

FREE SPEECH GUIDE FOR RESIDENCE LIFE



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Introduction to this Guide

In response to controversies and debates that have roiled colleges and universities across the country in recent years, PEN America has developed a first-of-its-kind guide to navigating issues of free speech and inclusion on campus. Housed online, the [Campus Free Speech Guide](#) provides practical, principled guidance for students, faculty, and administrators with the aim of keeping campuses open to a broad range of ideas and perspectives.

The **Free Speech Guide for Residence Life** is a companion resource complimenting the advice found online, with a particular focus on residence life personnel. The advice in this Guide reflects PEN America's efforts to uphold and advance the principles of free speech and inclusion in tandem in higher education, recognizing that college campuses are foundational to the future of civic life and often the catalyst for wider social change. These dual principles are both vital to sustaining an open, equitable, democratic society, and we believe that administrators and faculty have an obligation to model a commitment to these principles and to strive to inculcate this commitment among the rising generation.

The content of this guide was compiled in conjunction with PEN America's Campus Free Speech Program as part of a fellowship by its director, Jonathan Friedman, from the University of California National Center for Free Speech and Civic Engagement. The advice contained herein was developed in consultation with hundreds of university students, faculty, and administrators nationwide. It also draws on PEN America's extensive research, analysis, and advocacy on campus free speech issues.

Free Speech and Residence Life

The freedom to express one's ideas unhampered by censorship and suppression is a bedrock civil rights principle. In the U.S., the First Amendment endows all Americans with this freedom by forbidding Congress to pass any law that abridges freedom of speech, freedom of the press, peaceful assembly, or the right to petition the government. This right is also codified in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which cement free expression not just as an American liberty, but as international human rights law. In order to understand free speech on college campuses, one must begin with this fundamental precept: free expression is a universal and inalienable freedom belonging to all people equally, without discrimination. Free speech belongs to everyone.

But neither the First Amendment nor human rights covenants guarantee that all citizens in a democracy have equal opportunities to speak and be heard. Rather, upholding the principle of free speech -- for all -- requires an affirmative commitment to inclusion, and to advancing institutional efforts to lower the barrier to expression for members from historically marginalized or lesser heard communities. In order to ensure that the public sphere is open to all diverse voices, it is often in fact necessary that harmful or intimidating speech does not go unchallenged by institutional authorities. Speaking out against hateful speech, bigotry, harassment, and discrimination has become urgent in an era of rising hate, deepening political divides, and a crisis in civic literacy, where controversies over language have struck at the heart of the social fabric.

Colleges and universities, our democracy's crucibles of ideas and dialogue, know very well the challenges in harmonizing free expression with diversity, equity, and inclusion. Hateful expression incidents, controversial invited speakers, contentious statements made by faculty and staff, and other common issues often raise the

temperature of a campus climate. Although these events have the potential to antagonize and infuriate, responding to heightened anxieties with regulation and censorship can inhibit productive and inclusive long-term conditions for discourse. Campuses must take care to avoid setting precedents that empower administrators with the ability to discipline students based solely on the content of their expression, and they should work both proactively and reactively to ensure that all students on campus can express themselves freely and equally. Sanctions should be saved for only the most legally egregious offenses. Hateful and offensive speech should be answered with *more* speech, as well as clear, unwavering denunciations of values at odds with those of the institution.

Just as these principles apply across campuses, so too do they come to bear on residence life. In their day-to-day operations, residence directors, staff, and assistants can experience frictions between free expression and the feelings of welcoming and belonging. Language and politics have the potential to spur interpersonal tensions, occasionally leaving residence officers on the student- and parent-facing frontlines to respond with level-headed, policy-minded approaches that are consistent with free speech, inclusion, and other campus values. Residence Life leaders and staff can help campus communities understand that not everyone targeted with hate feels comfortable or empowered to speak out against it, and that beyond disciplinary responses, institutions can also engage in responses that involve education, counseling, or other restorative justice practices.

Speech-related tensions have the capacity to reverberate in all aspects of students' lives, from the classroom, to online, to their residence halls. This Guide has been assembled with the aim of supporting residence life personnel with principled and practical advice to help them confront a range of different scenarios.

Our Principles

PEN America Principles on Campus Free Speech

In today's debate over free speech on campus, PEN America's philosophy is guided by the 1948 PEN Charter to stand for the "unhampered transmission of thought," to "oppose any form of suppression of freedom of expression," and to "dispel all hatreds." The PEN America Principles on Campus Free Speech provide both general and specific precepts for nurturing campus communities that uphold these values; protecting speech to the utmost and allowing for academic and social discourse that is truly inclusive and transcends boundaries.

- Campuses must be open to a broad range of ideas and perspectives, and to achieve that, they must uphold the rights of all students to participate freely and equally.
- Campuses can and must fulfill their dual obligation to both protect free speech and advance diversity and inclusion.
- Campus leaders must be free to speak in their own right, to assert and affirm their institutional values.
- Promoting free speech and inclusion requires proactive steps, not just reactions to controversy.
- Campuses should encourage a climate of listening and dialogue in tandem with support for free speech.
- By acknowledging and addressing legitimate concerns regarding racism and bigotry in the context of free speech debates, universities can help ensure that the defense of freedom of expression is not misconstrued as a cause that is at odds with movements for social justice.
- Colleges have a unique academic mission and core values that are distinct from other social institutions, which should be protected.

To see the full list of principles, check out our online Guide at:

<https://campusfreespeechguide.pen.org/pen-principles/>

The Law

The First Amendment

The First Amendment protects people's rights to free speech, expression, press, and assembly, as well as the right to petition the government. These fundamental rights extend to all individuals in the United States, regardless of factors such as religion, gender, race, citizenship, or sexual orientation. Under the First Amendment, people have the right to create, publish, convey and receive information; to express their views; to speak freely; and to be free from retaliation or efforts to restrain their expression. Although free speech is an essential value of the United States, it is important to note that it is not absolute. The government may impose regulations on certain kinds of speech, including but not limited to harassment, threats, slander, and instances in which an individual participates in incitement of violence. In addition to jurisprudence and precedent, there are several federal statutes that regulate certain kinds of speech, including Title VI and Title IX.

Public and Private Institutions

Colleges and universities are held to different legal standards when setting internal regulations for First Amendment rights on campus, depending on their public or private status. While public universities are beholden to principles of the First Amendment, they may impose what are known as time, place, and manner restrictions on the exercise of those rights by individuals on campuses. A public college or university may impose these restrictions as long as they are reasonable and content-neutral, are in the interest of preventing significant disruption, and leave open other means of communication. Any campus policy that regulates speech based on content is unconstitutional unless the university can show that the regulation is narrowly tailored to serve an important university function. Often, the context that a policy seeks to regulate on campus—such as speech in a classroom versus in public areas versus in student dormitories—is relevant to understanding whether it is constitutional.

Because private colleges and universities are not government entities, they are not required to uphold First Amendment protections in the same manner as public universities. In other words, private institutions may impose stricter limitations on free speech. Still, most adhere to free speech principles and support academic freedom. Private institutions that receive federal funding must also adhere to federal anti-discrimination laws, such as those applicable under Title IX.

There are some exceptions to this rule. Private colleges and universities that accept government funding or which otherwise engage with government closely may be required to adhere to the First Amendment more closely. State governments may also pass statutes requiring private universities to respect free speech rights as a matter of state law, even when the US Constitution imposes no such requirement. For example, California law applies First

Amendment protections to both public and private universities. Congress also has the power to propose and pass federal laws which would require private universities, by statute, to adhere to various free speech guidelines.

Campus Policies

In an effort to balance the educational value of free speech against the value of providing a safe and supportive community for all students, some colleges and universities have considered or adopted policies that regulate or prohibit speech deemed hateful or offensive. Public institutions, however, must be sure that their policies do not contravene the First Amendment. Some policies promulgated by public universities have been found unconstitutional, particularly related to university regulation of offensive speech, bias reporting, and other expressive speech. To learn more about how to evaluate these policies at public universities, see FIRE's "Correcting Common Mistakes in Campus Speech Policies."

Private colleges and universities are able to impose even greater restrictions as long as they do so within the bounds of their legal obligations to members of the campus community. Private institutions should also ensure that their policies allow the campus to remain open to a broad range of diverse ideas and perspectives. Students seeking to understand the parameters of conduct on campus should consider both relevant law and university policies.

Time place and manner restrictions are limitations imposed by the government on expressive activity, such as limits on noise, the number of protesters allowed in a public space, or barring early morning or late night protest. The restrictions must leave ample alternative channels for communicating the speaker's message.

Federal Statutes

Beyond the contours of free speech rights afforded by the Constitution and the First Amendment, the two most significant federal statutes regulating speech in higher education are Title VI and Title IX, which prevent discrimination on the basis of race and sex, respectively.

The Office of Civil Rights in the Department of Education has stated that these federal regulations are "not intended to restrict the exercise of expressive activities protected under the U.S. Constitution." Rather, they apply only to unprotected speech that constitutes discrimination and harassment and creates a hostile environment. The offensiveness of speech alone is not sufficient to establish that it has created a hostile environment. A hostile environment is created when the harassment is "severe, persistent, or pervasive" and "sufficiently serious to deny or limit a student's ability to participate in or benefit from an educational program." Schools are obligated to take action if speech or conduct contributes to a hostile environment.

Title VI

Title VI of the Civil Rights Act of 1964 states that

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

This applies to both public and private schools that receive federal funds.

On December 11, 2019, President Trump issued an Executive Order that would allow Title VI to apply to cases of anti-Semitism on college campuses.

Title IX

Title IX of the Education Amendments Act of 1972 states that

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.

This applies to both public and private schools that receive federal funds. Title IX's impact on speech has been contentious, with some arguing that its implementation goes too far in its definition of sexual harassment and has a chilling effect on speech, and others arguing that it does not go far enough to protect people from sexual harassment. Under Secretary of Education Betsy DeVos, the definition of sexual harassment under Title IX was narrowed from that used in the Obama administration, and it was mandated that colleges and universities hold live hearings in Title IX cases that allow for cross-examination of all parties.

Hateful Language and Offensive Speech

Hateful language and offensive speech may be subject to punishment in a variety of contexts. However, such speech remains constitutionally protected under the First Amendment, as the United States Supreme Court has regularly upheld. While many countries ban hate speech, the U.S. has taken a different path, adopting no legal definition of "hate speech." The Supreme Court has consistently ruled that such speech enjoys First Amendment protection unless it is directed to causing imminent violence or unlawful action, or involves true threats against individuals. The principle often invoked instead is that the solution to offensive speech is to engage in counter-speech.

It is important to distinguish between hate crimes and hateful speech. There are various federal and state-level hate crime statutes. For the purposes of data collection, the FBI defines a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity." Unlike hate speech, all hate crimes are punishable criminal acts that are treated with priority by the federal government, and by almost all states, due to their extreme impact on individuals, groups and society. As the FBI articulates, "a hate crime is a traditional offense like murder, arson, or vandalism with an added element of bias...Hate itself is not a crime." State-level hate crime statutes are typically "penalty enhancement" statutes, which means they increase the punishment for a defendant if the target of a hate crime is intentionally selected because of his/her personal characteristics.

For more background and analysis, interested readers can read *Hate: Why We Should Resist it with Free Speech, Not Censorship*, by Nadine Strossen, former president of the American Civil Liberties Union (ACLU). Strossen explains in a June 2018 interview with NPR:

"The most effective way to counter the potential negative effects of hate speech — which conveys discriminatory or hateful views on the basis of race, religion, gender, and so forth — is not through censorship, but rather through more speech. And that censorship of hate speech, no matter how well-intended, has been shown around the world and throughout history to do more harm than good in actually promoting equality, dignity, inclusivity, diversity, and societal harmony."

State Legislation

Since 2017, over 30 states have proposed or passed new laws specifically focused on campus speech. As these debates often prompt heated debate around campus communities, different political actors and free speech groups continue to propose new legislative or regulatory “solutions.” Most of these proposals have been based on a handful of model bills, such as the Campus Free Expression Act (CAFE), authored by the Foundation for Individual Rights in Education (FIRE), the Campus Free Speech Act, authored by the Goldwater Institute, and the FORUM Act, authored by the American Legislative Exchange Council (ALEC). PEN America has discussed each of these bills in our reports, including *Wrong Answer: How Good Faith Attempts to Address Free Speech and Anti-Semitism on Campus Could Backfire* and *Chasm in the Classroom: Campus Free Speech in a Divided America*.

First Amendment Terms at a Glance

The First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Freedom of the Press is a core First Amendment principle which protects printing and public circulation of opinions without censorship by the government.

Right to Assemble is a core First Amendment principle which protects the right to peaceful public assembly and protest. The government may impose some restrictions on the right to assemble.

Government (Public) vs. Private Acts refer to different standards to which government and private actors are held when setting regulations that implicate First Amendment rights.

Content Neutral Government Restrictions refer to the government’s ability to impose regulations on free speech without regard to the content or message of the expression.

Prior Restraints are laws or regulations that suppress speech at the discretion of government officials on the basis of the speech’s content and in advance of its actual expression, such as requiring fees or permits as a condition for protesters to engage in peaceful assembly.

Harassment is the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands. Such activities may be the basis for a lawsuit if due to discrimination based on race or sex.

Defamation is the unlawful act of making untrue statements about another which damages their reputation. In a defamation trial, public figures must prove that the defamation was made with malicious intent and was not fair comment.

Slander/Libel are oral and written forms of defamation, respectively, in which someone expresses an untruth about another that will harm the reputation of the person defamed.

Fighting Words are words intentionally directed toward another person, causing them to suffer emotional distress or incite them to immediately retaliate physically. While this isn't an excuse or defense for assault and battery, it can form the basis for an assault lawsuit.

Hate Speech has no legal definition in the U.S., making it protected by the First Amendment. Many countries differ in having laws that disallow hateful speech or speech that advocates for or denies genocide.

Advice for Different Speech-Related Scenarios

The following set of advice was developed as general guidance for residence staff facing a generalized set of scenarios. Any true scenario will require considerations of context, policy, the public/private status of the institution, and judgments by the personnel on the ground. This advice is meant to inform those considerations, by offering step-by-step guidance that responding residence staff and leaders should bear in mind.

What to consider when responding to speech-related controversies

Speech-related controversies on campus are often complex and best analyzed through multiple lenses. When confronted with such a scenario, it is essential that residence personnel are prepared to respond nimbly and effectively and to address the concerns of the stakeholders involved. After assessing whether there are any immediate threats to public safety and gathering as much information as possible about the incident, consider utilizing PEN America's three-pronged response framework in developing your response:

Lens 1: Law and policy considerations

Private and public universities are subject to laws differently, but both have legal obligations and their own policies which will shape responses to speech-related incidents. Some questions to consider include:

- What laws and university policies, if any, are relevant to this incident?
- How do they shape the way the residence staff, or institution more broadly, should respond?

Lens 2: Community considerations

Campuses are communities. They have histories and stakeholders, bound together by core values like diversity, inclusion, academic freedom, and open inquiry. In responding to incidents involving speech, questions related to community to consider include:

- How has this incident affected the campus community?
- Who are the stakeholders in this incident and to what degree is the institution accountable to them?
- How does this incident fit within the context of other recent events on campus?
- Does this incident challenge the institution's shared values like academic freedom, open inquiry, diversity, and inclusion?

- Has the community had the opportunity to voice their opinions or concerns? If demands are being made, where are they coming from? Consider historical and systemic issues that may contribute to community concerns.
- Who within the community might not be speaking up at all?
- If appropriate, what actions can you take to help address any fears or concerns community members may feel in response to this incident?

Lens 3: Academic considerations

In addition to considerations of law, policy, and community, responses to incidents involving speech should also be informed by an academic lens, considering colleges' and universities' obligations to academic freedom, open inquiry in the search for knowledge, and education and growth. Some questions to consider from this lens include:

- What academic or pedagogical considerations are relevant? Can this incident be a learning experience?
- How can you ensure that the dialogue surrounding this incident is productive, rigorous, and balanced?
- Will your actions be consistent with the need to foster an intellectual climate for free speech, open inquiry, and dissent?

Different approaches to responding to speech-related controversies

When controversies arise on campus related to speech, there are a range of actions you can take to address the issue. These incidents often illuminate underlying tensions and can also be used as opportunities for reflection and self-evaluation.

Public Statements

When an incident reaches the level of campus-wide controversy, it is important for the university to speak out promptly and clearly. Statements should outline in clear terms what the university's response to the incident will be, a principled justification for that response, and an affirmation of the university's values. Residence leaders can consider how they can support and facilitate dialogue in response to such statements, which can have an impact on their residents.

Forums and Dialogues

Forums and panel discussions can be effective ways of deepening a conversation. But often dialogue in reaction to controversial incidents can easily become flattened and reductive. Creating venues for dialogue that encourage wide participation, discussion of nuance, and promotion of listening and understanding can be effective in de-escalating community tensions, as well as furthering the mission of the university to encourage open inquiry and rigorous debate. Residence staff trained in mediation can use these skills to facilitate opportunities for dialogue among residents.

Space for Counter-Programming

Allowing a controversial event to continue under the precepts of academic freedom is in no way an endorsement of the event's content. If an event held in a residence hall is contrary to the university's values or has a negative impact on the community, creating counter-programming can be a way to affirm the

community's values and support community members while upholding the tenets of free expression. Residence staff can help residents to channel their discontent into counter-programming.

Engagement With Affected Communities

A controversy may reveal that certain communities on campus feel marginalized or alienated. Use the opportunity to conduct outreach and learn more about what these communities want from the institution. Ensure Residence staff are equipped with knowledge of campus resources to share and to which they can refer residents.

Establishment of a New Task Force or New Resources

If a controversy brings to the fore an issue that requires more systemic change in the institution, it may be appropriate to establish a task force or committee to determine how to address the problem. Similarly, a controversy may highlight a lack of resources for students, faculty, or community members. Residence staff can support these institution-wide responses, including by examining ways to establish new resources.

Reassessment of University Policies and Procedures

An incident may also highlight that certain pre-existing policies and procedures are flawed or ineffective, or that the institution lacks relevant policies and procedures that could have been helpful in responding to the incident. The aftermath of a controversy can be a good opportunity to reevaluate existing policy, although a proactive review is even better.

Further Reading:

- Jonathan Friedman, [“When Diversity and Inclusion Clash with Free Speech—and Why they Don’t Have To”](#)

If a resident displays something offensive, disfavorable, or objectionable

Verify and Document

Gather as much information as possible about the display. Consider whether or not the message constitutes any kind of threat, or if the message involves vandalism, destruction of property, or other criminal activity.

Listen

When residents see something offensive, they may react with anger, sadness, fear, disgust, or a combination of several emotions. Even if your residents may not be keenly open to hearing you, it is vital that you reach out to offer yourself and your staff as listeners. Be active, present, and visible. An immediate public response, even if only to say that your office is aware, concerned, and investigating, is important. Remember to provide students with information about campus counseling services and other support resources.

Affirm Values

When speaking to or sending messages out to your residential community, it is essential to assert core values such as inclusion, tolerance, and mutual respect.

Consult and Support

If the objectionable content references a certain group or groups, whether that be racial, ethnic, religious, sex or sexuality-based, ability-based, political, or another category, it is essential to consult relevant campus and local offices that work with those identity groups. Lead with solidarity and inclusion by working with these

groups to coordinate responses that prioritize safety and community. Provide alternative accommodation options for students who feel threatened or unsafe. Students should have the right to leave as well as the right to stay in their current residence.

Weigh

Consider a range of responses. The gravity of the message, the voices of the students affected, and the communities involved should all inform a reasoned response that could include a wider public condemnation, or alternatively, a more discreet solution so as not to amplify the message and attract more attention. Nevertheless, keep in mind that the offensiveness of the message does not warrant regulating speech, and punitive action should only take place in response to clear situations of imminent and likely threats, harassment, or other criminal activities. Always consider campus policies and whether the conduct violates the law and warrants a disciplinary response. Choosing not to pursue a disciplinary response does not rule out other forms of response, including counseling and education, or adjusting rooming arrangements.

Keep Talking

Create spaces for community reflection and healing. Consider organizing opportunities for community members to speak out against hate. Any formal responses will spark conversation; be as transparent as possible and continue engaging with the community.

Assess

Establish mechanisms to review and evaluate the effectiveness of your response. Look to other institutions' responses to objectionable expression for examples of this sequential work.

Further Reading:

- Jonathan Friedman, [“Balancing Free Speech and Inclusion: Four Simple Strategies for Campus Leaders”](#)

If an incident of hateful expression occurs in a residence

Verify and Document

Amass as much information as possible about the expressive act deemed hateful. Determine whether or not the message constitutes a threat of imminent lawless action (if the action is imminent and likely to occur), harassment (if unwelcome, severe, pervasive, objectively offensive, detracts from the individual's access to their education), or if the message might be a potential hate crime (if involving vandalism, destruction of property, or other criminal activity). Coordinate with law enforcement if appropriate. When incidents of hateful expression occur, information often spreads quickly throughout the campus. If administrators do not work to fully understand the incident and inform the campus, students may be subject to inaccurate information about the incident.

Listen

When emotions run high, it is crucial for the community to be heard. Listening to community members' concerns in an earnest way is important. Be active, present, and visible. An immediate public response, even if only to say that residence leaders are aware, concerned, and investigating, is crucial in lessening fear and confusion after a hateful incident has occurred.

Consult

Reach out to all relevant stakeholders (affected students, student groups, residence faculty, the diversity office) and confer with them to arrive at a response that reflects their input as much as possible, as well as the full range of responsibilities of the residence.

Lead With Inclusion

When communicating about instances of hateful speech, starting with a defense of free speech can sometimes be alienating for those who feel hurt. It is better to first characterize the hateful speech as morally offensive and only then, and as appropriate, make clear that it is nonetheless a protected form of speech. It may be appropriate to open a campus forum where students can ask questions and express their views about the incident. These forums should center the experiences of individuals directly affected by the incident.

Affirm Values

In messages sent out to the campus community or shared on public platforms, assert core values, such as inclusion, tolerance, and mutual respect.

Support

Engage in specific outreach to targeted communities and express both support for and solidarity with them. Provide them with information about campus counseling and support services, cultural centers, faculty and staff assistance, spiritual life offices, and other resources.

Discipline

Depending on the type of incident, consider whether any disciplinary measures are appropriate, in line with campus policies. For hate crimes, harassment, and any other conduct that violates the law, a disciplinary response will be warranted.

Consider Other Responses

Even when disciplinary action is not appropriate, other responses include counseling, education, or adjusting rooming arrangements could be pursued. Residence staff should work with any relevant campus units that deal with hate or bias to consider and develop a range of ways of responding to hate in their residences.

Keep Talking

Create spaces for community reflection and healing. Residence staff can consider organizing opportunities for their residents to speak out against hate or larger issues or concerns that go beyond the specific incident. Any formal responses will spark conversation; be as transparent as possible and continue engaging with residents. Where possible, create a mechanism for residence staff to elevate these concerns to leaders and to other campus units.

Assess

Establish mechanisms to review and evaluate the effectiveness of your response. Coordinated responses to controversial expression involve ongoing conversation; appraisals relating to issues of inclusion or free speech are not one-time events. Instead, they are elements of a complex ongoing relationship between communities and those who lead them.

Further Reading:

- Jonathan Friedman, [“When Diversity and Inclusion Clash with Free Speech—and Why they Don’t Have To”](#)

If a resident files a complaint about another resident's speech

Listen

When emotions run high, it is crucial for the community to be heard. Deliberating with community members' concerns in an earnest way is important. Be active, present, and visible. Amass as much information as possible about the complaint.

Collaborate

If you have a bias response system or office on campus, coordinate with them for record-keeping, mediation, and supporting affected students. It is important to ensure such systems record issues of concern in ways that do not constrain student expression. Resident life staff may be on the frontlines of seeing how such systems operate and should develop means of providing feedback to these offices, as appropriate. See PEN America's "Cautions and Tips for Bias Response Systems."

Define

Ensure that your working definitions in responding to a complaint are clearly aligned with campus policies and the law. Hate, bias, and bullying have real repercussions and harmful effects, yet they have no legal definition and are often colloquially defined in broad, subjective terms. Legal definitions of discrimination, harassment, true threats, and defamation, however, have serious authority and must be standardized in your residence in compliance with the law.

Be Transparent

Being transparent with your residents about how complaints are handled keeps your team accountable, maintains the trust of your residential community, and makes the chilling of free expression less likely. Your complaint management policies should include mechanisms for people to appeal when they feel that they have been treated unfairly, as well as a space for residents to express when they feel a Resident Advisor's response has overstepped boundaries.

Discipline

Punitive responses should be saved for acts that violate campus policies and the law. For hate crimes, harassment, and any other conduct that violates the law, a disciplinary response will be warranted.

Consider Other Responses

Even when disciplinary action is not appropriate, other responses include counseling, education, or adjusting rooming arrangements could be pursued.

Empower

Residence life officers and their staff must receive specialized training in legal definitions and institutional policies on free speech, discrimination, and harassment. They should also be trained in mediation for situations involving interpersonal conflicts over speech.

If a resident complains about speech of a Resident Advisor or Staff Member

Prepare

Create and maintain a system that students can use to elevate their concerns if a Resident Advisor says something they find troubling. Be transparent with residents about how that system works. If a student is

alleging a Resident Advisor is engaged in any form of harassment it should be raised to appropriate disciplinary channels speedily. This guidance is not designed for such instances, but rather for circumstances where the Resident Advisor has engaged in potentially offensive, but protected, non-harassing speech. In such cases, responses other than those involving disciplinary action may still be necessary.

Know Your Rights

Students have broad rights to free expression. If a Resident Advisor engages in speech that does not rise to the level of harassment but nonetheless offends, the students do have a right to voice their criticism. It may be necessary to remind staff and students of the basics of free expression, but also to ensure Resident Advisors are clear on their roles and responsibilities.

Analyze

Context will matter a great deal in determining a response to this scenario, as will specific policies regarding Resident Advisor conduct. Consider carefully if the offending speech in question occurred while the Resident Advisor was on-duty, serving in a professional capacity, or not. When possible, try to support protections for free expression by Resident Advisors, particularly when they are off-duty. However if an action in question raises concerns about a Resident Advisor's ability to fulfill their duties or responsibilities with regard to residents, it is reasonable for Residence Leaders to initiate a disciplinary response. Even falling short of that, consultation, counseling, or educational programming for the Resident Advisor may be considered as appropriate.

Reflect and Engage

If your own words are being criticized, consider whether the language you used was necessary to convey your idea. Also consider why your speech was upsetting to someone else. If, after a conversation, you conclude that your language was ill chosen, be clear about your mistake. If you feel that your language was justified, explain your perspective calmly and honestly.

Reach Out

If you have heard second-hand that something a Resident Advisor said was interpreted negatively, consider reaching out and setting up a time to discuss the incident.

Listen

Resident Advisors and Residence Leaders must make an effort to understand why the resident was offended and how best to open up a productive conversation. If the resident has indicated that a group or groups were affected or offended, create opportunities to listen to those voices.

Respond

If what was said was particularly controversial or alienating, consider taking additional steps to restore trust in the residence building. While students have broad free expression rights, every community member benefits from approaching highly controversial speech sensitively and with a mind to nurturing an inclusive campus climate. Resident Advisors have broad responsibilities, usually including the responsibility to facilitate an emotionally safe environment for residents. Often, students speak out not with the purpose of disciplining a Resident Advisor but to vocalize a sense of alienation. Consider a range of responses before taking action.

Proactive ways to support free speech and inclusion in residence

Educate

Residential communities are a critical component to many students' experiences of college. Invest in strategies to educate residents and residential staff on the First Amendment and the importance of creating a diverse, inclusive, and equitable learning environment. Resident Advisors should be trained in implicit bias and ways to promote diversity, as well as taught how to handle different speech-related conflicts and who to contact for support. Reflecting on the range of programming sponsored through residential life and how these might be used to educate students about free speech and inclusion would also be worthwhile.

Articulate Values

Resident Advisors are normally on the frontlines of day-to-day, student-facing operations. Publicize a statement articulating your values. Make clear that free speech and inclusion are core to the academic mission, and present the statement as a binding set of principles to which a residential community—like a university more broadly—is deeply committed.

Support Speech

Cast the institution as a staunch defender of free speech explicitly and frequently by, for example, defending the right of even controversial speakers to be heard as well as by supporting the right to counter-speech and protest. Explain how college is a time for young people to test and debate opinions and to hone their civic voices.

Speak Out

Residential staff should be empowered to speak out against speech—even protected speech—that conflicts with the institution's values. In clear and unequivocal language, leaders can make the case both for why even deeply offensive speech should be allowed and for why such speech is inimical to campus values.

Facilitate Dialogue

Create opportunities for students, faculty, and staff with opposing views to engage with one another on difficult issues. Programs and activities that facilitate dialogue can reinforce the value of free speech on campus while fostering mutual understanding.

Listen

Residential staff should promote active and deep listening. Through dorm-sponsored community events that enable the exchange of views, residential staff can help students find their own voices and practice listening to the opinions of others. These exchanges may involve engaging in consultative decision-making processes and demonstrating a fair and reasoned response to calls for change.

Engage Productively

Whenever possible, residential staff should model openness and trust, debating in good faith, listening with nuance and patience, and considering multiple perspectives on an issue. This approach can set a tone on campus which indicates that the institution cares about and listens to its constituents.

Provide Resources

Resources made available to members of the university community have a great impact on the campus climate and can signal the institution's commitment to free speech and inclusion. Ensure Residence staff are dedicated

to generating resources, facilitating programs, and paying attention to students' concerns, and that they have the resources necessary to do so.

External Resources:

- Four Simple Strategies for Balancing Free Speech and Inclusion
- Engaged Listening Project

For more advice ready-made for student audiences, including tips for planning protests, or responding to hateful expression on campus, consult the student section of the online **Campus Free Speech Guide**. Advice ready-made for campus administrators in a range of positions is also available.

Professional Profiles

VICKA BELL-ROBINSON, Ph.D.

Director | Office of Residence Life | Division of Student Life Miami University

Why do you think free speech and inclusion are important on campuses?

College is supposed to help people prepare for work in a world that is based in a global society. Many students come from communities that are homogenous and where they are in the majority population. Students need the opportunity to converse with people who are different from themselves in a way that promotes an exchange of various perspectives. The exchange of different perspectives is not always a comfortable experience, and the discomfort can be reduced through exposure. The goal is not to have people change their minds or adjust their perspective, but rather consider the validity of an alternative point and recognize the humanity in themselves and others.

What do you or your team do to nurture or facilitate a healthy campus climate that respects both free speech and inclusion?

We frequently discuss the importance of diversity and inclusion. We grapple with the nuances associated with creating an inclusive campus and understanding that not everyone shares the same perspective. We have a committee that coordinates training, climate surveys, and opportunities to broaden our understanding of the identities our students hold. We review our climate survey results and enact changes to improve the climate for everyone. We also occasionally have training sessions from our General Counsel and other folks who are familiar with the First Amendment. All this makes us better situated to serve our students with respect to their identities.

What have been the toughest challenges in doing this work? How have you been able to successfully navigate these challenges and/or learn from them?

Everyone just wants to be seen and heard, trying to do that in situations around free speech and inclusion is challenging. When someone exercises free speech that negatively impacts another person you definitely want to support the student who is negatively impacted. You also want to engage the person who has caused harm in a productive conversation. The world is a better place when people who have caused harm recognize it. I'm not always convinced that students understand that they caused harm to each other. Talking with them is the best way to successfully attempt to navigate these challenging situations.

What are 3 essential tips that you think everyone in Residence Life should keep in mind when responding to an incident concerning free speech on campus?

- 1.** People are eager to be offended. If you're aiming to not offend anyone, you're not going to succeed. The goal is to help students feel heard and understood, if they end up happy, that's a bonus.
- 2.** There is always more to learn. You haven't arrived at the pinnacle of diversity and inclusion work. You have biases just like everyone else, don't pretend like you don't.
- 3.** Work to be the best possible professional for the students you have, not the students you wish you have.

JOHN-PAUL WOLF, Ph.D.

Assistant Director - Campus Apartments University of California, Riverside

Why do you think free speech and inclusion are important on campuses?

In a virtual world where algorithms "help" us consume more and more of what we are looking for and already believe, free speech and inclusion are crucial on our campuses to challenge everyone to develop more complex and nuanced thoughts. When we protect free speech we allow novel ideas to be shared and discovered in ways that would not occur otherwise. Inclusion is the "leveled up" version of free speech because it takes us beyond freedom of topic and thought to actually honor perspective. With inclusion we create room for voices that have been missing and encourage dialogue that is thick and rich, which is exactly the kind of engagement colleges and universities should all foster.

What do you or your team do to nurture or facilitate a healthy campus climate that respects both free speech and inclusion?

To protect the health of the campus climate while respecting the importance of free speech and the virtue of inclusion we have written policies. These policies allow us to set expectations early and often, and we lean on those policies to protect everyone involved. By setting physical space boundaries and abiding by our policies we are able to allow all manner of free-speech, even the speech that offends some, while preserving the business operations of the university. Additionally, we offer additional support to those who are triggered or upset. Finally, to achieve our goals our staff members are required to participate in free-speech training and educational events.

What have been the toughest challenges in doing this work? How have you been able to successfully navigate these challenges and/or learn from them?

As a protector of free-speech and a champion of inclusion I believe the most difficult challenge is to remember my role in the moment. Often, I have not agreed with messages that were being presented on campus. I have wanted to "fight back" against thoughts and perspectives that I have felt were wrong or harmful - I have wanted to silence voices I disagreed with. When you protect free-speech and inclusion, other people may think you agree with messages and ideas that you do not. In this way, you have to find the words to say, "I don't agree with this message but I do agree that they have a right to express the message, while following our policies."

What are 3 essential tips that you think everyone in Residence Life should keep in mind when responding to an incident concerning free speech on campus?

1. Make sure you know the policies concerning free speech on your campus. Know where public free speech areas are located. Know the resources that are available to support student residents. If you are comfortable, engage them on the topics to which they have been exposed.
2. We work in spaces where there is very little distance between the private and the public space. A big part of our job is helping people understand the difference between free -speech and expression in their on- campus home and in the public forum, which may be just outside their door. Then we guide people to make good decisions in both spaces.
3. Not all speech that offends is hate speech. Not all imagery associated with hate speech is being displayed as such. Slow down when responding to reports so you can assure that everyone's rights are being respected.