

2024-2025 Pomona College Student Handbook

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Pomona College Speech Code



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Approved by the Pomona College Board of Trustees in December 2023.

DEFINING FREE SPEECH

Speech Code: Pomona College believes that free speech is critical to Pomona's mission as an educational institution, and therefore, the norm is that speech and other forms of expression are protected.

Protected Speech

The First Amendment protects the exercise of free speech in ways that sometimes makes us uncomfortable, and our courts have consistently applied the First Amendment to protect speech that is insulting, outrageous and offensive. The First Amendment protects most speech that is commonly considered "hate speech." Under California's Leonard Law^[1], the College cannot discipline a student for speech that would otherwise be protected under the First Amendment, even when members of the College community find it offensive or repugnant. This includes wearing political messages or slogans on a hat, shirt, or other clothing.

Hate Speech

Contrary to a widely held misconception, "hate speech" is generally protected by the First Amendment. This has been established law for over a hundred years. Only if the speech fits within one of the categories of unprotected speech can it serve as a basis for disciplinary action against the speaker.

The term "hate speech" often refers to speech that insults or demeans a person or group of people on the basis of attributes such as race, religion, ethnic origin, shared ancestry, sexual orientation, disability or gender. While the College condemns speech of this kind, there is no "hate speech" exception to the First Amendment; under California law, the College is only permitted to discipline a student on the basis of speech if the content or manner of the expression falls into one of the categories described below as "unprotected speech".

Unprotected Speech

Certain limited categories of speech and other forms of expression are unprotected by the First Amendment and would constitute a violation of the Student Code subject to a disciplinary response:

- **Speech that constitutes harassment** as specifically defined in the College's Non-Discrimination Policy Regarding Student-Related Matters, i.e., speech based on one or more Legally Protected Characteristics, and so persistent, repetitive, pervasive or severe that it has the purpose or effect of substantially interfering with or materially limiting a reasonable person's ability to participate in or benefit from the College's educational programs or activities.
- **Speech that constitutes fighting words.** To constitute fighting words, the speech must meet all of the following three criteria. First, the speech must be addressed at a specific individual or particular group of individuals. Second, the speech must be abusive rather than a communication of ideas. Third, when considered objectively, the speech must be likely to provoke a violent reaction.
- **Speech that incites imminent lawless action.** To constitute incitement of imminent lawless action, the speech must meet all of the following three criteria. First, the speech must advocate for, or attempt to cause, lawless action in the near future. Lawless action includes, but is not limited to, violence or the destruction of property. Second, when considered objectively, the speech, in context, must be likely to produce such lawless action. Third, the speaker must intend to cause such lawless action.
- **Speech that constitutes a true threat.** To constitute a true threat, the speech must communicate a serious intent to harm a specific person or a particular group of persons. While the speaker does not necessarily have to intend to carry out the threat, the speech must (1) cause the individual to subjectively fear for their physical safety and (2) cause a reasonable person

in their situation to feel the same level of fear in order to qualify as a true threat.

- **Speech that materially limits the College's educational function.** Examples of speech that constitute a material limitation of the College's educational function include but are not limited to speech outside of a classroom or dedicated educational setting that is so loud as to disrupt a classroom or similar learning environment, protests that block access to a classroom or educational setting or hinder or prevent a scheduled class from convening.
- **Speech/material that constitutes obscenity.** To constitute obscenity, appeals to the prurient interest, that depicts sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- **Speech that infringes on the First Amendment rights of others through coercive disruption,** defined as the physical interference with others' peaceful exercise of free speech. Examples of this "heckler's veto" are physically blocking access to a speaking event, physical intimidation of a speaker, and noise-making that prevents a speaker from being heard. If this type of conduct occurs during any College-sanctioned activity or function, the College reserves the right to restore conditions under which free speech can flourish. Any student who engages in coercive disruption may be removed and subject to disciplinary action.

If the speech meets any of the requirements of the subpoints as stated above, students who are identified may be invited to have a conversation with any of the involved parties to further understand the details of the event. If, during these conversations, the College determines that the speech does violate all of the requirements of one or more of the exceptions stated above, the College may choose to pursue disciplinary action.

In addition, the College may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities and/or programs of the College.

[1] In pertinent part, the Leonard Law states 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.”



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