



# **Protecting Freedom of Expression on Campus In the Face of Intolerant Behavior**

**A Conceptual Model for University Administrators**



Illustrative photo – Shutdown of a 2017 pro-Israel event by protesters at the University of California, Irvine who entered the event and shouted loudly and continuously, explicitly stating to speakers, “You people...should not be allowed on this f\*\*\*\*\*g campus!” The event was effectively ruined and attendees and speakers had to be escorted safely out by police.

Source Credit: Gary Fouse

# Introduction

Our campuses today are being challenged by profoundly intolerant behavior, whose goal is to prevent some individuals and groups from expressing their opinions, beliefs or identity, or fully participating in campus life. Speakers are being prevented from speaking, and students and faculty are being vilified, threatened, and in some cases even harassed or assaulted, because of what they believe, who they are, or who they are perceived to be.

To make matters worse, school administrators often address intolerant behavior with a double standard, responding promptly and vigorously when behavior is directed at some students while ignoring or downplaying similarly intolerant acts directed at other students. For many, this has created a sense of inequity and increased vulnerability, which has led to further suppression of students' willingness to freely express themselves.

Although our organization focuses on protecting Jewish students from intolerant behavior that is anti-Semitic, we believe our mission is best accomplished when all students are equally protected. Therefore, this proposal encourages the adoption of adequate and equitable responses to all forms of intolerant behavior, in order to protect each and every student's rights to freedom of expression and full participation in campus life, regardless of opinion, belief or identity.

# Key Concepts of this Proposal

- **Protecting Student Rights:** The University has a responsibility to protect every student's rights to freedom of expression and full participation in campus life, and it must carry out its responsibility in two ways:
  1. By prohibiting the University from impeding an individual's or group's expression that is protected under the First Amendment;
  2. By prohibiting peer-on-peer intolerant behavior that prevents an individual or group from expression protected under the First Amendment, and by prohibiting illegal intolerant behavior (e.g. harassment, overt discrimination) that impedes an individual or group from fully participating in campus life.
- **Treating All Students Equally:** The University should carry out its responsibility equitably. This means that every student should be afforded the same freedom of expression and protection from intolerant behavior, regardless of opinion, belief or identity.
- **Educating Students About Rights & Responsibilities:** The University should ensure that all students are aware of their rights to freedom of expression and full participation in campus life, as well as their responsibility to avoid exercising their rights in a way that infringes on the rights of others.

# The First Amendment and the Protection of All Students' Freedom of Expression

Freedom of thought, inquiry and expression are not only essential pillars of the University, they are fundamental rights of all members of the University community, protected under the First Amendment of the U.S. Constitution. These rights include the freedom to express opinions; to hear, express and debate various views, no matter how unpopular; and to voice criticism. They also include the rights that are concomitant with the freedom to full participation in University life more broadly, such as the freedom of association and assembly.

The University has a solemn responsibility to protect the constitutional rights of each and every student, particularly when others attempt to restrict these rights. Behavior that substantially interferes with the ability of any individual or group to assemble, speak, and share or hear opinions, or otherwise impairs the freedom to fully participate in campus life, must not be tolerated.

While First Amendment protections apply only to public colleges and universities, in the interest of safeguarding the freedom of thought, inquiry and expression so vital to the academic endeavor, private schools should also use the First Amendment as the principal standard for determining whether expression ought to be protected or restricted.

## Intolerant Behavior that is Not Protected By the First Amendment

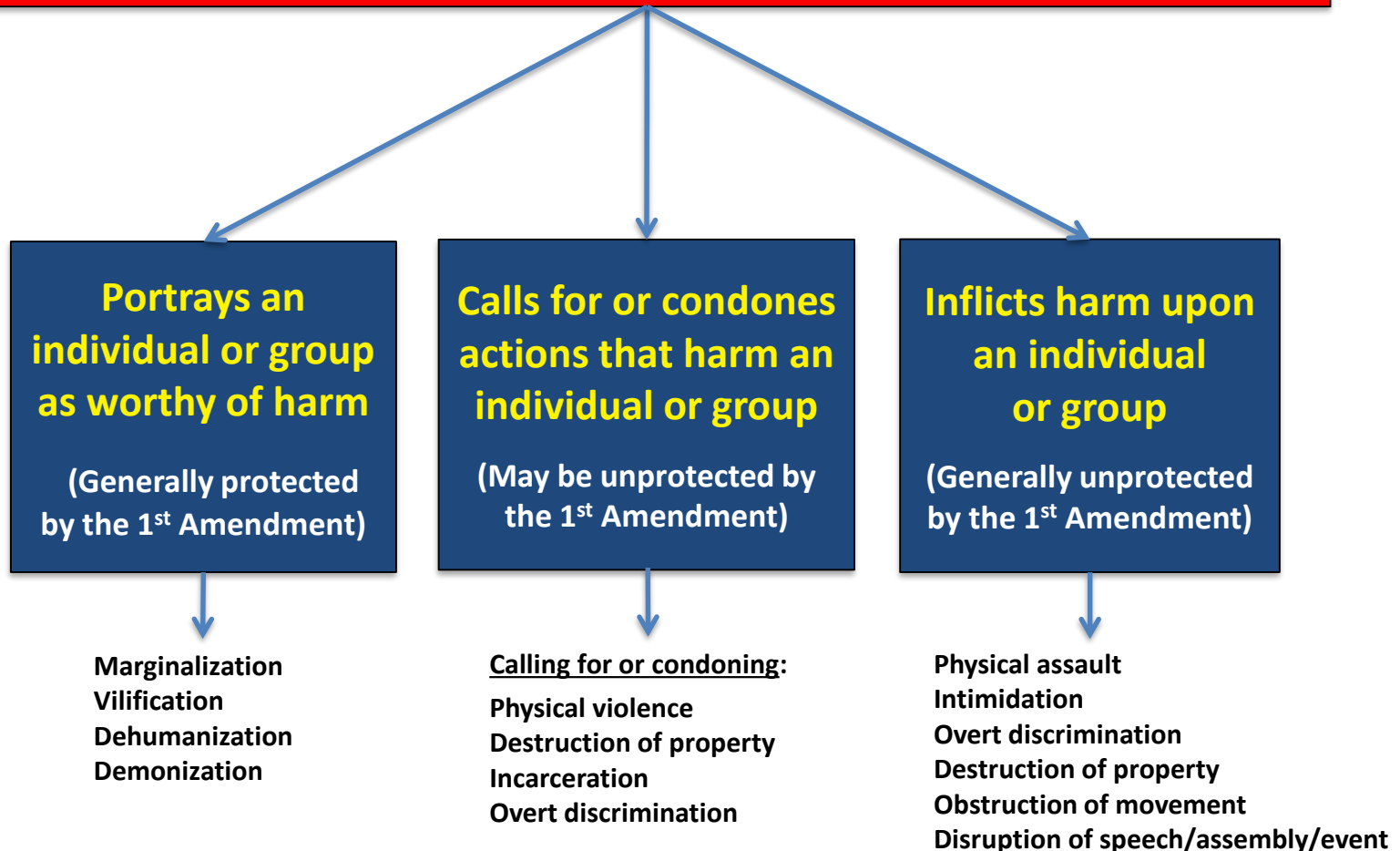
Although the First Amendment protects all students' freedom of expression, the University may restrict or prohibit speech or expressive behavior that violates the law or substantially impairs the mission and intellectual life of the University. The following intolerant behaviors are generally **unprotected** by the First Amendment:

- **Expressive behavior or speech that inflicts harm upon an individual or group**, including physical assault, intimidation, destruction of property, more than minimal obstruction of movement, more than symbolic disruption of speech or assembly, overt discrimination, and harassment;
- **Speech or expressive behavior that genuinely threatens an individual or group** with real and imminent harm; and
- **Speech or expressive behavior portraying others as worthy of harm**, which meets the legal threshold for **defamation**.

# What is Intolerant Behavior?

## Intolerant Behavior

Speech or expressive behavior that seeks to prevent an individual or group from expressing their opinions, beliefs or identity





# Intolerant Behavior: Portraying Individuals or Groups as Worthy of Harm (Generally protected by the 1<sup>st</sup> Amendment)





# Intolerant Behavior: Calling for or Condoning Actions that Harm Individuals or Groups

(May be unprotected by the 1<sup>st</sup> Amendment)



# Intolerant Behavior: Inflicting Harm on Individuals or Groups (Generally unprotected by the 1<sup>st</sup> Amendment)



- A homosexual student at Pennsylvania State University was violently assaulted after being told, "You're gay. I hate gays."
- An African American student at San Jose State University was racially bullied by his 3 roommates, who clamped a bicycle lock around his neck and decorated the suite with racist epithets.
- The dorm room door of a conservative student at the University of Michigan was vandalized with angry slurs, an image of the devil, as well as eggs, gum and hot dogs following a conservative article he penned in the campus newspaper.
- An Orthodox Jewish student at CUNY Medgar Evers College was punched in the face and told, "Leave the school, you Jew."



- At UC Berkeley, violent protests resulted in the cancellation of an event with a controversial speaker.
- An Asian USC student was called the racist and homophobic slur "Ching chang chong motherf--- gay" while being pelted with eggs.
- A number of Muslim students at the University of Kansas reported being harassed and assaulted, including by having food thrown at them.
- A pro-Israel student group's event at UC Irvine was disrupted by members of an anti-Zionist student group, who physically and verbally intimidated attendees, loudly chanted "Intifada, Intifada," and threatened a student attempting to enter the event. Police had to escort attendees out of the event for their own safety.

# Recommendations for Protecting Freedom of Expression And Addressing Intolerant Behavior

## **Part A: Review, Update and Enforce Policies, Procedures and Protocols**

- Review all campus policies and procedures regarding the protection of freedom of expression and the prohibition of intolerant behavior, including policies pertaining to general student behavior, harassment, bias/discrimination, tolerance/respect/civility, bullying, and protest/demonstration. Revise as necessary to ensure that policies:
  - Use state and federal law as the standard of required behavior, but go beyond the letter of the law in the cases where legal protection is limited to specific classes of students, in order to guarantee that all students' freedom of expression and civil rights are equally protected, regardless of identity, opinion or legally protected status;
  - Apply prompt and appropriate disciplinary measures when any individual or group engages in behavior that abrogates the freedom of expression or civil rights of others, up to and including suspension and expulsion for individuals, and the loss of university approval for groups. Disciplinary measures must be applied strictly on the basis of behavioral considerations, without respect to the identity, opinion or legally protected status of perpetrator or victim.
- Develop protocols to handle expression that is intolerant but constitutionally protected. Whether the school decides to handle such expression by loudly condemning it or by taking a more hands-off approach, it should be addressed in an equitable manner for all students, without regard to the identity or legally protected status of those responsible for the objectionable speech, or those who are offended by it.

# Recommendations for Protecting Freedom of Expression And Addressing Intolerant Behavior

## **Part B: Inform and Educate the Campus Community**

- Make public and disseminate widely in the campus community a formal statement from the University president or chancellor which contains the following:
  - Affirmation of the importance of freedom of expression to the University, and the University's commitment to promoting and not stifling it;
  - Assurance that all students will be equally protected from intolerant behavior that violates their freedom of expression or their right to full participation in campus life;
  - Explanations of the intolerant speech and expressive behavior that violates University policy and the law, and is liable to disciplinary action; and
  - Descriptions of all University policies, procedures and protocols that protect freedom of expression and prohibit intolerant behavior, along with a commitment to their equitable enforcement for all students, regardless of identity, opinion or legally protected status.
- Develop educational and training programs that can:
  - Help members of the campus community to be aware of all campus policies and procedures regarding intolerant behavior;
  - Teach and encourage the expression of a wide range of views in a productive and respectful manner;
  - Instill an appreciation for individual dignity and communal responsibility; and
  - Inculcate an understanding of and appreciation for the First Amendment and its critical role in supporting the academic mission of the university.

# Resources

- University of California Regents' - [Statement of Principles Against Intolerance](#)
- University of California, Davis - [Freedom of Expression Working Group Report](#)
- University of California, Davis - [Expressing Disagreement: Scenarios and Civil Disobedience](#)
- University of Chicago - [Report of the Committee on Freedom of Expression](#)
- University of Chicago President Robert J. Zimmer – [Free Expression and Campus Life](#)
- Princeton University – [Statement on Freedom of Expression](#)
- Purdue University - [Statement on Commitment to Freedom of Expression](#)
- Michigan State University – [President's Statement on Free Speech Rights and Responsibilities](#)



## For More Information

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