Published on *University of Colorado* (https://www.cu.edu)

Frequently Asked Questions [1]

What is freedom of speech?

The First Amendment to the U.S. Constitution protects free speech of members of the university community and their ability to speak on matters of public concern as private citizens:

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 of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Through the Fourteenth Amendment of the Constitution, the First Amendment's protections were made effective against governmental entities such as the state and public institutions of higher education.

The First Amendment protects not only speech, but also expressive activities. The types of expression that the courts have determined are expressive activities include flag-burning, burning draft cards, political cartoons, protest armbands, political buttons and slogans on T-shirts. During the second wave of the feminist movement in the 1960s, women burned their bras to protest gender inequality. Speech involving issues of public concern, such as political and social matters, have the most protection. But while some activity—such as burning a cross—may be protected as First Amendment speech, it could nevertheless be subject to criminal prosecution, if it violates criminal laws that do not involve the content of the speech.

What are some exceptions to free speech?

Not all speech is protected. Speech that does not fall under the protection of the First Amendment includes fighting words, harassment, obscenity, incitement to imminent lawless action or true threats. The courts determine on a case-by-case basis whether speech falls within one of these exceptions and judge speech using high thresholds that err on the side of protecting speech. In fact, the Supreme Court has upheld freedom of speech even in the face of a speaker's utmost efforts to offend, as illustrated by the following examples.

A Ku Klux Klansman's racist, inflammatory speech at a Klan rally was held by the Supreme Court to fall within the protections of the First Amendment because it did not advocate imminent lawless action.

A cross burned on the lawn of an African-American family was held by the Supreme Court to be protected speech.

The Supreme Court upheld the decision to allow neo-Nazis to march in Skokie, Illinois, a town that, at the time, had the highest concentration of Holocaust survivors in the United States.

The Westboro Baptist Church's pattern of attending military funerals and engaging in virulent anti-homosexual speech was held by the Supreme Court to be protected under the First Amendment.

Is "hate speech" an exception to the First Amendment?

No, there is no First Amendment hate speech exception. Hate speech has no definition in case law, but it is generally understood to mean hurtful and offensive speech targeted against certain groups and individuals.

Very recently the United States Supreme Court held that the Patent and Trademark Office could not deny trademark registrations on the grounds that they were offensive, including that the proposed trademark contained racial slurs. "We have said time and again that the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers . . . Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express the thought that we hate."

At CU, we will make efforts to promote a culture of respect and civility, but we also recognize the constitutional boundaries that protect offensive speech.

What rights do students have to express themselves in outdoor spaces?

Under both Colorado law and university policy, enrolled students have broad expressive rights in generally accessible open outdoor spaces. The CUUF policy [2] designates these open outdoor areas as "student forums."

Student forums are generally available to students for speech and expressive purposes, provided that those activities are consistent with the CUUF policy. Most importantly, while students are welcome and entitled to express themselves in student forums across campus, they may not do so in a way that disrupts previously scheduled events, impedes normal university operations or the flow of traffic, or endangers other people or property.

May students leaflet, handbill and canvas in outdoor areas?

Yes, these activities are all protected expression for students in student forums.

Do students need to schedule a protest or rally?

No. Students can express themselves in outdoor student forums without scheduling or permission.

However, students should understand that the CUUF policy [2] gives priority to previously scheduled events. The CUUF policy also disallows activities that would materially and substantially disrupt university teaching, research, or administrative functions.

Within these parameters, students may protest without advance scheduling or approval.

Are there advantages to students of scheduling demonstrations and rallies in advance?

In most cases, yes.

For rallies where advance scheduling is feasible, the administration encourages students to schedule the event through the event scheduling process, to ensure that the students' preferred location and adequate resources are available. Maintaining the integrity of the educational environment and the safety of our students, faculty and staff are our highest priorities. However, as previously stated, the CUUF policy [2] does not require students to schedule expressive activities in advance.

Do non-students have the same rights in campus outdoor areas as students?

No. The CUUF policy [2] provides more limited rights for non-students in campus outdoor spaces. The CUUF policy provides that in many outdoor areas on campus, non-students must schedule expressive activities through the event scheduling process. The CUUF policy permits non-students to use the Trumbo Fountain Court (north of the University Memorial Center) without scheduling. If the Trumbo Fountain Court is reserved or in use, non-students may use the UMC Plaza for unscheduled expressive activities.

What other restrictions does the CUUF policy impose on expressive activities in outdoor spaces?

The CUUF policy [2] restricts the use of amplified sound, the installation of temporary structures, and the deposit of unattended literature. It also imposes many common-sense safety measures, for example, restrictions on outdoor camping and campfires. Additionally, scheduled events in outdoor spaces may require approvals to ensure sanitation and safety and the orderly operation of university business.

How does the First Amendment right to free speech apply to controversial speakers who have been invited to campus by student groups?

Speakers on campus, including controversial speakers who have been invited by student groups, are afforded the full protections of the First Amendment. The events for those speakers, however, are subject to the policy requirements. In administering those policy requirements, the campus may not consider the substance of the speaker's viewpoint. The controversial nature of the speaker is immaterial—speech cannot be restricted based upon whether the university agrees or disagrees with a speaker's viewpoint.

If a controversial speaker has recent history of giving speeches at other locations at which significant unrest occurred, is that legal grounds for the university to deny the ability to speak?

No. Courts have clarified that a recent history of unrest does not necessarily mean that violence will occur at a future event, nor does it provide grounds for the university to deny the speaker the ability to speak. The courts have recognized that free speech can be imperiled if those who oppose a speaker's message can prevent the speech from occurring. Instead of denying a controversial speaker the ability to speak, free speech anticipates that those who oppose a speaker should have the ability to engage in counter speech.

Also, restricting speech before it occurs is called a "prior restraint." The courts regularly reject governmental efforts to prevent speech from occurring. Of course, the university's most important commitment is protecting the safety of both speakers and listeners. If there is a serious threat to public safety, particularly a serious threat of violence, and there is no option but to cancel the event, then the university may do so, though this is a last resort.

Do controversial speakers pay more for security costs?

No. The university does not consider the content of a speaker's message when determining how to assess costs for an event. The university makes every effort to ensure that costs associated with an event are consistent and equally applied for all events, regardless of whether the event speaker's viewpoints are controversial or will possibly draw protests. With respect to security costs, the CU Police Department (CUPD) employs a matrix to determine the safety needs of a particular event. The matrix takes into account the location of the event and the anticipated crowd size, but it does not impose higher costs because the university agrees or disagrees with the speaker's message. If CUPD or other campus officials determine that a particular event will require extra security measures or staffing, then the University will work with the organizer to provide for safety and security. When necessary, the university has absorbed the additional expense for events that have unusual security needs.

Note that different venues on campus may charge different rates for room rentals or other event needs. For example, renting out Macky Auditorium may have different fees than renting out a classroom such as Cristol Chemistry and Biochemistry Room 140. These fees are determined in accordance with the standard rate tables of the venue, and do not take into account the viewpoints or controversial nature of a speaker. Event organizers requiring special facility arrangements, such as audio visual equipment or special staffing, may be charged fees in accordance with standard rate tables for these requests.

Certain controversial speakers are known to identify and insult specific individuals, or entire groups of people, based on their protected characteristics, such as national origin or gender. Is this grounds for canceling the event?

No. The First Amendment protects a speaker's viewpoints regarding these matters. Of course, other legal principles may apply to this type of speech. For example, if the speech is directed at an individual and meets the legal definition of defamation, then such speech may not be protected. In addition, the university has robust discrimination and harassment policies [3], which may be implicated if speech is directed towards a particular person, rather than a group as a whole. Some speech that many consider offensive does not constitute discrimination or harassment. To rise to the level of being discriminatory or harassing, the speech must be sufficiently severe and pervasive that it denies a person equal access to an equal educational

or employment opportunity. At CU, we will make efforts to promote a culture of respect and civility, as we recognize that universities best function when the dialogue advances our academic purposes. However, our policies defining discrimination and harassment must also recognize the constitutional protections for expressive activities.

I want to protest a controversial speaker, may I?

Yes. Just as the First Amendment protects a speaker's right to express their views, it also protects the right of citizens to peaceably assemble in protest, and this right cannot be infringed based on the viewpoint of the protesters. However, a protest that causes material disruption or violence is not protected, and police may be required to act for safety purposes depending on the circumstances. The university would encourage protestors to follow the lawful instructions of police officers or university officials working in connection with the event. This may include directions to prevent destruction of property, or crowd dispersal where it is necessary to preserve public safety.

As described above, reasonable time, place or manner regulations may apply to protest activity. It is important to read and understand the university's policies and procedures with respect to the use of campus grounds and facilities [2]. Of course, such regulations do not take into account the viewpoints expressed by protestors. Rather, as described in the CUUF policy and procedures, these regulations are designed to prevent disruption of the university's educational mission and to safeguard the security of the campus community.

Lastly, university policy—such as the Student Code of Conduct [4]—may apply to protester activity depending on the circumstances. For example, protestor conduct that causes serious disruption or incites others to commit violence or property destruction may have legal and campus policy consequences.

Can protestors use speech to "shout down" a speaker they find offensive?

Probably not. While this area of the law is unclear and complex, a speaker's First Amendment rights would be diminished if the crowd shouted them down whenever they tried to speak. Of course, protestors have the right to assemble and express their disagreement with a speaker. But the effective silencing of another speaker's expression could itself be considered a violation of free speech. And, as noted elsewhere, protester activity may implicate the Student Code of Conduct—shouting down a speaker at an event may result in a serious disruption or other consequences rising to the level of a code violation.

How does the university handle significant events on campus?

The university employs a Significant Events Team (SET) to allow it to coordinate events and ensure that they occur safely and without disrupting the educational environment. SET is a multidisciplinary clearinghouse for big events on campus. One of SET's primary duties is to support coordination among key university and other stakeholders needed for big events (e.g., facilities owners, the Office of Information Technology, Parking Services, the City of Boulder, etc.). SET can be a valuable resource for campus event planners seeking to ensure that an event complies with campus policy. SET also monitors the event calendar for schedule conflicts.

Do Faculty, Students and Staff Enjoy Freedom of Expression?

Yes, all members of the university community enjoy freedom of expression, as protected by the First Amendment, Colorado's constitution, and the Laws of the Regents. Freedom of expression not only protects freedom of speech, but the Laws of the Regents recognize that all members of the university community have a responsibility to protect the university as a forum for the free expression of ideas.

When members of the university community speak or write as citizens, outside of the course of university activities, on matters of political, academic, artistic, or social concern, the university shall not censor their expression, initiate disciplinary action against them, or otherwise subject them to adverse action because it disapproves of the substance of their expression.

As described below, speech that occurs in research or in the classroom is subject to the university's policies related to academic freedom, instead of the policies that pertain to freedom of expression.

How are the concepts of academic freedom and free speech related, but different?

The concepts of free speech and academic freedom are distinctly different, and both have been treated in great depth for well over 100 years, making any attempt at a short description at risk of oversimplification. That said, as described in the Laws of the Regents, expression in research and teaching is protected by and subject to the Laws of the Regents and other policies defining academic freedom, while speech that occurs outside of employment or study is protected as freedom of expression.

Another fundamental difference that distinguishes academic freedom from general freedom of expression is the concept of and search for the truth, and the disciplinary bounds in which scholarship occurs. Academic freedom, in general terms, is the right afforded to faculty members to create and disseminate knowledge and seek truth as they know it, subject to the standards of their disciplines and the rational methods by which truth is established. Academic freedom also protects the rights of students to pursue their studies and to formulate their own opinions on the matters being taught, subject to the academic requirements within a program of study or course.

What Protections Does Academic Freedom Provide for Faculty Members?

For faculty members, academic freedom attaches to research and teaching. The Laws of the Regents broadly define academic freedom as the "freedom to study, learn, and conduct scholarship and creative work within their discipline, and to communicate the results of these pursuits to others, bound only by the control and authority of the rational methods by which knowledge is established in the field." This definition embraces academic debate as the means to advance knowledge and embraces the "fullest exposure to conflicting opinions."

Academic freedom requires that faculty members not be subjected to direct or indirect pressures in an attempt to influence their work in a manner that would conflict with professional standards of the field. The Board of Regents and administration shall not impose

such pressures or influence and shall resist such pressures or interference when exerted from outside the university. Notably, the appointment, reappointment, promotion of all faculty, and award of tenure to tenure-track faculty, shall not be awarded or denied based on extrinsic considerations such as a faculty member's expression of political, social, or religious views.

What Responsibilities Does Academic Freedom Create for Faculty Members?

Faculty members have the responsibility to maintain competence; to devote themselves to developing and improving their teaching, scholarship, research, creative work, clinical activities, writing, and speaking; and to act with integrity, in accordance with the highest standards of their profession. Faculty members are responsible for requirements (e.g., course content, topic order, course schedule, assessment mechanisms) specified by responsible faculty bodies, such as curriculum committees. Faculty members should be able to justify, in terms of curriculum and student learning, all materials introduced into the classroom.

Finally, it's important to note that academic freedom does not protect improper or unethical conduct. All members of the university community remain subject to the standards of ethical conduct stated in the Laws of the Regents and regent policy, as well as Administrative Policy Statements and campus policies, such as the Professional Rights and Duties of Faculty Members.

What Protections Does Academic Freedom Provide for Students?

Academic freedom also protects students. While faculty have the right to establish classroom procedures to ensure orderly discussion and progress towards the goals of a class, students have the freedom to raise questions and express reasoned opinions on the matters being discussed. Students also have the ability to discuss matters related to their courses with faculty during office hours and take reasoned exception to the views or methods offered in any course of study. *Students should be evaluated solely on academic performance, which shall be assessed according to the published requirements established by the instructor or academic unit*. If students believe their academic freedom rights have been violated, the campus will investigate complaints and remediate confirmed violations. (link to Form here for VCAA)

But it's always important to remember that the instructor has the right to determine the standards of scholarship for a class.

What Responsibilities Does Academic Freedom Create for Students?

The university and its faculty establish the standards of academic performance for students who are enrolled in their classes. A student who enrolls in a course is responsible for meeting those standards of performance, and academic freedom does not allow a student to avoid the course requirements or fail to meet standards of academic performance, even if the student disagrees with those requirements or standards.

Students are also responsible for maintaining the integrity of the academic environment. The instructor for each course has the ability to establish standards of conduct and reasonable procedures for classroom discussion. Academic freedom does not provide students with the right to disrupt the class, disregard the classroom procedures for discussion, or to raise discussions that are unrelated to the topic of the class or course.

Source URL:https://www.cu.edu/frequently-asked-questions

Links
[1] https://www.cu.edu/frequently-asked-questions [2] https://www.colorado.edu/policies/campus-use-university-facilities [3] https://www.colorado.edu/institutionalequity/policies
[4] https://www.colorado.edu/institutionalequity/student-code-conduct