



Campus Freedom of Speech

Executive Summary

- Campus Speech Codes are in violation of the First Amendment of the US Constitution.
- Existing Speech Codes are too broad and vague.
- Colleges/universities should be places for exchange of ideas, thoughts, discussion and debate. Campus Speech Codes restrict this.
- Due process is not always given to the accused.
- Students can be accused of violating speech codes because of a mere perception of harassment.
- Speech Codes may restrict the expressions of hate, but do not stop the hate. Discourse is more effective.
- Students and taxpayers who do not agree with the viewpoint protected by Campus Speech Codes are forced into compliance with them and that is censorship.

Overview

The development and implementation of Campus Speech Codes began in the 1980s and 1990s as an answer to increasing discrimination and harassment on college campuses. These policies prohibit speech that could be deemed offensive to any person or group based on race, national origin, age, disability, religion, gender, sexual orientation, etc. Instructors who discuss controversial material or use words that can be perceived as offensive, limiting areas where differing opinions can be expressed, safe zones, etc. are included under the of the general topic of "Speech Codes".

The intention of such codes is to foster a productive learning environment where public speech, behavior, harassment or threats do not inflict emotional distress on the targeted persons. According to FIRE, the Foundation for Individual Rights in Education, one in six college campuses have free speech zones where the freedom to speak publicly is restricted.

While these policies may be well intended, they are often in conflict with the First Amendment of the United States Constitution that protects the freedom of speech, even if that speech has content that is offensive. A distinction is sometimes made between harmful speech, such as in the First Amendment exception of not yelling "fire" in a theater that could easily cause individuals actual harm as opposed to speech that is seen as offensive. Since no actual serious harm occurs, these speech codes developed by state colleges and universities are seen as censorship, a violation of the Constitution.

Speech codes are at the same time both broad and vague leaving their actual intent subject to the interpretation of school administration. It is in this "broad vagueness" that is at the core of many of the court cases stemming from enforcement of speech codes.

Also related to the actual campus speech code debate is the Constitutional right to Due Process for students accused of an infraction of the codes. Due process is a basic right of all individuals to fair treatment through the legal system. Some students who have been accused of violating speech codes are denied their due process as universities claim that the discipline is seen as educational to help the student see the error of their ways and not punitive. Therefore the student is not entitled to due process.

For Campus Speech Codes

Speech codes exist to spare would be victims any psychological or emotional damage that could impede their learning and future success.

If any speech seems to be offensive it must be eliminated. The offender must be punished, not just for justice but to also send a message to everyone else on campus. Someone accused of violating a Speech Code may be investigated, harassed, ostracized, receive public shaming, censorship, firing, suspensions or expulsion without necessarily receiving due process. Such speech codes exist to spare would be victims any psychological or emotional damage that could impede their learning and future success.

- It is the job of the university to foster a productive learning environment where public speech, behavior, harassment or threats do not inflict emotional distress on its students.
- Speech codes state a policy about the university's stand on the dignity and civil rights of its students.
- By not having speech codes, a university may be held liable by students who were subjected to harassment.
- Speech codes benefit the students more than they restrict individual freedom.
- When students misuse freedom of expression, enforcement of campus speech codes help them to understand that their words are not acceptable, even if protected by the first Amendment.

Against Campus Speech Codes

Speech codes violate the constitutional right to freedom of speech. The result is censorship where students with opposing views are not allowed to speak. Colleges and universities should be centers of academic inquiry where all opinions, viewpoints and ideas can be discussed and debated in an atmosphere of academic freedom. By hearing opposing viewpoints, students can learn, among other things, to reserve judgment, and tolerate opinions that might offend them. Speech codes on campus create a type of artificial environment that shield students from the real world of diversity and celebrating that diversity within society.

- Speech codes violate the First Amendment's right to Freedom of Speech.
- Speech restrictions are a step toward censorship.
- Speech should not be restricted on college and university campuses that are intended to be centers of academic thought, ideas, discussion and debate.
- While speech codes may restrict the expression of hate, they do not stop the hate. Discourse is more effective.
- Students with dissenting views are not allowed to present or discuss their viewpoints fearing accusations of speech code violations.
- Speech codes are often intentionally vague or broad leading to wrong interpretation.
- Due process is not always given to the accused.
- Students can be accused of a perception of harassment that leads to false charges.

Existing Law

Campus Speech Codes were not a direct result of any state or federal legislation, they were written by universities in response to concerns of people who felt themselves objects of hate because of their race, gender, religion, etc.

Legislation has been passed to eliminate misleadingly labeled free speech zones on campuses in:

- Virginia, HB 258, 2014
- Missouri, SB 93, 2015
- Arizona, HB 265, 2016 and HB 2548, 2016

The following states have passed legislation to protect student free press:

- Arkansas, Student Publication Act, 2015729, 2015
- California
- Colorado, Student Free Expression Act
- Illinois, SB 0729, 2007
- Iowa
- Kansas, Kansas Student Publication Act
- Massachusetts
- North Dakota
- Oregon, Oregon Revised Statutes, 2011

SCOTUS Rulings

The Supreme Court of the United States has not issued a direct ruling on the constitutionality of public university Campus Speech Codes.

Position of the Wisconsin GrandSons of Liberty

WiGOL supports passage of legislation prohibiting Campus Speech Codes at Wisconsin's public colleges/universities to guarantee all students their First Amendment rights regardless of political or religious belief, sex, gender, or race.