

FREE SPEECH GUIDE FOR DIVERSITY OFFICES



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Introduction to this Guide

In response to controversies and debates that have roiled colleges and universities across the country in recent years, PEN America has developed a first-of-its-kind guide to navigating issues of free speech and inclusion on campus. Housed online, the [Campus Free Speech Guide](#) provides practical, principled guidance for students, faculty, and administrators with the aim of keeping campuses open to a broad range of ideas and perspectives.

The **Free Speech Guide for Diversity Offices** is a companion resource complimenting the advice found online, with a particular focus for diversity office personnel. The advice in this Guide reflects PEN America’s efforts to uphold and advance the principles of free speech and inclusion in tandem in higher education, recognizing that college campuses are foundational to the future of civic life and often the catalyst for wider social change. These dual principles are both vital to sustaining an open, equitable, democratic society, and we believe that administrators and faculty have an obligation to model a commitment to these principles and to strive to inculcate this commitment among the rising generation.

The content of this guide was compiled in conjunction with PEN America’s Campus Free Speech Program as part of a fellowship by its director, Jonathan Friedman, from the University of California National Center for Free Speech and Civic Engagement. The advice contained herein was developed in consultation with hundreds of university students, faculty, and administrators nationwide. It also draws on PEN America’s extensive research, analysis, and advocacy on campus free speech issues.

Free Speech and Diversity Offices

The freedom to express one’s ideas unhampered by censorship and suppression is a bedrock civil rights principle. In the U.S., the First Amendment endows all Americans with this freedom by forbidding Congress to pass any law that abridges freedom of speech, freedom of the press, peaceful assembly, or the right to petition the government. This right is also codified in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which cement free expression not just as an American liberty, but as international human rights law. In order to understand free speech on college campuses, one must begin with

this fundamental precept: free expression is a universal and inalienable freedom belonging to all people equally, without discrimination. Free speech belongs to everyone.

But neither the First Amendment nor human rights covenants guarantee that all citizens in a democracy have equal opportunities to speak and be heard. Rather, upholding the principle of free speech -- for all -- requires an affirmative commitment to inclusion, and to advancing institutional efforts to lower the barrier to expression for members from historically marginalized or lesser heard communities. In order to ensure that the public sphere is open to all diverse voices, it is often in fact necessary that harmful or intimidating speech does not go unchallenged by institutional authorities. Speaking out against hateful speech, bigotry, harassment, and discrimination has become urgent in an era of rising hate, deepening political divides, and a crisis in civic literacy, where controversies over language have struck at the heart of the social fabric.

Colleges and universities, our democracy's crucibles of ideas and dialogue, know very well the challenges in harmonizing free expression with diversity, equity, and inclusion. Diversity Officers are uniquely positioned to balance these ideas while nurturing a campus climate that reflects and embraces the diversity of a changing nation, and a changing world. Hateful expression incidents, controversial invited speakers, contentious statements made by faculty and staff, and other common issues often pose challenges to this mission. Although these events have the potential to antagonize and infuriate, responding to heightened anxieties with regulation and censorship can inhibit productive and inclusive long-term conditions for discourse. Diversity Officers must take care to avoid setting precedents that would empower administrators with the ability to discipline students based solely on the content of their expression, and they should work both proactively and reactively to ensure that all students on campus can express themselves freely and equally, exposing them to a wide array of thoughts and ideas. Sanctions should be saved for only the most legally egregious offenses. Hateful and offensive speech should be answered with more speech, as well as clear, unwavering denunciations of values at odds with those of the institution. Diversity Officers can also help institutional leaders understand that not everyone targeted with hate feels comfortable or empowered to speak out against it, and that beyond disciplinary responses, institutions can also engage in responses that involve education, counseling, or other restorative justice practices.

Just as these principles apply across campuses, so too do they come to bear in the work of Diversity Offices. In their day-to-day operations, diversity directors, staff, and assistants can experience frictions between free expression and the feelings of welcoming and belonging. Language and politics have the potential to spur interpersonal tensions, occasionally leaving Diversity Officers on the student- and parent-facing frontlines to respond with level-headed, policy-minded approaches that are consistent with free speech, inclusion, and other campus values. Diversity and inclusion efforts have in recent years sometimes been perceived as detrimental to a robust climate for free speech. This Guide was created to demonstrate that, in fact, the values of free speech, diversity, and inclusion can and should be mutually reinforcing, rather than at odds with each other, by providing diversity officers with principled and practical advice to help them confront a range of different scenarios.

Our Principles

PEN America Principles on Campus Free Speech

In today's debate over free speech on campus, PEN America's philosophy is guided by the 1948 PEN Charter to stand for the "unhindered transmission of thought," to "oppose any form of suppression of freedom of expression," and to "dispel all hatreds." The PEN America Principles on Campus Free Speech provide both general and specific precepts for nurturing campus communities that uphold these values; protecting speech to the utmost and allowing for academic and social discourse that is truly inclusive and transcends boundaries.

- Campuses must be open to a broad range of ideas and perspectives, and to achieve that, they must uphold the rights of all students to participate freely and equally.
- Campuses can and must fulfill their dual obligation to both protect free speech and advance diversity and inclusion.
- Campus leaders must be free to speak in their own right, to assert and affirm their institutional values.
- Promoting free speech and inclusion requires proactive steps, not just reactions to controversy.
- Campuses should encourage a climate of listening and dialogue in tandem with support for free speech.
- By acknowledging and addressing legitimate concerns regarding racism and bigotry in the context of free speech debates, universities can help ensure that the defense of freedom of expression is not misconstrued as a cause that is at odds with movements for social justice.
- Colleges have a unique academic mission and core values that are distinct from other social institutions, which should be protected.

To see the full list of principles, check out our online Guide at:

<https://campusfreespeechguide.pen.org/pen-principles/>

The Law

The First Amendment

The First Amendment protects people's rights to free speech, expression, press, and assembly, as well as the right to petition the government. These fundamental rights extend to all individuals in the United States, regardless of factors such as religion, gender, race, citizenship, or sexual orientation. Under the First Amendment, people have the right to create, publish, convey and receive information; to express their views; to speak freely; and to be free from retaliation or efforts to restrain their expression. Although free speech is an essential value of the United States, it is important to note that it is not absolute. The government may impose regulations on certain kinds of speech, including but not limited to harassment, threats, slander, and instances in which an individual participates in incitement of violence. In addition to jurisprudence and precedent, there are several federal statutes that regulate certain kinds of speech, including Title VI and Title IX.

Public and Private Institutions

Colleges and universities are held to different legal standards when setting internal regulations for First Amendment rights on campus, depending on their public or private status. While public universities are beholden to principles of the First Amendment, they may impose what are known as time, place, and manner restrictions on the exercise of those rights by individuals on campuses. A public college or university may impose these restrictions as long as they are reasonable and content-neutral, are in the interest of preventing significant disruption, and leave open other means of communication. Any campus policy that regulates speech based on content is unconstitutional unless the university can show that the regulation is narrowly tailored to serve an important university function. Often, the context that a policy seeks to regulate on campus—such as speech in a classroom versus in public areas versus in student dormitories—is relevant to understanding whether it is constitutional.

Because private colleges and universities are not government entities, they are not required to uphold First Amendment protections in the same manner as public universities. In other words, private institutions may impose stricter limitations on free speech. Still, most adhere to free speech principles and support academic freedom. Private institutions that receive federal funding must also adhere to federal anti-discrimination laws, such as those applicable under Title IX.

There are some exceptions to this rule. Private colleges and universities that accept government funding or which otherwise engage with government closely may be required to adhere to the First Amendment more closely. State governments may also pass statutes requiring private universities to respect free speech rights as a matter of state law, even when the US Constitution imposes no such requirement. For example, California law applies First Amendment protections to both public and private universities. Congress also has the power to propose and pass federal laws which would require private universities, by statute, to adhere to various free speech guidelines.

Campus Policies

In an effort to balance the educational value of free speech against the value of providing a safe and supportive community for all students, some colleges and universities have considered or adopted policies that regulate or prohibit speech deemed hateful or offensive. Public institutions, however, must be sure that their policies do not contravene the First Amendment. Some policies promulgated by public universities have been found unconstitutional, particularly related to university regulation of offensive speech, bias reporting, and other expressive speech. To learn more about how to evaluate these policies at public universities, see FIRE's [“Correcting Common Mistakes in Campus Speech Policies.”](#)

Private colleges and universities are able to impose even greater restrictions as long as they do so within the bounds of their legal obligations to members of the campus community. Private institutions should also ensure that their policies allow the campus to remain open to a broad range of diverse ideas and perspectives. Students seeking to understand the parameters of conduct on campus should consider both relevant law and university policies.

Time place and manner restrictions are limitations imposed by the government on expressive activity, such as limits on noise, the number of protesters allowed in a public space, or barring early morning or late night protest. The restrictions must leave ample alternative channels for communicating the speaker's message.

Federal Statutes

Beyond the contours of free speech rights afforded by the Constitution and the First Amendment, the two most significant federal statutes regulating speech in higher education are Title VI and Title IX, which prevent discrimination on the basis of race and sex, respectively.

The Office of Civil Rights in the Department of Education has [stated](#) that these federal regulations are “not intended to restrict the exercise of expressive activities protected under the U.S. Constitution.” Rather, they apply only to unprotected speech that constitutes discrimination and harassment and creates a hostile environment. The offensiveness of speech alone is not sufficient to establish that it has created a hostile environment. A hostile environment is created when the harassment is “severe, persistent, or pervasive” and “sufficiently serious to deny or limit a student’s ability to participate in or benefit from an educational program.” Schools are obligated to take action if speech or conduct contributes to a hostile environment.

Title VI

Title VI of the Civil Rights Act of 1964 states that

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

This applies to both public and private schools that receive federal funds.

On December 11, 2019, President Trump issued an Executive Order that would allow Title VI to apply to cases of anti-Semitism on college campuses.

Title IX

Title IX of the Education Amendments Act of 1972 states that

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This applies to both public and private schools that receive federal funds. Title IX's impact on speech has been contentious, with some arguing that its implementation goes too far in its definition of sexual harassment and has a chilling effect on speech, and others arguing that it does not go far enough to protect people from sexual harassment. Under Secretary of Education Betsy DeVos, the definition of sexual harassment under Title IX was narrowed from that used in the Obama administration, and it was mandated that colleges and universities hold live hearings in Title IX cases that allow for cross-examination of all parties.

Hateful Language and Offensive Speech

Hateful language and offensive speech may be subject to punishment in a variety of contexts. However, such speech remains constitutionally protected under the First Amendment, as the United States Supreme Court has regularly upheld. While many countries ban hate speech, the U.S. has taken a different path, adopting no legal definition of “hate speech.” The Supreme Court has consistently ruled that such speech enjoys First Amendment protection unless it is directed to causing imminent violence or unlawful action, or involves true threats against individuals. The principle often invoked instead is that the solution to offensive speech is to engage in counter-speech.

It is important to distinguish between hate crimes and hateful speech. There are various federal and state-level hate crime statutes. For the purposes of data collection, the FBI defines a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity.” Unlike hate speech, all hate crimes are punishable criminal acts that are treated with priority by the federal government, and by almost all states, due to their extreme impact on individuals, groups and society. As the FBI articulates, “a hate crime is a traditional offense like murder, arson, or vandalism with an added element of bias...Hate itself is not a crime.” State-level hate crime statutes are typically “penalty enhancement” statutes, which means they increase the punishment for a defendant if the target of a hate crime is intentionally selected because of his/her personal characteristics.

For more background and analysis, interested readers can read *Hate: Why We Should Resist it with Free Speech, Not Censorship*, by Nadine Strossen, former president of the American Civil Liberties Union (ACLU). Strossen explains in a June 2018 [interview with NPR](#):

“The most effective way to counter the potential negative effects of hate speech — which conveys discriminatory or hateful views on the basis of race, religion, gender, and so forth — is not through censorship, but rather through more speech. And that censorship of hate speech, no matter how well-intended, has been shown around the world and throughout history to do more harm than good in actually promoting equality, dignity, inclusivity, diversity, and societal harmony.”

State Legislation

Since 2017, over 30 states have proposed or passed new laws specifically focused on campus speech. As these debates often prompt heated debate around campus communities, different political actors and free speech groups continue to propose new legislative or regulatory “solutions.” Most of these proposals have been based on a handful of model bills, such as the [Campus Free Expression Act](#) (CAFE), authored by the Foundation for Individual Rights in Education (FIRE), the [Campus Free Speech Act](#), authored by the Goldwater Institute, and the [FORUM Act](#), authored by the American Legislative Exchange Council (ALEC). PEN America has discussed each of these bills in our reports, including [Wrong Answer: How Good Faith Attempts to Address Free Speech and Anti-Semitism on Campus Could Backfire](#) and [Chasm in the Classroom: Campus Free Speech in a Divided America](#).

First Amendment Terms at a Glance

The First Amendment reads: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Freedom of the Press is a core First Amendment principle which protects printing and public circulation of opinions without censorship by the government.

Right to Assemble is a core First Amendment principle which protects the right to peaceful public assembly and protest. The government may impose some restrictions on the right to assemble.

Government (Public) vs. Private Acts refer to different standards to which government and private actors are held when setting regulations that implicate First Amendment rights.

Content Neutral Government Restrictions refer to the government’s ability to impose regulations on free speech without regard to the content or message of the expression.

Prior Restraints are laws or regulations that suppress speech at the discretion of government officials on the basis of the speech’s content and in advance of its actual expression, such as requiring fees or permits as a condition for protesters to engage in peaceful assembly.

Harassment is the act of systematic and/or continued unwanted and annoying actions of one party or a group, including threats and demands. Such activities may be the basis for a lawsuit if due to discrimination based on race or sex.

Defamation is the unlawful act of making untrue statements about another which damages their reputation. In a defamation trial, public figures must prove that the defamation was made with malicious intent and was not fair comment.

Slander/Libel are oral and written forms of defamation, respectively, in which someone expresses an untruth about another that will harm the reputation of the person defamed.

Fighting Words are words intentionally directed toward another person, causing them to suffer emotional distress or incite them to immediately retaliate physically. While this isn’t an excuse or defense for assault and battery, it can form the basis for an assault lawsuit.

Hate Speech has no legal definition in the U.S., making it protected by the First Amendment. Many countries differ in having laws that disallow hateful speech or speech that advocates for or denies genocide.

Advice for Different Speech-Related Scenarios

The following set of advice was developed as guidance for Diversity Officers and their staff facing a generalized set of scenarios. Any true scenario will require considerations of context, policy, the public/private status of the institution, and judgments by the personnel on the ground. This advice is meant to inform those considerations, by offering step-by-step considerations that responding Diversity Officers and their staff should bear in mind.

What to consider when responding to speech-related controversies

Speech-related controversies on campus are often complex and best analyzed through multiple lenses. When confronted with such a scenario, it is essential that Diversity Officers and their staff are prepared to respond nimbly and effectively and to address the concerns of the stakeholders involved. After assessing whether there are any immediate threats to public safety and gathering as much information as possible about the incident, consider utilizing PEN America's three-pronged response framework in developing your response:

Lens 1: Law and policy considerations

Private and public universities are subject to laws differently, but both have legal obligations and their own policies which will shape responses to speech-related incidents. Some questions to consider include:

- What laws and university policies, if any, are relevant to this incident?
- How do they shape the way that Diversity Officers, their staff, or the institution more broadly, should respond?

Lens 2: Community considerations

Campuses are communities. They have histories and stakeholders, bound together by core values like diversity, inclusion, academic freedom, and open inquiry. In responding to incidents involving speech, questions related to community to consider include:

- How has this incident affected the campus community?
- Who are the stakeholders in this incident and to what degree is the institution accountable to them?
- How does this incident fit within the context of other recent events on campus?
- Does this incident challenge the institution's shared values like academic freedom, open inquiry, diversity, and inclusion?
- Has the community had the opportunity to voice their opinions or concerns? If demands are being made, where are they coming from? Consider historical and systemic issues that may contribute to community concerns.
- Who within the community might not be speaking up at all?

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- If appropriate, what actions can you take to help address any fears or concerns community members may feel in response to this incident?

Lens 3: Academic considerations

In addition to considerations of law, policy, and community, responses to incidents involving speech should also be informed by an academic lens, considering colleges' and universities' obligations to academic freedom, open inquiry in the search for knowledge, and education and growth. Some questions to consider from this lens include:

- What academic or pedagogical considerations are relevant? Can this incident be a learning experience?
- How can you ensure that the dialogue surrounding this incident is productive, rigorous, and balanced?
- Will your actions be consistent with the need to foster an intellectual climate for free speech, open inquiry, and dissent?

Different approaches to responding to speech-related controversies

When controversies arise on campus related to speech, there are a range of actions you can take to address the issue. These incidents often illuminate underlying tensions and can also be used as opportunities for reflection and self-evaluation.

Public Statements

When an incident reaches the level of campus-wide controversy, it is important for the university to speak out promptly and clearly. Statements should outline in clear terms what the university's response to the incident will be, a principled justification for that response, and an affirmation of the university's values. Diversity Officers and staff can consider how they can support and facilitate dialogue in response to such statements, which can have an impact on their students.

Forums and Dialogues

Forums and panel discussions can be effective ways of deepening a conversation. But often dialogue in reaction to controversial incidents can easily become flattened and reductive. Creating venues for dialogue that encourage wide participation, discussion of nuance, and promotion of listening and understanding can be effective in de-escalating community tensions, as well as furthering the mission of the university to encourage open inquiry and rigorous debate.

Space for Counter-Programming

Allowing a controversial event to continue under the precepts of academic freedom is in no way an endorsement of the event's content. If an event held on campus is contrary to the university's values or has a negative impact on the community, creating counter-programming can be a way to affirm the community's values and support community members while upholding the tenets of free expression. Diversity Officers and staff can help students to channel their discontent into counter-programming.

Engagement With Affected Communities

A controversy may reveal that certain communities on campus feel marginalized or alienated. Use the opportunity to conduct outreach and learn more about what these communities want from the institution. Ensure Diversity Office staff or teams are equipped with knowledge of campus resources to share and to which they can refer students.

Establishment of a New Task Force or New Resources

If a controversy brings to the fore an issue that requires more systemic change in the institution, it may be appropriate to establish a task force or committee to determine how to address the problem. Similarly, a controversy may highlight a lack of resources for students, faculty, or community members. Diversity Officers and staff can support these institution-wide responses, including by examining ways to establish new resources.

Reassessment of University Policies and Procedures

An incident may also highlight that certain pre-existing policies and procedures are flawed or ineffective, or that the institution lacks relevant policies and procedures that could have been helpful in responding to the incident. The aftermath of a controversy can be a good opportunity to reevaluate existing policy, although a proactive review is even better.

Further Reading:

- Jonathan Friedman, [“When Diversity and Inclusion Clash with Free Speech—and Why they Don’t Have To”](#)

Proactive ways to support free speech and inclusion on campus

Educate

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

Articulate Values

Publicize a statement articulating the institution’s values. Make clear that free speech and inclusion are core to the academic mission, and present the statement as a binding set of principles to which the institution is deeply committed.

Support Speech

Cast the institution as a staunch defender of free speech explicitly and frequently by, for example, defending the right of even controversial speakers to be heard as well as by supporting the right to counter-speech and protest. Emphasize that college is a time for young people to test and debate opinions and to hone their civic voices.

Support Faculty

Stand by faculty when they encounter issues that threaten their academic freedom or sense of well-being in the university community. Consider instituting a system whereby faculty can seek support from administrators

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if they feel their academic freedom is under attack. Ensure that faculty are educated about resources for dealing with discrimination and harassment, as well.

Speak Out

Universities should be empowered to speak out against speech—even protected speech—that conflicts with the institution's values. In clear and unequivocal language, leaders can make the case both for why even deeply offensive speech should be allowed and for why such speech is inimical to campus values.

Facilitate Dialogue

Create opportunities for students, faculty, and staff with opposing views to engage with one another on difficult issues. Programs and activities that facilitate dialogue can reinforce the value of free speech on campus while fostering mutual understanding.

Listen

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

Productive Engagement

Whenever possible, campus leaders, administrators, and faculty should model giving others the benefit of the doubt, debating in good faith, listening with nuance and patience, and considering multiple perspectives on an issue. This approach can set a tone on campus that the institution cares about and listens to its constituents.

Provide Resources

Resources made available to members of the university community have a great impact on the campus climate and can signal the institution's commitment to free speech and inclusion. If resources allow, consider hiring dedicated student-facing staff to generate resources and facilitate programs, and to be attuned to students' concerns.

Ensure Cultural Competence

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

Reckon with the Institution's Past

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

Further Reading:

- Jonathan Friedman, "[Four Simple Strategies for Balancing Free Speech and Inclusion](#)"
- [Engaged Listening Project](#)

How to respond to expressions of hate on campus

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

Verify

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

Listen

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

Consult

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

Weigh

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

Lead with Inclusion

When communicating about instances of hateful speech, starting with a defense of free speech can be alienating for those who feel hurt. It is better to first characterize the hateful speech as morally offensive and only then, and as appropriate, make clear that it is nonetheless a protected form of speech.

Affirm Values

In messages sent out to the campus community or shared on public platforms, assert core values, such as inclusion, tolerance, and mutual respect.

Support

Engage in specific outreach to targeted communities and express support for and solidarity with them. Provide them with information about campus counseling services and resources.

Discipline

Depending on the type of incident, consider whether any disciplinary measures are appropriate, in line with

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campus policies. For hate crimes, harassment, and any other conduct that violates the law, an aggressive disciplinary response is warranted.

Consider Other Responses

Even when disciplinary action is not appropriate, other responses include counseling and education. Student Affairs personnel should work with any relevant campus units that deal with hate or bias to consider and develop a range of ways of responding to hate on campus.

Keep Talking

Create spaces for community reflection and healing. Consider organizing opportunities for community members to speak out against hate. Any formal responses will spark conversation; be as transparent as possible and continue engaging with the community.

Assess

Establish mechanisms to review and evaluate the effectiveness of the university's response.

Further Reading:

- Cynthia Miller-Idriss & Jonathan Friedman, "[When Hate Speech and Free Speech Collide](#)"
- [American Council on Education's guide to hateful incidents](#)

How to respond to student calls to rename a campus building or landmark

There is nothing sacrosanct about the name of a building. Nor is there any right to a particular name. The evolution of words, images, and even certain intellectual assumptions is part of how societies change and not in and of itself cause for alarm. Still, when considering what's in a name, there are steps that universities can take that respect the principles of both free speech and inclusion.

Verify

Gather as much information as possible about the building as well as the reasons that community members want to change its name.

Adopt a Process

It is important to have an agreed-upon, inclusive, consultative process for evaluating possible name changes. Some universities have appointed multi-stakeholder committees to establish these processes and have then appointed additional committees to review specific calls for changes as they arise.

Be Transparent

Publicly acknowledge calls for name changes and be as transparent as possible in the university's response.

Say When

Establish and communicate clear timelines for responding.

Affirm Values

In public statements, communicate clearly whether and how the building's name contravenes the university's contemporary values.

Listen

Create opportunities for the group calling for change to meet in person with university administrators. As much as possible, integrate their perspectives into the decision-making process.

Consult

In addition to the group leading the charge, reach out to and discuss the matter with additional university stakeholders, including other students, student organizations, faculty, and alumni.

Compare

Draw on previous cases, either from your own university or others, when evaluating various courses of action. Whatever your decision, be prepared to defend it.

Reflect

Changing a name need not be interpreted as an erasure of history. Whatever the university's final decision, campus leaders can lessen this fear by creating multiple opportunities to learn about and spur reflection on the building's past.

Support

These kinds of conversations can stir up heavy emotions, so be sure that students and faculty have access to channels of support.

Further Reading:

- [Principles and procedures for renaming buildings and other landmarks at Stanford University](#)
- [Yale University students demand the renaming of Calhoun College](#)

Cautions and tips for bias response systems

One mechanism that many campuses have adopted to respond to hateful incidents are bias response systems, which generally consist of an online system to report incidents of bias to an appointed committee as well as a protocol that allows each complaint to be acknowledged, tracked, and addressed in a timely manner. When done right, bias response systems can be useful mechanisms for responding to hateful speech or discrimination. But they have generated [criticism](#) for their potential to chill free expression by punishing speech that is unfavorable. To minimize that risk, bias response teams should have clearly defined roles that exclude the power to discipline individuals for speech alone.

Specify Roles

Bias response teams should have plainly delineated roles. They can be effective for recording complaints, mediating disputes, educating on free speech protections, and supporting targeted individuals, but they should not have the power to police speech using punitive measures. Further, members of the team should be

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appointed in a neutral manner with set term limits, so as to avoid conflicts of interest with duties and roles of other university offices. Any office with the power to impose disciplinary measures, for example, should refrain from serving on a bias response team.

Define

Concepts like bullying and bias can be defined in overly broad and vague ways, while concepts like discrimination and harassment have legal definitions that must be considered. To avoid the arbitrary enforcement of policies, strive to provide clear, standardized definitions that are consistent with the law.

Be Transparent

Transparent processes can help ensure that bias response systems stay accountable, making them less likely to chill speech. They should also have mechanisms that apply when people feel they have been treated unfairly or when the bias response system has overstepped its boundaries.

Empower

Members of bias response teams must receive specialized training in legal definitions and institutional policies on free speech, discrimination, and harassment. Individuals in these roles need to understand that most speech is protected, though acts of violence and speech that poses an imminent threat are not.

Further Reading:

- [Duke University's bias response advisory committee](#)
- [Students sue University of Michigan over its bias response team](#)

How to respond if you're asked to fire a professor over speech

Academic freedom is a core tenet of higher education, and faculty should be free to push the bounds of knowledge, and explore ideas that might offend, without fear of retaliation.

Verify

Gather as much information as possible about the accusations against the professor and what led to them.

Hear Out

Speak with the professor, hear their perspective, and if other members of the campus community would like to voice their views, create an opportunity for them to do so with the appropriate offices or officials.

Prioritize Speech

Institutions should be careful to avoid any form of discipline or punishment solely for legally protected speech. While private institutions have more leeway in regulating speech, they should still be mindful of academic freedom and set a high bar for punishing expression.

Consult

Reach out to all relevant stakeholders, consult with them, and weigh their input.

Communicate

Whether by campus-wide email, press release, or social media, publish a clear statement of the university's

view of the situation. Emphasize its commitment to faculty's free speech and academic freedom. If a professor's statements contradict the values of the institution, leaders can say so.

Facilitate Counter-Speech

Make sure to provide opportunities for lawful protest and counter-speech for those with opposing views.

Support

Calls for professors to be fired for protected speech can impede their self-confidence, well-being, and productivity. Offer support and reassurance.

Respond

Any disciplinary actions taken against professors for their speech should be based on clear evidence that their language fell outside the legal categories of protected speech. If their conduct or speech crossed a line into harassment, discrimination, or other forms of unprotected speech, punishment may be merited. If the speech falls into a gray area that raises questions about the professor's ability to perform their professional duties, engage the professor directly and consider measures that fall short of formal discipline.

How to support faculty and staff who experience online harassment

This guidance is based on advice contained in PEN America's [Online Harassment Field Manual](#).

Acknowledge

As an institution, acknowledge that online harassment is a real problem that can have real consequences on lives and livelihoods. Take it seriously and encourage your staff and faculty to do the same.

Reach Out

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

Document and Identify

Before taking action, encourage the targeted faculty or staff to document the abuse and, if they are comfortable, share it with the university. Collect information to identify the kind of online abuse taking place. See our guidance on ["Definitions."](#)

Assess

Based on the available information, work with the targeted individual to assess the threat to themselves, the university, and others, like the target's family). Encourage the targeted individual to assess their sense of physical safety – the "Assessing the Threat" section of PEN America's Online Harassment Field Manual offers a good place to start. Depending on the nature of the online abuse and the individual's sense of personal safety, consultations with campus police, legal and security experts, and others may be necessary. See our guidance on ["Assessing the Threat"](#).

Include

Get all targets of the abuse involved in any decisions you make on their behalf, especially those that involve contacting law enforcement or drawing public attention to the abuse.

Communicate

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

Support

Harassment can be detrimental to psychological and physical health. Be sure to offer support to the targeted faculty or staff and to others who are affected. Listen and acknowledge their feelings. Share information about counselling and [other resources](#) for coping with online harassment. Offer to connect them with others at the university who have experienced harassment and expressed a willingness to serve as allies.

Speak Out

Speak out against the harassment and in support of the faculty or staff member's right to free expression and academic freedom, while being mindful of the targeted individual's desire for discretion or publicity. If the faculty or staff member's own speech has diverged from the school's core values, you can distance your institution from that speech while forcefully defending their right to express it.

Reflect

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

Educate

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

Further Reading:

- [University of Iowa's Faculty Support & Safety Guidance](#)

If a student asks for help planning a protest

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

Know Your Rights

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

Inform

Provide students with resources that offer practical guidance, such as PEN America’s [advice on how to plan a peaceful protest](#).

Advise

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

Prepare

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

Further Reading:

- [Six Tips from Successful Protests](#)

Guidance for administrators thinking about safe spaces

Universities have an obligation to foster an environment of respect in which violent, harassing, and reckless conduct does not occur. However, it is neither possible nor desirable for campuses to offer protection from all ideas and speech that may cause a measure of damage. Designating certain spaces as “safe” for particular groups on campus can ensure that all students have a place where they can feel free to share ideas and air grievances that they may otherwise feel uncomfortable expressing.

Provide Real Resources

Short-term safe spaces with resources for stress reduction and trauma response can have their place; but these cannot replace robust options for mental health treatment and accessible counseling.

Don’t Dismiss

Dismissing safe spaces as coddling or infantilizing fails to recognize the very real toll that harmful language, microaggressions, and systemic inequalities can take on students. In order for campuses to remain committed to both free speech and inclusion, they must find ways to help address harmful speech that do not involve sanctions or punitive measures. Providing resources for students who experience the effects of harmful speech is necessary for maintaining that balance.

Equip

Providing some safe spaces where students can feel safe to ask questions, express their ideas, and be with their communities can better equip them to engage with more challenging ideas within the campus at large.

Make Them Voluntary

Any space designated as “safe” on campus should be one that is entered voluntarily. The campus as a whole, and segments thereof that are intended for all—such as classrooms, quads, and cafeterias—must be kept physically safe but intellectually and ideologically open.

Adopt a Nuanced Approach

Allowing certain spaces to be designated as safe does not require surrendering the ideals of free speech on campus, nor does keeping public spaces ideologically open mean abandoning all sensitivity to diversity and inclusion. As Wesleyan president Michael S. Roth has said, “Stop talking about [safe spaces] as if they were part of a zero-sum ideological war.”

Reflect

If students feel that safe spaces on campus are necessary, it may be worth considering if there are any systemic issues or problems in the campus climate that contribute to students feeling unsafe or unwelcome. Think about other steps you can take to address those issues.

Further Reading:

- [PEN America’s principles on safe spaces](#)
- [And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities](#)
- [Michael S. Roth, “Don’t Dismiss Safe Spaces”](#)

Case Studies

Georgetown University grapples with slavery, memory, and reconciliation

In November 2015, student activists at Georgetown University [held a sit-in](#) at President John J. DeGiogia's office, demanding that the school publicly reckon with its history of racism. Their demands included changing the name of a campus building from Mulledy Hall, which memorialized a man who had authorized the 1838 sale of slaves to pay off the school's debt, to Building 272, which would commemorate [the 272 slaves that Georgetown sold](#). A rally of around [250 students and faculty](#) was organized. Activists also called for the creation of a fund to hire more black faculty and for the renaming of another building whose namesake was associated with the slave sale. In response, Georgetown administrators created the [Working Group on Slavery, Memory, and Reconciliation](#) to investigate the history of the sale and its implications for the campus today. The group produced a [104-page report](#) providing detailed background, discussion, and recommendations for how the university could recognize and address its history and legacy. In April 2017, Georgetown renamed the building after Isaac Hawkins, one of the slaves sold by the school. The university also took a series of other [measures](#) to strengthen its commitment to racial justice, including creating a Department of African American Studies, hiring new faculty, and the establishment of a Working Group to plan for an Institute for the Study of Racial Justice.

PEN America Analysis

Following the efforts of campus organizers, Georgetown administrators took clear steps to confront the university's historical involvement in oppressive and racist structures and institutions. The working group convened by the university examined the issue in great depth and detail, as evidenced by the final report. The report also investigated the socioeconomic status of descendants of the 1838 sale and local African Americans living near the Georgetown area. Overall, the working group and its recommendations dovetail with [PEN America's Principles on Campus Free Speech](#), constituting an effort to "look hard at how physical barriers, historical traditions, inequalities, prejudices, and power dynamics can weigh against openness." By listening to the concerns and demands of their constituents and taking significant steps to address them, officials have helped to ensure that Georgetown remains an inclusive campus for all.

Further Reading:

- [Working Group report](#)
- [Georgetown University – Slavery, Reconciliation, Memory project website](#)

Similar Cases:

- [Brown University's Steering Committee on Slavery and Justice](#)
- [The Lemon Project: A Journey of Reconciliation at William & Mary](#)

Controversy over painted bridge at the University of Minnesota-Twin Cities

Straddling the University of Minnesota's Twin Cities campus, the Washington Avenue Bridge has become a locus of annual controversy, especially in the wake of Donald Trump's election. Student groups gather every fall to paint the panels that line the bridge's pedestrian walkway, an opportunity that the university's College Republicans [took in 2016](#), devoting a panel to the phrase "Build the Wall" and another to the phrase "Trump Pence 2016." Within 24 hours, the group's panels were graffitied over with multiple tags, and the only legible message was "Stop White Supremacy," rendered in gold. The next day, the university's president, Eric W. Kaler, sent [a campus-wide email](#) defending the College Republicans' right to voice their opinion, arguing that "Build the Wall" must be protected as "free, political speech," and encouraging those who found it distasteful to counter it by speaking out in response. That afternoon, nearly 150 students did just that, [gathering on the bridge](#) in protest. A coalition of academic departments released a [statement](#) saying that the university's response was inadequate given the "inherent violence" within this slogan. In the years since, the panels on the Washington Avenue Bridge have been a consistent flashpoint, the site of an [annual battle](#) among student groups with differing political and social ideologies.

PEN America Analysis

The controversy at the University of Minnesota is instructive because it highlights how campuses have become a proxy for national political and social conflicts in which speech has taken on great significance and in which neither side is willing to cede an inch—or a mural—to the other. To one camp, the paint wars were just another example of how college campuses had become inhospitable to free speech, with left-leaning populations quick to censor conservative ideas. On the other side were students and faculty who, amid a pitched presidential campaign marked by charges of sexism, racism, and xenophobia, were acutely sensitive to bigoted overtones in messages appearing on campus. While PEN America agrees with President Kaler's suggestion to counter offensive speech with more speech rather than with vandalism, his statement failed to adequately address the concerns of students and faculty about the anti-immigrant and discriminatory overtones of the messages. This is a case where a robust defense of free speech should have been accompanied by an acknowledgement of these feelings and a forceful assertion of the university's values of inclusion.

Further Reading:

- [Statement on Paint the Bridge event from President Eric W. Kaler](#)
- [Statement of solidarity from the Department of Chicano and Latino Studies, et al.](#)

Similar Cases:

- [Swastika vandalism of mural at Duke](#)
- [Mural controversy at USC](#)

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

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

PEN America Analysis

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

Further Reading:

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

Similar Case:

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

Sample Statements

Statement on Milo Yiannopoulos at New York University

Background

In October 2018, Professor Michael Rectenwald [invited](#) professional provocateur Milo Yiannopoulos to speak to his class at New York University (NYU) on the “politics of Halloween.” Amid dissent from the community, John Beckman, senior VP for public affairs, published a statement explaining that Yiannopoulos would be allowed to speak as invited. Subsequently, Mayor Bill de Blasio [requested](#) that the university delay the visit for public safety reasons, considering nearby Halloween parades and NYPD assessments of risk. President Andrew Hamilton complied and the talk was said to be postponed, although it ultimately never took place.

Excerpt from Beckman’s Statement (October 29, 2018)

“Many institutions in our society speak with a single voice. That is not true of universities. The role of universities is to be a forum for many voices and many ideas, sometimes even ideas that are repudiated by much of the community. A controversial speaker’s appearance at a university must be understood not as the institution’s endorsement of the speaker’s views, but as the fulfillment of its commitment to the free exchange of ideas.” See the [full text](#).

What we like about this statement:

- Is clearly based in values, grounding the decision to permit Yiannopoulos to speak in the ideal of academic freedom.
- Acknowledges that some of Yiannopoulos’s views are at odds with the institution’s values.
- Makes a strong case that the free exchange of ideas is paramount even when ideas offend.

Similar Statement:

- [Statement on Richard Spencer at the University of Florida](#)

Statements on hateful incidents at Colorado State University

Background

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

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

“Our Colorado State community stands firmly against anyone who seeks to intimidate, incite violence and deprive others of their Constitutional rights. We hold up our Principles of Community in counter to anyone who

seeks to divide and terrorize. And while we cannot shield anyone from words or ideas that may be damaging and destructive, we will stand with those targeted so that no one on this campus will stand alone. And we will respond with utmost seriousness when there are threats to the safety of anyone on our campus.” See the [full text](#).

What we like about this statement:

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

Similar Statements:

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

Statement on racist incident at the University of Oklahoma

Background

In early January 2019, a video of a University of Oklahoma (OU) student wearing blackface and making racial slurs circulated across the internet. In response, the school [released a statement](#) denouncing the action but did not immediately specify any disciplinary measures. Following a [rally](#) held by students a few days later, the university’s president, James L. Gallogly, issued another statement to update the community on steps that the school would take to address racism.

Excerpt from President Gallogly’s Initial Statement (January 18, 2019)

“We were made aware of an inappropriate and derogatory video circulating on social media of two OU students. The University of Oklahoma abhors such conduct and condemns the students’ actions and behavior in the strongest terms possible. While students have the freedom of expression, the negative impact of such conduct cannot be underestimated.” See the [full text](#).

Excerpt from President Gallogly’s Follow-up Statement (January 25, 2019)

“It has been seven days since a racist incident by OU students reignited an important dialogue on our campus about racism. I use the word reignited because we have traveled this path before in 2015. And, like our students who felt the disrespect and anger from this incident, I want to do everything in our power to eradicate racism and disregard for the inherent value of every person.” See the [full text](#).

What we like about these statements:

- Clarify that students have a right to free expression while also emphasizing that words have a serious impact.
- Acknowledge the history of racism on the campus, contextualizing the most recent incident as an ongoing challenge rather than a one-off.
- Showcase President Gallogly’s willingness to listen to and engage with the student body, reflecting a commitment to better serve the campus community as a whole.
- Clearly detail the measures being taken to address racism on the campus.

Similar Statement:

- [University of Georgia condemns racism](#)

Swastika graffiti at Duke

Background

In the wake of a deadly mass shooting at the Tree of Life Synagogue in Pittsburgh, Jewish students at Duke gathered to paint a mural to memorialize the victims. Days later, the mural was [defaced](#) with a large, red swastika. In a letter to Duke President Vincent Price, one student asked that the administration do more to support Jewish students in the wake of growing anti-Semitism. “I know that you cannot stop anti-Semitism,” she [wrote](#), “but you can make students more aware of what is happening on campus.” President Price officially responded to the incident both in a published statement and in a campus-wide email.

Excerpt from President Price’s Statement (November 19, 2018)

“That such a craven and cowardly act of vandalism—a desecration of a memorial to individuals who were killed because they were Jewish and practicing their faith—should happen anywhere is extremely distressing. That it should occur in such a visible, public location at Duke should be a matter of grave concern to us all.” See the [full text](#).

What we like about this statement:

- Not only condemns the single act of vandalism but also educates the campus community on the rising number of anti-Semitic and hateful incidents in the United States at large.
- Details the steps that the university would take, including providing additional security at the university’s Jewish center and at the location of the mural and convening members of the Jewish community and public officials to further review the matter.
- Condemns the hateful act and acknowledges the harm it caused.
- Pledges to protect the safety of Jewish students and calls on the rest of the community to confront anti-Semitism and other forms of hate.

Similar Statements:

- [Columbia University denounces racism](#)
- [American University responds to hate](#)

Further Reading:

- [American Council on Education's guide to hateful incidents](#)

Professional Profile



NEIJMA CELESTINE-DONNOR, MSW, LCSW-C

Director,

Bias Incident Support Services (B.I.S.S.) | University of Maryland

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

Inclusion is critical to college campuses because it seeks to actively invite the contribution and participation of all people and cultivates a culture of belonging particularly for marginalized persons. Free speech allows students to pursue knowledge involving a wide range of content and also allows a space for marginalized voices to be heard.

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

We acknowledge that free speech is a right, while also acknowledging that folks exercising their free speech, can have an impact on others. We facilitate dialogue, trainings and discussions where we discuss that the legality of an action often times does not mitigate the impact. That way, we nurture a campus climate that does not get bogged down in fighting over free speech, but one that focuses on impact, healing and building community.

What have been the toughest challenges in doing this work? How have you been able to successfully navigate these challenges and/or learn from them?

Navigating the fact that when it comes to free speech that some people have more opportunities to be heard, to speak and to disseminate information. Through our trainings and dialogue program The Circle, we facilitate discussions where we challenge folks to acknowledge that power matters when it comes to free speech.

Getting folks to understand that while universities must remain open to all ideas, remaining open to all ideas doesn't mean that you must accept all ideas are equal on merit, especially if you value diversity and inclusion. We promote the importance of moral leadership. That involves working with leaders and getting them to understand that speaking out against an incident, does not equate to speaking out against free speech. It means that they are speaking out against the hateful ideas and actions including those that are racist, anti-black and xenophobic

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

- 1.** Take proactive measures by engaging in ongoing relationship building, not just when incidents happen. That way, those relationships that you have time nurturing and building, particularly with students, can be activated in times of crisis
- 2.** Acknowledge the impact by reaching out to those who may have been impacted by the incident and acknowledging any harm they may have experienced.
- 3.** Utilize processes in restorative practices to process incidents with all parties involved.