

EXECUTIVE SUMMARY

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Major Findings

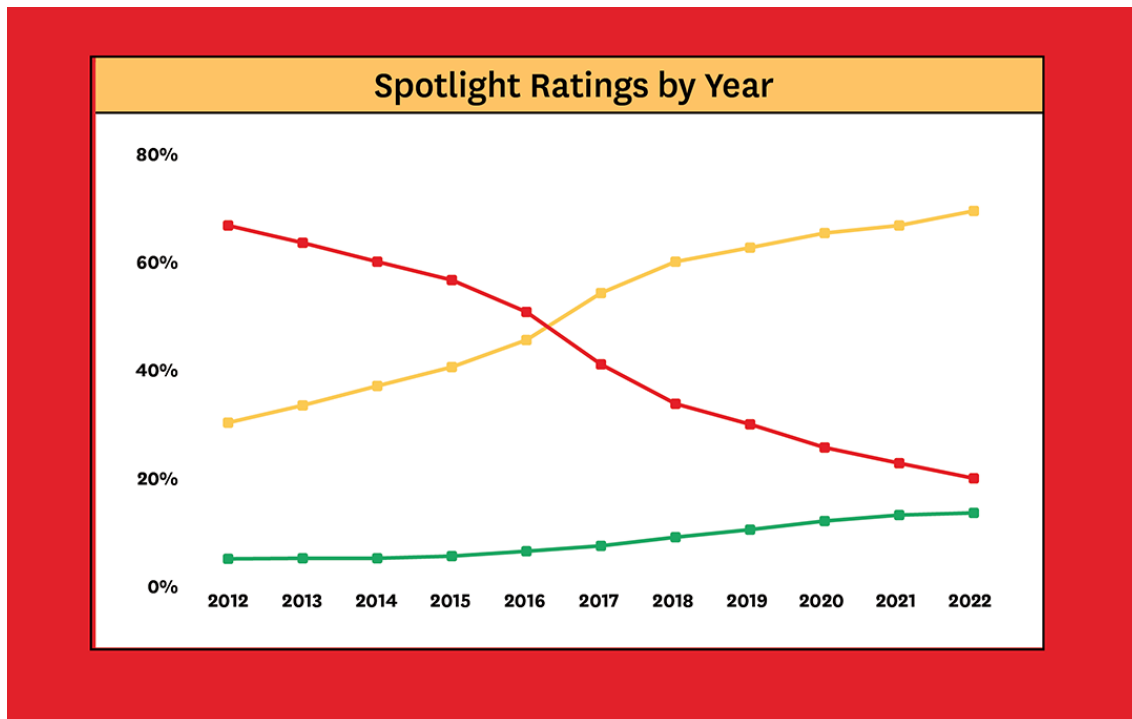
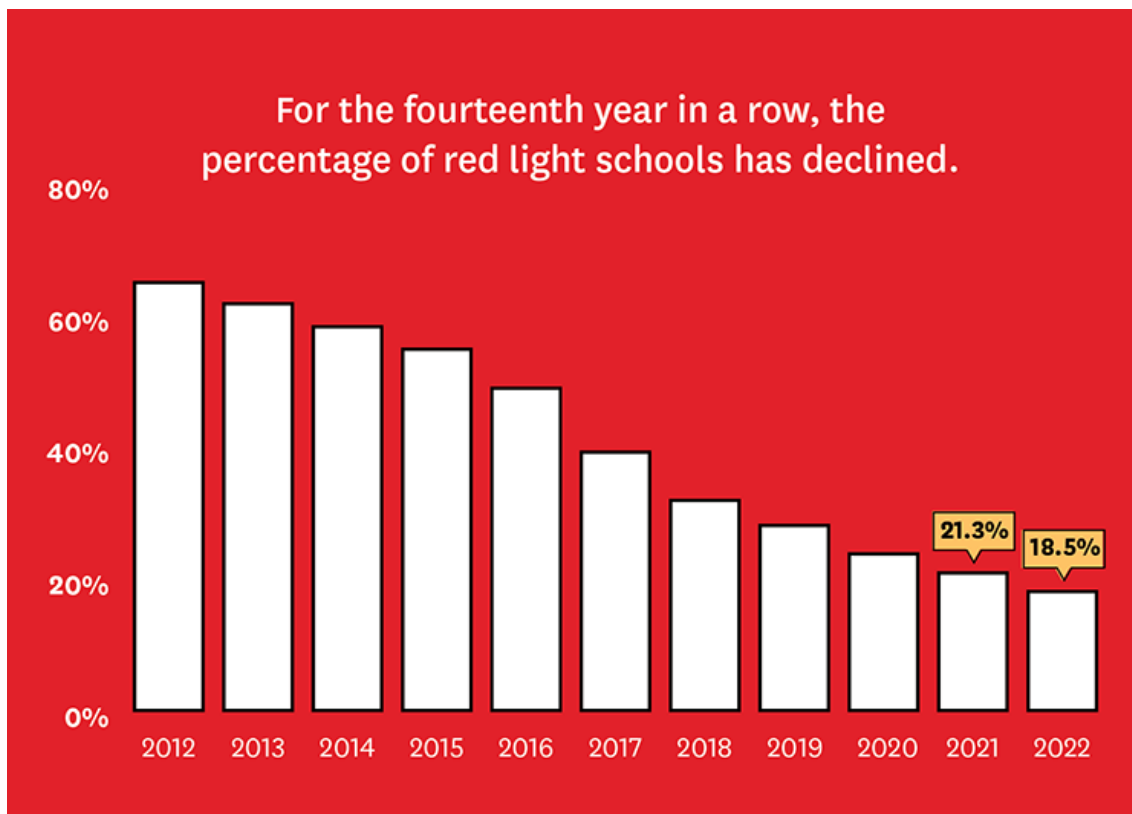
1. The percentage of colleges and universities earning an overall “[red light](#)” rating in FIRE’s Spotlight database has gone down for the fourteenth year in a row — this year to 18.5%. This is approximately a three percentage point drop from [last year](#), and is more than 50 percentage points lower than the percentage of red light institutions in [FIRE’s 2009 report](#).
2. 68% of institutions now earn an overall “[yellow light](#)” rating. Though less restrictive than red light policies, yellow light policies still restrict expression that is protected under First Amendment standards and invite administrative abuse.
3. A total of 58 colleges and universities now earn an overall “[green light](#)” rating, up from 56 schools as of last year’s report. Policies earn a green light rating when they do not seriously threaten protected expression. Significantly, there are now more public schools earning a green light rating (54) than there are earning a red light rating (45).
4. 5.2% of institutions surveyed maintain “free speech zone” policies, which limit student demonstrations and other expressive activities to small and/or out-of-the-way areas on campus. A [2013 FIRE survey](#) of these institutions found roughly triple that percentage.
5. [Eighty-two](#) university administrations or faculty bodies have now adopted policy statements in support of free speech [modeled after](#) the “Report of the Committee on Freedom of Expression” at the University of Chicago (the “Chicago Statement”), released in January 2015.

Executive Summary

Most college students in the United States should be able to expect that freedom of expression will be upheld on their campuses. After all, public institutions are legally bound by the First Amendment, and the vast majority of private colleges and universities promise their students commensurate free speech rights.

Nevertheless, far too many colleges across the country fail to live up to their free speech obligations in policy and in practice. Often, this occurs through the implementation of speech codes: university policies that restrict expression protected by the First Amendment.

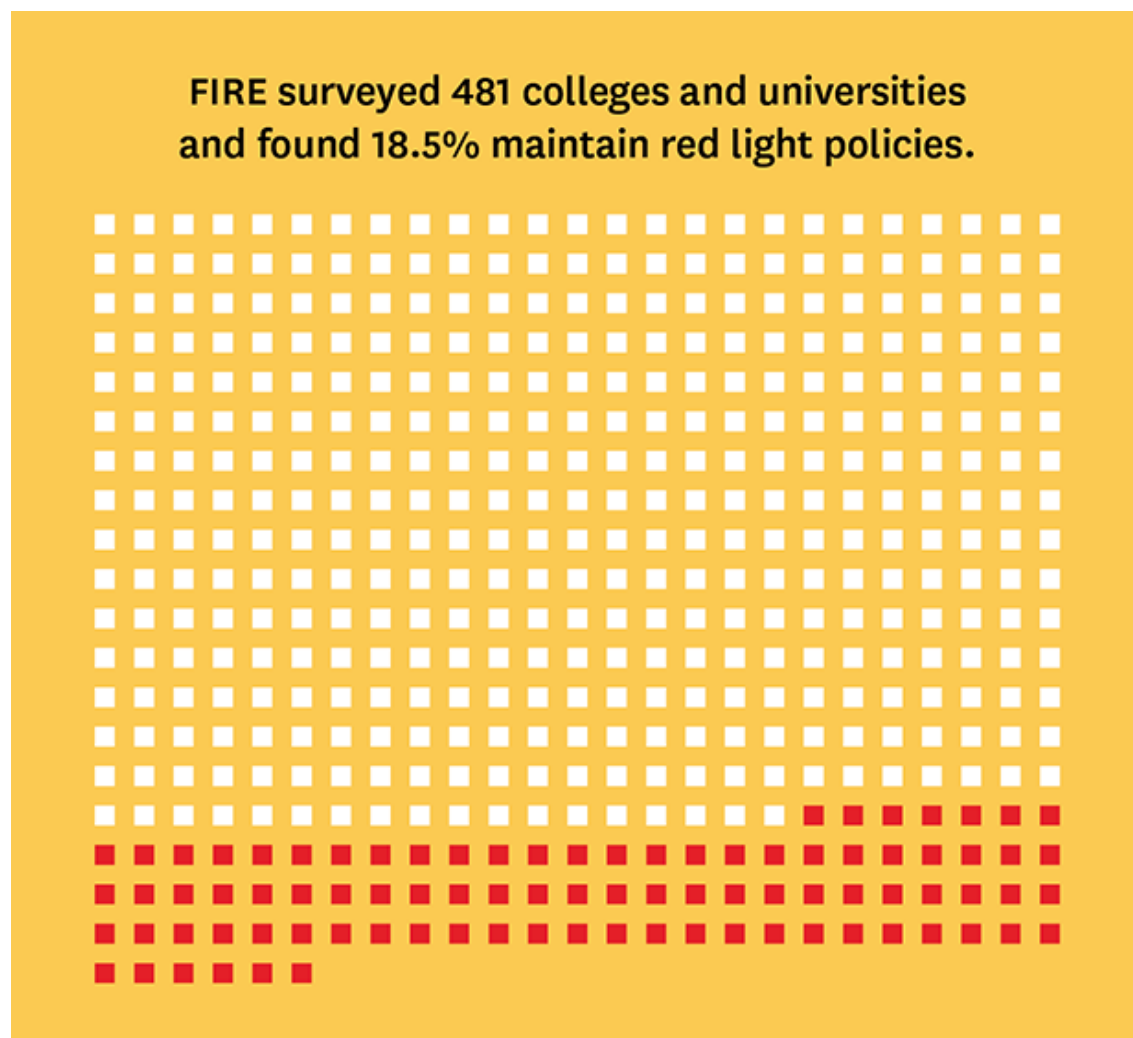
For our 2022 report, FIRE surveyed the written policies of 481 colleges and universities, evaluating their compliance with First Amendment standards. Overall, 18.5% of surveyed colleges maintained at least one severely restrictive policy that earned FIRE’s worst, “red light” rating, meaning that the policy both clearly and substantially restricts protected speech. **This is the fourteenth year in a row that the percentage of schools earning a red light rating has gone down; last year, 21.3% of schools earned a red light rating.**



The majority of institutions surveyed (68%) earned an overall “yellow light” rating, meaning they maintained at least one yellow light policy. Yellow light policies are either clear restrictions on a narrower range of expression or policies that, by virtue of vague wording, could too easily be applied to restrict protected expression. While the steady decline in red light institutions is cause for optimism, FIRE will continue to work with colleges and universities to ensure that yellow light institutions improve to earn our highest, “green light” rating.

A green light rating indicates that none of a university’s written policies seriously imperil protected expression. **A total of 58 colleges and universities (12.1% of those surveyed) earned an overall green light rating, up from 56 schools as of last year’s report.**

In further good news, a growing number colleges and universities are adopting policy statements in support of free speech modeled after the “Report of the Committee on Freedom of Expression” at the University of Chicago (the “Chicago Statement”). As of this writing, 82 universities, university systems, or faculty bodies have endorsed a version of the “Chicago Statement,” with seven adoptions since last year’s report.



Though these improvements in policy are heartening, free speech on campus remains under threat. Demands for censorship of student and faculty speech—whether originating on or off campus—are common, and universities continue to investigate and punish students and faculty over protected expression.

This year, schools across the country continued to grapple with challenges presented by the COVID-19 pandemic. During the spring semester, and before COVID-19 vaccines became widely available, many classes continued to be conducted remotely, making the concerns presented by policies that govern online speech that much greater.

It is imperative that those who care about free speech on campus stay vigilant. The decrease in restrictive speech codes and the proliferation of free speech policy statements are the result of the tireless work of free speech advocates at FIRE and elsewhere. But we must ensure that new national and global challenges do not result in such progress being lost. We must continue to work to ensure that students have the opportunity to pursue their education and that faculty are able to teach with the greatest possible foundation for free expression in place.

Methodology

For this report, FIRE surveyed publicly available policies at 374 four-year public institutions and 107 of the

nation's most prestigious private institutions. Our research focuses in particular on public universities because, as explained in detail below, public universities are legally bound to protect students' right to free speech and can be successfully sued in court when they do not.

FIRE rates colleges and universities as "red light," "yellow light," or "green light" institutions based on how much, if any, protected expression their written policies governing student conduct restrict. **The speech code ratings do not take into account a university's "as-applied" violations of student speech rights or other cases of censorship, student- or faculty-led calls for punishment of protected speech, and related incidents and controversies.** Monitoring and rating such incidents consistently across 481 institutions with accuracy is not feasible and is beyond the scope of this report.

The speech code ratings are defined as follows:

Red Light: A red light institution maintains at least one policy that both clearly and substantially restricts freedom of speech, or bars public access to its speech-related policies by requiring a university login and password for access.

A "clear" restriction unambiguously infringes on protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of the policy and does not depend on how the policy is applied. A "substantial" restriction on free speech is one that is broadly applicable to campus expression. For example, a ban on "offensive speech" would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what is protected under First Amendment standards). Such a policy would earn a university a red light.

When a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to weigh this crucial information prior to matriculation. At FIRE, we consider this denial to be so deceptive and serious that it alone warrants an overall red light rating.

Yellow Light: A yellow light institution maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict relatively narrow categories of speech.

For example, a policy banning "verbal abuse" has broad applicability and poses a substantial threat to free speech, but is not a clear violation because "abuse" might refer to unprotected speech and conduct, such as threats of violence or unlawful harassment. Similarly, while a policy banning "profanity on residence hall door whiteboards" clearly restricts speech, it is relatively limited in scope. **Yellow light policies are typically unconstitutional when maintained by public universities,^[1] and a rating of yellow light rather than red light in no way means that FIRE condones a university's restrictions on speech.** Rather, it means that in FIRE's judgment, those restrictions do not clearly and substantially restrict speech in the manner necessary to warrant a red light rating.

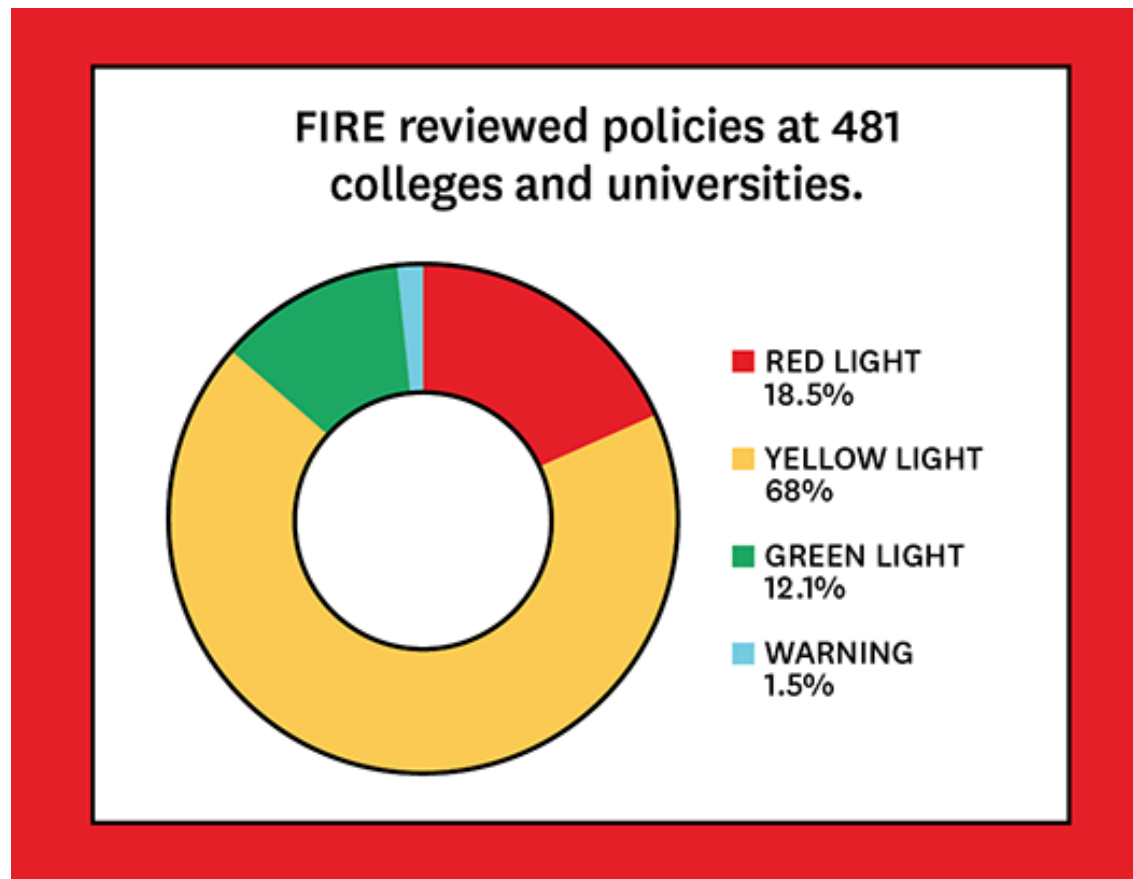
Green Light: If FIRE finds that a university's policies do not seriously threaten campus expression, that college or university receives a green light rating. A green light rating does not necessarily indicate that a school actively supports free expression in practice; it simply means that the school's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

Warning: FIRE believes that free speech is not only a moral imperative, but an essential element of a college education. However, private universities, as private associations, possess their own right to free association, which allows them to prioritize other values above the right to free speech if they wish to do so. Therefore, when a private university clearly and consistently states that it holds a certain set of values above a commitment to freedom of speech, FIRE gives it a Warning rating in order to warn prospective students and faculty members of this fact.^[2] Seven schools surveyed for this report meet these criteria.^[3]

Overall ratings: To determine overall ratings, FIRE does not produce an "average" of an institution's

policy ratings; a school with five yellow light policies and one red light policy earns an overall red light rating, just as a school with one yellow light policy and five red light policies earns an overall red light rating.^[4]

Findings



Of the 481 schools reviewed by FIRE, 89, or 18.5%, received a red light rating. 327 schools received a yellow light rating (68%), and 58 received a green light rating (12.1%). Seven schools earned a Warning rating (1.5%).^[5]

This marks the fourteenth year in a row that the percentage of universities with an overall red light rating has fallen, this year from 21.3% to 18.5%. **The continued reduction in red light institutions is encouraging: Just over a decade ago, red light schools encompassed about 75% of the report's findings.**^[6]

However, this year's numbers also reveal an increase in yellow light institutions, as 65.3% of schools earned an overall yellow light last year, compared to 68% this year. While yellow light policies are not as clearly and substantially restrictive as red light policies on their face, they nevertheless impose impermissible restrictions on expression.

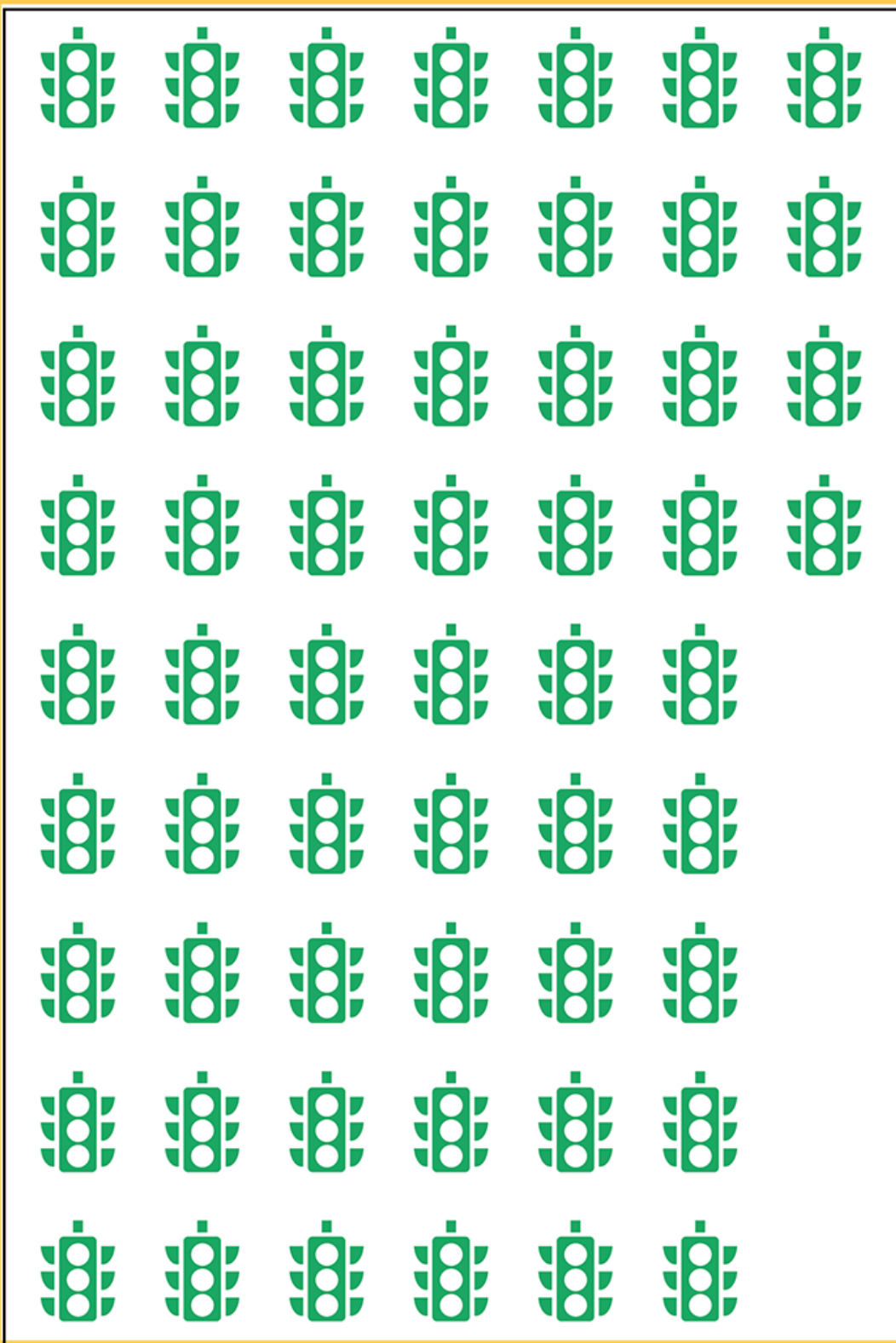
The number of green light institutions has continued to rise this year, though only slightly, from 56 institutions last year to 58 now.^[7] At 12.1%, the percentage of green light schools is at an all-time high, with **more than one million students across the country enrolled at green light colleges and universities.**^[8]

In total, 20 schools improved their overall ratings this year.^[9]

Public Colleges and Universities

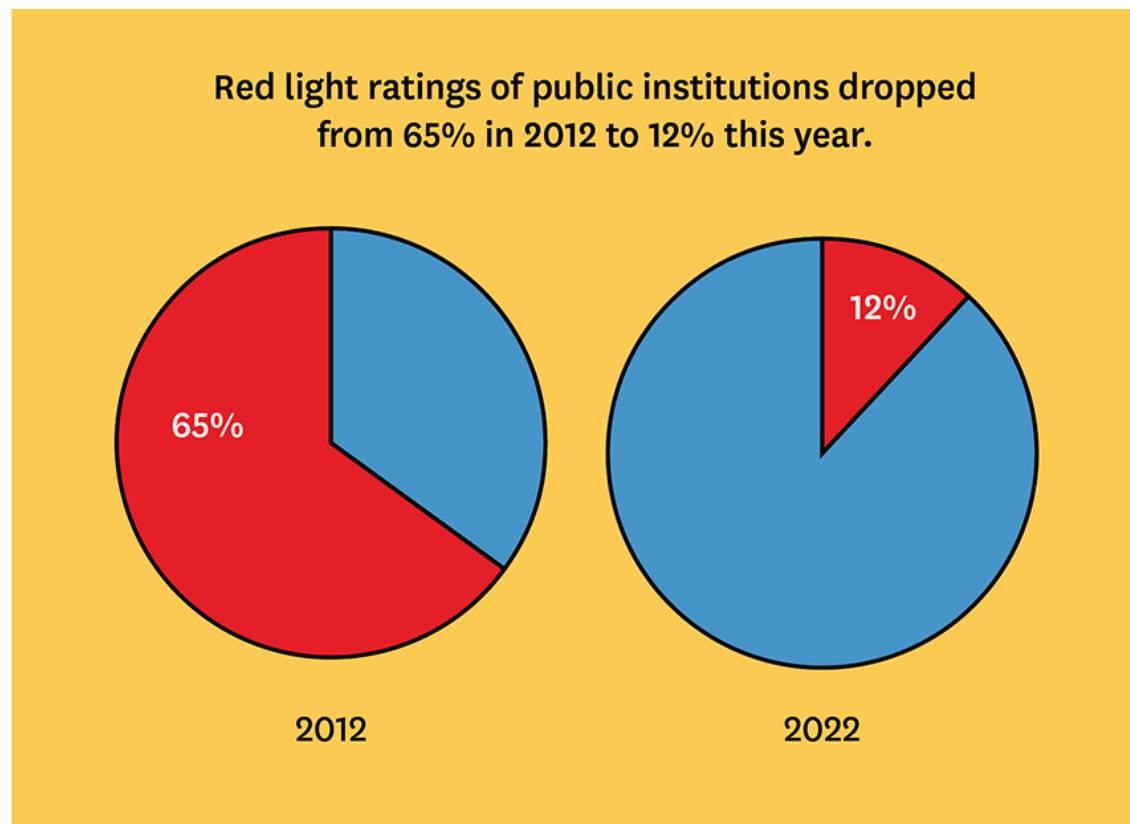
The percentage of public schools with a red light rating dropped again, from 14.5% last year to 12% this

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year. Overall, of the 374 public universities reviewed for this report, 45 received a red light rating (12%), 273 received a yellow light rating (73%), and 54 received a green light rating (14.4%).^[10] **As a result,**

public colleges and universities have reached a significant turning point: There are now more public institutions earning an overall green light rating than an overall red light rating. As just nine public schools earned the green light rating a decade ago, this milestone reveals significant progress.



This year, FIRE was pleased to welcome Elizabeth City State University and the University of North Carolina School of the Arts to the list of green light institutions.

Notably, 13 of the 16 institutions in the University of North Carolina System currently earn an overall green light rating, making North Carolina the state in the country with the greatest number of green light schools. We hope to use North Carolina as a model, working with governing bodies of other public university systems across the country to adopt similar, sweeping reform in other states.

Private Colleges and Universities

Of the 107 private colleges and universities reviewed, 44 received a red light rating (41.1%). 54 received a yellow light rating (50.5%), four received a green light rating (3.7%), and five earned a Warning rating (4.7%).

The percentage of private universities earning a red light rating, which stood at 44.3% last year, continued to decrease, coming in at 41.1% this year. This progress, albeit slight, is hard-earned, given that private universities are not legally bound by the First Amendment, which regulates only government actors. For this reason, it is gratifying that these colleges are closer to fulfilling their institutional commitments to free expression.

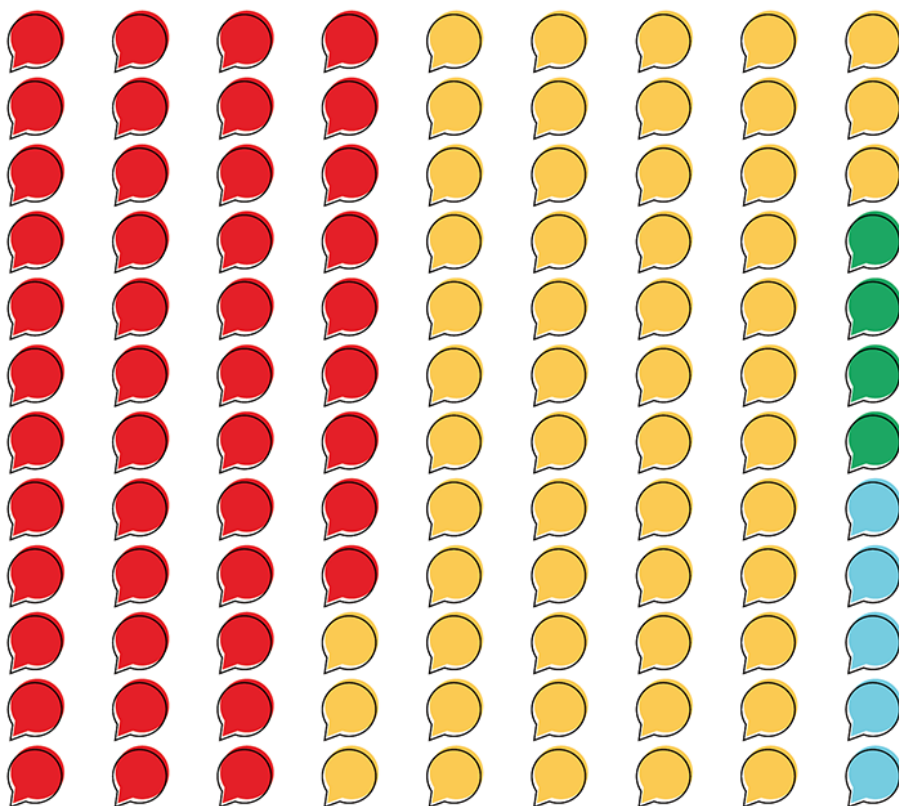
FIRE will continue to work with private colleges and universities to improve policies so that they better meet institutional commitments to protecting students' free speech rights.

Discussion

Speech Codes on Campus: Background and Legal Challenges

Speech codes—**university regulations prohibiting expression that would be constitutionally protected in society at large**—gained popularity with college administrators in the 1980s and 1990s. As

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discriminatory barriers to education declined, female and minority enrollment increased. Concerned that these changes would cause tension and that students who finally had full educational access would arrive at institutions only to be offended by other students, college administrators enacted speech codes.

In the mid-1990s, the phenomenon of campus speech codes converged with the expansion of Title IX, the federal law prohibiting sex discrimination in educational institutions receiving federal funds.^[11] Under the rationale of the obligation to prohibit discriminatory harassment, unconstitutionally overbroad harassment policies banning subjectively offensive conduct proliferated.

In enacting speech codes, administrators ignored or did not fully consider the philosophical, social, and legal ramifications of placing restrictions on speech, particularly at public universities. As a result, federal courts have overturned speech codes at numerous colleges and universities over the past several decades.^[12]

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

Public Universities vs. Private Universities

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

The guarantees of the First Amendment generally do not apply to students at private colleges because the First Amendment regulates only government conduct.^[13] Moreover, although acceptance of federal funding does confer some obligations upon private colleges (such as compliance with federal anti-discrimination laws), compliance with the First Amendment is not one of them.

This does not mean, however, that students and faculty at all private schools are not entitled to free expression. In fact, most private universities explicitly promise freedom of speech and academic freedom in their official policy materials.

Howard University, for example, provides in its student handbook that “all students are guaranteed freedom of expression, inquiry and assembly.”^[14] Likewise, the University of Tulsa states that “[t]he rights of free inquiry and free expression, both public and private, are essential to the learning process,” and that these rights “shall not be infringed upon.”^[15]

Yet both of these institutions, along with most other private colleges and universities, maintain policies that prohibit the very speech they promise to protect.^[16]

This year, both private and public institutions, including statewide systems, have continued to adopt policy statements in support of free speech modeled after the one produced in January 2015 by the Committee on Freedom of Expression at the University of Chicago.^[17] Since our last report, seven more institutions have adopted policy statements in support of free speech modeled after the “Chicago Statement.”^[18] Notably, earlier this year the University of Virginia convened a Committee on Free Speech and Inquiry, tasked with drafting a statement of principles affirming the university’s strong commitment to freedom of expression. Following significant community engagement, the Board of Visitors officially adopted the Committee’s statement over the summer, becoming the sixteenth green light institution to adopt a version of the Chicago Statement.^[19]

FIRE will continue to encourage institutions, private and public alike, to adopt a similar policy statement over the course of the next year.

What Exactly Is “Free Speech,” and How Do Universities Curtail It?

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

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

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

Threats and Intimidation

The Supreme Court has defined “true threats” as “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”^[20] The Court also has defined “intimidation,” of the type not protected by the First Amendment, as a “type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death.”^[21]

Neither term would encompass, for example, a vaguely worded statement that is not directed at anyone in particular. Nevertheless, far too many institutions fail to properly define these legal standards in their written policies.

For example:

- Lincoln University broadly bans “threatening conduct” without defining the term, along with “any form of verbal or mental abuse” and “any other conduct which threatens or endangers the health or safety of any person.”^[22]
- By defining “Threatening or Intimidating Behaviors” as “written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property or implied threats or acts that cause a reasonable fear of harm in another,” the University of Missouri system does not require intent on the part of the speaker.^[23]
- The University of Kentucky similarly leaves intent out of its standard by banning “conduct that causes injury or a reasonable expectation of injury to the physical or mental health or safety of another person.”^[24]

Incitement

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

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

The paradigmatic example of incitement is a person standing on the steps of a courthouse in front of a torch-wielding mob and urging that mob to burn down the courthouse immediately. Misapplying the doctrine to encompass an opposing party’s reaction to speech they dislike converts the doctrine into an impermissible “heckler’s veto,” where violence threatened by those angry about particular speech is used as a reason to censor that speech. As the Supreme Court has observed, speech cannot be prohibited because it “might offend a hostile mob” or because it may prove “unpopular with bottle throwers.”^[25]

The legal standard for incitement was announced in the Supreme Court’s decision in *Brandenburg v. Ohio*.^[26] There, the Court held that the state may not “forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing *imminent* lawless action and is likely to incite or produce such action.”^[27] This is an exacting standard, as evidenced by its application in subsequent cases.

For instance, in *Hess v. Indiana*, the Supreme Court held that a man who had loudly stated “[w]e’ll take the fucking street later” during an anti-war demonstration did not intend to incite or produce immediate lawless action.^[28] The Court found that “at worst, it amounted to nothing more than advocacy of illegal action at some indefinite future time,” and that the man could therefore not be convicted under a state disorderly conduct statute.^[29]

The fact that the Court ruled in favor of the speaker despite the use of such strong and unequivocal language underscores the narrow construction that has traditionally been given to the incitement doctrine, and its dual requirements of likelihood and immediacy. Nonetheless, college administrations have been all too willing to abuse or ignore this jurisprudence, often using the term in policies in a colloquial manner.

For example:

- In its student handbook, the University of Louisiana at Monroe prohibits “[e]ngaging in oral or written speech that is directed to inciting or producing imminent lawless action and/or is likely to incite or produce such action.” By merely requiring that conduct is either directed to inciting or producing imminent lawless action, *and/or* is likely to incite or produce such action, the university’s policy fails to require both components of the Supreme Court’s standard.^[30]
- At Brooklyn College, students are cautioned not to “take actions reasonably likely to provoke or encourage physical violence by demonstrators” when conducting expressive activities. However, this standard fails to require that the conduct is directed to provoke such unlawful action, or that the unlawful action be imminent.^[31]
- Florida A&M University states that, for demonstrators not to disrupt the operation of the university, they must not use “fighting words,” defined as “those words that . . . would tend to incite a reasonable person/individual to violence or other breach of the peace.” Again, this definition fails to require that the speaker intends to incite imminent violence.^[32]

Universities frequently misapply policies prohibiting threats, intimidation, and incitement so as to infringe on protected speech, citing generalized concerns about safety with no regard to the boundaries of protected speech.

For example, in November 2020, Iowa State University initially pledged to punish “[a]ny suggestion” of armed activity after the university’s College Republicans chapter tweeted, “Everyone, you must arm up, expect these people to attempt to destroy your life, the elites want revenge on us” following the 2020 presidential election.^[33] FIRE wrote a letter to the university to explain that a public university cannot punish students for political rhetoric that fails to rise to the exacting legal standards for a true threat or incitement, and that simply discussing armed activity is not unlawful.^[34] Within an hour of receiving FIRE’s letter, Iowa State affirmed that the College Republicans group would not face disciplinary action for its tweet.^[35]

Obscenity

The Supreme Court has held that “obscene” expression, to fall outside of the protection of the First Amendment, must “depict or describe sexual conduct” and must be “limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value.”^[36]

This is a narrow standard, applicable only to certain highly graphic sexual material. It does not encompass simple profanity, even though profane words are often colloquially referred to as “obscenities.” In fact, the Supreme Court has explicitly held that profanity is constitutionally protected. In *Cohen v. California*, the defendant, Paul Robert Cohen, was convicted in California for wearing a jacket bearing the words “Fuck the Draft” in a courthouse.^[37] The Supreme Court overturned Cohen’s conviction, holding that the message on his jacket, however vulgar, was protected speech.

Similarly, in *Papish v. Board of Curators of the University of Missouri*, the Court determined that a student’s expulsion for distributing a student newspaper containing an article titled “Motherfucker Acquitted” and a “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice” violated the First Amendment.^[38] The Court wrote that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of

decency.”^[39]

Nonetheless, many colleges erroneously believe that they may lawfully prohibit profanity and vulgar expression. For example:

- Coastal Carolina University broadly calls “excessive vulgarity” an example of prohibited disorderly conduct.^[40]
- At Alabama State University, students are told they “must refrain from using four-letter words and other obscenities that are not accepted standards of decency.”^[41]
- DePauw University’s policy on “Electronic Communications and Acceptable Use” prohibits using electronic communication facilities to access or transmit content that is “vulgar,” “pornographic,” or “sexually offensive.”^[42]

In 2019, an administrator at the University of Tennessee Health Science Center informed Kimberly Diei, a student seeking her doctorate in pharmacy, that she was under investigation over posts made on her Instagram and Twitter accounts.^[43] She appeared before the college’s Professional Conduct Committee, which unanimously determined she violated university policies with what the committee deemed to be “crude” and “sexual” posts—posts that did not constitute unlawful obscenity.^[44] Less than a year later, the committee again informed her she was under investigation, this time over tweets about the song “WAP” by Cardi B and Megan Thee Stallion, and another referencing a Beyoncé song.^[45]

Following the second investigation, the committee voted to expel her from the program, but a month later, after a letter from FIRE, the dean reversed the decision.^[46] Diei, represented by FIRE, filed suit in February 2021, seeking to stop UT from further investigations into her social media, to win damages for her over the college interfering with her rights, and to eliminate the college’s overbroad professionalism policies.^[47]

Harassment

Hostile environment harassment, properly defined, is not protected by the First Amendment. In the educational context, the Supreme Court defined student-on-student (or peer) harassment in *Davis v. Monroe County Board of Education* as discriminatory, unwelcome, and targeted conduct that is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”^[48]

This is not simply expression; it is *conduct* far beyond the protected speech that is too often deemed “harassment” on today’s college campus. For example, in *Davis*, the conduct found by the Court to constitute harassment was a months-long pattern of conduct including repeated attempts to touch the victim’s breasts and genitals, together with repeated sexually explicit comments directed at and about the victim.

For decades now, however, many colleges and universities have maintained policies defining harassment too broadly and prohibiting constitutionally protected speech. Years of Title IX enforcement by the Department of Education’s Office for Civil Rights (OCR) that neglected to fully protect First Amendment rights, including an unconstitutionally broad definition of sexual harassment promulgated by OCR itself,^[49] led numerous colleges and universities to enact overly restrictive harassment policies in an effort to avoid an OCR investigation.

On May 6, 2020, the Department of Education published new Title IX regulations that adopted the Supreme Court’s peer harassment standard from *Davis*, taking effect August 14, 2020. In response, the vast majority of institutions adopted the regulations’ definition of sexual harassment for Title IX cases, while also maintaining broader harassment definitions for other types of cases.^[50] As a result, although policies improved on the whole over the past year, students were left with a confusing policy scheme that is likely to have a chilling effect on expression.

At the time of this writing, it is difficult to be sure of the future of the Department of Education's regulations. FIRE will fight to preserve the regulations and the vital free speech and due process protections they provide, and will continue to urge colleges to revise harassment policies that fall short of the Supreme Court's *Davis* standard.

Regardless, definitions of harassment that encompass protected speech are not the only free speech concern presented by such policies. For example, many policies define harassment narrowly, then proceed to provide a list of examples of prohibited conduct that do not necessarily meet that standard when standing alone.

Here are just a few examples of problematic harassment policies:

- The Vermont State Colleges System's policy on non-discrimination defines harassment as conduct that has the "the purpose or effect" of objectively and substantially interfering with a student's educational performance or access to resources, thereby making conduct that does not actually have a harassing effect punishable.^[51] The policy goes on to provide that harassment "includes the use of epithets, stereotypes, slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, display, or circulation of written or visual material, and taunts on manner of speech and negative references to customs related to any of the protected categories."^[52]
- California State University, Long Beach broadly states that sexual harassment "may range from sexual innuendoes made at inappropriate times, perhaps in the guise of humor, to coerced sexual relations," and that "[e]xamples of harassment include . . . using epithets," "derogatory cartoons," and "inappropriate gestures."^[53]
- Adams State University's policy broadly defines sexual harassment as "unwelcome conduct that is of a sexual nature or is based on a person's actual or perceived sex, gender, sexual orientation, gender identity, or gender expression," including "verbal, nonverbal, or physical conduct of a sexual nature."^[54]

These examples demonstrate that, though some progress regarding harassment policies has been made due to the 2020 Title IX regulations, colleges and universities still too often expand the term harassment to prohibit broad categories of speech that do not even *approach* actionable harassment, despite similar policies having been struck down by federal courts years earlier.^[55]

This problem extends not only to policies but also to practice. For example, in September 2020, graduate student and adjunct professor Richard Taylor taught a lesson at St. John's University about the history of the "Columbian Exchange," the exchange of people, diseases, crops, animals, and goods during the 15th and 16th centuries. He ended the slideshow with the discussion prompt: "Do the positives justify the negatives?"^[56] After a student filed a bias complaint, the university found Taylor responsible for violating its anti-harassment policy. Taylor sued St. John's in state court; the case is ongoing.^[57]

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

Bullying Policies

Over the past decade, FIRE has found that numerous colleges and universities have adopted policies on "bullying" and "cyberbullying." On October 26, 2010, OCR issued a letter on the topic of bullying, reminding educational institutions that they must address actionable harassment, but also acknowledging that "[s]ome conduct alleged to be harassment may implicate the First Amendment rights to free speech or expression."^[58] For such situations, OCR's letter refers readers back to the 2003 "Dear Colleague" letter stating that harassment is conduct that goes far beyond merely offensive speech and expression. However, because it is primarily focused on bullying in the K–12 setting, the 2010 letter also urges an *in loco*

parentis^[59] approach that is inappropriate in the college setting, where students are overwhelmingly adults.^[60]

Court decisions and other guidance regarding student speech in the K–12 setting often “trickle up” to the collegiate setting, and indeed, FIRE has come across numerous university policies prohibiting bullying in a problematic manner. For example:

- Union College’s student handbook states that bullying includes “tormenting,” “mocking” and “maliciously or inappropriately ridiculing another’s work or comments beyond the scope of scholarly inquiry.” The “scope of scholarly inquiry” is not defined.^[61]
- At Reed College, bullying is defined as “repeated or aggressive” behavior likely to “discomfort” or “hurt” another student, “physically or mentally.”^[62]
- Kean University makes punishable “acts that a reasonable person should know will cause physical and/or emotional harm of [*sic*] fear of harm.”^[63]

But as courts have held in rulings spanning decades, speech cannot be prohibited simply because someone else finds it offensive, even deeply so.^[64] Offensive speech, if it does not rise to the level of harassment or one of the other narrow categories of unprotected speech and conduct, is entitled to constitutional protection (and, accordingly, to protection at private institutions that claim to uphold the right to free speech).

Policies on Tolerance, Respect, and Civility

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

For example:

- Montana Technological University states that students in the residence halls have the right “to be free from fear, intimidation, and physical or emotional harm.”^[65]
- Carleton College informs students that creating and sustaining a “climate of civility” is “the responsibility of each individual,” and bans “verbal or psychological abuse.”^[66]
- Evergreen State College goes so far as to say: “Civility is not just a word; it must be present in all our interactions.”^[67]

While respect and civility may seem uncontroversial, most uncivil or disrespectful speech is protected by the First Amendment,^[68] and is indeed sometimes of great political and social significance. Some of the expression employed in the civil rights movement of the 1950s and ’60s, for example, would violate campus civility codes today. Colleges and universities may *encourage* civility, but public universities—and those private universities that purport to respect students’ fundamental free speech rights—may not require it or threaten mere incivility with disciplinary action.

Internet Usage Policies

Universities bound by the First Amendment—and private ones that commit to upholding students’ expressive rights—are no more permitted to infringe on free speech online than on the campus quad. However, out of all of the types of policies FIRE rates in our Spotlight database, those regulating online speech earn the second-highest number of red light ratings, just after harassment policies.

As campuses continued to conduct classes online over the past year due to the COVID-19 pandemic, the concerns these policies present only increased. This report’s “Spotlight on: Information Technology Regulations” section covers this prevailing issue in greater detail.

Policies on Bias and Hate Speech

In recent years, colleges and universities around the country have instituted policies and procedures specifically aimed at eliminating “bias” and “hate speech” on campus.^[69] These sets of policies and procedures, frequently termed “Bias Reporting Protocols” or “Bias Incident Protocols,” often include bans on protected expression. For example:

- Examples of bias incidents that can be reported at Clark University include: “telling jokes based on a stereotype,” “name-calling,” and “posting or commenting on social media related to someone’s identity in a bias *[sic]* matter.”^[70]
- Clemson University’s “Bias Incident Response” policy states: “Acts that are an affront to the core values of the institution, which are integrity, honesty and respect, are not tolerated,” and encourages students to complete an online bias incident report or file a report with one of a number of university offices, including the campus police, if they perceive one of these incidents has occurred.^[71]
- Drexel University’s “Discrimination, Harassment, and Bias Incident Prevention Policy” claims the university is “committed to the free expression of ideas,” but then goes on to say that “[a] person can be passionate about his or her position or idea without exhibiting bias as defined in this policy so long as the individual remains respectful and tolerant of those who hold a different view and/or position.”^[72]

While speech or expression that is based on a speaker’s bias may be subjectively offensive, disrespectful, or intolerant, it is protected under First Amendment standards unless it rises to the level of unlawful conduct like harassment. Some bias reporting policies acknowledge the distinction between unlawful conduct, like hate crimes or harassment, and bias-related incidents. However, many of these policies nonetheless encourage students to report such broadly defined bias incidents, and reserve the right to take action against incidents that do not constitute unlawful behavior or unprotected speech.

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

Although some bias incident protocols do not include a separate enforcement mechanism, the mere threat of a bias investigation will likely be sufficient to chill speech on controversial issues. Indeed, the United States Court of Appeals for the Sixth Circuit recently held that, even though it lacked the power to punish students independently, the University of Michigan’s former “Bias Response Team” policy was likely to chill the speech of students because “the invitation from the Response Team to meet could carry an implicit threat of consequence should a student decline the invitation.”^[73] As part of a settlement agreement,^[74] the university replaced its Bias Response Team with a “Campus Climate Support” (“CCS”) program. The new policy makes its purpose—to provide support, rather than to investigate or punish protected speech—clear: “CCS is not a disciplinary body, cannot impose discipline, and does not require participation in any aspect of CCS’s work.”^[75]

Overbroad bias reporting policies must be revised so that they narrowly target unlawful conduct, or to make clear they exist for purposes of providing support for affected individuals.

Policies Governing Speakers, Demonstrations, and Rallies

Universities may enact reasonable, narrowly tailored “time, place, and manner” restrictions that prevent demonstrations and other expressive activities from unduly interfering with the educational process.^[76] They may not, however, regulate speakers and demonstrations on the basis of content or viewpoint, nor

may they maintain regulations that burden substantially more speech than is necessary to maintain an environment conducive to education. Such regulations can take several forms, as discussed in the sections below.

Security Fee Policies

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

The Supreme Court addressed a very similar issue in *Forsyth County v. Nationalist Movement*, where it struck down an ordinance in Georgia that permitted the local government to set varying fees for events based upon how much police protection the event would need.^[77] Invalidating the ordinance, the Court wrote that “[t]he fee assessed will depend on the administrator’s measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit.”^[78] Deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation. . . . **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**”^[79]

Despite this precedent, the impermissible use of security fees to burden controversial speech is all too common on university campuses:

- Radford University’s “Use of University Facilities Policy” merely states that “[s]ecurity will be required at specific events as determined by the Radford University Police Department (RUPD) in consultation with the University Scheduling Office,” without explaining the criteria these offices will be applying to make such determinations.^[80] The policy *does* specify that “[t]he sponsor is responsible for all fees associated with the cost of providing security whether by the RUPD and/or private security.”^[81]
- Cameron University’s Director of Public Safety has “the final decision-making capability and will decide how many police officers will be present, if any, and how many security personnel will be present, if any, after being properly advised as to the facts surrounding the event and the likelihood of potential disruptions or security threats, based on the history of the event in other areas”^[82] Its policy notes that the “RSO/Student shall be responsible for the cost of security for events where more than 200 people are expected to (or do) attend or if the event organizer requests security.”^[83]
- The University of Miami’s policy simply provides that the “Department of Student Activities & Student Organizations – in consultation with the University of Miami Police Department – may require that additional security be present to ensure the safety of the speaker and program participants,” and that the costs of security “are the responsibility of the sponsoring organization.”^[84]

Prior Restraints

The Supreme Court has held that “[i]t is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.”^[85] Yet many colleges and universities enforce prior restraints, requiring students and student organizations to register their expressive activities well in advance and, often, to obtain administrative approval for those activities. For example:

- At Rice University, students are required to contact the campus police department “at least 48 hours in advance of the activity to request permission” to hold expressive activities.^[86]
- “All groups must receive permission from the director of the Office of Campus Life” before engaging

in “solicitation for any purpose,” including “political leafleting,” at Tufts University.^[87]

- Fort Hays State University affirms students’ “right to orderly dissent and protest against any decision or issue” before saying that those “wishing to express their concerns should confer with the Vice President for Student Affairs regarding procedural policy and appropriateness of their proposed actions.”^[88]

In 2019, Jones College twice stopped student Mike Brown from conducting expressive activities on campus without seeking advance permission.^[89] Under the college’s policy, students needed to obtain that approval at least three days in advance before “gathering for any purpose” anywhere on campus.^[90]

Represented by FIRE, Brown challenged the policy, and this past November, the college agreed to a settlement.^[91] As part of the settlement, the college implemented a new policy that allows students to express themselves without seeking advance permission and adopts language from the Chicago Statement.^[92]

Free Speech Zone Policies

Of the 481 schools surveyed for this report, 25 institutions (5.2%) enforce “free speech zone” policies —policies limiting student demonstrations and other expressive activities to small and often out-of-the-way areas on campus.^[93] **This number represents a dramatic improvement over the course of the past decade: A 2013 FIRE survey of the institutions covered in this report found that 16.4%—over three times the percentage today—maintained such policies.**^[94] This positive shift can be traced in large part to FIRE’s litigation and legislative efforts.

Over the past several years, free speech zones have repeatedly been struck down by courts or voluntarily revised by colleges as part of settlements to lawsuits brought by students. FIRE’s litigation efforts have mounted successful challenges to free speech zone policies at nine colleges.^[95] Most recently, the Los Angeles Community College District agreed to settle a lawsuit brought after an administrator told a student his rights were restricted to a tiny free speech zone on the Los Angeles Pierce College campus. As the largest community college district in the country, this FIRE litigation victory restored free speech rights to roughly 150,000 students.^[96]

Additionally, state legislatures have continued to take action to prohibit public colleges and universities from maintaining free speech zones. Currently, 21 states have enacted laws prohibiting these restrictive policies: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Iowa, Kentucky, Louisiana, Missouri, Montana, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia.^[97]

Due to FIRE’s efforts in litigation and legislation, as well as our continued policy reform work, free speech zones have declined dramatically over the past decade. In spite of this progress, too many universities still maintain free speech zones. Despite being inconsistent with the First Amendment, free speech zones are more common at public universities than at private universities: 5.6% of public universities surveyed maintain free speech zones, while just 3.9% of private universities that promise their students free speech rights do.

Examples of current free speech zone policies include the following:

- Students at the University of Massachusetts Dartmouth are limited to just one “public forum space” for expressive activities, and must inform the Department of Public Safety at least 48 hours before using it.^[98]
- Students wishing to distribute non-commercial materials at California State University, Sacramento are limited to “the edge of walkways” adjacent to quad areas on campus.^[99]
- Another CSU institution—California State University, Dominguez Hills—names just one area, the

“Sculpture Garden,” as the “Designated Outdoor Programming Space.”^[100]

Although free speech zone policies are indeed being steadily revised across the country, they continue to pose problems for students’ expressive activities.

What Can Be Done?

The good news is that the types of restrictions discussed in this report can be reformed. Students and faculty members can be tremendously effective advocates for change when they are aware of their expressive rights and willing to engage administrators in their defense. FIRE provides a number of resources to assist advocates and administrators in revising speech codes, including our Model Code of Student Conduct and our Model Speech Policies webpage.^[101] The Model Code includes provisions regarding prohibited conduct that would all earn green light ratings, as well as student conduct procedures and procedural safeguards that comply with the Department of Education’s 2020 Title IX regulations.

Unconstitutional policies also can be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country for decades. Many more such policies have been revised in favor of free speech as the result of legal settlements.

Any speech code in force at a public university is vulnerable to a constitutional challenge. Moreover, as speech codes are consistently defeated in court, administrators cannot credibly argue that they are unaware of the law, which means that they may be held personally liable when they are responsible for their schools’ violations of constitutional rights.^[102]

The suppression of free speech at institutions of higher education is a matter of national concern. But, by working together with universities to revise restrictive speech codes and to reaffirm commitments to free expression, we can continue to make strides toward campuses that truly embody the “marketplace of ideas” that such institutions are meant to be in our society.

Spotlight On: Information Technology Regulations

Just as college administrators may not infringe on students’ protected speech on the campus quad, they also may not do so when that speech takes place online. But as great strides have been made in some areas of speech code reform over the past decades—the reduction of free speech zones being one example—one area that has lagged behind is the regulation of students’ use of information technology resources. With so much student expression now taking place online, these policies are in critical need of attention and reform.

As of this writing, 34 schools in FIRE’s Spotlight database have an IT policy on the books that poses a clear and substantial restriction on protected expression, earning a red light rating. A total of 216 schools—nearly half the database—maintain an IT policy that earns a yellow light rating, for posing a vague restriction on speech that is ripe for administrative abuse.

To name some examples, at Boston University, students are prohibited from using computing facilities in a way that “*might* needlessly interfere with the work of others.”^[103] The policy goes on to say that such prohibited use includes “transmitting or making accessible offensive, annoying, or harassing material.”^[104]

Similarly, Alabama A&M University’s policy bans harassing others by sending “annoying, abusive, profane . . . or offensive messages.”^[105] As discussed in this report, speech that is a part of conduct that constitutes unlawful harassment is not protected by the First Amendment, but “annoying,” “abusive,” “profane,” and “offensive” messages, standing alone, do not necessarily constitute unlawful harassment.

Delaware State University also prohibits students from using university technology resources

in ways that would “cause offense to others.”^[106] Its policy even bans use that would “harm morale,” or “[r]esult in Delaware State University’s . . . embarrassment.”^[107]

Given that a great proportion of campus expression now occurs online—from remote classes, to online learning platforms, to social media pages for student groups—these restrictions, though possibly appearing narrow at first, have a broad scope, and pose two main concerns.

First, bad policies beget bad results: the application of these policies to infringe on student rights. And while infringement on online speech is nothing new, the problem only increased during the COVID-19 pandemic, when college campuses shifted their learning online.

In April 2020, Dickinson College launched an investigation to identify the anonymous operator of an Instagram account called “menofdickinson,” which mimicked a “womenofdickinson” account and posted memes the student newspaper described as “misogynistic.”^[108] When FIRE wrote to the college to explain investigating the account for offending students was at odds with the college’s commitment to upholding students’ free speech rights, the college agreed it would not punish the student, but did not agree to drop the investigation.^[109]

For another example, in October 2021, California State University, Long Beach student Aqsa Khan was charged with violating school policy after she sent a message through CSULB’s online learning platform to department administrators and students, which expressed concerns about the department’s treatment of minority students and a recent hiring decision.^[110] The provisions she was charged with violating, which apply systemwide to California State University schools pursuant to California state code, ban the use of computing facilities and resources “to send obscene or intimidating and abusive messages” and “to interfere with normal University operations.”^[111]

Banning the use of resources that causes an interference with normal university operations is reasonable on its face, but the ban on “abusive” messages is impermissibly vague and overbroad. Indeed, the Supreme Court held half a century ago that a Georgia statute prohibiting “opprobrious words or abusive language” was unconstitutional because those terms, as commonly understood, encompassed speech and expression protected by the First Amendment.^[112]

The application of unconstitutional policies against online speech isn’t limited to students. In June 2020, Weber State University announced an investigation and placed professor Scott Senjo on “administrative leave” after he tweeted at a *Wall Street Journal* reporter who was hit by police officers while covering protests about George Floyd in New York City, “If I was the cop, you wouldn’t be able to tweet.”^[113] FIRE wrote to the university to explain that his extramural speech fell short of the “true threats” or “incitement” exceptions to the First Amendment, and that the university could not punish him over it.^[114]

Even absent application, these policies present a second concern: a chilling effect on speech. It’s pretty unlikely that a school will investigate and take action against every single instance of subjectively “offensive” speech conducted over its networking or computing services—after all, that would be logistically impossible, given just how much speech falls under such broad terms. But students reading a policy that threatens investigation over subjectively offensive speech, or that even bans embarrassing the school, may decide a tweet criticizing a recent policy decision made by the university administration isn’t worth the risk.

The answer to these concerns is to revise these policies so that they meet First Amendment standards. Schools with restrictive IT policies are not without models for reform: FIRE’s Model Speech Policies webpage provides model policies for each type of most common speech codes, including IT policies.^[115]

For a model regulation on the use of technology, we point to Arizona State University’s “Computer, Internet, and Electronic Communications Information Management Policy,” which bans “[u]nlawful communications, including threats of violence, obscenity, child pornography, and harassing communications”—all examples that are not protected by the First Amendment.^[116] And Eastern Kentucky University provides a simple guide for other institutions: “Using information technology is no different than similar conduct carried out in person, by telephone or by mail. Violations through electronic media will subject the individual to the same University sanctions.”^[117]

Indeed, the legal standards governing free expression that apply online are not different—and should not be represented as being different—from those that apply in person.

Appendix A: Schools by Rating

Red Light

Adams State University
Alabama A&M University
Barnard College
Bates College
Boston College
Boston University
California Institute of Technology
California State University – Dominguez Hills
California State University – Fresno
California State University – Monterey Bay
Carleton College
Case Western Reserve University
Cheyney University of Pennsylvania
Chicago State University
Clark University
Colgate University
College of the Holy Cross
Connecticut College
Delaware State University
DePauw University
Dickinson College
Drexel University
Eastern Illinois University
Evergreen State College
Fordham University
Fort Lewis College
Framingham State University
Furman University
Georgetown University
Grinnell College
Harvey Mudd College
Howard University
Indiana State University
Johns Hopkins University
Kean University
Lafayette College
Lake Superior State University
Lehigh University
Lewis-Clark State College

Lincoln University
Louisiana State University – Baton Rouge
Macalester College
Marquette University
Middlebury College
Mount Holyoke College
Northeastern University
Northern Vermont University
Northwestern University
Portland State University
Princeton University
Reed College
Rensselaer Polytechnic Institute
Rice University
Santa Clara University
Shawnee State University
Skidmore College
Southern Illinois University at Carbondale
Southern Illinois University Edwardsville
Southern Oregon University
St. Olaf College
State University of New York – Fredonia
State University of New York – New Paltz
Stevens Institute of Technology
Tennessee State University
The College of New Jersey
Troy University
Tufts University
Tulane University
Union College
University of Alaska Anchorage
University of Alaska Fairbanks
University of Central Missouri
University of Central Oklahoma
University of Houston-Downtown
University of Illinois at Chicago
University of Louisiana at Monroe
University of Louisiana Lafayette
University of Massachusetts at Lowell
University of Miami
University of Notre Dame
University of Texas at Dallas
University of Tulsa
University of Wisconsin – Oshkosh
University of Wyoming
Utah State University
Valdosta State University
Villanova University
Virginia State University
Western Michigan University

Yellow Light


Alabama State University
American University
Amherst College

Angelo State University
Arkansas State University
Athens State University
Auburn University Montgomery
Ball State University
Bard College
Baruch College
Bemidji State University
Black Hills State University
Bloomsburg University of Pennsylvania
Boise State University
Bowdoin College
Bowling Green State University
Brandeis University
Bridgewater State University
Brooklyn College, City University of New York
Brown University
Bryn Mawr College
Bucknell University
California Maritime Academy
California Polytechnic State University
California State Polytechnic University, Pomona
California State University – Bakersfield
California State University – Channel Islands
California State University – Chico
California State University – East Bay
California State University – Fullerton
California State University – Long Beach
California State University – Los Angeles
California State University – Northridge
California State University – Sacramento
California State University – San Bernardino
California State University – San Marcos
California State University – Stanislaus
California University of Pennsylvania
Cameron University
Carnegie Mellon University
Central Connecticut State University
Central Michigan University
Central Washington University
Centre College
Christopher Newport University
Clarion University of Pennsylvania
Clemson University
Coastal Carolina University
Colby College
College of Charleston
Colorado College
Colorado School of Mines
Colorado State University
Colorado State University Pueblo
Columbia University
Cornell University
Dakota State University
Dartmouth College
Davidson College
East Stroudsburg University of Pennsylvania

East Tennessee State University
Eastern Michigan University
Eastern New Mexico University
Eastern Washington University
Ferris State University
Fitchburg State University
Florida A&M University
Florida Atlantic University
Florida Gulf Coast University
Florida International University
Fort Hays State University
Franklin & Marshall College
Frostburg State University
George Washington University
Georgia Gwinnett College
Georgia Institute of Technology
Georgia Southern University
Georgia State University
Gettysburg College
Governors State University
Grambling State University
Grand Valley State University
Hamilton College
Harvard University
Haverford College
Henderson State University
Humboldt State University
Hunter College, City University of New York
Idaho State University
Illinois State University
Indiana University – Bloomington
Indiana University – Kokomo
Indiana University – Purdue University Columbus
Indiana University – Purdue University Indianapolis
Indiana University of Pennsylvania
Indiana University South Bend
Indiana University, East
Indiana University, Northwest
Indiana University, Southeast
Iowa State University
Jacksonville State University
James Madison University
Kennesaw State University
Kent State University
Kentucky State University
Kenyon College
Kutztown University of Pennsylvania
Lock Haven University of Pennsylvania
Longwood University
Louisiana Tech University
Loyola Marymount University
Mansfield University of Pennsylvania
Marshall University
Massachusetts College of Liberal Arts
Massachusetts Institute of Technology
Metropolitan State University
Metropolitan State University of Denver

Miami University of Ohio
Michigan State University
Middle Georgia State University
Middle Tennessee State University
Millersville University of Pennsylvania
Missouri State University
Missouri University of Science & Technology
Montana State University
Montana Technological University
Montclair State University
Morehead State University
Murray State University
New College of Florida
New Jersey Institute of Technology
New Mexico State University
New York University
Nicholls State University
Norfolk State University
North Carolina A&T State University
North Dakota State University
Northeastern Illinois University
Northern Illinois University
Northern Kentucky University
Northern Michigan University
Northwestern Oklahoma State University
Northwestern State University
Oakland University
Oberlin College
Occidental College
Ohio University
Oklahoma State University – Stillwater
Old Dominion University
Pennsylvania State University – University Park
Pittsburg State University
Pitzer College
Pomona College
Queens College, City University of New York
Radford University
Rhode Island College
Rogers State University
Rowan University
Rutgers University – New Brunswick
Saginaw Valley State University
Saint Cloud State University
Salem State University
Sam Houston State University
San Diego State University
San Francisco State University
San Jose State University
Scripps College
Sewanee, The University of the South
Slippery Rock University of Pennsylvania
Smith College
Sonoma State University
South Dakota State University
Southeast Missouri State University
Southeastern Louisiana University

Southern Connecticut State University
Southern Methodist University
Southern Utah University
Southwest Minnesota State University
Stanford University
State University of New York – Binghamton
State University of New York – Oswego
State University of New York – Albany
State University of New York – University at Buffalo
State University of New York College of Environmental Science and Forestry
Stockton University
Stony Brook University
Swarthmore College
Syracuse University
Tarleton State University
Temple University
Tennessee Technological University
Texas Southern University
Texas State University – San Marcos
Texas Tech University
Texas Woman’s University
The City College of New York
The Ohio State University
The University of Virginia’s College at Wise
Towson University
Trinity College
University of Akron
University of Alabama
University of Alabama at Birmingham
University of Alabama in Huntsville
University of Alaska Southeast
University of Arkansas – Fayetteville
University of California Berkeley
University of California Davis
University of California Irvine
University of California Merced
University of California Riverside
University of California San Diego
University of California Santa Barbara
University of California Santa Cruz
University of Central Arkansas
University of Central Florida
University of Cincinnati
University of Colorado Denver
University of Connecticut
University of Delaware
University of Denver
University of Georgia
University of Hawaii at Manoa
University of Hawaii Hilo
University of Houston
University of Idaho
University of Illinois at Springfield
University of Illinois at Urbana-Champaign
University of Iowa
University of Kansas
University of Kentucky

University of Maine
University of Maine at Fort Kent
University of Maine Presque Isle
University of Mary Washington
University of Massachusetts – Amherst
University of Massachusetts – Boston
University of Massachusetts at Dartmouth
University of Memphis
University of Michigan – Ann Arbor
University of Michigan – Dearborn
University of Michigan – Flint
University of Minnesota – Morris
University of Minnesota – Twin Cities
University of Missouri – Columbia
University of Missouri-Kansas City
University of Missouri-St. Louis
University of Montana
University of Montana Western
University of Montevallo
University of Nebraska – Lincoln
University of Nebraska Omaha
University of Nevada, Las Vegas
University of Nevada, Reno
University of New Mexico
University of New Orleans
University of North Alabama
University of North Carolina at Asheville
University of North Georgia
University of North Texas
University of Northern Colorado
University of Northern Iowa
University of Oklahoma
University of Oregon
University of Pennsylvania
University of Pittsburgh
University of Rhode Island
University of Richmond
University of Rochester
University of South Alabama
University of South Carolina Columbia
University of South Dakota
University of South Florida
University of South Florida at Saint Petersburg
University of Southern California
University of Southern Indiana
University of Southern Maine
University of Texas at Arlington
University of Texas at Austin
University of Texas at El Paso
University of Texas at San Antonio
University of Texas at Tyler
University of Texas Rio Grande Valley
University of Toledo
University of Utah
University of Vermont
University of Washington
University of West Alabama

University of West Florida
University of West Georgia
University of Wisconsin – Eau Claire
University of Wisconsin – Green Bay
University of Wisconsin – La Crosse
University of Wisconsin – Madison
University of Wisconsin – Stout
University of Wisconsin Milwaukee
Utah Valley University
Vanderbilt University
Vassar College
Virginia Commonwealth University
Virginia Polytechnic Institute and State University
Wake Forest University
Washington & Lee University
Washington State University
Washington University in St. Louis
Wayne State University
Weber State University
Wellesley College
Wesleyan University
West Chester University of Pennsylvania
West Virginia University
Western Illinois University
Western Kentucky University
Western Oregon University
Western Washington University
Westfield State University
Whitman College
Wichita State University
William Paterson University
Williams College
Winona State University
Winston-Salem State University
Worcester Polytechnic Institute
Worcester State University
Wright State University
Yale University
Youngstown State University

Green Light

Alcorn State University
Appalachian State University
Arizona State University
Auburn University
Claremont McKenna College
Cleveland State University
Colorado Mesa University
Delta State University
Duke University
East Carolina University
Eastern Kentucky University
Edinboro University of Pennsylvania
Elizabeth City State University
Emory University

Fayetteville State University
Florida State University
George Mason University
Jackson State University
Kansas State University
Keene State College
McNeese State University
Michigan Technological University
Mississippi State University
North Carolina Central University
North Carolina State University
Northern Arizona University
Oregon State University
Plymouth State University
Purdue University
Purdue University Fort Wayne
Purdue University Northwest
Shippensburg University
State University of New York – Brockport
State University of New York – Plattsburgh
Texas A&M University
The College of William & Mary
University of Arizona
University of California Los Angeles
University of Chicago
University of Colorado at Boulder
University of Florida
University of Louisville
University of Maryland – College Park
University of Mississippi
University of New Hampshire
University of North Carolina – Pembroke
University of North Carolina Chapel Hill
University of North Carolina Charlotte
University of North Carolina Greensboro
University of North Carolina School of the Arts
University of North Carolina Wilmington
University of North Dakota
University of North Florida
University of Southern Mississippi
University of Tennessee Knoxville
University of Virginia
Western Carolina University
Western Colorado University

Warning Schools

 Baylor University
Brigham Young University
Pepperdine University
Saint Louis University
United States Military Academy
United States Naval Academy
Yeshiva University

Appendix B: Rating Changes, 2020-2021 Academic Year

School	2019-2020 Rating	2020-2021 Rating
California Institute of Technology	Yellow	Red
Clemson University	Red	Yellow
Coastal Carolina University	Red	Yellow
Colby College	Red	Yellow
Dakota State University	Red	Yellow
Davidson College	Red	Yellow
Elizabeth City State University	Yellow	Green
Harvard University	Red	Yellow
Indiana State University	Yellow	Red
Murray State University	Red	Yellow
Skidmore College	Yellow	Red
University of Colorado Denver	Red	Yellow
University of Houston	Red	Yellow
University of Massachusetts at Dartmouth	Red	Yellow
University of North Carolina School of the Arts	Yellow	Green
University of Southern California	Red	Yellow
University of Texas at Arlington	Red	Yellow
University of Texas at Austin	Red	Yellow
Vassar College	Warning	Yellow
Western Illinois University	Red	Yellow
William Paterson University	Red	Yellow
Winston-Salem State University	Red	Yellow
Worcester Polytechnic Institute	Red	Yellow

Appendix C: Schools at Which A Faculty or Administrative Body has Adopted a Version of the 'Chicago Statement'

Note: Some of the institutions on this list are not rated as part of the Spotlight database at this time and thus do not fall within this report's speech code analysis. However, they have been included here in order to provide a full list of the institutions at which the administration, faculty body, or university system has adopted a version of the Chicago Statement. Institutions not rated in the Spotlight database are denoted with an asterisk.

Adrian College*

American University

Amherst College

Appalachian State University

Arizona State University

Ashland University*

Ball State University

Board of Regents, State of Iowa

Brandeis University

California State University – Channel Islands

Case Western Reserve University

Chapman University*

Christopher Newport University
 Claremont McKenna College
 Clark University
 Cleveland State University
 Colgate University
 Colorado Mesa University
 Columbia University
 Denison University*
 Eckerd College*
 Franklin & Marshall College
 George Mason University
 Georgetown University
 Gettysburg College
 Jacksonville State University
 Johns Hopkins University
 Joliet Junior College*
 Kansas State University
 Kenyon College
 Kettering University*
 Louisiana State University System
 Miami University of Ohio
 Michigan State University
 Middle Tennessee State University
 Nevada System of Higher Education
 Northern Illinois University
 Ohio University
 Ohio Wesleyan University*
 Princeton University
 Purdue University
 Ranger College*
 Smith College
 Snow College*

South Dakota University System
 State University of New York – University at Buffalo
 State University System of Florida
 Stetson University*
 Suffolk University*
 Tennessee Technological University
 The Citadel*
 The City University of New York
 University of Alabama System
 University of Arizona
 University of Arkansas at Little Rock*
 University of Colorado System
 University of Denver
 University of Louisiana System
 University of Maine System
 University of Maryland
 University of Minnesota
 University of Missouri System
 University of Montana
 University of Nebraska
 University of North Carolina – Chapel Hill
 University of Southern Indiana
 University of Texas at San Antonio
 University of Toledo
 University of Virginia College at Wise
 University of Wisconsin System
 Utica College*
 Vanderbilt University
 Washington and Lee University
 Washington University in St. Louis
 Winston-Salem State University
 Winthrop University*

Appendix D: Schools with ‘Free Speech Zones’

Auburn University Montgomery	Saint Cloud State University
Ball State University	Southern Illinois University at Carbondale
Bemidji State University	Stanford University
Bridgewater State University	The College of New Jersey
California State University – Dominguez Hills	Tulane University
California State University – Los Angeles	University of Alabama in Huntsville
California State University – Sacramento	University of California Riverside
East Tennessee State University	University of Illinois at Urbana-Champaign
Eastern Illinois University	University of Massachusetts at Dartmouth
Grambling State University	University of Nebraska – Lincoln
Montclair State University	University of Southern Indiana
Northwestern State University	Vanderbilt University
Occidental College	

Notes

[1] See, e.g., *Gooding v. Wilson*, 405 U.S. 518, 519, 528 (1972) (holding that a Georgia statute prohibiting “opprobrious words or abusive language” was unconstitutional because those terms, as commonly understood, encompass speech protected by the First Amendment). Under this and related precedents, a public university maintaining a ban on “verbal abuse” and similar expression would be constitutionally deficient.

[2] For example, Brigham Young University’s “Church Educational System Honor Code” provides:

“Brigham Young University and other Church Educational System institutions exist to provide an education in an atmosphere consistent with the ideals and principles of The Church of Jesus Christ of Latter-day Saints. . . . By accepting appointment, continuing in employment, being admitted, or continuing class enrollment, each member of the BYU community personally commits to observe these Honor Code standards approved by the Board of Trustees . . . including the avoidance of profane and vulgar language.” *Church Educational System Honor Code*, BRIGHAM YOUNG UNIV., policy.byu.edu/view/index.php?p=26 (last visited Oct. 27, 2021). It would be clear to any reasonable person reading this policy that students are not entitled to unfettered free speech at BYU.

[3] FIRE has designated the following colleges and universities as “Warning” schools: Baylor University, Brigham Young University, Pepperdine University, Saint Louis University, the United States Military Academy, the United States Naval Academy, and Yeshiva University.

[4] The one exception to this general rule is that certain harassment policies may earn a yellow light rating without affecting an institution’s overall green light rating. Title IX regulations that took effect August 14, 2020 direct institutions to adopt a definition of sexual harassment for purposes of Title IX proceedings that tracks the Supreme Court’s definition from *Davis v. Monroe County Board of Education*.

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 FR 106, 300026-30579 (May 19, 2020), [federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal](https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal) (codified at 34 C.F.R. pt. 106). However, the same regulations also provide that “inappropriate or illegal behavior may be addressed by a [school receiving federal funding] even if the conduct clearly does not meet the *Davis* standard or otherwise constitute sexual harassment under § 106.30, either under a recipient’s own code of conduct or under criminal laws in a recipient’s jurisdiction.” *Id.* As a result, the majority of institutions whose policies we reviewed have adopted a sexual harassment definition tracking *Davis* for conduct falling under Title IX, while maintaining less stringent definitions for allegations of harassment that they believe fall outside of Title IX’s scope—most often banning conduct that is “severe or pervasive and objectively offensive,” using “or” rather than “and.” FIRE strongly encourages institutions to adopt the *Davis* standard in all policies regulating peer harassment in order to comport with both the First Amendment and the spirit of the regulations. We will not award policies that do not adopt this full standard a green light rating. However, while the existing regulations remain subject to litigation and Department of Education review, policies earning a yellow light rating for utilizing a “severe or pervasive and objectively offensive” standard will not threaten an institution’s overall green light rating.

[5] See Appendix A for a full list of schools by rating.

[6] All of FIRE’s previous Spotlight on Speech Codes reports are available at [thefire.org/spotlight/reports](https://www.thefire.org/spotlight/reports).

[7] Elizabeth City State University and the University of North Carolina School of the Arts joined the ranks of green light schools since last year’s report.

[8] Press Release, Found. for Individual Rights in Educ., One million students now attend colleges with FIRE’s highest free speech rating (Feb. 26, 2019), [thefire.org/one-million-students-now-attend-colleges-with-fires-highest-free-speech-rating](https://www.thefire.org/one-million-students-now-attend-colleges-with-fires-highest-free-speech-rating).

[9] See Appendix B for a full list of rating changes over the 2020–21 academic year.

[10] The remaining 0.5% of public institutions in the database earn FIRE’s Warning rating. A Warning rating is typically reserved for private universities that clearly prioritize other values above students’ free speech, such that students do not have a reasonable expectation of free speech rights. However, despite their public status as federal service academies, the United States Military Academy and the United States Naval Academy earn the Warning rating because they place other institutional priorities above free speech.

[11] Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, provides 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.” See generally Jacob E. Gersen & Jeannie Suk, *The Sex Bureaucracy*, 104 CAL. L. REV. (2016) (discussing evolution of Title IX requirements).

[12] *McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010); *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995); *Univ. of Cincinnati Chapter of Young Am. for Liberty v. Williams*, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio Jun. 12, 2012); *Smith v. Tarrant Cnty. Coll. Dist.*, 694 F. Supp. 2d 610 (N.D. Tex. 2010); *Coll. Republicans at S.F. St. Univ. v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Booher v. N. Ky. Univ. Bd. of Regents*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998); *Corry v. Leland Stanford Junior Univ.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.); *UWM Post, Inc. v. Bd. of Regents of the Univ. of Wis.*, 774 F. Supp. 1163 (E.D. Wisc. 1991); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989). In addition, numerous institutions have voluntarily modified their speech codes as part of settlement agreements. See, e.g., Press Release, Found. for Individual Rights in Educ., VICTORY: Student stopped by campus police for holding up a sign settles First Amendment lawsuit with Mississippi college (Nov. 19, 2020), [thefire.org/victory-student-stopped-by-campus-police-for-holding-up-a-sign-settles-first-amendment-lawsuit-with-mississippi-college](https://www.thefire.org/victory-student-stopped-by-campus-police-for-holding-up-a-sign-settles-first-amendment-lawsuit-with-mississippi-college); Press Release, Found. for Individual Rights in Educ., VICTORY: Speech rights of 150,000 students to be restored as Los Angeles Community College District settles lawsuit, will abandon Pierce College’s tiny free speech zone (Dec. 13, 2018), [thefire.org/victory-speech-rights-of-150000-students-to-be-restored-as-los-angeles-community-college-district-settles-lawsuit-will-abandon-pierce-colleges-tiny-free-speech-zone](https://www.thefire.org/victory-speech-rights-of-150000-students-to-be-restored-as-los-angeles-community-college-district-settles-lawsuit-will-abandon-pierce-colleges-tiny-free-speech-zone) [hereinafter Pierce College Press Release]; Press Release, Found. for Individual Rights in Educ., VICTORY: Student detained for passing out political flyers settles lawsuit with Illinois College (Apr. 18, 2018), [thefire.org/victory-student-detained-for-passing-out-political-flyers-settles-lawsuit-with-illinois-college](https://www.thefire.org/victory-student-detained-for-passing-out-political-flyers-settles-lawsuit-with-illinois-college); Press Release, Found. for Individual Rights in Educ., Victory: Texas College Settles Free Speech Lawsuit After Telling Student that Gun Rights Sign Needs ‘Special Permission’ (May 4, 2016), [thefire.org/victory-texas-college-settles-free-speech-lawsuit-after-telling-student-that-gun-rights-sign-needs-special-permission](https://www.thefire.org/victory-texas-college-settles-free-speech-lawsuit-after-telling-student-that-gun-rights-sign-needs-special-permission); Press Release, Found. for Individual Rights in Educ., Victory: Lawsuit Settlement Restores Free Speech Rights at Dixie State U. After Censorship of Bush, Obama, Che Flyers (Sept. 17, 2015), [thefire.org/victory-lawsuit-settlement-restores-free-speech-rights-at-dixie-state-u-after-censorship-of-bush-obama-che-flyers](https://www.thefire.org/victory-lawsuit-settlement-restores-free-speech-rights-at-dixie-state-u-after-censorship-of-bush-obama-che-flyers).

[13] California maintains a law that applies the protections of the First Amendment to private, nonsectarian institutions of higher education in the state. Section 94367 of the California Education Code—the so-called “Leonard Law”—provides: “No private postsecondary educational institution shall make or enforce a rule subjecting a student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.” The code further provides that the law “does not apply to a private postsecondary educational institution that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization.” Cal. Educ. Code § 94367(a).

[14] *Student Handbook*, HOWARD UNIV. at 100, studentaffairs.howard.edu/sites/studentaffairs.howard.edu/files/2020-10/Student%20Handbook%202020.2021.pdf (last visited Oct. 31, 2021).

[15] *Statement on Rights, Freedoms, and Responsibilities*, UNIV. OF TULSA, utulsa.edu/student-life/statement-on-rights-freedoms-and-responsibilities (last visited Oct. 31, 2021).

[16] Howard University and the University of Tulsa both earn overall red light ratings. See *School Spotlight: Howard University*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., [thefire.org/schools/howard-university](https://www.thefire.org/schools/howard-university) (last visited Oct. 31, 2021); *School Spotlight: University of Tulsa*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., [thefire.org/schools/university-of-tulsa](https://www.thefire.org/schools/university-of-tulsa) (last visited Oct. 31, 2021).

[17] Committee on Freedom of Expression at the University of Chicago, *Report of the Committee on Freedom of Expression*, available at provost.uchicago.edu/FOECommitteeReport.pdf. For a complete list of institutions that have adopted a version of the Chicago Statement, see thefire.org/chicago-statement-university-and-faculty-body-support.

[18] Astute readers will note that Amherst College no longer appears on our list of Chicago Statement adoptions. For the first time, FIRE has rescinded recognition of a Chicago Statement adoption due to a revision in the policy. In December 2020, the faculty at Amherst, who originally drafted the statement, updated the policy to empower the college to “restrict disparaging or abusive speech (e.g., racial epithets).” This provision is antithetical to the principles articulated in the rest of statement, and renders the commitment inert. To read the full statement, see *Faculty Handbook: Statement of Academic and Expressive Freedom*, AMHERST COLL., amherst.edu/academiclife/provost_dean_faculty/fph/fachandbook/preintroduction (last visited Nov. 3, 2021).

[19] The additional green light institutions that have also adopted a version of the Chicago Statement are Arizona State University, Claremont McKenna College, Kansas State University, Purdue University, Purdue University Fort Wayne, Purdue University Northwest, the University of Maryland, Cleveland State University, George Mason University, the University of Florida, the University of North Florida, Florida State University, McNeese State University, the University of Colorado Boulder, and Colorado Mesa University.

[20] *Virginia v. Black*, 538 U.S. 343, 359 (2003).

[21] *Id.* at 360.

[22] *Student Handbook 2020-2021*, LINCOLN UNIV. at 23, lincoln.edu/sites/default/files/pdf/student-affairs/student-handbook/SHB2020.pdf (last visited Oct. 29, 2021).

[23] *200.010 Standard of Conduct*, UNIV. OF MISSOURI SYSTEM (last revised Nov. 19, 2020), umsystem.edu/ums/rules/collected_rules/programs/ch200/200.010_standard_of_conduct. The Supreme Court has not meaningfully addressed its true threats doctrine since *Virginia v. Black*, leaving the federal circuits split on the meaning of intent in these cases. See John Sivils, *Online Threats: The Dire Need for a Reboot in True Threats Jurisprudence*, 72 SMU L. REV. F. 51 (2019).

[24] *Administrative Regulation 4:10 Code of Student Conduct(Interim)*, UNIV. OF KENTUCKY at 10 (Aug. 14, 2020), uky.edu/studentconduct/sites/www.uky.edu.studentconduct/files/AR_4-10_Student_Code-2020_0.pdf.

[25] *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992).

[26] 395 U.S. 444 (1969).

[27] *Id.* at 447 (emphasis in original).

[28] 414 U.S. 105 (1973).

[29] *Id.* at 108–09.

[30] *Student Handbook*, UNIV. OF LOUISIANA AT MONROE at 155 (last revised Oct. 13, 2021), ulm.edu/studenthandbook/studentconductrevised.pdf.

[31] *Rules and Regulations for the Maintenance of Public Order*, BROOKLYN COLLEGE (last amended June 25, 1990), brooklyn.cuny.edu/web/about/initiatives/policies/order.php.

[32] *5.005 Freedom of Expression and Assembly Rights and Responsibilities*, FLORIDA A&M UNIV. at 2 (last

revised June 9, 2018), support.famu.edu/regulations/7.9.18%20Revised%20Regulation%20FREE%20SPEECH%20Final.pdf.

[33] Zach Greenberg, *Iowa State backs down from pledge to punish students for ‘suggestions of armed activity’*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Nov. 10, 2020), thefire.org/iowa-state-backs-down-from-pledge-to-punish-students-for-suggestions-of-armed-activity.

[34] *Id.*

[35] *Id.*

[36] *Miller v. California*, 413 U.S. 15, 24 (1973).

[37] 403 U.S. 15 (1971).

[38] 410 U.S. 667-68 (1973).

[39] *Id.* at 670.

[40] *Code of Student Conduct*, COASTAL CAROLINA UNIV. at 9, coastal.edu/media/2015ccuwebsite/contentassets/documents/deanofstudents/21-22%20CSC%20Editor%20APPROVED%20FINAL.pdf (last visited Oct. 29, 2021).

[41] *Student Rights and Responsibilities*, ALABAMA STATE UNIV., alasu.edu/current-students/student-rights-and-responsibilities (last visited Oct. 29, 2021).

[42] *Electronic Communications and Acceptable Use*, DEPAUW UNIV. (Jan. 7, 2006), depauw.edu/handbooks/employee-guide/ecau.

[43] LAWSUIT: The University of Tennessee tried to expel a grad student for a tweet about Cardi B and other social media posts. Now she’s fighting back., FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Feb. 5, 2021), thefire.org/lawsuit-the-university-of-tennessee-tried-to-expel-a-grad-student-for-a-tweet-about-cardi-b-and-other-social-media-posts-now-shes-fighting-back.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633 (1999).

[49] *See* Letter from Shaheena Simons and Damon Martinez, U.S. Dep’t of Justice to Robert G. Frank, President, Univ. of N.M. (Apr. 22, 2016), *available* at justice.gov/opa/file/843901/download; Letter from Anurima Bhargava, Chief, Civil Rights Div., U.S. Dep’t of Justice, and Gary Jackson, Reg’l Dir., Office for Civil Rights, U.S. Dep’t of Educ., to Royce Engstrom, President, Univ. of Mont. and Lucy France, Univ. Counsel, Univ. of Mont. (May 9, 2013), *available* at justice.gov/opa/documents/um-ltr-findings.pdf.

[50] The regulations note that “inappropriate or illegal behavior may be addressed by a recipient even if the conduct clearly does not meet the *Davis* standard or otherwise constitute sexual harassment under § 106.30, either under a recipient’s own code of conduct or under criminal laws in a recipient’s jurisdiction (e.g., with respect to a commenter’s example of drugging at a dorm party).” Nondiscrimination on the

Basis of Sex, *supra* note 4. However, developing two entirely separate definitions of sexual harassment with correspondingly distinct procedural protections gives administrators the power to decide which definition and procedures to apply to each case (and even to conduct concurrent proceedings), a scenario that invites administrative abuse and puts free speech and due process rights at risk. As a federal district court explained: “Such disregard for the inevitable administrative headaches of a multi-procedure approach certainly qualifies as evidence of an irregular adjudicative process.” *Doe v. Rensselaer Polytechnic Institute*, No. 1:20-cv-1185, at 13* (N.D.N.Y. Oct. 16, 2020). The court found that a school’s “conscious and voluntary choice to afford a plaintiff, over his objection, a lesser standard of due process protections when that school has in place a process which affords greater protections, qualifies as an adverse action.” *Id.*

[51] *Non-Discrimination and Prevention of Harassment and Related Unprofessional Conduct*, VERMONT STATE COLLEGES SYSTEM at 3-4 (Aug. 12, 2020), www.vsc.edu/wp-content/uploads/2020/08/Policy-311-Revised-for-08-12-20-1-1.pdf.

[52] *Id.*

[53] *Catalog 2020-2021: Sexual Harassment*, CALIFORNIA STATE UNIV., MONTEREY BAY, catalog.csumb.edu/content.php?catoid=7&navoid=375#sexual-harrassment (last visited Oct. 29, 2021).

[54] *Student Handbook*, ADAMS STATE UNIV. at 13 (last updated Aug. 2018), drive.google.com/file/d/0B8w11ArVquL1YWY5LVVScFJFS00/view?resourcekey=0-koPxPLmeZ2HcZMH-TbRc0A.

[55] *See, e.g., DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008) (holding that Temple University’s sexual harassment policy banning conduct that has “purpose or effect of unreasonably interfering with an individual’s work, educational performance” was unconstitutionally overbroad); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (E.D. Mich. 1989) (holding that the University of Michigan’s discriminatory harassment policy was unconstitutionally broad); *Booher v. N. Ky. Univ. Bd. of Regents*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998) (holding that Northern Kentucky University’s sexual harassment policy was unconstitutionally broad). The United States Court of Appeals for the Fifth Circuit recently questioned whether harassment claims purely involving speech could ever meet the *Davis* standard, stating: “Whether *Davis* may constitutionally support purely verbal harassment claims, much less speech-related proscriptions outside Title IX protected categories has not been decided by the Supreme Court or this court and seems self-evidently dubious.” *Speech First, Inc. v. Fenves*, 979 F.3d 319, 337 n.16 (5th Cir. 2020).

[56] *St. John’s University: Professor Accused of Violating Bias Policy for Asking Students to Debate Global Trade*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., thefire.org/cases/st-johns-university-professor-accused-of-violating-bias-policy-for-asking-students-to-debate-global-trade (last visited Oct. 31, 2021).

[57] *Id.*

[58] “Dear Colleague” Letter from Russlynn Ali, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Oct. 26, 2010), [available at ed.gov/about/offices/list/ocr/letters/colleague-201010.html](http://ed.gov/about/offices/list/ocr/letters/colleague-201010.html).

[59] “In the place of parents.”

[60] *See generally McCauley v. Univ. of the V.I.*, 618 F.3d 243–44 (3d Cir. 2010) (“[T]he pedagogical missions of public universities and public elementary and high schools are undeniably different. While both seek to impart knowledge, the former encourages inquiry and challenging priori assumptions whereas the latter prioritizes the inculcation of societal values. . . . The idea that public universities exercise strict control over students via an *in loco parentis* relationship has decayed to the point of irrelevance.”).

[61] *Union College Student Handbook*, UNION COLLEGE at 121 (last revised Aug. 2021), union.edu/sites/default/files/community-standards/202108/studenthandbook2021-202282021.pdf.

[62] *Discriminatory Harassment and Sexual Misconduct Policy*, REED COLLEGE (Aug. 14, 2020), reed.edu/academic/gbook/comm_pol/dhsm_policy.html.

[63] *Student Code of Conduct*, KEAN UNIV. (last updated Sept. 2017), kean.edu/offices/community-standards-and-student-conduct/student-code-conduct.

[64] See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”); see also *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 206 (3d Cir. 2001) (holding that there is “no question that the free speech clause protects a wide variety of speech that listeners may consider deeply offensive. . . .”); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 369 (M.D. Pa. 2003) (“[R]egulations that prohibit speech on the basis of listener reaction alone are unconstitutional both in the public high school and university settings”); *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 863 (E.D. Mich. 1989) (“Nor could the University proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people”).

[65] *Residence Life Handbook*, MONTANA TECHNOLOGICAL UNIV. at 10, mtech.edu/student-life/housing/housing-handbook.pdf (last visited Oct. 29, 2021).

[66] *Community Standards Policy*, CARLETON COLLEGE (last reviewed Oct. 2, 2020), apps.carleton.edu/handbook/community/?policy_id=6131.

[67] *Evergreen’s Social Contract*, EVERGREEN STATE COLLEGE, evergreen.edu/about/evergreens-social-contract (last visited Oct. 29, 2021).

[68] See, e.g., *Coll. Republicans at S.F. St. Univ. v. Reed*, 523 F. Supp. 2d 1005, at 23* (N.D. Cal. 2007) (enjoining enforcement of university civility policy because “there is a substantial risk that the civility requirement will inhibit or deter use of the forms and means of communication that, to many speakers in circumstances of the greatest First Amendment sensitivity, will be the most valued and the most effective.”).

[69] See generally *Bias Response Team Report 2017*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., thefire.org/research/publications/bias-response-team-report-2017.

[70] *Student Handbook*, CLARK UNIV., clarku.edu/wp-content/uploads/2020/01/Student-Handbook.pdf (last visited Oct. 30, 2021).

[71] *University Support Services*, CLEMSON UNIV., clemsun.edu/campus-life/campus-services/international/support_services.html (last visited Oct. 30, 2021).

[72] *Discrimination, Harassment, and Bias Incident Prevention Policy*, DREXEL UNIV. (last revised Nov. 2017), drexel.edu/~media/Files/oed/PDF/OED1-EQUALITY%20POLICY.ashx?la=en.

[73] *Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019). Quoting *Schlissel*, the United States Court of Appeals for the Fifth Circuit recently found a university bias reporting team’s practice of making referrals to university disciplinary bodies “sufficiently proscriptive to objectively chill student speech.” *Fenves*, 979 F.3d 319 at 333.

[74] *Speech First v. U of M; Settlement Agreement*, SPEECH FIRST (Oct. 28, 2019), speechfirst.org/court-battles/speech-first-v-u-of-m-settlement-agreement.

[75] *Campus Climate Support*, UNIV. OF MICHIGAN, deanofstudents.umich.edu/campus-climate-support (last visited Oct. 30, 2021).

[76] See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

[77] Forsyth, 505 U.S. 123.

[78] *Id.* at 134.

[79] *Id.* at 134–35 (emphasis added).

[80] *Use of University Facilities Policy*, Radford Univ. (Apr. 1, 2021), radford.edu/content/dam/departments/administrative/policies/FinanceAdminPoliciesandProcedures/FA-PO-1209_UseofUniversityFacilitiesPolicy.pdf.

[81] *Id.*

[82] *Facility Use Policy*, CAMERON UNIV., cameron.edu/current-students/student-services/handbook/facility-use-policy (last visited Oct. 30, 2021).

[83] *Id.*

[84] *Student Rights and Responsibilities Handbook*, UNIV. OF MIAMI at 70-71 (Aug. 9, 2021), dosso.studentaffairs.miami.edu/_assets/pdf/policies/student_rights_and_responsibilities_handbook.pdf.

[85] *Watchtower Bible and Tract Society of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002).

[86] *Campus Demonstrations, Protests and Organized Expressions of Opinion*, RICE UNIV. (last revised Apr. 6, 2018), policy.rice.edu/820.

[87] *Policies on Promotions, Solicitations, and Gatherings on Campus*, TUFTS UNIV., students.tufts.edu/student-affairs/student-code-conduct/x-other-selected-university-policies (last visited Oct. 30, 2021).

[88] *Student Organization Handbook*, FORT HAYS STATE UNIV., fhsu.edu/engage/documents/stuorg/stuorghandbook/index.pdf (last visited Oct. 30, 2021).

[89] Press Release, Found. for Individual Rights in Educ., *LAWSUIT: Campus police said he should've been 'smarter' than to exercise his First Amendment rights. Now he's suing.* (Sept. 4, 2019), thefire.org/lawsuit-campus-police-said-he-shouldve-been-smarter-than-to-exercise-his-first-amendment-rights-now-hes-suing.

[90] *Id.*

[91] VICTORY: Student stopped by campus police for holding up a sign settles First Amendment lawsuit with Mississippi college, *supra* note 11.

[92] *Id.*

[93] See Appendix D for a full list of schools with free speech zone policies.

[94] *Infographic: Free Speech Zones on America's Campuses* (2013), thefire.org/infographic-free-speech-zones-on-americas-campuses-2.

[95] For more information about FIRE's litigation efforts, see *Litigation: FIRE in the Courts*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., thefire.org/legal/fire-in-the-courts (last visited Nov. 6, 2021).

[96] Pierce College Press Release, *supra* note 11.

[97] *See Enacted Campus Free Speech Statutes*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., [thefire.org/legislation/enacted-campus-free-speech-statutes](https://www.thefire.org/legislation/enacted-campus-free-speech-statutes) (last visited Nov. 1, 2021).

[98] *Public Forum Use of University Facilities*, UNIV. OF MASSACHUSETTS DARTMOUTH (Aug. 24, 2010), umassd.edu/policies/active-policy-list/facilities-operations-and-construction/public-forum-use-of-university-facilities.

[99] *Time, Place & Manner Restrictions on Speech and Speech-Related Activities*, CALIFORNIA STATE UNIV., SACRAMENTO (Oct. 25, 2016) csus.edu/umannual/student/stu-0125.htm.

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