

# FREQUENTLY ASKED QUESTIONS ABOUT FREE SPEECH ON CAMPUS

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# Frequently Asked Questions About Free Speech on Campus

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## What is ADL's position on free speech on campus?

ADL firmly believes that our country's colleges and universities serve as laboratories for the exchange of differing viewpoints and beliefs, and the First Amendment allows for such free flow of thought. As part of that, offensive, hateful speech must also be protected by the Constitution. However, university administrators and campus stakeholders have a responsibility to use their own expressive rights to challenge and confront heinous ideas, rather than attempt to stifle discussion.

Hateful speech has a detrimental impact on campus climate and must not go unanswered. It is critical that campus leaders speak out vociferously, immediately, and directly when hateful rhetoric comes to their campus.

Just as speakers have a right to express their views, campus administrators have a First Amendment right to counter hateful messages as well as a responsibility to ensure the safety and inclusivity of their campus.

## What is the source of our free speech rights?

Free speech rights emanate from the First Amendment to the United States Constitution and from state constitutions. The U.S. Constitution applies to all public/state colleges and universities. It serves as a floor for individual rights, not a ceiling. State constitutions may grant more robust free speech rights than the federal Constitution, but never fewer.

## Is there a distinction between private and public universities?

Unlike public universities, private schools are not directly bound by the First Amendment (except in California). They have much more leeway to limit speech; however, many private institutions promise freedom of expression in their promotional materials and in student conduct policies.

## Is all speech protected?

**No.** Certain types of speech—including obscenity, defamation, invasion of privacy, threats, harassment, and incitement to violence—are not protected by the First Amendment.

Campuses often confront situations in which invited speakers are shouted down by protesters who do not share their perspective. This is often referred to as the “heckler’s veto.” It infringes on the free speech rights of the speaker and listeners and is not protected by the First Amendment.

## Under the First Amendment, is hate speech protected speech?

**Yes.** Hate speech is protected speech. A university's ability to limit a speaker based on the content of the speaker's message is extremely limited.

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## What types of restrictions on protected speech can a public university impose?

Courts typically consider public university campuses to be limited/designated public forums. Therefore, universities can place content-neutral restrictions on the time, place, and manner of speech as long as they are reasonable. For example, a policy stating, “Speakers may use amplified sound on the quad between noon and 1 p.m.” meets the content-neutral restriction requirement because the time (noon to 1 p.m.), place (quad), and manner (amplified sound) restrictions are unrelated to the content of the message.

In contrast, it is very difficult for campus officials to impose restrictions based on the content of the speaker’s message. To do so, the university must be able to demonstrate that restricting the content of the speaker’s message is narrowly tailored to serve an important university function.

Universities should have clear policies and guidelines about free speech and should ensure that campus stakeholders and outsiders who wish to visit the university know and understand the campus permitting and rally policies.

## How can a university protect the free speech rights of protestors and counter-protestors?

Just as a speaker has a constitutional right to express his or her views, those who disagree with a speaker have a right to express their opposition. University policies should give all sides an opportunity to be heard while maintaining order and security. Before a controversial speaker comes to campus, administrators should make sure that student groups on all sides of an issue understand the relevant policies and procedures. During an event, a university can reduce tensions by sponsoring alternate forums, structured dialogue, and anti-bias training.

## May public schools have different requirements for outside speakers than for students, faculty, and other members of the campus community?

**Yes.** University administrators are generally permitted to adopt regulations for speech by outsiders that are more restrictive than the rules applied to students and faculty. Public universities are recognized as special enclaves devoted to higher education, and they can therefore preserve their limited facilities and resources for students, faculty, and employees. At the same time, rules for outsiders must be applied consistently without regard to the speaker’s viewpoint. Examples of permissible but more restrictive criteria include requiring outsiders to be invited to campus by a faculty member or student group, or requiring that they reserve a space in advance.

## Can a public university deny an invited speaker a platform because of safety concerns?

While safety is certainly an important consideration, when struggling with whether or not to allow “lightning rod” figures onto campus, a university cannot deny a speaker merely based on evidence that protesters are likely to become unruly or possibly even violent. If a university denies a speaker access to campus, it should be prepared to present specific information about the speaker’s history of advocating violence and/or proof that the speaker’s followers are likely to be violent. This is an emerging issue, and there is currently little guidance about what type or amount of proof would persuade a court.

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## How can universities respond to constitutionally-protected speech that is offensive and hurtful to members of its community?

While hate speech may be protected, it has a harmful impact and must not go unanswered by university leaders, faculty, and staff. The most effective responses to hate speech are timely, specific, and direct. This requires being equally concerned about instances of bias directed against any group on campus. An effective response assures members of the community that the campus is a safe and inclusive place.

## What about free speech zones?

Some universities have created “free speech zones,” limited areas on the campus where students can exercise their expressive rights. Typically, such free speech zones require pre-registration and can only be used at certain times and/or certain days.

While free speech zones may look like content-neutral restrictions, some have been found to be overly restrictive based on the size of the zone when compared to the entire campus and the number of students on campus.

**NOTE:** This FAQ is for informational purposes only. It is not intended and should not be read to provide or constitute a legal opinion on the part of the Anti-Defamation League.