SPEECH CODES ON CAMPUS:
BACKGROUND AND LEGAL CHALLENGES

Speech codes—**university regulations prohibiting expression that would be constitutionally protected in society at large**—gained popularity with college administrators in the 1980s and 1990s. As discriminatory barriers to education declined, female and minority enrollment increased. Concerned that these changes would cause tension and that students who finally had full educational access would arrive at institutions only to be offended by other students, college administrators enacted speech codes.

Rights (OCR)—the federal agency that oversees the implementation and enforcement of Title IX—investigated Santa Rosa Junior College after two women complained about comments made about them on an online college bulletin board that included “anatomically explicit and sexually derogatory terms.”⁸ In a letter to the college, OCR concluded that the offensive speech had created a “hostile educational environment” for the complainants, and directed the college to adopt a policy banning, among other things, online speech that “has the purpose or effect of creating a hostile,

code was required by Federal Department of Education regulations.”¹⁰

In enacting these speech codes, administrators ignored or did not fully consider the philosophical, social, and legal ramifications of placing restrictions on speech, particularly at public universities. As a result, federal courts have overturned speech codes at numerous colleges and universities over the past two decades.¹¹

SPEECH CODES ARE UNIVERSITY REGULATIONS PROHIBITING EXPRESSION THAT WOULD BE CONSTITUTIONALLY PROTECTED IN SOCIETY AT LARGE.

In the mid-1990s, the phenomenon of campus speech codes converged with the expansion of Title IX, the federal law prohibiting sex discrimination in educational institutions receiving federal funds.⁷ In 1994, the Department of Education’s Office for Civil

intimidating or offensive educational environment.”⁹ Soon thereafter, when the University of Massachusetts faced criticism over a broad new proposed harassment policy in 1995, then-Chancellor David K. Scott “responded to criticism by suggesting that a

Despite the overwhelming weight of legal authority against speech codes, a large number of institutions—including some of those that have been successfully sued on First Amendment grounds—still maintain unconstitutional speech codes.¹² It is with this unfortunate fact in mind that we turn to a more detailed discussion of the ways in which campus speech codes violate individual rights and what can be done to challenge them.

⁷ Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, provides: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

⁸ Eugene Volokh, *Freedom of Speech, Cyberspace, Harassment Law, and the Clinton Administration*, 63 LAW & CONTEMP. PROB. 299 (2000).

⁹ *Id.* at 315.

¹⁰ Anthony Lewis, *Abroad at Home; Living in a Cocoon*, N.Y. TIMES, Nov. 27, 1995, <http://www.nytimes.com/1995/11/27/opinion/abroad-at-home-living-in-a-cocoon.html>.

¹¹ *McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010); *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995); *Univ. of Cincinnati Chapter of Young Am. for Liberty v. Williams*, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio Jun. 12, 2012); *Smith v. Tarrant Cty. Coll. Dist.*, 694 F. Supp. 2d 610 (N.D. Tex. 2010); *Coll. Republicans at S.F. St. Univ. v. Reed*, 523 F. Supp.

2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Booher v. N. Ky. Univ. Bd. of Regents*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998); *Corry v. Leland Stanford Junior Univ.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.); *UWM Post, Inc. v. Bd. of Regents of the Univ. of Wis.*, 774 F. Supp. 1163 (E.D. Wis. 1991); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989). In addition, numerous institutions have voluntarily rescinded their speech codes as part of settlement agreements. *See, e.g.*, Press Release, Found. for Individual Rights in Educ., *Victory: Modesto Junior College Settles Student’s First Amendment Lawsuit* (Feb. 25, 2014), [available at http://www.thefire.org/victory-modesto-junior-college-settles-students-first-amendment-lawsuit](http://www.thefire.org/victory-modesto-junior-college-settles-students-first-amendment-lawsuit); Press Release, Student Press Law Ctr., *N.Y. College Settles Lawsuit with Students Who Challenged Campus Speech Codes* (June 22, 2005), [available at http://www.thefire.org/ny-college-settles-lawsuit-with-students-who-challenged-campus-speech-codes/](http://www.thefire.org/ny-college-settles-lawsuit-with-students-who-challenged-campus-speech-codes/).

¹² Several universities that have been the target of successful speech code lawsuits—such as the University of Cincinnati and the University of Michigan—have revised the unconstitutional policies challenged in court but still maintain other, equally unconstitutional policies.



DISCUSSION

PUBLIC UNIVERSITIES VS. PRIVATE UNIVERSITIES

With limited, narrowly defined exceptions, the First Amendment prohibits the government—including governmental entities such as state universities—from restricting freedom of speech. A good rule of thumb is that if a state law would be declared unconstitutional for violating the First Amendment, a similar regulation at a state college or university is likewise unconstitutional.

The guarantees of the First Amendment generally do not apply to students at private colleges because the First Amendment regulates only government—not private—conduct. Moreover, although acceptance of federal funding does confer some obligations upon private colleges (such as compliance with federal anti-discrimination laws), compliance with the First Amendment is not one of them.

This does not mean, however, that students and faculty at all private schools are not entitled to free expression. In fact, most private universities explicitly promise freedom of speech and academic freedom. In January 2015, for example, the Committee on Freedom of Expression at the University of Chicago produced a free speech policy statement (the “Chicago statement”) affirming the centrality of unfettered debate to the university’s mission:

Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. ... In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.¹³

Princeton University adopted the core of the Chicago statement into its own policies in April 2015.¹⁴ Similarly, in September

2015, Johns Hopkins University adopted its own statement on academic freedom, identifying “free and independent inquiry” as one of the university’s “core principles,” and stating that

[t]he torch of free inquiry is a critical part of our heritage and our mission. Each of us, in our time as members of this community of scholars, bears a responsibility for nurturing its flame, and passing it on to those who will follow.¹⁵

These statements are laudable. Indeed, FIRE recently launched a nationwide campaign asking universities to adopt the Chicago statement. The problem is that too many private universities maintain speech codes that directly conflict with their stated commitments to free speech. Princeton, for example, bans not only actual sexual harassment but also any “unwelcome conduct ... that is sexual in nature,” including “offensive” comments.¹⁶ Johns Hopkins bans “rude, disrespectful behavior.”¹⁷ And it is this false advertising—promising free speech and then, by policy and practice, prohibiting free speech—that FIRE considers impermissible. Students may freely choose to enroll at a private institution where they knowingly give up some of their free speech rights in exchange for membership in the university community. But universities may not engage in a bait-and-switch in which they advertise themselves as bastions of freedom and then instead deliver censorship and repression.



GEOFFREY STONE *Chairman of the Committee on Free Expression at the University of Chicago*

¹³ Committee on Freedom of Expression at the University of Chicago, *Report on the Committee of Freedom of Expression*, available at <http://provost.uchicago.edu/FOECommitteeReport.pdf>.

¹⁴ *Statement on Freedom of Expression*, PRINCETON U. RTS., RULES, RESP. (2015 edition), <http://www.princeton.edu/pub/rrr/part1/index.xml>.

¹⁵ *Academic Freedom at Johns Hopkins*, available at <http://web.jhu.edu/administration/provost/initiatives/academicfreedom/AcademicFreedomatJohnsHopkins.pdf>.

¹⁶ *Sexual Misconduct*, PRINCETON U. RTS., RULES, RESP. (2015 edition), <http://www.princeton.edu/pub/rrr/part1/index.xml>.

¹⁷ *Johns Hopkins University Principles for Ensuring Equity, Civility, and Respect for All*, https://www.jhu.edu/assets/uploads/2014/09/equity_civility_respect.pdf.



DISCUSSION

WHAT EXACTLY IS “FREE SPEECH,” AND HOW DO UNIVERSITIES CURTAIL IT?

What does FIRE mean when we say that a university restricts “free speech”? Do people have the right to say absolutely anything, or are certain types of expression left unprotected?

Simply put, the overwhelming majority of speech is protected by the First Amendment. Over the years, the Supreme Court has carved out a limited number of narrow exceptions to the First Amendment: speech that incites reasonable people to immediate violence; so-called “fighting words” (face-to-face confrontations that lead to physical altercations); harassment; true threats and intimidation; obscenity; and defamation. If the speech in question does not fall within one of these exceptions, it most likely is protected speech.

The exceptions are often misapplied and abused by universities to punish constitutionally protected speech. There are instances in which the written policy at issue may be constitutional—for example, a prohibition on “incitement”—but its application may not be. In other instances, a written policy will purport to be a legitimate ban on a category of unprotected speech like harassment or true threats, but (either deliberately or through poor drafting) will encompass protected speech, as well. Therefore, it is important to understand what these narrow exceptions to free speech actually mean in order to recognize when they are being misapplied.

THREATS & INTIMIDATION

The Supreme Court has defined “true threats” as only “those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). The Court also has defined “intimidation,” of the kind not protected by the First Amendment, as a “type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.” *Id.* at 360. Neither term would encompass, for example, a vaguely worded statement that is not directed at anyone in particular.

Nevertheless, universities frequently misapply policies prohibiting threats and intimidation so as to infringe on protected speech.

In May 2015, Oakton Community College (OCC) in Illinois threatened adjunct faculty member Chester Kulis—a vocal advocate for adjunct faculty rights—with legal action after he sent an email to colleagues that read: “Have a happy MAY DAY when workers across the world celebrate their struggle for union rights and remember the Haymarket riot in Chicago.” May Day, or International Workers’ Day, is observed every May 1 by the international labor movement. Its date was chosen in part to commemorate the 1886 Haymarket riot in Chicago. Kulis’s email, titled “May Day – The Antidote to the Peg Lee Gala,” was written in response to a reception hosted by OCC in celebration of the retirement of college president Margaret B. Lee. Lee herself was one of the many recipients of Kulis’s email. Several days after sending the email, Kulis received a cease-and-desist letter from OCC’s attorney, informing him that because the Haymarket riot “involved a bomb-throwing incident at a



OAKTON COMMUNITY COLLEGE



HAYMARKET SQUARE Site of the Chicago Haymarket Riot



DISCUSSION

striking workers' rally in Chicago which resulted in 11 deaths and more than 70 people injured ... [y]our reference to 'remember the Haymarket riot' was clearly threatening the President that you could resort to violence against the President and the College campus."¹⁸

FIRE asked the college to retract the letter, explaining that

Kulis's brief email is entirely protected by the First Amendment, and the charge that it was "clearly threatening" to anyone in the OCC community is without merit and wholly detached from our legal system's understanding of what constitutes a true threat. ... Kulis's email invoking a historical event in the context of his ongoing labor activism cannot by any reasonable reading be considered threatening or intimidating in this regard.¹⁹

Despite the clear weight of legal authority against it, OCC's lawyers doubled down on their assertion that Kulis's email constituted a threat.²⁰

To FIRE, this is a familiar refrain. In a strikingly similar case that took place just last year, Colorado State University–Pueblo cut off Professor Tim McGettigan's email access after he sent an email to students and faculty comparing the university administration's planned layoffs to the Ludlow Massacre, a 1914 incident in which numerous striking Colorado mineworkers and their families were killed. Although McGettigan's email merely likened the planned terminations to the massacre in terms of its impact on the lives of those affected, the university administration instead treated it as a threat.²¹

INCITEMENT

There is also a propensity among universities to restrict speech that offends other students on the basis that it constitutes "incitement." The basic concept, as administrators too often see it, is that offensive or provocative speech will anger those who disagree with it, perhaps so much that it moves them to violence. While preventing violence is an admirable goal, this is an impermissible misapplication of the incitement doctrine.

Incitement, in the legal sense, does not refer to speech that may lead to violence on the part of those opposed to or angered by it, but rather to speech that will lead those *who agree with it* to commit immediate violence. In other words, the danger is that certain speech will convince receptive, willing listeners to take immediate unlawful action. The paradigmatic example of

incitement is a person standing on the steps of a courthouse in front of a torch-wielding mob and urging that mob to burn down the courthouse immediately. To misapply the doctrine to encompass an opposing party's reaction to speech they dislike is to convert the doctrine into an impermissible "heckler's veto," where violence threatened by those angry about particular speech is used as a reason to censor that speech. As the Supreme Court has said, speech cannot be prohibited because it "might offend a hostile mob" or because it may prove "unpopular with bottle throwers."²²

The standard for incitement to violence was announced in the Supreme Court's decision in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). There, the Court held that the state may not "forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action." *Id.* at 447 (emphasis in original). This is an exacting standard, as evidenced by its application in subsequent cases.

For instance, in *Hess v. Indiana*, 414 U.S. 105 (1973), the Supreme Court held that a man who had loudly stated, "We'll take the fucking street later," during an anti-war demonstration did not intend to incite or produce immediate lawless action. The Court found that "at worst, it amounted to nothing more than advocacy of illegal action at some indefinite future time," and that the man was therefore not guilty under a state disorderly conduct statute. *Id.* at 108–09. The fact that the Court ruled in favor of the speaker despite the use of such strong and unequivocal language underscores the narrow construction that has traditionally been given to the incitement doctrine and its requirements of likelihood and immediacy. Nonetheless, college administrations have been all too willing to abuse or ignore this jurisprudence.

¹⁸ Letter from Philip H. Gerner III, Robbins Schwartz, to Chester Kulis (May 7, 2015), available at <https://www.thefire.org/letter-from-occ-attorneys-to-chester-kulis>.

¹⁹ Letter from Ari Cohn and Peter Bonilla, Found. for Individual Rights in Educ., to Margaret B. Lee, President, Oakton Cmty. Coll. (May 22, 2015), available at <https://www.thefire.org/fire-letter-to-oakton-community-college>.

²⁰ Letter from Catherine R. Locallo, Robbins Schwartz, to Peter Bonilla, Dir., Individual Rights Def. Program, Found. for Individual Rights in Educ. (June 1, 2015), available at <https://www.thefire.org/response-to-fire-from-catherine-r-locallo>.

²¹ Scott Jaschik, *Is Citing History a Threat?*, INSIDE HIGHER ED (Jan. 20, 2014), <https://www.insidehighered.com/news/2014/01/20/colorado-state-removes-email-account-professor-who-criticized-cuts>.

²² *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134–135 (1992).



DISCUSSION

OBSCENITY

The Supreme Court has held that obscene expression, to fall outside of the protection of the First Amendment, must “depict or describe sexual conduct” and must be “limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973).



THE FIRST AMENDMENT BLOCK Philadelphia, Pa.

This is a narrow definition applicable only to some highly graphic sexual material. It does not encompass curse words, even though these are often colloquially referred to as “obscenities.” In fact, the Supreme Court has explicitly held that profanity is constitutionally protected. In *Cohen v. California*, 403 U.S. 15 (1971), the defendant, Paul Robert Cohen, was convicted in California for wearing a jacket bearing the words “Fuck the Draft” in a courthouse. The Supreme Court overturned Cohen’s conviction, holding that the message on his jacket, however vulgar, was protected speech. In *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court determined that a student newspaper article entitled “Motherfucker Acquitted” was constitutionally protected speech. The Court wrote that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Id.* at 670.

Nonetheless, many colleges erroneously believe that they may legitimately prohibit profanity and vulgar expression.

Examples of such policies from the 2014–2015 academic year include:

- | Alabama A&M University prohibits the transmission of “profane” or “offensive” email messages.²³
- | Sam Houston State University in Texas prohibits, as disorderly conduct, using “profane or vulgar language.”²⁴

“THE MERE DISSEMINATION OF IDEAS—NO MATTER HOW OFFENSIVE TO GOOD TASTE—ON A STATE UNIVERSITY CAMPUS MAY NOT BE SHUT OFF IN THE NAME ALONE OF ‘CONVENTIONS OF DECENCY.’”

- U.S. SUPREME COURT

²³ Alabama A&M University Policy 5.1: Responsible Use of University Computing and Electronic Communications Resources, available at http://www.aamu.edu/administrativeoffices/information-technology/ITPolicies/Documents/Acceptable_Use_of_Computing_Resources.pdf.

²⁴ SAM HOUSTON ST. U. STUDENT GUIDELINES 2013–2016, at 36, available at <http://www.shsu.edu/students/guide/StudentGuidelines2013-2016.pdf>.



DISCUSSION

HARASSMENT

Harassment, properly defined, is not protected by the First Amendment. In the educational context, the Supreme Court has defined student-on-student harassment as targeted, discriminatory, and unwelcome conduct “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999). This is not simply expression; it is *conduct* far beyond the dirty joke or “offensive” student newspaper op-ed that is too often deemed “harassment” on today’s college campus. Harassment is extreme and usually repetitive behavior—behavior so serious that it would interfere with a reasonable person’s ability to receive his or her education. For example, in *Davis*, the conduct found by the Court to be harassment was a months-long pattern of behavior including repeated attempts to touch the victim’s breasts and genitals together with repeated sexually explicit comments directed at and about the victim.

For decades now, however, too many colleges and universities have maintained policies defining harassment too broadly and prohibiting constitutionally speech. And recent guidance from the Department of Education’s Office for Civil Rights (OCR), combined with that agency’s increasingly aggressive enforcement of Title IX, have exacerbated the problem by leading numerous colleges and universities to enact more restrictive policies in an effort to avoid an OCR investigation.

In May 2013, OCR issued a letter to the University of Montana that proclaimed itself to be a “blueprint” for colleges and universities around the country.²⁵ In that letter, OCR stated that “sexual harassment should be more broadly defined as ‘any unwelcome conduct of a sexual nature,’” including “verbal conduct” (that is, speech). Although OCR backed away from its use of the term “blueprint” in a letter to FIRE (stating that “the agreement in the Montana case represents the resolution of that particular case and not OCR or DOJ policy”),²⁶ this clarification was never directly communicated by OCR to the many colleges and universities within its jurisdiction. As a result, many colleges and universities revised their sexual harassment policies to include the broad definition prescribed by the blueprint:

At Clemson University, “[s]exual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature including sexual violence.”²⁷

Syracuse University defines sexual harassment as “unwelcome behavior of a sexual nature that relates to the gender or sexual identity of an individual.” The policy explicitly provides that “[e]ven without creating an intimidating or hostile environment for study, work, or social living, unwelcome behavior of a sexual nature is a violation of the University’s Code of Ethical Conduct.”²⁸

These examples, along with far too many others, demonstrate that colleges and universities often fail to limit themselves to the narrow definition of harassment that is outside the realm of constitutional protection. Instead, they expand the term to prohibit broad categories of speech that do not even *approach* actual harassment, despite similar policies having been struck down by federal courts years earlier.²⁹

These vague and overly broad harassment policies deprive students and faculty of their free speech rights. Consider the recent case of Professor John McAdams at Marquette University. In November 2014, McAdams posted an entry on his personal blog, the *Marquette Warrior*, criticizing then-graduate student instructor Cheryl Abbate for preventing a student from expressing opposition to

²⁵ Letter from Anurima Bhargava, Chief, Civil Rights Div., U.S. Dep’t of Justice, and Gary Jackson, Reg’l Dir., Office for Civil Rights, U.S. Dep’t of Educ., to Royce Engstrom, President, Univ. of Mont. and Lucy France, Univ. Counsel, Univ. of Mont. (May 9, 2013), available at <http://www.justice.gov/opa/documents/um-ltr-findings.pdf>.

²⁶ Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., to Greg Lukianoff, President, Found. for Individual Rights in Educ. (Nov. 14, 2013), available at <http://www.thefire.org/letter-from-department-of-education-office-for-civil-rights-assistant-secretary-catherine-lhamon-to-fire/>.

²⁷ *Clemson University Anti-Harassment and Non-Discrimination Policy*, available at <http://www.clemson.edu/campus-life/campus-services/access/anti-harassment-policy.html>.

²⁸ *Syracuse University Information Regarding Sexual Misconduct and Other Types of Harassment and Discrimination*, available at http://www.syr.edu/hcd/SYRACUSE_UNIVERSITY_INFORMATION.pdf.

²⁹ See, e.g., *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008) (holding that Temple University’s sexual harassment policy was unconstitutionally broad); *Doe v. Univ. of Mich.*, 721 F.Supp. 852 (E.D. Mich. 1989) (holding that University of Michigan’s discriminatory harassment policy was unconstitutionally broad); *Booher v. N. Ky. Univ. Bd. of Regents*, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. Jul. 21, 1998) (holding that Northern Kentucky University’s sexual harassment policy was unconstitutionally broad).



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same-sex marriage in her class on grounds that it might offend gay students.³⁰ After the blog drew media attention, Abbate reported on her own blog that she received threatening letters and emails.

In December 2014, Marquette suspended McAdams from all of his job duties. Although the letter from Dean Richard Holz did not specify the charges against McAdams, Holz enclosed a copy of the university's harassment policy. And a statement issued by the university on December 17 said that, "As stated in our harassment policy, the university will not tolerate personal attacks or harassment of or by students, faculty and staff."³¹ At the time, Marquette policy defined harassment broadly as "verbal, written or physical conduct directed at a person or a group based on color, race, national origin, ethnicity, gender or sexual orientation where the offensive behavior is intimidating, hostile or demeaning, or which could or does result in mental, emotional or physical discomfort, embarrassment, ridicule or harm."³² Although he was never formally charged with harassment, Professor McAdams remains suspended and the university is currently attempting to revoke his tenure over the incident,³³ despite the fact that Marquette's Faculty Handbook states that the university's termination procedures may not be applied to "impair the full and free enjoyment of legitimate personal or academic freedoms of thought, doctrine, discourse, association, advocacy, or action."³⁴

Having discussed the most common ways in which universities misuse the narrow exceptions to free speech to prohibit protected expression, we now turn to the innumerable other types of university regulations that restrict free speech and expression on their face. Such restrictions are generally found in several distinct types of policies.

ANTI-BULLYING POLICIES

In recent years, "bullying" has garnered a great deal of media attention, bringing pressure on legislators and school administrators at both the grade-school and the college levels to crack down on speech that purportedly causes emotional harm to other students. On October 26, 2010, OCR issued a letter on the topic of bullying, reminding educational institutions that they must address actionable harassment, but also acknowledging that "[s]ome conduct alleged to be harassment may implicate



PROFESSOR JOHN MCADAMS *Marquette University*

the First Amendment rights to free speech or expression."³⁵ For such situations, OCR's letter refers readers back to the 2003 "Dear Colleague" letter stating that harassment is conduct that goes far beyond merely offensive speech and expression. However, because it is primarily focused on bullying in the K-12 setting, the letter also urges an *in loco parentis*³⁶ approach that is inappropriate in the college setting, where students are overwhelmingly adults.

Under New Jersey's 2011 Anti-Bullying Bill of Rights Act, speech that does not rise to the level of actionable harassment (or any other type of unprotected speech) is now punishable

³⁰ John McAdams, *Marquette Philosophy Instructor: 'Gay Rights' Can't Be Discussed in Class Since Any Disagreement Would Offend Gay Students*, MARQUETTE WARRIOR (Nov. 9, 2014), <http://www.mu-warrior.blogspot.com/2014/11/marquette-philosophy-instructor-gay.html>.

³¹ Letter from Peter Bonilla, Dir., Individual Rights Def. Program, Found. for Individual Rights in Educ., to Michael R. Lovell, President, Marquette Univ. (Jan. 30, 2015), available at <https://www.thefire.org/fire-letter-marquette-university>.

³² 2014–2015 Marquette University Harassment Policy, available at https://www.thefire.org/fire_speech-codes/marquette-harassment-14-15.

³³ Marieke Tuthill Beck-Coon, *Marquette Faculty Hearing Committee to Weigh in on McAdams Tenure Dispute*, THE TORCH (Sept. 18, 2015), <https://www.thefire.org/marquette-faculty-hearing-committee-to-weigh-in-on-mcadams-tenure-dispute>.

³⁴ *Marquette University Faculty Handbook*, Section 306.03, available at <http://www.marquette.edu/provost/306.php>.

³⁵ "Dear Colleague" Letter from Russlynn Ali, Assistant Sec'y for Civil Rights, U.S. Dep't of Educ. (Oct. 26, 2010), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>.

³⁶ "In the place of parents."



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as “bullying” at public universities in the state. Critically, New Jersey’s definition lacks any objective (“reasonable person”) standard, labeling conduct as bullying if it “has the effect of insulting or demeaning any student or group of students.” As a result, students must appraise all of their fellow students’ subjective individual sensitivities before engaging in controversial or offensive speech. While the Act does require that there be a “substantial disruption” to the educational environment, it places the onus squarely on the speaker to ensure that his or her speech will not cause another student, however sensitive or unreasonable, to react in a manner that is disruptive to the educational environment (such as by engaging in self-harm or harm to others).

Many of the same flaws plague the Tyler Clementi Higher Education Anti-Harassment Act, a bill reintroduced in 2015 by Senator Patty Murray and included in the Senate Democrats’ first draft of the Higher Education Act, which is currently pending reauthorization. The Act defines harassment, in relevant part, as conduct that is

sufficiently severe, persistent, or pervasive so as to limit a student’s ability to participate in or benefit from a program or activity at an institution of higher education, or to create a hostile or abusive educational environment at an institution of higher education.³⁷

Again, because of the lack of an objective, “reasonable person” standard, this formulation conditions the permissibility of speech entirely upon the subjective reaction of the listener—something courts have repeatedly ruled unconstitutional.³⁸

Unsurprisingly, with so much attention from federal and state lawmakers, FIRE has seen a dramatic increase in the number of university policies prohibiting bullying. Many universities have addressed the issue by simply adding the term “bullying,” without definition, to their existing speech codes—giving students no notice of what is actually prohibited, and potentially

threatening protected expression. Other policies explicitly restrict protected speech by calling it “bullying” or “cyberbullying.” Examples of such policies include:

At the University of South Dakota, “[t]easing, making fun of, laughing at or harassing someone over time is bullying.” Furthermore, “[u]sing university property (i.e. the USD Internet server) to bully other students (cyber bullying) [sic] or express feelings of hatred via Facebook, Twitter, email or other forms of social media is not allowed per university policy that governs the use of USD resources and facilities.”³⁹

At Idaho State University, “[b]ullying includes harsh practical jokes, spreading rumors and gossip, teasing, taunting and using social media to humiliate and ridicule others; using aggressive communication such as insults, offensive remarks, shouting, yelling, angry outbursts, and invading others personal space; and taking intentional actions to exclude or ostracize others from a group.”⁴⁰

POLICIES ON TOLERANCE, RESPECT, AND CIVILITY

Many schools invoke laudable goals like respect and civility to justify policies that violate students’ and faculty members’ free speech rights. While a university has every right to promote a tolerant and respectful atmosphere on campus, a university that claims to respect free speech must not limit speech to only the inoffensive and respectful. And although pleas for civility and respect are often initially framed as requests, many schools have speech codes that effectively turn those requests into requirements.

Shortly before Halloween 2015, for example, Wesleyan University put out a flyer asking students to consider whether their Halloween costumes were offensive. The flyer told students to ask themselves if their costumes “trivialize human suffering, oppression, and marginalization”; “mock cultural or

³⁷ Tyler Clementi Higher Education Anti-Harassment Act of 2014, available at http://www.murray.senate.gov/public/_cache/files/c55e8226-da2b-41a2-a128-401a5a91d8ab/tyler-clementi-higher-education-anti-harassment-act-of-2014.pdf.

³⁸ See, e.g., *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 369 (M.D. Pa. 2003) (“regulations that prohibit speech on the basis of listener reaction alone are unconstitutional both in the public high school and university settings”).

³⁹ *Guidelines for the Awareness and Prevention of Acts of Cultural Insensitivity and Bullying at USD*, available at <http://www.usd.edu/-/media/files/diversity/guidelinesawarenessandprevention.ashx?a=en>.

⁴⁰ *Idaho State University Student Conduct Code*, at p.9, available at <http://www.isu.edu/policy/5000/Student-Conduct-Code-ISUPP-5000-7-27-15.pdf>.



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religious symbols”; or “attempt to represent an entire culture or ethnicity.”⁴¹ While the flyer had the appearance of a friendly reminder, Wesleyan’s speech codes grant students “the right to be protected against actions that may be harmful to the health or emotional stability of the individual or that degrade the individual or infringe upon his/her personal dignity.”⁴² So in reality, if a Wesleyan student were to report feeling offended by another student’s costume, that student could indeed find him- or herself facing disciplinary action.



COLLEGE STUDENTS SHOULD BE SCARED TO CELEBRATE HALLOWEEN *The Torch*

Wesleyan is far from alone; many universities have civility requirements codified in university policy. Here are just two examples of such policies from the 2014–2015 academic year:

Middlebury College prohibits “flagrant disrespect for persons.”⁴³

Under the University of New Mexico’s “Respectful Campus” policy, “unduly inflammatory statements” are prohibited, as are any “actions that are destructive to a respectful campus.”⁴⁴

While respect and civility may seem morally uncontroversial, most uncivil or disrespectful speech is wholly protected by the First Amendment,⁴⁵ and is indeed sometimes of great political and social significance. Some of the expression employed in

the civil rights movement of the 1950s and 60s, for example, would violate campus civility codes today. Colleges and universities may *encourage* civility, but public universities—and those private universities that purport to respect students’ fundamental free speech rights—may not require it or threaten mere incivility with disciplinary action.

INTERNET USAGE POLICIES

A great deal of student expression now takes place online, whether over email, on sites like Facebook and Twitter, or on apps such as Yik Yak. Numerous universities maintain policies—many of which were originally written before the Internet became one of students’ primary methods of communication—severely restricting the content of online expression.

Examples of impermissibly restrictive Internet usage policies from the 2014–2015 academic year include the following:

Boise State University prohibits “publishing, displaying, transmitting, retrieving or storing inappropriate or offensive material.”⁴⁶

Under Macalaster College’s policy on Facebook and Social Networking, students may not post “inappropriate” material on social networking sites, including anything that is “racially, sexually, ethnically, or religiously objectionable.”⁴⁷



Wesleyan University Halloween poster

⁴¹ Alex Morey, *College Students Should be Afraid to Celebrate Halloween*, *THE TORCH* (Oct. 30, 2015), <https://www.thefire.org/college-students-should-be-scared-to-celebrate-halloween>.

⁴² *2015-2016 University Standards and Regulations*, at p.2, available at <http://www.wesleyan.edu/studentaffairs/studenthandbook/20152016studenthandbook.pdf>.

⁴³ Middlebury College Handbook, *General Conduct*, Sept. 2015, available at http://www.middlebury.edu/about/handbook/student_policies/conduct.

⁴⁴ *Administrative Policies and Procedures Manual*, Policy 2240: Respectful Campus, available at <https://policy.unm.edu/university-policies/2000/2240.html>.

⁴⁵ See, e.g., *Coll. Republicans at S.F. St. Univ. v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007) (enjoining enforcement of university civility policy because “there is a substantial risk that the civility requirement will inhibit or deter use of the forms and means of communication that, to many speakers in circumstances of the greatest First Amendment sensitivity, will be the most valued and the most effective”).

⁴⁶ Boise State University Policy Manual, #8000: Information Technology Resource Use, available at <http://policy.boisestate.edu/information-technology/information-technology-resource-use>.

⁴⁷ Macalester College Student Handbook, Facebook and Social Networking, available at <https://www.macalester.edu/studentaffairs/studenthandbook/05campuspolicies/05-12socialnetworking.html>.



SPOTLIGHT ON: THE STAND UP FOR SPEECH LITIGATION PROJECT



JOEY JERGINs, FORREST GEE, AND WILLIAM JERGINs *Dixie State University student plaintiffs*

In the summer of 2014, FIRE launched the Stand Up For Speech Litigation Project, a national effort to eliminate unconstitutional speech codes through targeted First Amendment lawsuits.

The idea behind the Stand Up For Speech Litigation Project is simple: FIRE wants to impose a real cost on universities for violating First Amendment rights to reset the incentives that currently drive censorship of student and faculty speech. Lawsuits will be filed against public colleges maintaining unconstitutional speech codes in each federal circuit. After each victory by ruling or settlement, FIRE will target another school in the same circuit—sending a message that unless public colleges obey the law, they will be sued.

To accomplish this, FIRE has retained preeminent First Amendment attorney Robert Corn-Revere of the national law firm Davis Wright Tremaine as counsel for students and faculty members participating in the Stand Up For Speech Litigation

Project. At a press conference announcing the project's launch, Corn-Revere praised the students and faculty plaintiffs as those “who have chosen not to follow the path of least resistance, but instead to challenge the exercise of arbitrary and illegal authority.”¹

A total of ten lawsuits have been filed thus far as part of the project. To date, seven of those lawsuits have settled in favor of free speech, with universities agreeing to revise unconstitutional policies and pay attorney's fees and damages to censored students.² The other three suits remain ongoing.

The Stand Up For Speech Litigation Project has resulted in the vindication of students' free speech rights in a variety of different ways. FIRE's cases at Modesto Junior College, the University of Hawaii at Hilo, Citrus College, Cal Poly Pomona and, most recently, Dixie State University all led to the abolishment of restrictive campus free speech zones. Western Michigan University (WMU) agreed to pay damages to a student group after the group alleged in their lawsuit that WMU taxed controversial speech by making them pay for extra security to host rapper and social activist Boots Riley on campus.³ And Ohio University (OU) revised several overbroad speech codes in its settlement with a member of OU's student group Students Defending Students (SDS). SDS leader Isaac Smith brought the suit after OU administrators ordered SDS members to stop wearing T-shirts with the three-decade-old slogan, “We get you off for free.” (SDS provides free assistance to students accused

¹ Press Release, Found. for Individual Rights in Educ., FIRE Brings Four Free Speech Lawsuits in One Day (July 1, 2014), <http://www.thefire.org/fire-brings-four-free-speech-lawsuits-in-one-day>.

² Press Release, Found. for Individual Rights in Educ., VICTORY: Lawsuit Settlement Restores Free Speech Rights at Dixie State U. After Censorship of Bush, Obama, Che Flyers (Sept. 17, 2015), <https://www.thefire.org/victory-lawsuit-settlement-restores-free-speech-rights-at-dixie-state-u-after-censorship-of-bush-obama-che-flyers>.

³ Press Release, Found. for Individual Rights in Educ., Western Michigan U. Settles Boots Riley 'Speech Tax' Lawsuit, 'Stand Up For Speech' Scores Fifth Victory (May 4, 2015), <https://www.thefire.org/western-michigan-u-settles-boots-riley-speech-tax-lawsuit-stand-up-for-speech-scores-fifth-victory>.

⁴ Press Release, Found. for Individual Rights in Educ., Students, FIRE Go Four-for-Four as Ohio U. Settles Speech Code Lawsuit (Feb. 2, 2015), <https://www.thefire.org/students-fire-go-four-four-ohio-u-settles-speech-code-lawsuit>.



THE STAND UP FOR SPEECH LITIGATION PROJECT

of disciplinary infractions.) Group members obeyed the orders to stop wearing the shirts because they feared punishment under several vague provisions of OU's student conduct code, which OU revised as part of the settlement.⁴ All told, the seven settled lawsuits have restored the free speech rights of almost 200,000 students and secured over \$350,000 in damages and attorney's fees.⁵

In addition to Ohio University, Modesto Junior College, the University of Hawaii at Hilo, Citrus College, Dixie State University, Western Michigan University, and California State Polytechnic University, Pomona, have all revised unconstitutional policies as a direct result of FIRE's Stand Up For Speech Litigation Project. Many others have contacted FIRE for help revising their policies so as to avoid potential future litigation. The initiative is still going strong, and we hope to have many more successful cases to share in next year's report.



MERRITT BURCH *University of Hawaii at Hilo student plaintiff*

**THE STAND UP FOR
SPEECH LITIGATION
PROJECT IS A
NATIONAL EFFORT
TO ELIMINATE
UNCONSTITUTIONAL
SPEECH CODES
THROUGH TARGETED
FIRST AMENDMENT
LAWSUITS.**



ROBERT VAN TUINEN *Modesto Junior College student plaintiff*

⁵ Press Release, Found. for Individual Rights in Educ., VICTORY: Lawsuit Settlement Restores Free Speech Rights at Dixie State U. After Censorship of Bush, Obama, Che Flyers (Sept. 17, 2015), <https://www.thefire.org/victory-lawsuit-settlement-restores-free-speech-rights-at-dixie-state-u-after-censorship-of-bush-obama-che-flyers>.



DISCUSSION

POLICIES ON BIAS AND HATE SPEECH

In recent years, colleges and universities around the country have instituted policies and procedures specifically aimed at eliminating “bias” and “hate speech” on campus. These sets of policies and procedures, frequently termed “Bias Reporting Protocols” or “Bias Incident Protocols,” often include speech codes prohibiting extensive amounts of protected expression. “Hate speech” has no legal definition in the United States, and while speech or expression that is based on a speaker’s prejudice may be offensive, it is entirely protected unless it rises to the level of unprotected speech (harassment, threats, and so forth). The speaker’s motive has no bearing on whether or not the speech is protected.

The protocols often also infringe on students’ right to due process, allowing for anonymous reporting that denies students the right to confront their accusers. Moreover, universities are often heavily invested in these bias incident policies, having set up entire regulatory frameworks and response protocols devoted solely to addressing them.

While many bias incident protocols do not include a separate enforcement mechanism, the reality is that the mere threat of a bias investigation will likely be sufficient to chill protected speech on controversial issues. And when the only conduct at issue is constitutionally protected speech, even investigation is inappropriate.

Examples of overly broad bias incident policies from this past academic year include:

At Dickinson College, a bias incident “is defined as a pejorative act or expression that a reasonable person would conclude is directed at and/or impacts a member or group based on but not limited to those characteristics outlined above. A bias motivated incident can occur whether the act or expression was intentional or unintentional.”⁴⁸

At Gettysburg College, “[a]n inappropriate bias behavior is defined as an act (speech, written or verbal, or conduct) targeted at a person or group creating what the College deems an insensitive or unwelcoming environment on the basis of actual or perceived identity/expression, national origin, gender, gender identity, gender expression, race, religion, ethnicity, sexual orientation, or ability status.” This includes things such as “stereotyping” and “derogatory jokes.”⁴⁹

POLICIES GOVERNING SPEAKERS, DEMONSTRATIONS, AND RALLIES

Universities have a right to enact reasonable, narrowly tailored “time, place, and manner” restrictions that prevent demonstrations and speeches from unduly interfering with the educational process. They may not, however, regulate speakers and demonstrations on the basis of content or viewpoint, nor may they maintain regulations that burden substantially more speech than is necessary to maintain an environment conducive to education. But many universities do just that, in the ways discussed below.

“HATE SPEECH” HAS NO LEGAL DEFINITION IN THE UNITED STATES.

⁴⁸ Dickinson College Bias Incident Protocol, available at http://www.dickinson.edu/download/downloads/id/4882/bias_incident_protocol_2015pdf.pdf.

⁴⁹ Gettysburg College Handbook of Student Rights & Responsibilities, Bias Related Conduct, available at http://www.gettysburg.edu/about/offices/college_life/srr/student_handbook/policy-details.dot?id=342a40d1-b41b-4817-98be-c8140ed2e85b.



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SECURITY FEE POLICIES

In recent years, FIRE has seen a number of colleges and universities hamper—whether intentionally or just through a misunderstanding of the law—the invitation of controversial speakers by levying additional security costs on the sponsoring student organizations.

The Supreme Court addressed exactly this issue in *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992), in which it struck down an ordinance in Georgia that permitted the local government to set varying fees for events based upon how much police protection the event would need. Invalidating the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.” *Id.* at 134. Deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation. ... **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” *Id.* at 134–35 (emphasis added).

Despite the clarity of the law on this issue, the impermissible use of security fees to burden controversial speech is all too common on university campuses.



UNIVERSITY OF AKRON

⁵⁰ Letter from Peter Bonilla and Ari Cohn, Found. for Individual Rights in Educ., to Scott L. Scarborough, President, Univ. of Akron (Sept. 18, 2015), available at <https://www.thefire.org/fire-letter-to-university-of-akron-september-18-2015>.

⁵¹ *Id.* at 2.

⁵² Letter from Ted Mallo, Vice President & Gen. Counsel, Univ. of Akron, to Peter Bonilla and Ari Cohn, Found. for Individual Rights in Educ. (Oct. 2, 2015), available at <https://www.thefire.org/response-from-vice-president-general-counsel-ted-mallo-october-2-2015>.

⁵³ Boston College Student Guide, Student Demonstrations, available at <http://www.bc.edu/publications/studentguide/behavioralpolicies.html>.

⁵⁴ Edinboro University of Pennsylvania Policy No. C005: Rights of Students and Other Persons to Assemble for the Purpose of Demonstrating their Concerns, available at https://my.edinboro.edu/c/document_library/get_file?uuid=a9dc4821-1353-454e-8e04-6e903853388&groupId=216562.

PRIOR RESTRAINTS

The Supreme Court has held that “[i]t is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” *Watchtower Bible and Tract Society of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002). Yet many colleges and universities do just that, requiring students and student organizations to register their expressive activities well in advance and, often, to obtain administrative approval for those activities.

For instance, in August 2015, University of Akron (UA) law student Anthony Palumbo stood outside the entrance to UA’s Student Union in an effort to sign new members up for a prospective student group. After just a few minutes, he was stopped by an administrator who informed him that in order to continue soliciting signatures, he would first need to obtain a permit—a process that could take up to three days.⁵⁰ FIRE wrote a letter to UA, explaining that

[b]y preventing students from distributing materials in the public outdoor spaces of its campus under threat of arrest, UA violates its students’ First Amendment rights. Requiring students to obtain a permit prior to engaging in any on-campus expression is likewise an impermissible burden on student First Amendment rights. UA must address and rectify these problems immediately.⁵¹

In response, UA informed FIRE that it was revising its policies and that the current registration requirements would be suspended in the meantime.⁵² This was a welcome outcome at UA, but similar policies persist across the country.

For example:

At Boston College, “applications for permits for all activities in the nature of a public speech, rally, demonstration, march, or protest must be submitted a minimum of 48 hours in advance to the Dean of Students.”⁵³

Edinboro University of Pennsylvania requires students “wishing to assemble” to “complete a Facilities Request Form” and “meet with the Dean of Students.”⁵⁴



DISCUSSION

FREE SPEECH ZONE POLICIES

Of the schools surveyed for this report, roughly one in six have “free speech zone” policies—policies limiting student demonstrations and other expressive activities to small and/or out-of-the-way areas on campus.⁵⁵ Such policies are generally inconsistent with the First Amendment, and have repeatedly been struck down by courts or voluntarily revised as part of lawsuit settlements.

In March 2015, student and animal rights activist Nicolas Tomas filed a First Amendment lawsuit against California State Polytechnic University, Pomona, challenging the university’s free speech zone as well as its permit requirement for expressive activities. The lawsuit alleged that a Cal Poly Pomona police officer stopped Tomas from handing out flyers on a campus sidewalk. The officer directed Tomas to the Office of Student Life to obtain a “permit,” namely a badge that he would have to wear while distributing any written material. Furthermore, he would be confined to Cal Poly Pomona’s tiny free speech zone—a patch of turf that at the time comprised less than 0.01 percent of the university’s campus. The university ultimately settled the lawsuit with Tomas, agreeing to revise its policies and pay Tomas \$35,000 in damages and attorney’s fees. Tomas’ lawsuit was brought as part of FIRE’s Stand Up For Speech Litigation Project, discussed in greater detail elsewhere in this report.

Despite the threat of successful litigation, free speech zones remain common. For example:

East Carolina University has just one “Designated Public Forum”—“the four-sided green space adjacent to the Cupola”—for expressive activities on campus.⁵⁶

The University of Central Arkansas has designated “the area adjacent to the southwest corner of Ferguson Chapel, not to exceed fifty (50) feet in any direction,” as the only area where students can engage in expressive activity without prior administrative approval.⁵⁷

⁵⁵ “Infographic: Free Speech Zones on America’s Campuses,” <https://www.thefire.org/infographic-free-speech-zones-on-americas-campuses-2>.

⁵⁶ East Carolina University Reg. 07.30.02: Assemblies and Public Addresses in Designated Public Forum, available at <https://www.ecu.edu/prt/07/30/02>.

⁵⁷ University of Central Arkansas Board Policy 406: Free Speech, available at <http://uca.edu/board/files/2010/11/406.pdf>.

⁵⁸ Azhar Majeed, *Putting Their Money Where Their Mouth Is: The Case for Denying Qualified Immunity to University Administrators for Violating Students’ Speech Rights*, 8 CARDOZO PUB. LAW, POL’Y & ETHICS J. 515 (2010).

WHAT CAN BE DONE?

The good news is that the types of restrictions discussed in this report can be defeated. A student can be a tremendously effective advocate for change when he or she is aware of First Amendment rights and is willing to engage administrators in defense of them. Public exposure is also critical to defeating speech codes, since universities are often unwilling to defend their speech codes in the face of public criticism.

Unconstitutional policies also can also be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country. Many more policies have been revised in favor of free speech as the result of legal settlements, including seven cases brought since July 2014 as part of FIRE’s Stand Up For Speech Litigation Project.



NICOLAS TOMAS California State Polytechnic University, Pomona plaintiff

Any speech code in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, as speech codes are consistently defeated in court, administrators are losing virtually any chance of credibly arguing that they are unaware of the law, which means that they may be held personally liable when they are responsible for their schools’ violations of constitutional rights.⁵⁸

The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: While many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation’s courts nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.



APPENDIX A: SCHOOLS BY RATING

RED LIGHT

Adams State University
Alabama A&M University
Alabama State University
Alcorn State University
American University
Armstrong State University
Athens State University
Barnard College
Bates College
Boise State University
Boston College
Boston University
Brooklyn College, City University of New York
Brown University
Bryn Mawr College
California Institute of Technology
California State Polytechnic University, Pomona
California State University, Channel Islands
California State University, Chico
California State University, Dominguez Hills
California State University, Fresno
California State University, Fullerton
California State University, Long Beach
California State University, Los Angeles
California State University, Monterey Bay
California State University, Sacramento
California University of Pennsylvania
Carleton College
Case Western Reserve University
Central Michigan University
Central Washington University
Cheyney University of Pennsylvania
Chicago State University
Clark University
Clemson University
Coastal Carolina University
Colby College
Colgate University
College of the Holy Cross
Colorado College
Colorado Mesa University
Colorado School of Mines

Columbia University
Connecticut College
Cornell University
Davidson College
Delaware State University
Delta State University
DePauw University
Dickinson College
East Carolina University
East Tennessee State University
Eastern Michigan University
Edinboro University of Pennsylvania
Emory University
Evergreen State College
Florida Gulf Coast University
Florida State University
Fordham University
Fort Lewis College
Franklin & Marshall College
Frostburg State University
Furman University
Georgetown University
Georgia Institute of Technology
Georgia Southern University
Georgia State University
Gettysburg College
Governors State University
Grambling State University
Grand Valley State University
Harvard University
Howard University
Idaho State University
Illinois State University
Iowa State University
Jackson State University
Jacksonville State University
Johns Hopkins University
Kean University
Keene State College
Kenyon College
Lafayette College
Lake Superior State University



SCHOOLS BY RATING

RED LIGHT

Lehigh University
Lincoln University
Louisiana State University–Baton Rouge
Lyndon State College
Macalester College
Marquette University
McNeese State University
Michigan Technological University
Middle Tennessee State University
Middlebury College
Missouri State University
Morehead State University
Mount Holyoke College
Murray State University
New College of Florida
New York University
Norfolk State University
North Carolina Central University
Northeastern Illinois University
Northeastern University
Northern Arizona University
Northern Illinois University
Northern Kentucky University
Northwestern Oklahoma State University
Oakland University
Ohio University
Oklahoma State University–Stillwater
Pennsylvania State University–University Park
Princeton University
Reed College
Rensselaer Polytechnic Institute
Rice University
Salem State University
Sam Houston State University
Shawnee State University
Smith College
Southeastern Louisiana University
Southern Illinois University at Carbondale
Southern Illinois University at Edwardsville
Southwest Minnesota State University
St. Olaf College
State University of New York at Albany

State University of New York at Fredonia
State University of New York at New Paltz
State University of New York at Plattsburgh
State University Of New York at University at Buffalo
State University of New York College of Environmental
Science and Forestry
Stevens Institute of Technology
Swarthmore College
Syracuse University
Tennessee State University
Texas Southern University
Texas Woman’s University
The College of New Jersey
The Ohio State University
Troy University
Tufts University
Tulane University
Union College
University of Alabama
University of Alabama at Birmingham
University of Alaska Anchorage
University of California, Merced
University of California, Santa Barbara
University of California, Santa Cruz
University of Central Arkansas
University of Central Florida
University of Central Missouri
University of Cincinnati
University of Connecticut
University of Denver
University of Georgia
University of Houston
University of Idaho
University of Illinois at Chicago
University of Illinois at Springfield
University of Kansas
University of Maine at Presque Isle
University of Massachusetts Amherst
University of Massachusetts at Dartmouth
University of Massachusetts at Lowell
University of Miami
University of Michigan, Ann Arbor



SCHOOLS BY RATING

RED LIGHT

University of Minnesota–Morris
University of Missouri–Columbia
University of Missouri at St. Louis
University of Montana
University of New Hampshire
University of New Mexico
University of New Orleans
University of North Carolina at Greensboro
University of North Carolina School of the Arts
University of North Texas
University of Northern Colorado
University of Notre Dame
University of Oregon
University of Richmond
University of South Alabama
University of South Carolina Columbia
University of South Dakota
University of Southern California
University of Southern Indiana
University of Texas at Arlington
University of Texas at Austin
University of Toledo
University of Tulsa
University of West Alabama
University of West Florida
University of Wisconsin–Green Bay
University of Wisconsin–La Crosse
University of Wisconsin–Oshkosh
University of Wyoming
Utah State University
Utah Valley University
Valdosta State University
Wake Forest University
Washington State University
Washington University in St. Louis
Wayne State University
Wellesley College
Wesleyan University
West Chester University of Pennsylvania
Western Illinois University
Western Michigan University
Westfield State University

Whitman College
William Paterson University
Williams College
Winona State University
Winston Salem State University
Worcester State University
Wright State University
Youngstown State University



SCHOOLS BY RATING

YELLOW LIGHT

Amherst College
Angelo State University
Appalachian State University
Arkansas State University
Auburn University
Auburn University Montgomery
Ball State University
Bard College
Bemidji State University
Binghamton University, State University of New York
Bloomsburg University of Pennsylvania
Bowdoin College
Bowling Green State University
Brandeis University
Bridgewater State University
Bucknell University
California Maritime Academy
California Polytechnic State University
California State University, Bakersfield
California State University, East Bay
California State University, Northridge
California State University, San Bernardino
California State University, San Marcos
California State University, Stanislaus
Cameron University
Central Connecticut State University
Centre College
Christopher Newport University
Claremont McKenna College
Clarion University of Pennsylvania
Colorado State University
Colorado State University–Pueblo
Dakota State University
Dartmouth College
Drexel University
Duke University
East Stroudsburg University of Pennsylvania
Eastern New Mexico University
Elizabeth City State University
Fayetteville State University
Fitchburg State University
Florida A&M University
Florida Atlantic University
Florida International University
Framingham State University
George Washington University
Grinnell College
Hamilton College
Harvey Mudd College
Haverford College
Henderson State University
Humboldt State University
Indiana State University
Indiana University Bloomington
Indiana University Kokomo
Indiana University–Purdue University Columbus
Indiana University–Purdue University Fort Wayne
Indiana University–Purdue University Indianapolis
Indiana University of Pennsylvania
Indiana University South Bend
Indiana University, East
Indiana University, Northwest
Indiana University, Southeast
James Madison University
Kansas State University
Kennesaw State University
Kent State University
Kentucky State University
Kutztown University of Pennsylvania
Lewis-Clark State College
Lock Haven University of Pennsylvania
Longwood University
Louisiana Tech University
Mansfield University of Pennsylvania
Marshall University
Massachusetts College of Liberal Arts
Massachusetts Institute of Technology
Metropolitan State University
Miami University of Ohio
Michigan State University
Millersville University of Pennsylvania
Missouri University of Science and Technology
Montana State University



SCHOOLS BY RATING

YELLOW LIGHT

Montana Tech of the University of Montana
Montclair State University
New Jersey Institute of Technology
New Mexico State University
Nicholls State University
North Carolina A&T State University
North Carolina State University - Raleigh
North Dakota State University
Northern Michigan University
Northwestern State University
Northwestern University
Oberlin College
Occidental College
Old Dominion University
Pittsburg State University
Pitzer College
Pomona College
Radford University
Rhode Island College
Richard Stockton College of New Jersey
Rogers State University
Rutgers University–New Brunswick
Saginaw Valley State University
Saint Cloud State University
San Diego State University
San Francisco State University
San Jose State University
Scripps College
Sewanee, The University of the South
Skidmore College
Slippery Rock University of Pennsylvania
Sonoma State University
South Dakota State University
Southern Methodist University
Stanford University
State University of New York at Brockport
State University of New York at Oswego
Stony Brook University
Tarleton State University
Temple University
Texas A&M University–College Station
Texas State University–San Marcos

Texas Tech University
The City College of New York
The University of Virginia's College at Wise
Towson University
Trinity College
University of Alabama in Huntsville
University of Alaska Fairbanks
University of Alaska Southeast
University of Arizona
University of Arkansas, Fayetteville
University of California, Riverside
University of California, Berkeley
University of California, Davis
University of California, Irvine
University of California, Los Angeles
University of California, San Diego
University of Chicago
University of Colorado at Boulder
University of Delaware
University of Hawaii at Hilo
University of Illinois at Urbana-Champaign
University of Iowa
University of Kentucky
University of Louisville
University of Maine
University of Maine at Fort Kent
University of Mary Washington
University of Maryland, College Park
University of Memphis
University of Minnesota–Twin Cities
University of Montana Western
University of Montevallo
University of Nebraska–Lincoln
University of Nevada, Las Vegas
University of Nevada, Reno
University of North Alabama
University of North Carolina Asheville
University of North Carolina at Charlotte
University of North Carolina at Pembroke
University of North Carolina Wilmington
University of North Dakota
University of Northern Iowa



SCHOOLS BY RATING

YELLOW LIGHT

University of Oklahoma
University of Pittsburgh
University of Rhode Island
University of Rochester
University of South Florida
University of South Florida at Saint Petersburg
University of Southern Maine
University of Southern Mississippi
University of Texas at El Paso
University of Texas at San Antonio
University of Vermont
University of Washington
University of West Georgia
University of Wisconsin–Eau Claire
University of Wisconsin–Madison
University of Wisconsin–Stout
Vanderbilt University
Virginia Commonwealth University
Virginia Polytechnic Institute and State University
Virginia State University
Washington & Lee University
West Virginia University
Western Carolina University
Western Kentucky University
Western Oregon University
Wichita State University
Yale University



SCHOOLS BY RATING

GREEN LIGHT

Arizona State University
Black Hills State University
Carnegie Mellon University
Cleveland State University
Eastern Kentucky University
George Mason University
Mississippi State University
Oregon State University
Plymouth State University
Purdue University
Purdue University Calumet
Shippensburg University of Pennsylvania
The College of William and Mary
University of Florida
University of Mississippi
University of North Carolina at Chapel Hill
University of North Florida
University of Pennsylvania
University of Tennessee, Knoxville
University of Utah
University of Virginia
Western State Colorado University

WARNING SCHOOLS

Baylor University
Brigham Young University
Pepperdine University
Saint Louis University
Vassar College
Worcester Polytechnic Institute
Yeshiva University

**APPENDIX B: RATING CHANGES, 2014–2015 ACADEMIC YEAR**





























SCHOOL NAME	2013–2014 RATING		2014–2015 RATING	
Arkansas State University		Red		Yellow
Auburn University		Red		Yellow
Bridgewater State University		Red		Yellow
Bucknell University		Red		Yellow
California Maritime Academy		Red		Yellow
Cameron University		Red		Yellow
Clemson University		Yellow		Red
Colorado School of Mines		Yellow		Red
Cornell University		Yellow		Red
California State University, Long Beach		Yellow		Red
Colorado State University–Pueblo		Red		Yellow
Dartmouth College		Green		Yellow
East Stroudsburg University		Red		Yellow
Edinboro University of Pennsylvania		Yellow		Red
Florida A&M University		Yellow		Red
Florida International University		Red		Yellow
Furman University		Yellow		Red
George Mason University		Yellow		Green
Georgia Southern University		Yellow		Red
Humboldt State University		Red		Yellow
Idaho State University		Yellow		Red
Indiana University of Pennsylvania		Red		Yellow
Kansas State University		Red		Yellow
Mansfield University of Pennsylvania		Red		Yellow

**RATING CHANGES, 2014–2015 ACADEMIC YEAR**

SCHOOL NAME	2013–2014 RATING		2014–2015 RATING	
Marshall University		Red		Yellow
Missouri Univ. of Science and Technology		Red		Yellow
Montana State University		Red		Yellow
New Jersey Institute of Technology		Red		Yellow
Nicholls State University		Red		Yellow
Oberlin College		Red		Yellow
Oklahoma State University		Yellow		Red
Purdue University		Yellow		Green
Purdue University Calumet		Yellow		Green
Reed College		Yellow		Red
San Francisco State University		Red		Yellow
Sewanee, the University of the South		Red		Yellow
Southwest Minnesota State University		Yellow		Red
SUNY Albany		Yellow		Red
SUNY Oswego		Red		Yellow
Tarleton State University		Red		Yellow
Texas A&M University		Red		Yellow
University of California, Santa Barbara		Yellow		Red
University of Denver		Yellow		Red
University of Georgia		Yellow		Red
University of Hawaii Hilo		Red		Yellow
University of Iowa		Red		Yellow
University of Louisville		Red		Yellow
University of Minnesota Twin Cities		Red		Yellow



RATING CHANGES, 2014–2015 ACADEMIC YEAR

SCHOOL NAME	2013–2014 RATING		2014–2015 RATING	
University of Nebraska–Lincoln		Green		Yellow
University of Nevada Las Vegas		Red		Yellow
University of Nevada, Reno		Red		Yellow
University of North Carolina at Chapel Hill		Yellow		Green
University of Northern Iowa		Red		Yellow
University of South Dakota		Yellow		Red
University of South Florida		Red		Yellow
University of South Florida St. Petersburg		Red		Yellow
University of Southern California		Yellow		Red
University of Southern Mississippi		Red		Yellow
University of Texas at El Paso		Red		Yellow
University of Virginia Wise		Red		Yellow
University of Wisconsin Stout		Red		Yellow
Western State Colorado University		Yellow		Green

**APPENDIX C: STATE-BY-STATE INFORMATION**

STATE	NO. OF SCHOOLS RATED	RED	YELLOW	GREEN	WARNING SCHOOLS
Alabama	14	9	5	--	--
California	42	15	26	--	1
Colorado	11	7	3	1	--
Connecticut	6	3	3	--	--
Florida	13	6	5	2	--
Georgia	9	7	2	--	--
Illinois	13	10	3	--	--
Indiana	16	3	11	2	--
Kentucky	9	3	5	1	--
Louisiana	9	6	3	--	--
Maine	7	3	4	--	--
Maryland	4	2	2	--	
Massachusetts	25	17	7	--	1
Michigan	12	9	3	--	--
Minnesota	10	6	4	--	--
Mississippi	6	3	1	2	--
Missouri	7	5	1	--	1
New Jersey	9	5	4	--	--
New York	27	16	9	--	2
North Carolina	19	7	12	--	--
Ohio	14	9	4	1	--
Oklahoma	6	3	3	--	--
Pennsylvania	30	13	14	3	--
Tennessee	6	3	3	1	--



STATE-BY-STATE INFORMATION

STATE	NO. OF SCHOOLS RATED	RED	YELLOW	GREEN	WARNING SCHOOLS
Texas	17	8	8	--	1
Virginia	16	2	11	3	--
Washington	5	4	1	--	--
Wisconsin	7	4	3	--	--

SPOTLIGHT

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