

Sample Statement for University Leaders¹

A Companion Document to “Protecting Freedom of Expression on Campus In the Face of Exclusionary Behavior”

1. The importance of freedom of expression and the University’s commitment to promoting it

Freedom of expression and freedom of inquiry are paramount in a University and form the bedrock on which the University is founded. These freedoms are uniquely important to the University as they bring about a free interchange of ideas integral to the University’s fundamental mission of teaching, research and public service. Without a vibrant commitment to free and open inquiry and expression, a university ceases to be a university.

Therefore the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

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. 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.

¹ This Sample Statement draws liberally from the following documents: The University of Chicago’s “Report of the Committee on Freedom of Expression”; Purdue University’s “Commitment to Freedom of Expression”; and the University of California’s “Regents Statement of Principles Against Intolerance.”

The University is committed to guaranteeing all members of the University community the broadest possible latitude to speak, write, listen, challenge and learn, and the freedom to fully participate in campus life.

2. Ensuring all students will be equally protected from conduct that violates their freedom of expression and the civil rights associated with it

As a corollary to the University's commitment to ensuring each student's freedom of expression and the protection of the civil rights associated with it, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not significantly obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. Nor may they impede any student's right to full participation in campus life.

Indeed, the University has a solemn responsibility to protect the rights of each and every student to freedom of inquiry and expression and full participation in campus life when others attempt to restrict these rights. Conduct that substantially interferes with the ability of any individual or group to assemble, speak, and share or hear the opinions of others, or otherwise impairs the mission and intellectual life of the University, will not be tolerated.

To this end, the University is committed to enforcing relevant federal and state laws that protect the rights of members of the University community to free expression and full participation in campus life. These include laws pertaining to freedom of expression such as the First Amendment to the United States Constitution and, in California for example, Section 2 of Article 1 of the California Constitution, as well as laws pertaining to freedom from harassment and discrimination in higher education, such as Title VI of the 1964 Civil Rights Act and, in California, the Equity in Higher Education Act of the California Education Code (Sections 66250 et seq.), and other civil and criminal laws.

It is important to point out that while laws prohibiting harassment and discrimination in higher education may be limited in their jurisdiction to the

protection of individuals who share certain characteristics such as race, color, national origin or disability, **the University is committed to applying the same stringent standard of protection prescribed by federal and state law to *all* students at the University.** For to the extent that harassment and discrimination can restrict any student's freedom of expression and full participation in campus life, protection from such conduct must be afforded to all students equally.

3. Restricting expression that violates the law or impairs the mission and intellectual life of the University

Although the University is committed to promoting freedom of inquiry and expression, it may restrict or prohibit speech or expressive conduct² that violates the law or substantially impairs the mission and intellectual life of the University. The following behaviors are generally unprotected by law and will be subject to disciplinary action under University policy:

- Expressive conduct 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 discrimination³
 - Harassment⁴
- Speech or expressive conduct that threatens an individual or group with real and imminent harm
- Speech or expressive conduct portraying others as worthy of harm, which meets the legal threshold for defamation.

² Expressive conduct, also known as “symbolic speech,” consists of actions that purposefully and discernibly convey a particular message or statement to those viewing them and are generally protected by the First Amendment.

³ Discrimination refers to unfair or unequal treatment of an individual or group that denies them full freedom of expression or participation in campus life.

⁴ The Supreme Court has defined peer-on-peer harassment in the educational context as conduct that is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources.”

In addition, the University may reasonably regulate in a content-neutral way the time, place, and manner of expression in order to ensure that it does not disrupt the ordinary activities of the University.

However, the above limitations on expression are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas.

4. University rules that have to do with exclusionary behavior and the disciplinary action that may be taken if they are violated:

Here are examples of one state university's policies that protect students from the abrogation of their rights to freedom of expression and full participation in campus life:⁵

- RP 3303: Policy on Employee and Student Protections Related to Student Press and Student Free Speech Rights provides that students shall not be subject to discipline on the basis of protected speech but notes several reserved areas of University authority, including to establish and enforce non-discrimination policies.⁶
- Several provisions of the Policies Applying to Campus Activities, Organizations and Students (PACAOS)⁷ establish expectations for the conduct of students as members of the University community and provide for discipline of students; especially relevant grounds for discipline include:
 - 102.04 addressing damage to property of University or others on University premises
 - 102.08 addressing physical abuse, assault and threats of violence
 - 102.09 addressing harassment so severe and pervasive as to substantially impair a person's access to University programs effectively denying equal access
 - 102.10 addresses stalking behavior making a credible threat of intent to cause a person to fear for his or her safety where it alarms, torments or

⁵ These policies were culled from the University of California's policies concerning freedom of expression and student conduct.

⁶ <http://regents.universityofcalifornia.edu/governance/policies/3303.html>

⁷ <http://policy.ucop.edu/doc/2710530/PACAOS-100>

- terrorizes an individual and serves no legitimate purpose (such as self-defense) (also 102.24)
- 102.13 addresses obstruction of teaching, research, administration, disciplinary procedures or other University activities
 - 102.14 addresses disorderly conduct
 - 102.15 addresses disturbance of the peace and unlawful assembly
 - 105.00 provides for following types of student discipline: warning/censure, probation, loss of privileges and exclusion from activities, exclusion from areas of campus or University functions, suspension, dismissal, restitution, revocation of awarding of degree and also provides for interim suspension during an investigation and/or conduct proceeding

As noted above, the policies protecting freedom of expression should apply to and be enforced equally for all students, regardless of their identity, opinions or legally protected status. Furthermore, any student who violates one or more of these policies should be held to the same behavioral standards and subject to the same disciplinary procedures as all other violators, regardless of his or her identity, opinions or legally protected status.

5. Protocols for dealing with conduct that is protected but exclusionary

Although the University will only act to restrict speech and expressive conduct that violates the law or is otherwise directly incompatible with the functioning of the University, occasionally student expression which is protected under the law and does not violate University policy is nevertheless highly offensive or objectionable to one or more members of the campus community.

The University cannot commit to responding to every instance of objectionable but protected speech or expressive conduct, nor is it advisable to do so. However, whether campus administrators decide to handle such expression by loudly condemning it or by taking a more hands-off approach, the University will strive to address objectionable but protected speech and expressive conduct in an equitable manner for all students, without regard to the identity, opinions or legally protected status of those responsible for the objectionable speech, or those who are offended by it.