

Spotlight On
SPEECH CODES
2020

The State of Free Speech on Our Nation's Campuses

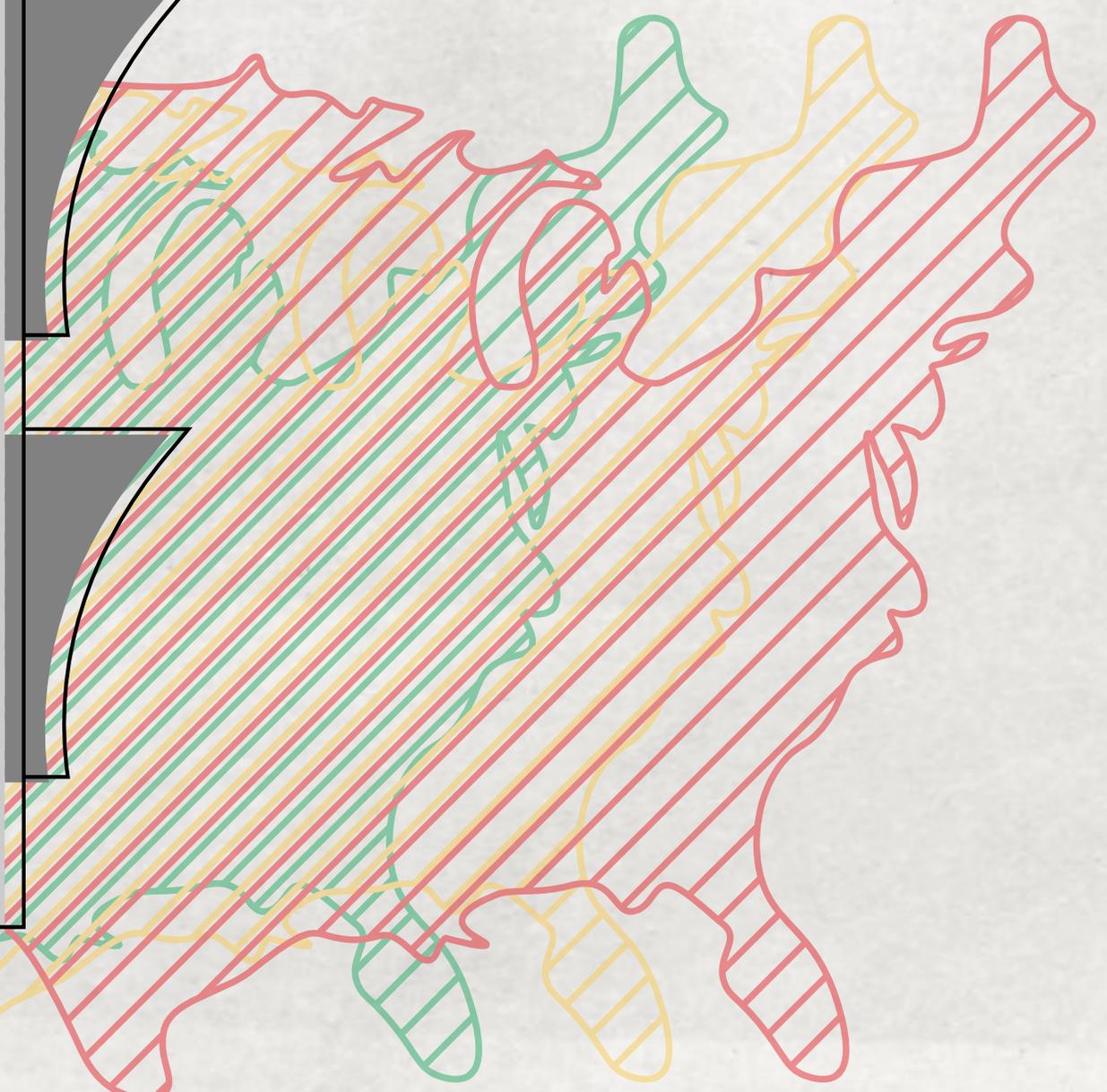
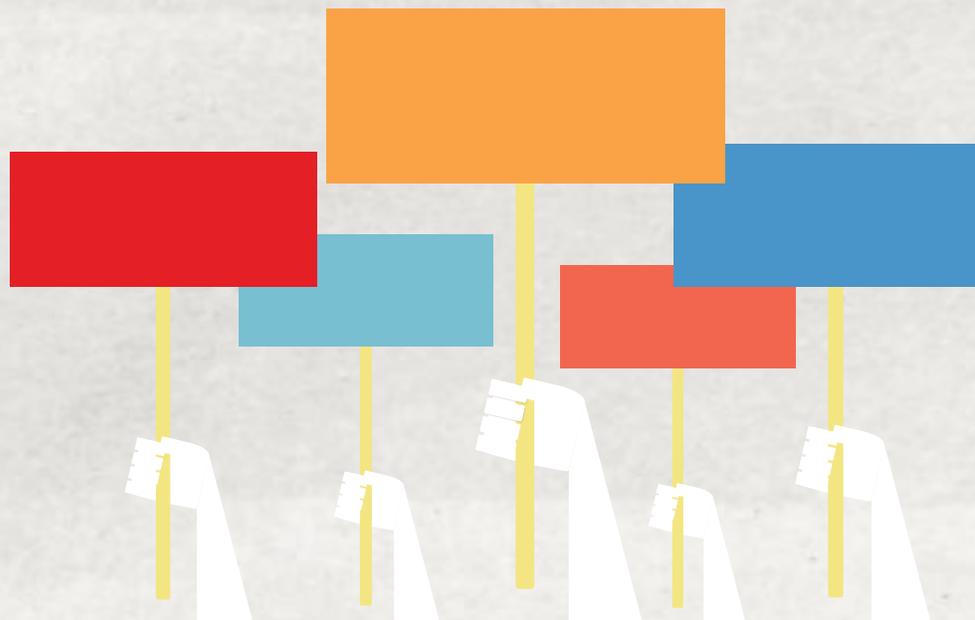


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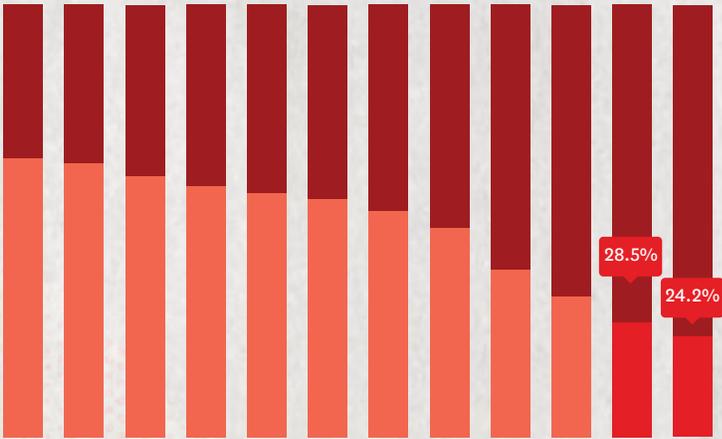
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EXECUTIVE SUMMARY



For the 12th year in a row, the percentage of red light schools has declined.



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.

In spite of this legal landscape, 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 this report, FIRE surveyed the written policies of 471 colleges and universities, evaluating their compliance with First Amendment standards. Overall, 24.2% of surveyed colleges maintained at least one severely restrictive policy that earned FIRE's worst, "red light" rating, meaning that it both clearly and substantially restricts protected speech. This is the twelfth year in a row that the percentage of schools earning a red light rating has gone down; last year, 28.5% of schools earned a red light rating.

The majority of institutions surveyed (63.9%) 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.

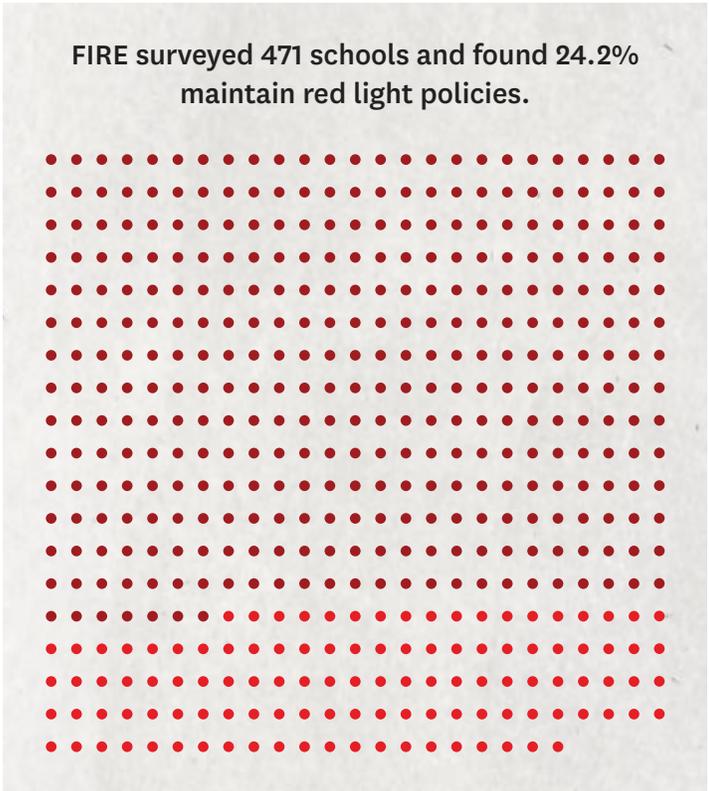
A green light rating indicates that none of a university's written policies seriously imperil protected expression. A total of fifty colleges and universities (10.6% of those surveyed) earned an overall green light rating, up from forty-two schools as of last year's report.

In further good news, more and more colleges and universities continue to adopt policy statements in support of free speech modeled after the one

adopted by the University of Chicago in January 2015. As of this writing, sixty-eight schools or faculty bodies have endorsed a version of the "Chicago Statement," with nine adoptions in 2019 alone.

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.

It is imperative that those who care about free speech on campus continue to 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. We must continue that 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 366 four-year public institutions and 105 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. Monitoring and rating such incidents consistently across 471 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 both clearly and substantially restricting freedom of speech, or that bars public access to its speech-related policies by requiring a university login and password for access.

A "clear" restriction 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.

FIRE believes that free speech is not only a moral imperative, but an essential element of a college education.



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 it 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,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 warns prospective students and faculty members of this fact.² Six schools surveyed for this report meet these criteria.³

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).

² For example, Baylor University's "Campus Speakers" policy provides: "Speakers whose purposes and methods are basically contrary to the purposes and methods of a Christian university such as Baylor should not be invited. The use of profanity shall not be tolerated."

Campus Speakers, BAYLOR UNIVERSITY STUDENT POLICIES & PROCEDURES (updated Aug. 18, 2019), available at baylor.edu/student_policies/index.php?id=32253. It would be clear to any reasonable person reading this policy that students are not entitled to unfettered free speech at Baylor.

³ FIRE has designated the following colleges and universities as "Warning" schools: Baylor University, Brigham Young University, Pepperdine University, Saint Louis University, Vassar College, and Yeshiva University.

FINDINGS



Of the 471 schools reviewed by FIRE, 114, or 24.2%, received a red light rating. 301 schools received a yellow light rating (63.9%), and fifty received a green light rating (10.6%). Six schools earned a Warning rating (1.3%).⁴

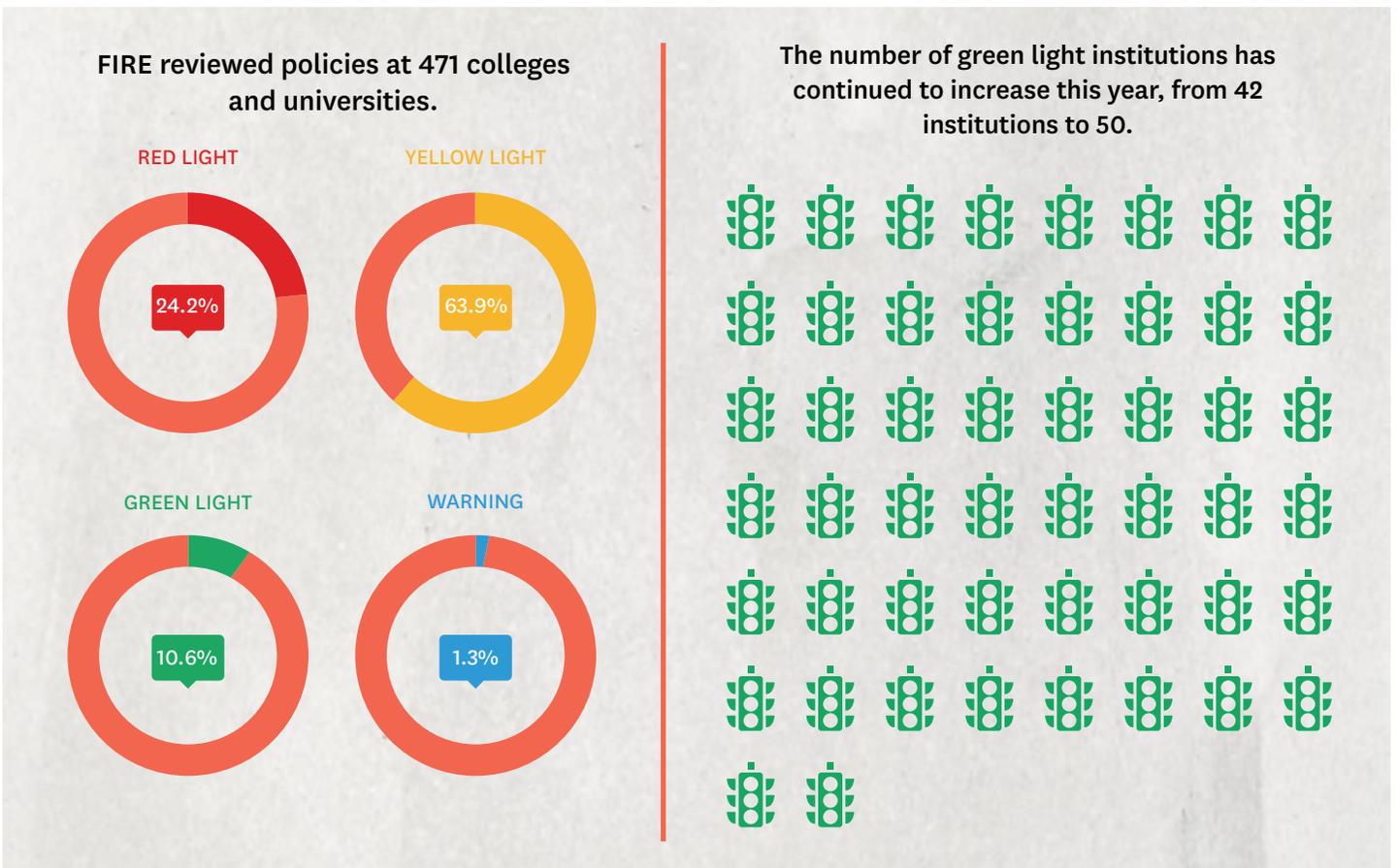
This marks the twelfth year in a row that the percentage of universities with an overall red light rating has fallen, this year from 28.5% to 24.2%. The continued reduction in red light institutions is encouraging: **In the eleven years since the release of our 2009 report, red light schools have declined by exactly fifty percentage points.**⁵ This is a dramatic shift to have taken place in just over a decade.

However, this year's numbers also reveal an increase in yellow light institutions, as 61.2% of schools earned an overall yellow light last year, compared to 63.9% 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, as discussed in further detail in this report's "Spotlight On: Yellow Light Policies" feature.

The number of green light institutions has continued to increase this year, going from forty-two institutions last year to fifty.⁶ **Significantly, this was the first year since FIRE began rating speech codes that the list of green light institutions reached a total of fifty schools.** At 10.6%, this was also the first year that green light schools comprised over 10% of the database. **Now, more than one million students across the country are enrolled at green light colleges and universities.**⁷

While eleven schools in total were added to our list of green light institutions this year, three schools were, unfortunately, removed from the list.⁸ In total, thirty-five schools improved their overall ratings this year.⁹



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

⁵ The 2009 report and all other past Spotlight on Speech Codes reports are available at thefire.org/spotlight/reports.

⁶ Alcorn State University, Delta State University, McNeese State University, North Carolina State University, Northern Arizona University, Texas A&M University, the University of North Carolina – Pembroke, the University of Arizona, the University of Louisville, the University of Southern Mississippi, and Western Carolina University all joined the ranks of green light schools since last year's report.

⁷ 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.

⁸ Carnegie Mellon University, Emory University, and the University of Pennsylvania lost their green light ratings since last year's report.

⁹ See Appendix B for a full list of rating changes over the 2018-19 academic year.

Public Colleges and Universities

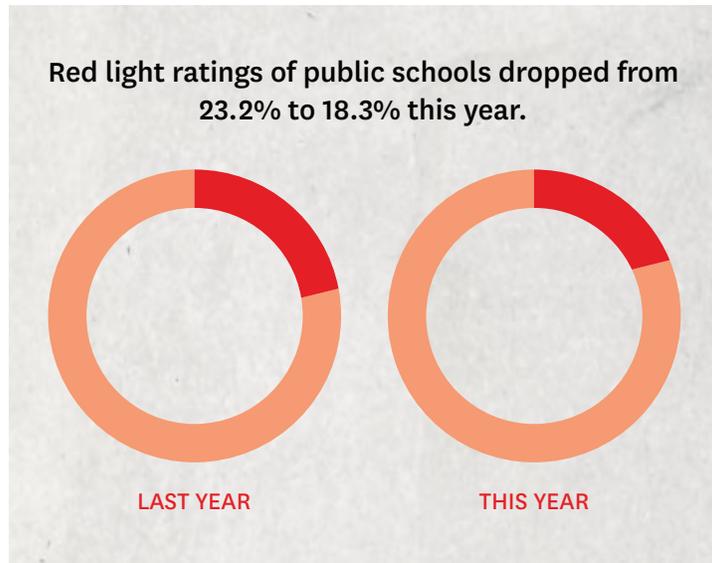
The percentage of public schools with a red light rating dropped again, from 23.2% last year to 18.3% this year. Overall, of the 366 public universities reviewed for this report, sixty-seven received a red light rating (18.3%), 252 received a yellow light rating (68.9%), and forty-seven received a green light rating (12.8%).

This year, FIRE was pleased to welcome Northern Arizona University and the University of Arizona to the list of green light institutions. Since Arizona State University has earned an overall green light rating since 2011, all of the four-year public universities in Arizona now earn FIRE’s highest rating, making Arizona the only state able to claim this distinction.

In another state-wide success story, Alcorn State University, Delta State University, and the University of Southern Mississippi all earned green light ratings this year, joining the University of Mississippi and Mississippi State University on the green light list.

The successes in these states demonstrate that revisions at one school can inspire change across statewide systems. In the coming year, FIRE will continue to work strategically to reform policies at public university systems across the country.

All of the four-year public universities in Arizona now earn FIRE’s highest rating, making Arizona the only state able to claim this distinction.



Private Colleges and Universities

Of the 105 private colleges and universities reviewed, forty-seven (44.8%) received a red light rating. Forty-nine (46.7%) received a yellow light rating, three (2.9%) received a green light rating, and six (5.7%) earned a Warning rating.

The percentage of private universities earning a red light rating, which stood at 47.1% last year, continued to decrease, coming in at 44.8% this year. This progress 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.

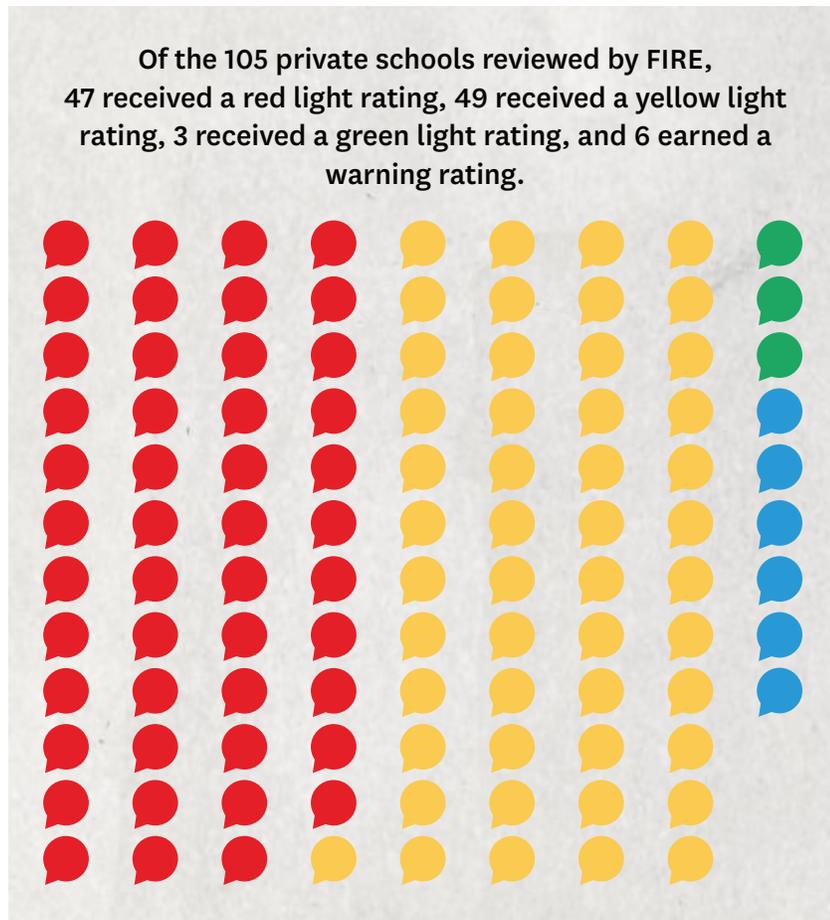
Unfortunately, three private universities that previously earned green light ratings, Carnegie Mellon University, the University of Pennsylvania, and Emory University, all lost their place on the green light list this year.

Carnegie Mellon University and the University of Pennsylvania had been long-standing green light institutions, first joining the green light list over ten years ago. After discovering policies that earned yellow light ratings and, thus, threatened these institutions' green light statuses, FIRE reached out to alert the universities to the problem. Unfortunately, neither of the schools revised the policies in question. As a result, they both now earn yellow light ratings.

Emory University lost its green light rating in a different way: by password protecting the policy portal

on its website. As mentioned earlier, when a school prevents prospective students and other interested members of the public from viewing its speech-related policies, it is awarded an automatic red light rating for restricting this crucial information.

It is our hope that changes to these policies and protocols will allow all three universities to return to our green light list next year. In the meantime, FIRE will continue to work with other 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 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.¹⁰ Under the guise 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 three decades.¹¹

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.



¹⁰ 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).

¹¹ *McCauley v. Univ. of the V.I.*, 618 F.3d 232 (3d Cir. 2010); *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008); *Dambrot v. Cent. Mich. Univ.*, 55 F.3d 1177 (6th Cir. 1995); *Univ. of Cincinnati Chapter of Young Am. for Liberty v. Williams*, 2012 U.S. Dist. LEXIS 80967 (S.D. Ohio Jun. 12, 2012); *Smith v. Tarrant Cty. Coll. Dist.*, 694 F. Supp. 2d 610 (N.D. Tex. 2010); *Coll. Republicans at S.F. St. Univ. v. Reed*, 523 F. Supp. 2d 1005 (N.D. Cal. 2007); *Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357 (M.D. Pa. 2003); *Booher v. N. Ky. Univ. Bd. of Regents*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (E.D. Ky. July 21, 1998); *Corry v. Leland Stanford Junior Univ.*, No. 740309 (Cal. Super. Ct. Feb. 27, 1995) (slip op.); *UWM Post, Inc. v. Bd. of Regents of the Univ. of Wis.*, 774 F. Supp. 1163 (E.D. 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 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; 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; 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.

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.¹² 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. Colby College, for example, states in its student handbook that the right of free expression “is essential in an academic community and will be vigorously upheld.”¹³ Similarly, Furman University’s student handbook provides: “Students are guaranteed freedom of inquiry and expression,” as well as the “right of peaceable assembly.”¹⁴ Yet both of these institutions, along with most other private colleges and universities, maintain policies that prohibit the very speech they promise to protect.¹⁵

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.¹⁶ Since our last report, nine more institutions have adopted policy statements in support of free speech modeled after the Chicago Statement. Notably, three of those adoptions were by university systems that govern multiple colleges and universities across a particular state: the Nevada System of Higher Education, the State University System of Florida, and the Board of Regents of the State of Iowa.

The First Amendment prohibits the government—including governmental entities such as state universities—from restricting freedom of speech.

Thanks to the affirmative commitment to freedom of expression by these higher education systems, an additional 500,000 students can now claim their institution promises to actively prioritize and defend free speech on campus.



¹² 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 that “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.”

¹³ *Free Expression*, COLBY COLLEGE STUDENT HANDBOOK, available at colby.edu/studentlife/student-handbook/2018-2019-handbook.

¹⁴ *The University’s Rights and Responsibilities*, STUDENT HANDBOOK (updated Aug. 30, 2019), available at furman.edu/studentlife/studentlife/studenthandbook/Documents/studenthandbook.pdf.

¹⁵ Colby College and Furman University both earn overall red light ratings. See School Spotlight: Colby College, Found. for Individual Rights in Educ. (Oct. 28, 2019), thefire.org/schools/colby-college; School Spotlight: Furman University Found. for Individual Rights in Educ. (Oct. 28, 2019), thefire.org/schools/furman-university.

¹⁶ 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.

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.

The exceptions are often misapplied and abused by universities to punish constitutionally protected speech.



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.” *Virginia v. Black*, 538 U.S. 343, 359 (2003). 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.” *Id.* at 360. Neither term would encompass, for example, a vaguely worded statement that is not directed at anyone in particular.

Nevertheless, universities frequently misapply policies prohibiting threats and intimidation so as to infringe on protected speech, citing generalized concerns about safety with no regard to the boundaries of protected speech. Too many institutions also fail to meet the legal standards for these First Amendment exceptions in written policies.

For example:

- North Dakota State University bans “[i]ntimidation,” defined as conduct in any form “that involves an expressed or implied threat to an individual’s personal safety, safety of property, academic efforts, employment, or participation in University sponsored activities,” without further defining “threat” or requiring that the speech be directed with the intent of placing the victim in fear of bodily harm.¹⁷
- The University of Wisconsin – Green Bay states that no person may make threats of violence and that this includes “[a]cts or threats made directly or indirectly by words, gestures or symbols.”¹⁸
- The University of Missouri System bans threatening or intimidating behaviors, defined 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.”¹⁹

Universities must revise such policies so that they track the applicable legal standards and must enforce the policies accordingly.



Too many institutions also fail to meet the legal standards for these First Amendment exceptions in written policies.

¹⁷ Section 601: Rights and Responsibilities of a Community: A Code of Student Conduct, NORTH DAKOTA STATE UNIVERSITY POLICY MANUAL (updated Sept. 30, 2019), available at nds.edu/fileadmin/policy/601.pdf.

¹⁸ Policy on Violence & Threats, UNIVERSITY POLICE, available at uwgb.edu/public-safety/violence-threats/policy-on-violence-threats.

¹⁹ 200.010 Standard of Conduct, COLLECTED RULES AND REGULATIONS CHAPTER 200: STUDENT CONDUCT (updated Feb. 9, 2017), available at umsystem.edu/ums/rules/collected_rules/programs/ch200/200.010_standard_of_conduct.

Incitement

There is also a propensity among universities to restrict speech that offends other students on the basis that it constitutes “incitement.” The basic concept, as administrators too often see it, is that offensive or provocative speech will anger those who disagree with it, perhaps so much 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.”²⁰

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

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

Nonetheless, college administrations have been all too willing to abuse or ignore this jurisprudence.

²⁰ *Forsyth Cty. v. Nationalist Movement*, 505 U.S. 123, 134–35 (1992).

Obscenity

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

This is a narrow definition applicable only to some highly graphic sexual material. It does not encompass 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*, 403 U.S. 15 (1971), the defendant, Paul Robert Cohen, was convicted in California for wearing a jacket bearing the words “Fuck the Draft” in a courthouse. The Supreme Court overturned Cohen’s conviction, holding that the message on his jacket, however vulgar, was protected speech.

Similarly, in *Papish v. Board of Curators of the University of Missouri*, 410 U.S. 667 (1973), the Court determined that a student’s expulsion for distributing a student newspaper containing an article titled “Motherfucker Acquitted” violated the First Amendment. The Court wrote that “the mere dissemination of ideas—no matter how offensive to good taste—on a state university campus may not be shut off in the name alone of ‘conventions of decency.’” *Id.* at 670.



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

- Kean University prohibits the placement of information that is “profane or sexually

offensive to the average person” on its computer resources.²¹

- The University of Texas at San Antonio’s posting policy states that materials to be posted on campus may not contain material that is “vulgar.”²²
- Murray State University bans the use of information technology resources in an “offensive, profane, or abusive manner,” and explains that the perception of the affected person is a “major factor” in determining if an action is in violation of the policy.²³

²¹ *Computer-Related Acceptable Use Guidelines, POLICIES: STUDENT CODE OF CONDUCT AND CAMPUS LIFE*, available at kean.edu/media/computer-related-acceptable-use-policy.

²² *9.09 University Posting of Materials, HANDBOOK OF OPERATING PROCEDURES* (Dec. 12, 2017), available at utsa.edu/hop/chapter9/9-9.html.

²³ *Information Technology: Acceptable Use Policy*, available at campus.murraystate.edu/aup.

Harassment

Hostile environment harassment, properly defined, is not protected by the First Amendment. In the educational context, the Supreme Court has defined student-on-student harassment as discriminatory, unwelcome conduct that is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.” *Davis v. Monroe County Board of Education*, 526 U.S. 629, 633 (1999).

This is not simply expression; it is *conduct* far beyond the protected speech that is too often deemed “harassment” on today’s college campus. Harassment is extreme and usually repetitive behavior—behavior so serious that it would interfere with a reasonable person’s ability to receive his or her education. For example, in *Davis*, the conduct found by the Court to be harassment was a months-long pattern of 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. And years of Title IX enforcement by

of time and effort by free speech advocates to undo this damage.

Here are just a few examples of overly broad sexual harassment policies based on OCR’s definition:

- Southern Utah University directly quotes OCR’s April 2011 “Dear Colleague” guidance letter²⁵ in defining sexual harassment as “unwelcome conduct of a sexual nature,” and encourages students to report such incidents to the administration.²⁶
- Colgate University’s policy defines harassment as “unwelcome, offensive conduct” that occurs on the basis of certain listed characteristics, and states that harassing conduct can occur through “graphic comments,” “jokes or comments that demean a person,” and creating “racially, ethnically, religiously offensive” cartoons.²⁷
- Alabama A&M University defines sexual harassment as “any and all unwelcomed sexual advances between members of the same and/or opposite sex,” and defines sexual advances as including “[v]erbal comments of a suggestive nature” and “[v]isual or written materials that include content that is sexual in nature.”²⁸

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

These examples, along with many others, demonstrate that colleges and universities often fail to limit themselves to the narrow definition of harassment that is outside the realm of constitutional protection.

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,²⁴ led numerous colleges and universities to enact overly restrictive harassment policies in an effort to avoid an OCR investigation. It will likely take a great deal

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.

²⁴ 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](https://www.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](https://www.justice.gov/opa/documents/um-ltr-findings.pdf).

²⁵ “Dear Colleague” Letter, April 4, 2011, available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html.

²⁶ *What should I do if I believe I have been sexually harassed?*, STUDENT HANDBOOK: UNIVERSITY’S RESPONSE TO SEXUAL MISCONDUCT, available at help.suu.edu/article/448/what-should-i-do-if-i-believe-i-have-been-sexually-harassed.

²⁷ *Equity Grievance Policy, NON-DISCRIMINATION/TITLE IX POLICY* (updated Oct. 2015), available at [colgate.edu/about/offices-centers-institutes/provost-and-dean-faculty/equity-and-diversity/non-discrimination-2](https://www.colgate.edu/about/offices-centers-institutes/provost-and-dean-faculty/equity-and-diversity/non-discrimination-2).

²⁸ *Sexual Misconduct & Title IX Policy, ALABAMA A&M UNIVERSITY STUDENT HANDBOOK* (2019), available at <https://www.aamu.edu/about/administrative-offices/student-affairs/student-handbook/index.html>.

²⁹ See, e.g., *DeJohn*, 537 F.3d 301 (holding that Temple University’s sexual harassment policy was unconstitutionally overbroad); *Doe v. Univ. of Mich.*, 721 F. Supp. 852 (holding that University of Michigan’s discriminatory harassment policy was unconstitutionally broad); *Booher*, No. 2:96-CV-135, 1998 U.S. Dist. LEXIS 11404 (holding that Northern Kentucky University’s sexual harassment policy was unconstitutionally broad).

Spotlight On:

Yellow Light Policies

This year, we were pleased to find that the percentage of schools earning FIRE’s worst, red light rating had declined again, for the twelfth year in a row. While the revision or removal of red light policies is highly encouraging, we remain concerned by the persistence of yellow light policies.

Yellow light policies are vague restrictions or policies that are aimed at a narrower range of speech compared to red light policies. To name just a few examples: At Harvard University, a yellow light policy forces students to submit an application before distributing written materials anywhere on university property.¹ Indiana University Bloomington prohibits “offensive” language or symbols in the residence halls, a policy that would earn a red light rating if its ban extended to the entire campus.² At Boston College, students are encouraged to report undefined “bias-related incidents” to administrators for investigation, a vague directive that earns a yellow light rating.³

Though they do not earn FIRE’s worst rating, yellow light policies represent a serious threat to expression, and their prevalence warrants a closer look.

Rather than steadily declining like the percentage of red light institutions, the percentage of yellow light schools has increased each year since our 2009 report.⁴ This inverse relationship is caused when colleges revise all of their red light policies as a way of doing just enough to earn a yellow light rating, or for some other reason fail to address the yellow light policies that were also on the books.

A total of twenty-six institutions that earned overall red light ratings last year improved their ratings this year, but only two of those schools—Delta State University and McNeese State University—actually improved all the way to earn an overall green light rating. The other twenty-four stopped at an overall yellow light rating, bringing the category to a total of 301 institutions across the country.

So why didn’t those schools finish the job? Perhaps some are still undergoing the revision process—policy revisions can take a good deal of time to develop and adopt, depending on the procedures at a particular school. Others, however, likely see the yellow light rating as being good enough to avoid public criticism and scrutiny. After all, the majority of schools in the database earn an overall yellow light rating, so administrators may see “safety in numbers” and assume maintaining yellow light policies is not unduly restrictive to students or risky with regard to litigation. This assumption is wrong on both counts.

First, yellow light speech restrictions are just that—policies that restrict student expression. Yellow light policies govern a narrower area of speech, like restricting the distribution of flyers instead of all outdoor expressive activities, or depend on administrative application, like a vague bias protocol instead of an outright ban on all biased speech, but this should not breed complacency.

Whether or not these yellow light policies are always applied by administrators in a restrictive manner, their mere presence may have a chilling effect on



¹ *Publicity and Solicitation*, HARVARD COLLEGE HANDBOOK FOR STUDENTS (2019), available at handbook.fas.harvard.edu/book/publicity-and-solicitation.

² *Activities Resulting in Damage, Distress, or Disturbance*, RESIDENCE HALL RULES AND REGULATIONS, available at rps.indiana.edu/resources/policies/Residence%20Hall%20Rules%20and%20Regulations/index.html.

³ *Definitions*, HATE CRIMES AND BIAS-RELATED INCIDENTS PROTOCOL (updated Mar. 22, 2017), available at bc.edu/offices/diversity/compliance/hate-crime-conduct-proto/definitions.html.

⁴ Speech Code Reports, *supra* note 5.

the expression of students who read them. And where enforcement of policies is selective, you can bet that the expression that will most likely be restricted is the most controversial speech, or speech that challenges powerful figures, like criticism of elected officials or of the college administration itself.

While red light policies are clearly restrictive as written, yellow light policies can be applied to have the same restrictive effect on a student's expression. **Therefore, FIRE's yellow light rating must not be mistaken as an indication that a policy's enforcement will result in a less significant free speech violation than the enforcement of a red light policy.**

Second, if a moral obligation to live up to the First Amendment—or, in the case of private institutions, to live up to their free speech promises—isn't enough for administrators, there's also their legal obligation. **Yellow light policy language has been struck down by courts as unconstitutional, ultimately costing colleges time and money.**

For example, in *DeJohn v. Temple University, et al.*, the United States Court of Appeals for the Third Circuit invalidated the university's sexual harassment speech code as unconstitutionally overbroad. The Third Circuit explained that the university had failed to limit the policy's reach to harassing conduct that is objectively severe and pervasive. The court found fault with the

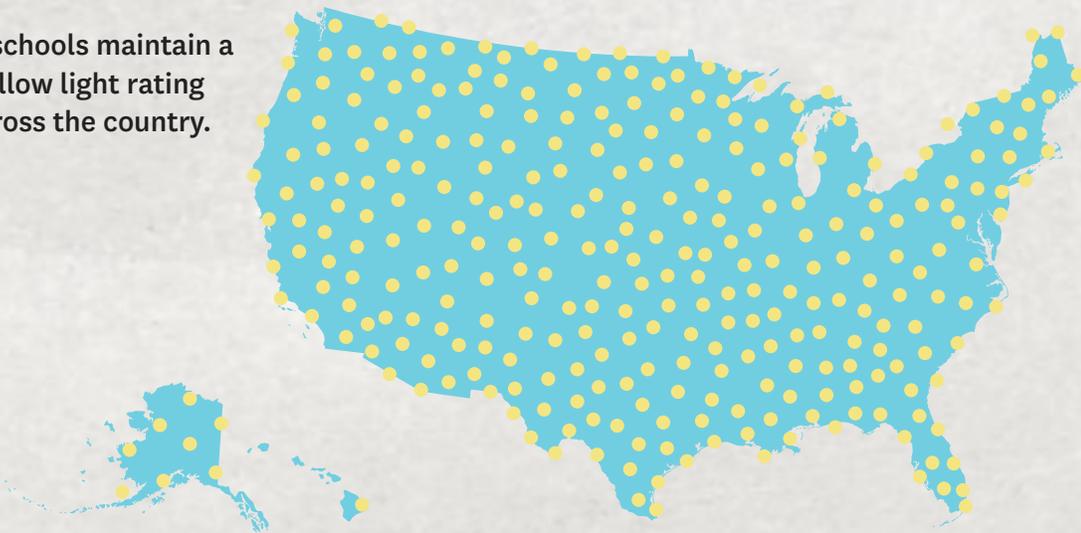
policy's "purpose or effect" standard for harassment, which impermissibly made intentional conduct that did not actually result in harassment punishable.⁵

In spite of this ruling from a federal appellate court, many schools across the country employ such language in their harassment policies, earning yellow light ratings, as the language represents a vague restriction on expression.⁶ Notably, Carnegie Mellon University and the University of Pennsylvania both have harassment policies in place that use a "purpose or effect" standard, resulting in their removal from the list of green light institutions as of this year's report.

The continued maintenance of these "purpose or effect" harassment policies—as well as other types of yellow light policies that have been litigated—opens up yellow light public universities to costly First Amendment lawsuits.

For both moral and legal reasons, institutions earning yellow light ratings must revise their policies. FIRE is always happy to work with administrators who wish to know more about how their institutions' policies can be revised to meet First Amendment standards. This important step will remove restrictions on student expression, while still allowing the policies to address misconduct that does not constitute protected speech.

301 schools maintain a yellow light rating across the country.



⁵ DeJohn, 537 F.3d 301.

⁶ See, e.g., *Policy Against Discrimination and Sexual Harassment - Complaint Procedure*, HUMAN RESOURCES, available at unlv.edu/hr/policies/harassment; *Policy Prohibiting Discrimination, Sexual Harassment, and Sexual Misconduct*, EXECUTIVE POLICY MANUAL (2014), available at policies.wsu.edu/prf/index/manuals/executive-policy-manual-contents/ep15-discrimination-sexual-harassment-sexual-misconduct; 1004: *Policy Statement on Harassment*, UNIVERSITY POLICIES, available at policymanual.hr.georgetown.edu/1004-Policy-Statement-on-Harassment.

Anti-Bullying Policies

Over the past decade, FIRE has found that an increasing number of 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.”³⁰ 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*³¹ approach that is inappropriate in the college setting, where students are overwhelmingly adults.³²

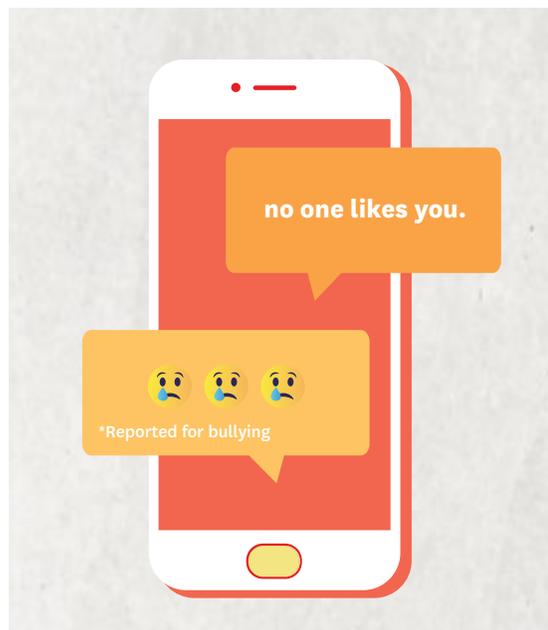
Court decisions and other guidance regarding K–12 speech often “trickle up” to the collegiate setting, and indeed, FIRE has come across numerous university policies prohibiting bullying in a problematic manner. For example:

- Cheyney University of Pennsylvania warns students that they can be held accountable for posting and sending “inappropriate” and “uncivil” content online, and that “[a]ny act that is unbecoming of a CU student to include cyber bullying . . . is considered a violation of the Student Code of Conduct and the CU Student Handbook.”³³
- At Ball State University, bullying is said to include “creating web pages,” “posting photos on social networking sites,” and “spreading rumors.”³⁴
- Gettysburg College defines bullying as “unwelcome or unreasonable behavior that

demeans, offends, or humiliates people either as individuals or as a group,” and states that “[a]lthough bullying may not rise to the level of harassment,” these behaviors are “inappropriate and inconsistent” with the college’s mission.³⁵

FIRE has come across numerous university policies prohibiting bullying in a problematic manner.

But as courts have held in rulings spanning decades, speech cannot be prohibited simply because someone else finds it offensive, even deeply so.³⁶ 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).



³⁰ “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.

³¹ “In the place of parents.”

³² See generally McCauley, 618 F.3d at 243–44 (“[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.”).

³³ *Cyber Stalking And Bullying Information*, CU CAMPUS & PUBLIC SAFETY, available at cheyney.edu/resources/cu-campus-public-safety/cyber-stalking-and-bullying-information.

³⁴ *Appendix K - Sexual Harassment and Misconduct Policy*, CODE OF STUDENT RIGHTS AND RESPONSIBILITIES (2019), available at <https://ballstate.policytech.com/dotNet/documents/?docid=1724&public=true>.

³⁵ *Personal Harassment and Bullying*, STUDENT HANDBOOK: HARASSMENT POLICY, available at gettysburg.edu/offices/student-rights-responsibilities/student-handbook/policy-details?id=eb0db757-e02d-4bb9-838c-b0449d38e2f2.

³⁶ 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 (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 (“Nor could the University proscribe speech simply because it was found to be offensive, even gravely so, by large numbers of people”).

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:

- Utah State University's conduct code states: "All interactions with faculty members, staff members, and other students shall be conducted with courtesy, civility, decency, and a concern for personal dignity."³⁷
- At Sonoma State University, students are expected to "[c]ommunicate with each other in a civil manner," and are directed to "report to University staff any incidents of intolerance, hatred, injustice, or incivility."³⁸
- The University of Pittsburgh states that, by choosing to join the university community,

students have made a "commitment to civility" and accept the obligation to behave in ways that contribute to a "civil campus environment."³⁹

While respect and civility may seem uncontroversial, most uncivil or disrespectful speech is protected by the First Amendment,⁴⁰ 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.

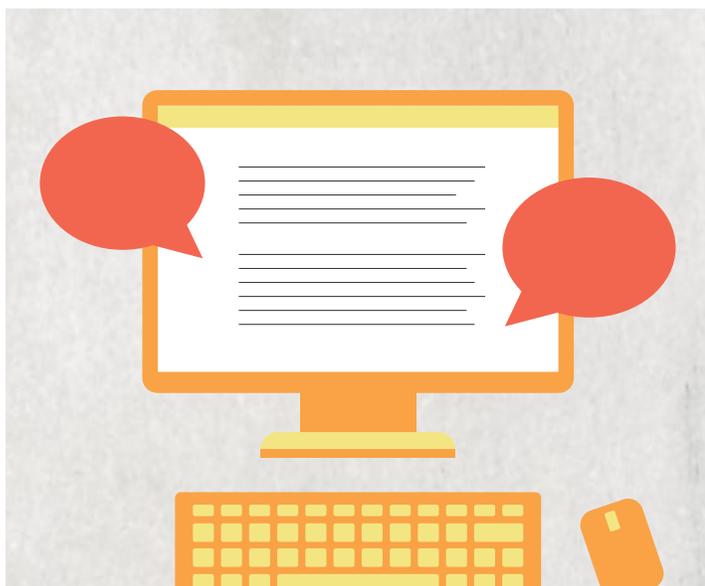
Internet Usage Policies

University policies regulating online expression, while perhaps appearing to be narrow, can have a significant impact on students' and faculty members' free speech rights, given the prevalence of online communication on today's college campuses.

Examples of impermissibly restrictive Internet usage policies include the following:

- At Fordham University, the use of information technology resources to "insult" or "embarrass" others is prohibited.⁴¹
- The University of Alaska Anchorage bans the transmission or posting of statements that are "bigoted, hateful or racially offensive."⁴²
- Northeastern University prohibits the transmission of material that is "annoying" in "the sole judgment of the University."⁴³

Just as speech that occurs in the public square may not be sanctioned merely because it has been found to be subjectively "offensive" or "annoying," online speech may not be restricted on those bases alone.



³⁷ ARTICLE II. RESPONSIBILITIES AND RIGHTS: SECTION II-1 Responsibilities of Students, THE CODE OF POLICIES AND PROCEDURES FOR STUDENTS AT UTAH STATE UNIVERSITY (2009), available at studentconduct.usu.edu/studentcode/article1#collapseTwo.

³⁸ SSU Statement on Civility and Tolerance (Apr. 15, 2014), available at sonoma.edu/about/diversity/civility-and-tolerance.

³⁹ PITT PROMISE, OFFICE OF THE DEAN, available at studentaffairs.pitt.edu/dean/pittpromise.

⁴⁰ See, e.g., *Reed*, 523 F. Supp. 2d 1005 (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.").

⁴¹ Acceptable Uses of IT Infrastructure and Resources, POLICIES, available at fordham.edu/info/21366/policies/2792/acceptable_uses_of_it_infrastructure_and_resources/2.

⁴² Acceptable Use Policy, INFORMATION TECHNOLOGY SERVICES, available at uaa.alaska.edu/about/administrative-services/policies/information-technology/acceptable-use.cshtml.

⁴³ Specific Prohibitions on the Use of Information Systems, NORTHEASTERN UNIVERSITY UNDERGRADUATE STUDENT HANDBOOK (2016), available at issuu.com/northeasternuniversity/docs/2016-2017_ug_handbook?e=2831976/36502597.

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.⁴⁴ These sets of policies and procedures, frequently termed “Bias Reporting Protocols” or “Bias Incident Protocols,” often include bans on protected expression. For example:

- Dickinson College defines a “bias incident” as “a pejorative act or expression” that a reasonable person would conclude is directed at a member or group based on a listed personal characteristic, and specifies that the campus police or local police department will investigate bias incidents.⁴⁵
- Davidson College’s policy states: “Halloween parties that encourage people to wear costumes and act out in ways that reinforce stereotypes create a campus climate that is hostile to racial and ethnic minority groups,” and encourages students to report such “bias incidents.”⁴⁶
- Mount Holyoke College provides that the potential outcomes for reported bias incidents range from a “mandatory educational project” to “required withdrawal.”⁴⁷

While speech or expression that is based on a speaker’s prejudice may be subjectively offensive, it is nonetheless



protected unless it rises to the level of harassment, true threats, or another form of unprotected speech.

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

While many 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.”⁴⁸

One recent example of speech investigated for perceived bias comes from Wake Forest University. In March 2019, a screenshot of an Instagram post that listed mock class president campaign statements, including one that said the candidate for class president wanted to “build a wall” between Wake Forest and Winston-Salem State University, went viral on social media over concerns that the post was racist, given that Winston-Salem State is a historically black institution.⁴⁹ Wake Forest’s university president thanked students for reporting the post to the university’s Bias Response Team, and promised an investigation, calling the post “deeply offensive and unacceptable.”⁵⁰

FIRE wrote to the president to explain that the actions were chilling, and that the investigation must be dropped:

Although the university has not yet identified and formally punished anyone responsible for the image, the chilling effect precedes the imposition

⁴⁴ See generally Bias Response Team Report 2017, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., available at thefire.org/first-amendment-library/special-collections/fire-guides/report-on-bias-reporting-systems-2017.

⁴⁵ *Bias Incident Protocol*, STUDENT HANDBOOK, available at dickinson.edu/download/downloads/id/6231/bias_incident_protocol.pdf.

⁴⁶ *Reporting Bias Incidents & Hate Crimes*, BIAS EDUCATION AND RESPONSE, available at davidson.edu/offices-and-services/diversity-and-inclusion/bias-education-and-response.

⁴⁷ *Questions and Answers*, DIVERSITY, EQUITY AND INCLUSION: BIAS INCIDENTS, available at mtholyoke.edu/diversity/questions-and-answers.

⁴⁸ *Speech First, Inc. v. Schlissel*, 939 F.3d 756 (6th Cir. 2019).

⁴⁹ Adam Goldstein, *Wake Forest’s investigation of ‘build a wall’ Instagram post chills free speech*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Mar. 28, 2019), available at thefire.org/wake-forests-investigation-of-build-a-wall-instagram-post-chills-free-speech.

⁵⁰ *Id.*

⁵¹ Letter from Adam Goldstein, Program Officer, Individual Rights Defense Program, Found. For Individual Rights in Educ., to Nathan O. Hatch, President, Wake Forest Univ. (Mar. 28, 2019), available at d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2019/03/28165326/FIRE-Letter-to-Wake-Forest-March-20191.pdf.

of final, formal discipline, and instead arises from the initiation, announcement, and maintenance of an investigation into speech WFU already knows to be protected. Official “inquiry alone trenches upon” freedom of expression. *Paton v. La Prade*, 469 F. Supp. 773, 778 (D.N.J. 1978) (student’s speech impermissibly chilled when anonymous request for information from a political organization resulted in being labeled a “subversive” and formally investigated).

...

The chilling effects emanating from WFU’s response may already be observable; the Instagram account referenced in the screenshots of the post has already been deleted. While WFU is not bound by the First Amendment, it has bound itself to freedom of speech, freedom of inquiry, and freedom of expression. WFU should recognize that maintaining an investigation into a post it recognizes as parody will undermine its purported goals.⁵¹

Indeed, when the only conduct at issue is speech that is protected under the First Amendment, even investigation as a bias incident is inappropriate.

Policies Governing Speakers, Demonstrations, and Rallies

Universities have a right to enact reasonable, narrowly tailored “time, place, and manner” restrictions that prevent demonstrations and other expressive activities from unduly interfering with the educational process.⁵² 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.⁵³ 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.”⁵⁴ *Id.* at 134. Deciding that such a determination required county administrators to “examine the content of the message that is conveyed,” the Court wrote that “[l]isteners’ reaction to speech is not a content-neutral basis for regulation. . . . **Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob.**” *Id.* at 134–35 (emphasis added).

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

- “Special arrangements” for security may be required if the University of Rhode Island determines an invited speaker is a “highly controversial person.”⁵⁵
- The University of Miami vaguely states that it may require additional security to be present based on the “nature of the presentation.”⁵⁶
- The University of Delaware shifts the responsibility for “ensuring the safety of the speaker as well as those who listen” fully onto the student organization holding the event, and provides that the costs of security “must be absorbed” by the organization.⁵⁷

⁵² See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

⁵³ *Forsyth*, 505 U.S. 123.

⁵⁴ *Id.* at 134.

⁵⁵ *Memorial Union, Student Activities, Event Planning: Security for Speakers*, STUDENT HANDBOOK (2019), available at <https://web.uri.edu/studentconduct/files/Student-Handbook-FINAL-08.22.2019.pdf>.

⁵⁶ *Outside Speaker Guidelines and Responsibilities*, STUDENT RIGHTS AND RESPONSIBILITIES HANDBOOK (Sept. 13, 2019), available at doso.studentaffairs.miami.edu/_assets/pdf/policies/student_rights_and_responsibilities_handbook.pdf.

⁵⁷ *Speakers on Campus*, UNIVERSITY STUDENT CENTERS STUDENT ORGANIZATION POLICIES, available at sites.udel.edu/usc/rso-policies.

Prior Restraints

The Supreme Court has held that “[i]t is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” *Watchtower Bible and Tract Society of NY, Inc. v. Village of Stratton*, 536 U.S. 150, 165–66 (2002). Yet many colleges and universities 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 the University of Southern California, students wishing to stage a demonstration must complete a permit application “at least two weeks” in advance.⁵⁸
- Students at the University of Northern Colorado must apply for a permit ten business days before any outdoor event.⁵⁹
- Wichita State University requires notification no later than 72 hours prior to any expressive activities, including everything from the mere “distribution of information leaflets” and “meetings to display group feelings or sentiments” to actual “mass protests.”⁶⁰

Free Speech Zone Policies

Of the 471 schools surveyed for this report, thirty-nine institutions (8.3%) enforce “free speech zone” policies—policies limiting student demonstrations and other expressive activities to small and often out-of-the-way areas on campus.⁶¹ **This number represents a significant improvement over the course of the past decade: a 2013 FIRE survey of the institutions covered in this report found that 16.4%—roughly double the percentage today—maintained such policies.**⁶² 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 Stand Up For Speech Litigation Project has mounted successful challenges to free speech zone policies at eight colleges.⁶³ 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 victory for the Stand Up For Speech Litigation Project restored free speech rights to roughly 150,000 students.⁶⁴

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

Using language from the Campus Free Expression Act model legislation from FIRE,⁶⁵ Texas’ bill, which was signed into law in June 2019, recognizes that “all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to or observe the expressive activities of others.”⁶⁶ Importantly, the statute declares that the “common outdoor areas of the institution’s campus are deemed traditional public forums.” In practice, this provision means that rather than being relegated to free speech zones, individuals may use any common outdoor areas for expressive activities, so long as their conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

The Texas law also mandates that institutions inform new students of the policies during their freshman or transfer orientation, and that they develop materials, programs, and procedures to ensure that the employees that are responsible for educating or disciplining students understand the requirements of the law.⁶⁷

⁵⁸ SCampus Part D: Free Expression and Dissent, SCAMPUS (updated July 2019), available at policy.usc.edu/scampus-part-d.

⁵⁹ Event Permit Application Instructions (updated July 2019), available at unco.edu/police/pdf/forms/Outdoor-Event-Permit-Application.pdf.

⁶⁰ Procedures, Regulations and Requirements for Section 11.12

Use of University Campus for First Amendment Activities (2017), available at wichita.edu/about/policy/ch11_12_procedures.pdf.

⁶¹ See Appendix D for a full list of schools with free speech zone policies.

⁶² Infographic: Free Speech Zones on America’s Campuses (2013), available at <https://www.thefire.org/infographic-free-speech-zones-on-american-campuses-2>.

⁶³ For more information about FIRE’s Stand Up for Speech Litigation Project and Million Voices campaign, see standupforspeech.com.

⁶⁴ 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), available at 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.

⁶⁵ For more detailed information about the CAFE Act, see thefire.org/frequently-asked-questions-the-campus-free-expression-cafe-act.

⁶⁶ Tyler Coward, Texas becomes 17th state to enact campus free speech legislation, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (June 10, 2019), available at thefire.org/texas-becomes-17th-state-to-enact-campus-free-speech-legislation.

⁶⁷ Id.

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. And despite being inconsistent with the First Amendment, free speech zones are more common at public universities than at private universities: 9.6% of public universities surveyed maintain free speech zones, while just 3.8% of private universities that promise their students free speech rights do.

Examples of current free speech zone policies include the following:

- At Tulane University, all demonstrations must be registered at least two business days in advance, and may only take place in one of three designated areas.⁶⁸
- Elizabeth City State University states that the sole “designated area on campus for ‘free speech’ events is the Outdoor Classroom.”⁶⁹
- The University of Massachusetts Dartmouth designates just one area on campus as a “public forum space,” and even requires students wishing to use that space to inform the campus police “at least 48 hours in advance.”⁷⁰

Even where free speech zones have seemingly been eradicated, poor training and policy management continue to cause free speech violations. This past year, students at Western Illinois University sought to hold a demonstration on campus about the decriminalization and legalization of marijuana, a topic the Illinois legislature was debating at the time.⁷¹ Within minutes, the students were stopped by campus police, who told them they were “outside of the free speech zone,” and who promptly shut the event down.⁷²

When FIRE contacted the school in September 2019, the administration responded that it had abolished the free speech zone in 2003, and that it would remove current references to the “free speech area” in its policies “as soon as possible.”⁷³ As of this writing, however, references to the free speech area remain on the university’s website.⁷⁴ This confusion underscores the necessity of the requirement from Texas’ free speech legislation that employees who enforce these policies be informed and trained in this area.

Although free speech zone policies are indeed being steadily revised across the country, they continue to pose problems for students’ expressive activities—even when they’ve apparently been taken off the books.



⁶⁸ *Demonstration Guidelines*, EVENT SERVICES: POLICIES & PROTOCOL (updated Mar. 2017), available at campusservices.tulane.edu/content/demonstration-guidelines.

⁶⁹ *Policy on Designated Areas for Unplanned “Free Speech” Events*, CLUBS AND ORGANIZATIONS POLICY (updated June 7, 2011), available at ecs.edu/documents/legal-affairs/policy-manual/Section500/500-3-2-1.pdf.

⁷⁰ *Public Forum Use of University Facilities*, UNIVERSITY POLICIES, available at umassd.edu/policies/active-policy-list/facilities-operations-and-construction/public-forum-use-of-university-facilities.

⁷¹ Press Release, Found. for Individual Rights in Educ., Western Illinois University’s “zombie” free speech zone resurrected to shut down satirical ‘pot’ brownies event (Sept. 5, 2019), available at thefire.org/western-illinois-universitys-zombie-free-speech-zone-resurrected-to-shut-down-satirical-pot-brownies-event.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *Policy on Appearance of Off-Campus Speakers Invited by Recognized Student and Faculty Groups at Western Illinois University*, ADMINISTRATIVE SERVICES (July 1981), available at www.wiu.edu/vpas/policies/ocampspk.php; *Policy on Use of University Facilities; Distribution of Printed Materials and Collection of Signatures Policy*, ADMINISTRATIVE SERVICES (Aug. 10, 1995), available at wiu.edu/vpas/policies/printmat.php.

WHAT CAN BE DONE?



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

Unconstitutional policies also can be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country. 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.⁷⁵

The suppression of free speech at institutions of higher education is a matter of great 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.



Public exposure is also critical to defeating speech codes, since universities are often unwilling to defend their speech codes in the face of public criticism.

⁷⁵ See Azhar Majeed, *Putting Their Money Where Their Mouth Is: The Case for Denying Qualified Immunity to University Administrators for Violating Students' Speech Rights*, 8 CARDOZO PUB. L., POL'Y & ETHICS J. 3, 515 (2010).

APPENDICES



Appendix A: Schools by Rating



Adams State University
Alabama A&M University
Barnard College
Bates College
Boise State University
Boston College
Boston University
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
Clemson University
Coastal Carolina University
Colby College
Colgate University
College of Charleston
College of the Holy Cross
Connecticut College
Dakota State University
Dartmouth College
Davidson College
Delaware State University
DePauw University
Dickinson College
Drexel University
Eastern Illinois University
Emory University
Evergreen State College
Florida State University
Fordham University
Fort Lewis College
Framingham State University
Furman University
Georgetown University
Georgia Southern University
Governors State University
Grinnell College
Harvard University
Howard University
Idaho 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
Morehead State University
Mount Holyoke College
Murray State University
New Jersey Institute of Technology
Northeastern University
Northern Illinois University
Northern Vermont University
Oklahoma State University - Stillwater
Portland State University
Princeton University
Reed College
Rensselaer Polytechnic Institute
Southeastern Louisiana University
Southern Illinois University at Carbondale
Southern Illinois University Edwardsville
Southern Oregon University
Southern Utah University
St. Olaf College
State University of New York - Fredonia
State University of New York - New Paltz
State University of New York - Albany
Stevens Institute of Technology
Syracuse University
Tennessee State University
The College of New Jersey
Troy University
Tufts University
Tulane University
Union College
University of Alabama at Birmingham
University of Alaska Anchorage
University of Alaska Fairbanks
University of Central Missouri
University of Central Oklahoma
University of Houston
University of Illinois at Chicago
University of Louisiana Lafayette
University of Massachusetts at Dartmouth
University of Massachusetts at Lowell
University of Miami
University of Montana
University of New Orleans



RED LIGHT

University of North Texas
 University of Notre Dame
 University of South Carolina Columbia
 University of Southern California
 University of Texas at Austin
 University of Texas at Dallas
 University of Tulsa
 University of Wisconsin - Oshkosh
 University of Wyoming
 Utah State University
 Villanova University
 Virginia State University
 Western Illinois University
 Whitman College
 Wichita State University
 William Paterson University
 Worcester Polytechnic Institute



YELLOW LIGHT

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
 Colorado College
 Colorado Mesa University
 Colorado School of Mines
 Colorado State University
 Colorado State University Pueblo
 Columbia University
 Cornell University
 East Stroudsburg University of Pennsylvania
 East Tennessee State University
 Eastern Michigan University
 Eastern New Mexico University
 Eastern Washington University
 Elizabeth City State University
 Fayetteville State 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 Institute of Technology
 Georgia State University
 Gettysburg College
 Grambling State University
 Grand Valley State University
 Hamilton College
 Harvey Mudd College
 Haverford College
 Henderson State University
 Humboldt State University
 Hunter College, City University of New York
 Illinois State 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
 Bemidji State University
 Black Hills State University
 Bloomsburg University of Pennsylvania
 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 Institute of Technology
 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



YELLOW
LIGHT

Indiana 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
Jackson 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
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 Tech of the University of Montana
Montclair State University
New College of Florida
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 Kentucky University
Northern Michigan University
Northwestern Oklahoma State University
Northwestern State University
Northwestern University



YELLOW
LIGHT

Oakland University
Oberlin College
Occidental College
Ohio University
Old Dominion University
Pennsylvania State University - University Park
Pittsburg State University
Pitzer College
Pomona College
Radford University
Rhode Island College
Rice University
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
Shawnee State University
Skidmore College
Slippery Rock University of Pennsylvania
Smith College
Sonoma State University
South Dakota State University
Southeast Missouri State University
Southern Connecticut State University
Southern Methodist University
Southwest Minnesota State University
Stanford University
State University of New York - Binghamton
State University of New York - Oswego
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
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



**YELLOW
LIGHT**

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 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 at Boulder
University of Connecticut
University of Delaware
University of Denver
University of Georgia
University of Hawaii at Manoa
University of Hawaii Hilo
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 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 at St. Louis
University of Missouri-Kansas City
University of Montana Western
University of Montevallo
University of Nebraska - Lincoln



**YELLOW
LIGHT**

University of Nebraska Omaha
University of Nevada, Las Vegas
University of Nevada, Reno
University of New Mexico
University of North Alabama
University of North Carolina at Asheville
University of North Carolina School of the Arts
University of North Georgia
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 Dakota
University of South Florida
University of South Florida at Saint Petersburg
University of Southern Indiana
University of Southern Maine
University of Texas at Arlington
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
Valdosta State University
Vanderbilt University
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



**YELLOW
LIGHT**

- Weber State University
- Wellesley College
- Wesleyan University
- West Chester University of Pennsylvania
- West Virginia University
- Western Kentucky University
- Western Michigan University
- Western Oregon University
- Western Washington University
- Westfield State University
- Williams College
- Winona State University
- Winston Salem State University
- 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
- Delta State University
- Duke University
- East Carolina University
- Eastern Kentucky University
- Edinboro University of Pennsylvania
- George Mason 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



**WARNING
SCHOOLS**

- University of Arizona
- University of California Los Angeles
- University of Chicago
- 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 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

- Baylor University
- Brigham Young University
- Pepperdine University
- Saint Louis University
- Vassar College
- Yeshiva University



APPENDIX B: Rating Changes, 2018–2019 Academic Year

SCHOOL NAME	2017–2018 RATING		2018–2019 RATING	
Alcorn State University	●	Yellow	●	Green
Black Hills State University	●	Red	●	Yellow
Bryn Mawr College	●	Red	●	Yellow
California State University - Channel Islands	●	Red	●	Yellow
Carnegie Mellon University	●	Green	●	Yellow
Dakota State University	●	Yellow	●	Red
Delta State University	●	Red	●	Green
Eastern Washington University	●	Red	●	Yellow
Emory University	●	Green	●	Red
Fort Lewis College	●	Yellow	●	Red
George Washington University	●	Red	●	Yellow
Grambling State University	●	Red	●	Yellow
Jackson State University	●	Red	●	Yellow
Kentucky State University	●	Red	●	Yellow
Mansfield University of Pennsylvania	●	Red	●	Yellow
McNeese State University	●	Red	●	Green
Middle Georgia State University	●	Red	●	Yellow
Missouri State University	●	Red	●	Yellow
New York University	●	Red	●	Yellow
North Carolina State University	●	Yellow	●	Green
Northern Arizona University	●	Yellow	●	Green
Northern Kentucky University	●	Red	●	Yellow
Pennsylvania State University - University Park	●	Red	●	Yellow
Salem State University	●	Red	●	Yellow
Sam Houston State University	●	Red	●	Yellow

SCHOOL NAME	2017-2018 RATING		2018-2019 RATING	
Texas A&M University	●	Yellow	●	Green
University of Arizona	●	Yellow	●	Green
University of Louisville	●	Yellow	●	Green
University of Michigan - Ann Arbor	●	Red	●	Yellow
University of Michigan - Dearborn	●	Red	●	Yellow
University of Michigan - Flint	●	Red	●	Yellow
University of North Carolina - Pembroke	●	Yellow	●	Green
University of Pennsylvania	●	Green	●	Yellow
University of Rhode Island	●	Red	●	Yellow
University of Southern California	●	Yellow	●	Red
University of Southern Mississippi	●	Yellow	●	Green
University of West Alabama	●	Red	●	Yellow
Utah Valley University	●	Red	●	Yellow
Wake Forest University	●	Red	●	Yellow
Wesleyan University	●	Red	●	Yellow
Western Carolina University	●	Yellow	●	Green
Wichita State University	●	Yellow	●	Red



APPENDIX C: Schools at Which a Faculty or Administrative Body Has Adopted a Version of the ‘Chicago Statement’

American University
Amherst College
Appalachian State University
Arizona State University
Ashland University*
Board of Regents, State of Iowa
Brandeis University
California State University – Channel Islands
Chapman University*
Christopher Newport University
Claremont McKenna College
Clark University
Cleveland State University
Colgate University
Columbia University
Denison University*
Eckerd College*
Franklin & Marshall College
George Mason University
Georgetown University
Gettysburg College
Johns Hopkins University
Joliet Junior College*
Kansas State University
Kenyon College
Kettering University*
Louisiana State University
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
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 Arizona
University of Arkansas at Little Rock*
University of Central Florida
University of Colorado System
University of Denver
University of Louisiana at Lafayette
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 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

NOTE: Some of the institutions on this list are not rated as a 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 either the administration or a faculty body has adopted a version of the Chicago Statement. Such institutions are denoted with an asterisk.

APPENDIX D: Schools with “Free Speech Zones”

Arkansas State University
Auburn University Montgomery
Bemidji State University
California State University - Bakersfield
California State University - Dominguez Hills
California State University - Los Angeles
Cameron University
Cornell University
East Tennessee State University
Elizabeth City State University
Evergreen State College
Grambling State University
Kentucky State University
Montclair State University
Morehead State University
Murray State University
Nicholls State University
Occidental College
Old Dominion University
Rutgers University - New Brunswick
Saint Cloud State University
Southern Illinois University at Carbondale
Stanford University
Texas Woman’s University
The College of New Jersey
Tulane University
University of California - Riverside
University of Central Arkansas
University of Colorado at Boulder
University of Illinois at Urbana-Champaign
University of Massachusetts at Dartmouth
University of Montana
University of North Carolina School of the Arts
University of North Georgia
University of South Carolina Columbia
University of Southern Indiana
University of West Alabama
Valdosta State University
Western Illinois University



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