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# Preserving Campus Discourse

A Multipronged Approach to Protecting Free Speech

BY MICHELLE DEUTCHMAN AND DARYL LOWE

Featured

In December 2023, the higher education community watched with rapt attention as the presidents of the University of Pennsylvania, Massachusetts Institute of Technology, and Harvard University were grilled by members of Congress about the climate for Jewish students on their campuses in light of the Israel-Hamas war. It was hard to escape the viral video clip of Representative Elise Stefanik (R-NY) demanding a yes-or-no answer to the question of whether calling for the genocide of Jewish students violates the universities' codes of conduct or rules regarding bullying and harassment. Even though university leaders gave legally accurate responses in stating answers depend on context, and their responses were based on respective institutional policies and procedures, the blowback to their seemingly cold and analytic answers was fierce. At the time of this publication, two of the three presidents had resigned.

The response to the hearing reinforces a key practice for successfully navigating expression-related controversies in this polarized environment: Acknowledge that law and policy are only two parts of a multipronged approach to traversing these super-charged, challenging issues. Focus on the First Amendment rules and regulations must be paired with acknowledgment of the pain that words cause and support for students who are impacted.

## Five Basic Steps to Policymaking

All institutions—public, private, or religious—should have policies that clearly elucidate their values, including the importance of unfettered expression in institutions dedicated to teaching and learning. Numerous schools set these policies through community values or standards

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There is no one-size-fits-all approach for policymaking; each institution has its own personality and priorities. However, answers to the following questions can help institutions establish a framework for building clear, transparent and, ultimately, successful policies in five steps: policy creation, review, dissemination, training, and implementation.

## **1. Create Policies**

Does your institution have expression policies? If so, are they easy to find? Just because policies exist does not mean they are easy for new student affairs professionals—or students, for that matter—to find. Often, related policies are not grouped together. Ideally, regulations concerning the "where," "when," and "how" of speech should be found in a central, or easily referenced, location. These regulations might include: how to reserve space for an event; time, place, and manner restrictions, especially as they pertain to amplified sound and locations designated for protests and rallies; posting and distribution of flyers; chalking; and examples of what constitutes a disruption and could be deemed a code of conduct violation.

## **2. Review Policies**

When was the last time your institutions' policies were reviewed in a holistic and intentional way? It is optimal to follow a regular schedule for reviewing policies (e.g., once a year, every other year). A campus expression issue making the local news or stirring up social media attention may feel like an invitation to reevaluate policies, but check that gut instinct and provide a measured response to ensure timing does not open the institution to an allegation of a pretextual review. For example, imagine a college has no existing regulations about posting signs, flags, or posters on residence hall windows facing the campus. A student puts up a flag that many students in the residence hall facing the window find deeply offensive. These angry students gather hundreds of signatures from others living in the residence hall and present their petition to the administrator who oversees campus housing. The administrator then asks the student with the flag to take it down, and a new policy is created that prohibits students from posting anything on windows facing outward. While the institution's reaction is intended to be timely and responsive, the student with the flag may argue the policy was created

to censor their viewpoint, which would likely run afoul of the First Amendment.

One related note: Reviewing an institution's student code of conduct to eliminate sanctions that force compulsory speech is important. Sanctions requiring a student to issue a letter of apology could be viewed as violating the student's freedom of speech. Instead, it may be beneficial to have educational sanctions that allow the student to reflect on their past conduct and provide opportunities for them to articulate how they will handle circumstances differently, which does not violate the rights of others or the student code of conduct.

When a policy review takes place, who participates? In the best case, diverse stakeholders come together for policy creation and review. Ensuring student representation is critical to success.

### **3. Disseminate Information**

Having clear, easy-to-find policies reviewed on a regular basis is a first step. Next is the process of disseminating and training campus stakeholders about the policies, how they work in practice, and why they matter.

When a new policy is written, or changes are made to an existing policy, how does the campus community learn about it? Are there opportunities for stakeholders to weigh in on the proposed policy (e.g., public comment)? If yes, what is the process for taking the feedback into consideration?

### **4. Train Students and Staff**

How does your institution train students and staff about relevant rules and regulations? Similar to policy review, creating regular opportunities (e.g., student or staff orientation, professional development, etc.) to educate both incoming and existing students and staff about expression-related policies is a best practice. This education might include case studies based on challenging situations that have affected similarly situated institutions. Knowing what a policy requires and applying it in practice can be two very different endeavors.

Partnering with student leaders (clubs, government) can be effective and valuable. Ask student government leaders to share university policies on social media and encourage students to review them. Host a joint training workshop

with students and staff to create opportunities for partnerships and for building trust.

## 5. Implement Policies Consistently

The final component of effective policymaking is implementation, with the most critical aspect being consistency. How does your institution ensure rules are applied consistently? Uneven application of rules and regulations creates inequality, the perception of favoritism, and when it comes to expression, likely runs afoul of the First Amendment. Being even-handed gets tricky when trying to support students' rights to freedom of expression while balancing policies and procedures.

Let's return to the example about posting on campus-facing residence hall windows. Imagine a student pastes a rainbow flag in a residence hall window. The student is very involved with advocating for LGBTQIA+ student rights, and the rainbow flag is critical to their identity. The resident advisor feels badly asking the student to compromise their self-expression and figures—since no one is complaining—there is no harm in hanging the flag, despite clear policy that requires the opposite result.

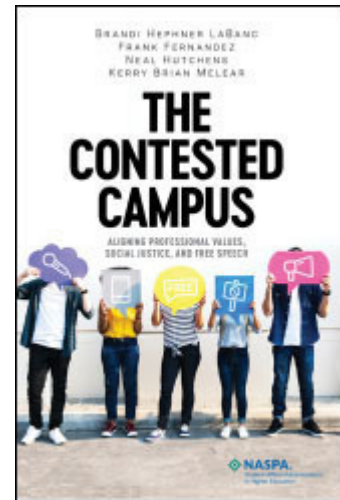
A week later, a different student in the same residence hall puts up a National Rifle Association (NRA) flag in their window. This student has strong feelings about the Second Amendment and gun ownership. But, in this case, people from the residence hall across the courtyard complain about the NRA flag and, per the rules, ask that it be removed. In this case, the resident advisor requires the student to remove the flag in light of the complaints and the policy.

While the resident advisor might have been well-intentioned, that individual has inconsistently applied the posting policy. Additionally, it appears the advisor's decision rests on the response to the various flags' messages. This is precisely the kind of content-based decision-making that should be avoided—especially at public institutions where it contravenes not only the written policy but also the First Amendment.

## **The Contested Campus: Aligning Professional Values, Social Justice, and Free Speech**

***By Brandi Hephner LaBanc, Frank Fernandez, Neal Hutchens, and Kerry Brian Melear***

Written for student affairs professionals of all levels and graduate students, this accessible and useful resource goes beyond discussion of legal compliance by bringing much-needed clarity and guidance on a wide array of complex campus free speech issues. Chapters feature proactive campus-based practices to consider as well as diverse voices and experiences to make the book directly relevant to practice.



A best practice for posting policies is ensuring regulations are based on content neutral factors like time, place, and manner. Instances may occur, however, when the subject matter of the literature or material conflicts with an institution's student code of conduct. For example, if a flier encourages illegal activity such as underage drinking, or the use of illegal substances, then it can be restricted based upon the institution's student code of conduct, which prohibits illegal activity.

The review process for protests and demonstrations should follow similar guidelines. Ideally, the institution identifies specific hours of the day (time) and locations on campus (place) when and where protests and demonstrations are permitted. If, for instance, no sound amplification (manner) is permitted during finals week because of the disruption it causes, the regulation must be uniformly enforced. If the institution prohibits a Christian student organization from using a loudspeaker during finals week, it must also stop the Muslim student organization from doing the same.

## **Support Students Who Find Speech Hurtful and Objectionable**

It is undeniable that objectionable speech, while permitted, can still cause pain and discomfort to students. When students encounter harmful speech that

impacts their ability to feel a sense of community and belonging on campus, it is important for student affairs professionals to acknowledge student feelings and not discount their experiences. Suggesting ways students can respond to the objectionable speech in a manner that does not violate institutional policies allows them to use their voices to express themselves, including counter-protesting or organizing a separate event emphasizing a message opposite to the one students find objectionable. Another option is to encourage students to walk away or remove themselves from situations in which they are confronted with speech or expression they find objectionable.

Just as it is important to support students' rights to express themselves when the speech is objectionable, student affairs professionals must consider ways they can support students who are articulating the objectionable speech or inviting the speakers who share those viewpoints. It is critical student affairs professionals avoid the impression that their own conduct is supporting one group of students over another. To maintain this type of neutrality, student affairs professionals might consider keeping their personal opinions private with regard to specific speech since sharing personal opinions may contribute to the perception they do not support "all students."

Part of educating students about expression is helping them understand their speech has consequences. While an institution's code of conduct may not permit sanctions for ugly, hateful, or demeaning speech in conflict with community standards, the world outside of higher education does. Imagine a student makes statements offensive to a certain demographic of students. A student affairs administrator could meet with the student to discuss the impact of the expression and ways the expression may result in off-campus consequences, including cancellation of job or internship offers by outside employers or the forfeiture of external funding.

The education process may also include creating opportunities for students to host or engage in deliberative dialogue. Coming together to interact with and learn from people with various backgrounds and experiences can provide a platform to discuss shared problems and identify commonalities. This process can include trained individuals (i.e., students, faculty, staff, community members) who moderate the dialogue, frame the issues, and present three or four broad

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Finally, it is important to examine cross-campus collaborations that can provide additional help and resources to students. For example, an institution’s counseling center can teach students resilience and how to develop skills for emotional self-management when students find speech to be objectionable. Counseling services might also include support groups that focus on deescalating techniques and advocating coping strategies.

## Self-Care for Student Affairs Professionals

Student affairs professionals should remember they do not check their humanity at the entrance to campus. Certain speech, while allowable, can offend them on a personal level. In these instances, it may be reasonable for the staff member to meet with a supervisor and explain the difficulties with the expression and suggest it may be more beneficial for another staff person to take the lead on policy approvals related to the speech (e.g., demonstration, event, etc.). Student affairs professionals may find it helpful to use an institution’s employee assistance program for additional support.

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