

# FREE SPEECH GUIDE FOR STUDENT AFFAIRS



by *Jonathan Friedman*  
Program Director, Campus Free Speech

## Table of Contents

<b>Introduction to this Guide</b> .....	<b>2</b>
<b>Free Speech and Student Affairs</b> .....	<b>2</b>
<b>Our Principles</b> .....	<b>4</b>
<b>The Law</b> .....	<b>4</b>
<i>The First Amendment</i>	
<i>Public and Private Institutions</i>	
<i>Campus Policies</i>	
<i>Federal Statutes</i>	
<i>Hateful Language and Offensive Speech</i>	
<i>State Legislation</i>	
<i>First Amendment Terms at a Glance</i>	
<b>Advice for Different Scenarios</b> .....	<b>9</b>
<i>What to consider when responding to speech-related controversies</i>	
<i>Different approaches to responding to speech-related controversies</i>	
<i>Proactive tips for promoting free speech and inclusion in tandem</i>	
<i>How to respond to expressions of hate on campus</i>	
<i>If a student asks for help planning a protest</i>	
<i>If student protests involve civil disobedience</i>	
<i>How to respond if a controversial speaker is invited to your campus</i>	
<i>Tips for supporting students facing online harassment and threats</i>	
<i>Tips for student clubs seeking to foster dialogue and defend free expression</i>	
<b>Case Studies</b> .....	<b>19</b>
<i>Fordham denies permission to form a Students for Justice in Palestine chapter</i>	
<i>Protesters at Columbia University disrupt a class</i>	
<i>Middlebury College student government requests a way to vet speakers</i>	
<i>Students at Sarah Lawrence College call for professor's tenure to be reviewed</i>	
<b>Sample Statements</b> .....	<b>22</b>
<i>Statement on critics of Israeli policy at the University of Massachusetts</i>	
<i>Statement on vandalism of pro-life display at Miami University of Ohio</i>	
<i>Statements on hateful incidents at Colorado State University</i>	
<b>Professional Profile</b> .....	<b>25</b>

## 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 Student Affairs** is a companion resource complimenting the advice found online, with a particular focus for Student Affairs 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 Student Affairs

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. Student Affairs personnel are uniquely positioned to balance these ideas, as their role entails working closely with the student body, and navigating tensions among these principles when they arise. 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. Student Affairs personnel 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. Student Affairs personnel can also help institutional leaders 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.

Just as these principles apply across campuses, so too do they come to bear in Student Affairs. In their day-to-day operations, Student Affairs 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 Student Affairs personnel 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.

Speech-related tensions have the capacity to reverberate in all aspects of students' lives, from the classroom, to online, to their residence halls. Student Affairs personnel must often manage a range of complex issues as they attempt to balance competing priorities while creating a sense of community on campus. This Guide has been assembled with the aim of supporting these 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 Scenarios

The following set of advice was developed as general guidance for Student Affairs personnel 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 considerations that responding Student Affairs personnel 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 Student Affairs 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 that Student Affairs personnel, or the 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. Student Affairs leaders can consider how they can support and facilitate dialogue in response to such statements, which can have an impact on their students.

#### **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.

#### **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 on campus 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. Student Affairs personnel can encourage students 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 Student Affairs personnel are equipped with knowledge of campus resources to share and to which they can refer students.

### **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. Student Affairs personnel 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”](#)

## **Proactive tips for promoting free speech and inclusion in tandem**

### **Educate**

Invest in strategies to educate staff, faculty, and students on the First Amendment, academic freedom, and the importance of creating a diverse, inclusive, and equitable learning environment.

### **Articulate Values**

Publicize a statement articulating the institution’s 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 the institution 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. Emphasize that college is a time for young people to test and debate opinions and to hone their civic voices.

### **Support Faculty**

Stand by faculty when they encounter issues that threaten their academic freedom or sense of well-being in the university community. Consider instituting a system whereby faculty can seek support from administrators if they feel their academic freedom is under attack. Ensure that faculty are educated about resources for dealing with discrimination and harassment, as well.

### **Speak Out**

Universities 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**

Campus leaders should promote active and deep listening. Through town halls, dialogues, and other forums that enable the exchange of views, campus leaders can help students find their own voices and practice listening to the opinions of others. These exchanges may involve meeting with campus constituents, engaging in consultative decision-making processes, and demonstrating a fair and reasoned response to calls for change.

### **Productive Engagement**

Whenever possible, campus leaders, administrators, and faculty should model giving others the benefit of the doubt, debating in good faith, listening with nuance and patience, and considering multiple perspectives on an issue. This approach can set a tone on campus 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. If resources allow, consider hiring dedicated student-facing staff to generate resources and facilitate programs, and to be attuned to students' concerns.

### **Ensure Cultural Competence**

Because students come from a wide range of backgrounds, it is important to ensure that student-facing staff receive cultural competency training. It is especially important for all mental health counselors and any staff who respond to trauma, such as sexual assault response teams.

### **Reckon With the Institution's Past**

If your institution has a history of slavery, racism, or discrimination, it can be both symbolically and substantively important to take public steps to address that legacy and to identify and rectify systemic injustices that may still inflict harm. Universities are uniquely positioned to draw on the expertise and research of faculty and other community members to undertake a rigorous examination of their history.

## **How to respond to expressions of hate on campus**

Universities must be responsive to threats, hateful intimidation, overt racism, and other forms of discrimination. In developing responses, administrators need to distinguish between speech that is offensive but protected by the First Amendment and hate crimes or harassment, which are punishable criminal acts. Even short of hate crimes or harassment, manifestly malicious and intimidating speech can impair equal access to the full benefits of a college education and the ability of all students to participate in campus discourse. In responding, administrators should emphasize expressions of outrage, empathy with those targeted, and creative educational approaches.

**Verify**

Amass as much information as possible about the origins of the hateful messages. Determine whether the speech in question represents an imminent threat of violence or potential hate crime, and coordinate with law enforcement as appropriate.

**Listen**

When emotions run high, the community might not be receptive to hearing you, but you should nonetheless listen to them. Be active, present, and visible. An immediate public response, even if only to say that the administration is aware, concerned, and investigating, is important.

**Consult**

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

**Weigh**

Consider a range of responses. Some cases may demand strenuous, public condemnation, while others may raise concerns that amplifying a hateful act will bring it outsize attention. In determining a response, keep in mind that even if some individuals take offense, that is not sufficient grounds to limit the offensive speech.

**Lead With Inclusion**

When communicating about instances of hateful speech, starting with a defense of free speech can 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.

**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 solidarity and support for them. Provide them with information about campus counseling services 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, an aggressive disciplinary response is warranted.

**Consider Other Responses**

Even when disciplinary action is not appropriate, other responses include counseling and education. Student Affairs personnel 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.

**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 the university's response.

### **Further Reading:**

- Cynthia Miller-Idriss & Jonathan Friedman, "When Hate Speech and Free Speech Collide"
- American Council on Education's guidance on hateful incidents

## **If a student asks for help planning a protest**

Peaceful protests are legal, powerful expressions of free speech, but planning them can be daunting. When students ask for your support, make sure that you are equipped with accurate and helpful information to help set them up for success. There is no reason that you cannot also participate in the protest, should you choose, subject to the same provisos as students.

### **Know Your Rights**

Help students understand their rights as well as the legal parameters. If you plan to participate in the protest, make sure you know your own rights, too.

### **Inform**

Provide students with resources that offer practical guidance, such as PEN America's advice on how to plan a peaceful protest.

### **Advise**

Direct students to legal, safe, and effective methods of protest. Protesters should not be permitted to shut down, shout down, or obstruct speech.

### **Prepare**

If students choose to engage in civil disobedience, make sure that they understand their rights and the consequences they can expect for their actions. See PEN America's information on protests involving civil disobedience.

### **Further Reading:**

- Six Tips from Successful Protests

## **If student protests involve civil disobedience**

Civil disobedience is a form of protest that involves the willful refusal to comply with certain laws. While it is not typically protected by the First Amendment, nonviolent civil disobedience has often been deployed to demand social change, and it has a long association with college campuses. It is imperative that schools be prepared to respond to civil disobedience in a nonviolent, proportionate way.

### **Prepare**

Be ready with an internal policy for administrators on how to deal with protesters engaged in civil

disobedience and ensure that senior administration is well versed in it. Institute guidelines for campus police as well and make sure they are properly trained. See our advice for drafting a civil disobedience policy.

### **Assess**

Ensure that the protest actually amounts to civil disobedience and is not, in fact, protected speech. Assess whether or not the protesters have a plan to engage in violence.

### **Listen and Engage**

Let the students know that you hear their concerns. If you do not address them directly in the moment, make clear that you will be addressing them after some reflection. Offer a time and place to participate in structured conversation about the issue at hand, preparing students to accept the consequences of their actions, which might include arrest. Laying this groundwork can make students less likely to believe that any punitive measures are designed to shut down their speech.

### **Communicate**

Let the students know that you recognize their protest as a form of civil disobedience and that any punitive action you may take is a direct engagement with and response to their chosen form of protest.

### **Warn**

Tell the students that what they are doing is against the law or against school policy. Make sure they know the specific consequences of their demonstration before you take any action against them, so they can decide whether they are prepared to accept the consequences.

### **Use Campus Police**

Use campus police or security rather than local or state authorities whenever possible. Recognize that students of color may be particularly distrustful of law enforcement and that calling it in may be seen as an act of betrayal.

### **Respond**

Issue a timely public response that recognizes that students chose to engage in civil disobedience. Reach out to students involved in the protest and offer to have a mediated conversation.

### **Discipline**

Civil disobedience is powerful in part because those engaged in it are prepared to accept the consequences of their actions. In some cases an institutional response may be warranted, but when that response goes too far, there can be a strong chilling effect on people's willingness to exercise their constitutional and human right to protest. Make sure that your disciplinary measures are not excessively punitive for nonviolent acts of civil disobedience. If possible, avoid measures like suspension and expulsion.

## **How to respond if a controversial speaker is invited to your campus**

Both public and private campuses should be open to a wide variety of academic and popular opinions and should foster a culture where speech and reasoned debate are seen as the best tools for confronting mistaken, wrongheaded, or hateful ideas. The advice below was adapted in part from the article "A Free-Speech To-Do List for College Administrators," by Erwin Chemerinsky and Howard Gillman.

### **Verify**

Confirm the details of who invited the speaker and whether existing policies for such invitations were followed.

### **Affirm Values**

If the speaker's views contradict the university's values, leaders should explain the distinction to their community clearly and unequivocally, while also reaffirming their commitment to free speech.

### **Communicate**

During the lead-up to the event, the university should be as transparent as possible about how it plans to handle the event and any new developments.

### **Teach**

These cases provide an opportunity for leadership to educate the community about free speech, the First Amendment, and the dangers of silencing even offensive speech.

### **Listen**

If a group would like to voice discontent in response to the invitation, create an opportunity for them to do so with the appropriate offices or officials.

### **Anticipate**

Establish transparent, content-neutral procedures for approving events in campus spaces. Groups do not have the right to unconditional access to campus spaces, and universities can impose certain content-neutral restrictions.

### **Prioritize Safety**

Prepare security assessments to ensure that speakers, audiences, and protesters will be able to participate safely.

### **Stand Firm**

Only under extremely rare and extenuating circumstances should administrators consider a disinvitation or cancellation. Whenever possible, campuses should not allow security costs to be grounds for disinviting a speaker.

### **Facilitate Counter-Speech**

During the lead-up to the event, make sure to provide opportunities for lawful protest and counter-speech. Some universities have created alternative programming in conjunction with a controversial speaker's visit.

### **Anticipate**

Establish clear and detailed procedures for staff to respond to various potential disruptions. Make clear that counter-protests must not prevent others from hearing the speaker.

### **Remind**

Before the event, review policies for invited speakers, protests, and disruptions with the campus community.



## Tips for supporting students facing online harassment and threats

*This guidance is based on advice contained in PEN America's Online Harassment Field Manual.*

### Reach Out

If you hear second-hand about students being targeted by abuse online, reach out to get a better understanding of what is happening and how they are doing—no need to wait for them to come to you. Not everyone will feel comfortable discussing their experience, so be discreet in your outreach

#### Document and Identify

Documenting the harassment or threats is a critical first step. Before taking action, encourage the targeted student(s) to document the abuse and, if they are comfortable, share it with the university. Advise the student(s) to collect information to identify the kind of online abuse taking place, such as screenshots, links to social media messages, emails, voicemails, or texts. Amassing evidence can be helpful in conversations with allies and university officials and instrumental if you decide to engage law enforcement or pursue legal action. See our guidance on “Definitions.”

### Assess Safety

Based on the available information, work with the targeted individual(s) to assess the threat to themselves, the university, and others, like the target's family. Encourage the targeted individual to assess their sense of physical safety. Depending on the nature of the online abuse and the individual's sense of personal safety, consultations with campus police, legal and security experts, and others may be necessary. See our guidance on “Assessing the Threat” and “Engaging Law Enforcement.”

### Communicate

Check in frequently with the student, collect any further relevant documentation, and keep notes of new developments. Work with other appropriate offices and personnel in coordinating the institutional response, which may vary depending on the type of harassment. At public institutions, be cognizant that emails could be subject to future open-records requests.

### Support

Harassment can be detrimental to psychological and physical health. Be sure to offer support to the targeted student(s) and to others who are affected. Listen and acknowledge their feelings. Share information about counselling and other resources for coping with online harassment. Offer to connect them with others at the university who have experienced harassment and expressed a willingness to serve as allies. If the harassment is affecting the student's ability to work or study, tell their advisor or dean and get them the support they need. Offer our guidance on “Talking to Friends and Family.”

### Take Care

Online harassment can make you feel like your life is spinning out of control and elicit feelings of fear and shame, even when it is not happening directly to you. It can do real damage to psychological and physical health and affect people differently depending on their life experience, race, gender, and background. Resist the urge to ignore how you're feeling and prioritize self-care. See our guidance on “Self-care.”

### Speak Out

Some people find it empowering to speak publicly against harassment and take control of the narrative. If

harassers are propagating misinformation, it might be important for campus leaders to stand up for students. See our guidance on “Safely Approaching Counterspeech.”

### **Review**

Treat each case as an opportunity to create or improve official policies. Consider conducting an anonymous survey to assess the scope of the problem and the needs of staff.

### **Educate**

Online harassment has been on the rise in recent years. Educate faculty and staff on how to prepare for and respond to online abuse and serve as allies.

## **Tips for student clubs seeking to foster dialogue and defend free expression**

### **Articulate**

Create a statement of values, upholding commitments that can help guide your thinking and actions, including free speech and inclusion. Engage your membership broadly to help shape this statement.

### **Include**

Strive to reach a diverse audience. If your organization should appeal to the student body at large but you find that your membership is homogeneous, reflect on whether you should undertake steps to make the club more welcoming.

### **Partner**

Partner with other campus organizations on events and initiatives. Create coalitions to address common concerns. Consider opportunities to pool resources, contacts, knowledge, and experience to strengthen your actions.

### **Advocate**

Recognized student groups often have direct lines of communication to administrators and opportunities to make clear and concrete requests of them. Use your position to advocate for free speech and diversity and to represent the concerns of the student body at large.

### **Speak Out**

Student groups are well positioned to mobilize large groups of people around issues they care about. Take advantage of that position to organize events and to bring attention to any causes about which your group is passionate.

### **Respect**

Try to engage respectfully with organizations that have different perspectives from your own. Consider engaging them in dialogue or co-sponsoring debates. Clubs can be built around bipartisanship or debate, to deliberately bring together students from different backgrounds or who disagree with each other on key social and political matters.

## Case Studies

### **Fordham denies permission to form a Students for Justice in Palestine chapter**

In 2016, a group of students at Fordham University sought permission to form a Students for Justice in Palestine (SJP) chapter. The student government initially approved the request, but it was ultimately vetoed by the dean of students, who claimed that the group would cause “polarization” and that their support for a boycott of Israel “presents a barrier to open dialogue.” In 2017, five students involved in the formation of the group sued the university on First Amendment grounds, with Fordham arguing that, as a private university, they were not beholden to the First Amendment. In 2019, the students won the suit and the university was ordered to recognize the club. The court found that the university’s denial of the chapter was “arbitrary and capricious” and that Fordham violated its own rules in vetoing the application.

#### **PEN America Analysis**

The best way for universities to support the laudable ideals of open dialogue and mutual understanding is to allow students to freely participate in organizations focusing on a wide range of political issues, even highly controversial ones. Barring a student organization because university administrators are uncomfortable with its objectives denies students the opportunity to learn from each other and debate the pressing issues of our time, and universities should adopt a content-neutral approach to student clubs, unless they advocate or provide a forum for violence, discrimination, or harassment.

#### **Similar Incident:**

- Williams College Council rejects proposal for Williams Initiative for Israel student group

### **Protesters at Columbia University disrupt a class**

In October 2017, a group of student protesters entered the Columbia University classroom of Suzanne Goldberg, a law professor and the executive vice president of the Office of Student Life, which is partly responsible for overseeing the school’s response to sexual assault and harassment. The students were protesting university sexual harassment and assault policies that they believed to be ineffective. During class, the students held signs and distributed pamphlets as one of them read a prepared statement, and they refused to leave when Goldberg repeatedly asked them to.

#### **PEN America Analysis**

While there should be a high threshold for disciplinary action in response to peaceful student protests, cases where protests infringe on students’ ability to learn can cross that line. The students in this case clearly violated the school’s code of conduct, which prohibits “interrupting a university function” and “causing a noise that substantially hinders others in their normal academic activities.” Students participating in such a protest should be aware they may face disciplinary action as a result, and the university in this case should make clear that such disruptions are not permissible. A failure to punish clear disciplinary infractions, impermissible encroachments on speech, and acts of violence signals that university norms and values won’t be enforced and can create the impression that justice is meted out selectively. At the same time, when institutions punish protesters too harshly, they risk unnecessarily chilling students’ free speech. A retributive mindset can lead to

harsher punishments than necessary, or to a situation in which discipline is misapplied. University leaders should try to balance these concerns, punishing disruptions only when it's truly warranted. The school could also encourage protest in other forums, supporting students who wish to bring a concern to the fore.

**Further Reading:**

- Article about the protest
- Column Criticizing the protest
- Columbia's Rules of University Conduct

## **Middlebury College student government requests a way to vet speakers**

In April 2019, the Middlebury College Student Government Association sent out a formal request to the administration calling for more student and community input in university decision making. The students' letter, titled "Thirteen Proposals for Community Healing," notably requested a vetting process for invited speakers that included students' views. The process would require any organization or academic department that invites speakers to first fill out "due diligence forms" created by the Office of Institutional Diversity, Equity, and Inclusion. An additional provision asked that student advisory boards be added to faculty councils and that those boards be given access to speaker lists at least a month in advance of a visit. Another called for the university to release a list of names of faculty who had opted out of bias training.

### **PEN America Analysis**

Students and the larger campus community should absolutely have a voice in a campus community, and proposals calling for increased transparency and communication between administration and students should be applauded. But the specific demand that students be allowed to vet speakers works against the spirit of free expression and risks becoming a mechanism for censorship. While the desire to protect individuals from hateful ideas is understandable, PEN America believes that this goal is attainable without resorting to censorship or other chilling mechanisms. PEN America also believes that creating a public list of faculty who haven't participated in bias training could become an ideological litmus test and stifle open inquiry. Efforts to promote diversity and inclusion are most effective if they are done voluntarily. Instituting them through public shaming or other punitive measures is more likely to lead to animosity and backlash than social change.

**Further Reading:**

- Text of the Student Government Association's proposals

## **Students at Sarah Lawrence College call for professor's tenure to be reviewed**

In October 2018, professor Samuel Abrams of Sarah Lawrence College became a target of criticism by students and faculty after he published an op-ed in The New York Times criticizing the dominance of liberal and progressive ideologies in the college administration. Soon after, Abrams's office door was vandalized, and flyers alleging impropriety were posted around campus. Following each of these retaliatory incidents, the college president, Cristle Collins Judd, sent emails to the campus community addressing the controversy, but it was only three weeks after the initial incident that she explicitly rebuked the attacks on Abrams and issued a robust defense of his right to free expression. In March 2019, a student group called the Diaspora Coalition

occupied a campus building and published a list of demands in the student newspaper, including that “Abrams’s position at the college be put up to tenure review to a panel of the Diaspora Coalition and at least three faculty members of color.”

### **PEN America Analysis**

While students are free to say what they wish, their call for a review of Abrams’s tenure demonstrates a lack of understanding of the principles of academic freedom and free speech. In cases like these, PEN America urges administrators to work with their communications team to make clear their institution’s commitment to academic freedom and assure the public that the professor’s tenure is secure. This does not mean that the administration should not hear students out, or that the students cannot criticize a professor’s position. But the call for tenure review or the discipline of a professor in response to an op-ed runs roughshod over the principles of free inquiry that should govern any campus.

### **Further Reading :**

- [Overview of the controversy](#)
- [Abrams’s New York Times op-ed](#)

### **Similar Case:**

- [Statement supporting Camille Paglia at the University of the Arts](#)
- [University of Nebraska at Lincoln professor files ethics complaint](#)

## Sample Statements

### Statement on critics of Israeli policy at the University of Massachusetts

#### Background

In April 2019, three anonymous Jewish students filed a lawsuit to stop the University of Massachusetts at Amherst (UMass Amherst) from hosting an upcoming panel event. Called “Not Backing Down: Israel, Free Speech, and the Battle for Palestinian Rights.” The event was scheduled for May 2019 and was set to feature musician Roger Waters, sportswriter David Zirin, activist Linda Sarsour, and academic Marc Lamont Hill. The student plaintiffs argued that these speakers were not just critical of Israeli policy but also anti-Semitic, and that the panel would be harmful to Jewish students on campus. In response, the university released a statement saying that the event should, and by law must, be allowed to proceed based on free speech grounds. A judge ultimately rejected the suit, and the event went forward.

#### Excerpt from UMass Amherst’s Statement (April 25, 2019)

“UMass Amherst is committed to fostering a community of dignity and respect and rejects all forms of bigotry. The campus is also firmly committed to the principles of free speech and academic freedom. As such, and as is required of a public institution under the First Amendment, UMass Amherst applies a content-neutral standard when making facilities available to outside organizations for the purpose of holding events.” See the full text.

#### What we like about this statement:

- Denies the request to cancel the event, explaining the university’s policy—in accordance with the First Amendment—to remain content-neutral in deciding who can rent and use campus facilities.
- Reaffirms the university’s stance against bigotry as well as its duty to support free speech and the free exchange of ideas.
- Clarifies the university’s view that departmental sponsorship of events does not constitute an endorsement of the views expressed at those events.
- Combats ambiguity by clarifying that the university does not support academic boycotts of any kind.

#### Similar Statements:

- New York University affirms the right to air unpopular views
- UCLA chancellor explains that allowing controversial opinions does not imply endorsement
- Templeton University defends the airing of controversial views

### Statement on vandalism of pro-life display at Miami University of Ohio

#### Background

On November 12, 2018, at Miami University, an installation called Cemetery for the Innocents by the group Students for Life was vandalized multiple times. Over the course of two days, portions of the display were

knocked over, stolen, placed in a recycling bin, and partially disassembled. In 2017, the annual display also faced controversy at a regional campus of Miami University when Students for Life successfully challenged the university's attempt to require trigger warnings surrounding the display on a regional campus. Soon after the vandalism occurred, Dean of Students Kimberly Moore sent a school-wide email condemning it and affirming the university's commitment to freedom of speech.

#### **Excerpt from Dean Moore's Statement (November 14, 2018)**

"With a student body of over 17,000 undergraduates and 500+ registered student organizations, every student at Miami is likely to hear or see something with which they do not agree. We do not expect students to agree with every idea espoused by a student organization but we compel all students to take the opportunity to learn and gain from the experience. It is not unusual for student organization displays to generate conversations that in fact deepens our understanding of, and commitment to, those qualities we most value." See the full text.

#### **What we like about this statement:**

- Strongly condemns the vandalism and "destructive behavior" and affirms all students' right to free speech and expression
- Draws an explicit distinction between the administration's policy on free speech and an endorsement of the content of that speech.
- Acknowledges that due to the size of the student body, disagreements among students are unavoidable, and encourages students to engage with one another to generate conversations.

#### **Similar Statements:**

- University of Minnesota supports the free flow of ideas
- University of Southern California defends the right to display a controversial mural

## **Statements on hateful incidents at Colorado State University**

### **Background**

In 2017 and 2018, a series of hateful incidents occurred at Colorado State University (CSU). They ranged from a fake noose and anti-Semitic symbols found in dorms to a racist incident targeting a Middle Eastern student on local public transportation. In each case, CSU President Tony Frank responded with campus-wide emails telling the community what occurred and offering support to those directly targeted. One of the emails invited students to attend a "solidarity walk and community gathering" to counteract hate. The event, called "CSUnite: No Place for Hate," was attended by more than 2,500 people.

#### **Excerpt from Message from President Frank (August 31, 2017)**

"Our Colorado State community stands firmly against anyone who seeks to intimidate, incite violence and deprive others of their Constitutional rights. We hold up our Principles of Community in counter to anyone who seeks to divide and terrorize. And while we cannot shield anyone from words or ideas that may be damaging and destructive, we will stand with those targeted so that no one on this campus will stand alone. And we will respond with utmost seriousness when there are threats to the safety of anyone on our campus." See the full text.

**What we like about this statement:**

- Does not shy away from forceful condemnation of hateful expression.
- Acknowledges the detrimental impact of hateful incidents on targeted members of the community.
- Provides contact information for various support offices at the university.

**Similar Statements:**

- President Frank responds to anti-immigrant flyers on campus
- President Frank invites community to solidarity walk and gathering
- Statement on swastika graffiti at Duke University
- Northwestern University condemns acts of hate



## Professional Profile

### LARA SCHWARTZ

#### Director | Project on Civil Discourse American University

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

Universities are entirely about communicating and listening. Because of our unique role in expanding and challenging previously understood ideas and teaching critical thinking, universities protect freedom of speech. But the mere absence of censorship by authorities doesn't guarantee productive discourse. A campus where a wide variety of voices can come together, and where everyone is equally valued and respected, is one where the most rigorous and life-changing conversations can happen.

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

We encourage students to look beyond mere speech rights and think about responsibilities. They start by reflecting on two questions: what do I want for myself, and what will I ask of myself? We encourage them to see themselves as part of a learning community and challenge themselves to contribute something to it. In addition, we encourage perspective-taking, both across difference and across academic disciplines. Finally, we try to avoid the language of combat and debate, and ask students to try, as Rilke wrote, "to love the questions themselves."

##### *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?*

The biggest challenge is our changed relationship with truth. First, today's students have grown up in a media landscape where people shop for their preferred truth, where both-sidesism is the norm, and where many people doubt the existence of stable truth. Many campus groups invite speakers to troll their peers rather than to educate. Some of our most successful student-led conversations have been about whether debunked scientists or conspiracy theorists have any place on campuses- regardless of whether they have a First Amendment right to be there.

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

1. First, remember the First Amendment is only a limitation on authority- not a blueprint for running a university. The real conversation begins after you explain why you can't punish speech. Be prepared to talk about what the institution is doing to be equally accessible to everyone—especially those targeted by hurtful but constitutionally protected speech.
2. Second, help students move from their positions (desire to punish or exclude speakers) to their interest in building an inclusive community, and involve them in getting that interest met.
3. Finally, remember the First Amendment doesn't require schools to be value neutral. You can speak in solidarity against hate and in favor of human dignity.