

# UNIVERSITY OF DENVER STATEMENT OF POLICY AND PRINCIPLES ON FREEDOM OF EXPRESSION

Approved by the University of Denver Faculty Senate May 19, 2017

## I. Introduction

As a private institution of higher learning, the University of Denver has historically and consistently dedicated itself to supporting the most fundamental goals of higher education, including establishing a community that promotes a culture of robust debate and open dialogue about a wide range of issues across a number of different campus venues. An essential element of promoting these values is the facilitation of free expression on campus to the fullest extent reasonably possible. The American university is the quintessential marketplace of ideas. Academic discourse and higher order learning cannot take place in an environment in which individuals are not at liberty to express their thoughts and ideas, however controversial or provocative.<sup>1</sup> Indeed, free speech protection is most necessary for controversial or non-mainstream speakers and messages, which are far more likely to be the target of censorship efforts than popular expression.

The central importance of freedom of expression to the academy is reflected in the University's statements of [Vision, Values, Mission, and Goals](#). The University's statement identifies "excellence, innovation, engagement, integrity and inclusiveness" as our key values. Properly understood, a commitment to freedom of expression supports all of these values; indeed, none of them can truly be practiced without it. Neither can the University pursue its three core goals of promoting community, learning, and scholarship absent a commitment to freedom of expression. Freedom of expression is crucial to the mission of the University of Denver.

In order to advance these principles, the University of Denver is committed to free-ranging inquiry on all matters and must ensure that all community members have the broadest ability to think, speak, write, listen, and challenge, which are each essential components of learning. Except in those circumstances in which limitations on such freedoms are necessary to maintain the functioning of the University, the University shall respect and support the exercise of these freedoms.

To claim that freedom of expression is crucial to our values and goals is not, however, to ignore the fact that a commitment to speech can create considerable tension within those same values and goals. For example, as recent events across the country and on our own campus have shown, a commitment to freedom of expression and a commitment to the value of inclusiveness do not always or easily align.<sup>2</sup> However, the University believes that with sufficiently careful

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<sup>1</sup> *Academic freedom* and *freedom of expression* are closely linked but distinct concepts. Freedom of expression is the subject of this document. For a fuller discussion of academic freedom specifically, see [Policies and Procedures Relating to Faculty Appointment, Promotion, & Tenure](#), section 1.1.

<sup>2</sup> An excellent resource for those interested in how these tensions have been addressed around the country is the report [And Campus for All: Diversity, Inclusion, and Freedom of Speech at U.S. Universities](#), prepared by PEN America.

stewardship of the community's opportunities for free exchange of ideas and beliefs, speech and inclusiveness need not be in direct conflict. The University has demonstrated its commitment to inclusive excellence through numerous policies and the creation of institutional structures to advance that commitment, but heretofore has not adopted a policy of freedom of expression. The University therefore recognizes that, in a society confronting social, racial, gender, religious, economic, and other inequalities, where historically some voices and some communities have been marginalized, excluded, or silenced, a commitment to free speech must, at the same time, include a strong commitment to inclusiveness. The University is therefore especially committed to insuring that community members from groups that have been marginalized and lack privilege feel equally welcome to participate in discourse and receive divergent information.

To those ends, the Faculty Senate adopts this statement of policy and principles on freedom of expression; and shall appoint a University Committee to promote free expression, as defined by this statement, to be comprised of faculty, staff, administrators, and students from across campus, tasked with (a) proactively creating forums for meaningful, responsible engagement of diverse and opposing viewpoints among all campus constituencies, particularly concerning the types of issues that are likely to lead to tensions on campus, (b) addressing such conflicts as they arise in ways that aim to resolve them in a manner that increases dialogue, respects speakers of diverse viewpoints, and seeks to heal and build community, and (c) when requested, assist the University in examining issues of freedom of expression.<sup>3</sup> In accord with these recommendations, it is consistent with this statement of policy and principles that the University administration, as well as its faculty, staff and students, may speak out whenever the University's own values are compromised, its precepts threatened, or its community members' rights violated in a material way. If such circumstances arise because of a community member's speech, it is appropriate for the University to condemn the message, while still vigorously defending the speaker's right to express his or her views. In what follows, historical context for this view is provided, followed by basic free speech principles.

## **II. Free Expression at the University of Denver and on Other College Campuses**

Any discussion of freedom of expression requires some historical context. American universities have not always fulfilled their aspirations to promote free speech, and have not infrequently adopted policies and engaged in practices that are antithetical to the notion of expressive liberty. In the 1964-1965 academic year at the University of California, students founded what became known as the Free Speech Movement in response to University administrators' imposition of a policy forbidding all political speech on the Berkeley campus. The University was concerned about the disruption of campus due to protests advocating for racial equality in conjunction with the Civil Rights Movement after many students had returned from engaging in civil rights organizing in the southern United States. Large scale student protests in response to the ban resulted in mass arrests of students, which were followed by even larger

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<sup>3</sup> Nothing in the present document supersedes, substitutes for, or eliminates, policies and procedures in the University's Policies and Procedures Relating to Faculty Appointment, Promotion, and Tenure (the APT document), the Office of Equal Opportunity & Office of Title IX Procedures, the Employee Grievance Policy, or Student Conduct.

protests that virtually shut down the entire campus. Recent incidents in reaction to Berkeley's invitation of conservative speakers may suggest that the University has come full circle with the potential shutting down of conservative, rather than liberal, expression in the current era.

Like the University of California's administrators, leaders at the University of Denver have not always met their highest aspirations in protecting freedom of expression. In May 1970, DU students organized a protest in the wake of National Guard officers' shootings of four students at Kent State University. The DU students focused on the United States' recent invasion of Cambodia, formed an Ad Hoc Committee to End the War, and called for a two-day student strike, asking fellow students to walk out of their classes in protest. As protest efforts failed and Chancellor Maurice Mitchell refused to acknowledge the validity of any strike, students began to build tents and other temporary structures, forming what became known as "Woodstock West," occupying a large part of what was then the campus green. After unconfirmed reports that many of the Woodstock West "residents" were not students, Chancellor Mitchell called in the Colorado National Guard and local law enforcement agencies. Officers of the Denver Police and Colorado State Patrol removed all protestors and arrested many of them. Barriers were built around the encampment area and maintenance crews tore down the temporary "village" the students had constructed.

More recent speech controversies involving the University of Denver have involved, among other things: student protests of the appearance of former President George W. Bush at a downtown event sponsored by the Korbel School of International Studies in 2013; continuing debates over the University's decision to discontinue use of the "Boone" mascot; and the recent incidents involving messages posted on the Driscoll wall (sometimes mistakenly referred to as "the free speech wall.").

Across the nation, free speech issues have emerged on college campuses concerning reactions to controversial speakers invited to campus; the devotion of some place on campuses as "safe spaces;" questions about the use of "trigger warnings" in various educational contexts; concerns about potentially offensive remarks posted by university community members on various social media platforms; and the regulation of communication on open forums such as the Driscoll wall.

These are but some of many incidents involving freedom of expression at this University and on other college campuses over the past 60 years. They are formative events to the extent that they shaped a view that freedom of speech on college campuses plays a central role in our democracy, and that incursions against such speech shall be viewed with great skepticism and concern. These historical lessons underscore the necessity of adopting a statement of principles about the protection of freedom of expression to serve as a source for community members to refer to when addressing issues of speech on or relating to the University campus. Moreover, it is incumbent upon those responsible for addressing free speech issues that might arise at the University of Denver in the future to do so with the following principles in mind.

### **III. Some Basic Principles of Freedom of Expression**

- The First Amendment to the United States Constitution forbids the government from “abridging the freedom of speech.”
- Although private universities are not the government, an essential and historic function of higher learning institutions is the promotion of open, robust, and rigorous discourse about the most important and difficult issues of our times. Freedom of expression is essential to the search for moral, aesthetic, and philosophical truth, the creation of knowledge, the people’s ability to engage in democracy, and for individuals to be autonomous, free-thinking human beings.
- Freedom of speech is almost always invoked by groups that represent a minority viewpoint. Indeed, the history of free speech in the United States is about preventing powerful actors from excluding the voices of marginalized groups. Not surprisingly, free speech has been a cornerstone of many important social movements from the civil rights movement to the women’s movement to the LGBT rights movement.
- There is a natural impulse by those in the majority to want to suppress minority viewpoints. The restriction of speech because of the speaker’s viewpoint or the content of the speech is therefore presumptively disfavored.
- At different points in history, there has sometimes been an impulse by universities to restrict speech from those with more progressive viewpoints, and at other times there has been an equally strong impulse to censor those with conservative viewpoints. It is for this very reason that one of the central tenets of freedom of expression is that those in positions of power, such as the governments or universities, must take a position of neutrality with regard to the viewpoint of speakers who are under their power. The University is free to express its own views on issues and should use its powerful voice when others engage in speech that is not representative of the University’s values; but in doing so the University may not punish or censor those who take an opposing position based solely on their viewpoint.
- An inevitable but necessary cost of protecting free speech is that speech that is hurtful, offensive, provocative, and even hateful sometimes must be permitted. Indeed, the United States Supreme Court has pronounced that “a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Terminiello v. City of Chicago*, 337 U.S. 1, 4 (1949). The fact that speech may sometimes be offensive or even emotionally hurtful is not sufficient, alone, to justify interfering with the speaker’s right to engage in such expression.
- But exposing such speech to public scrutiny also enables those who find those views distasteful, objectionable, or abhorrent to respond to them publicly. Public discourse is better served by encouraging counter-speech rather than censoring the original message, which otherwise might go un rebutted. The best remedy for “bad” speech is more speech, not enforced silence.
- Communities are typically better served by providing opportunities and forums for meaningful, responsible engagement of diverse and opposing viewpoints than by silencing some members of the community, whatever their views and opinions.

- In addition, one theory for protecting freedom of speech is that doing so allows productive outlets for persons with non-mainstream views to promote their ideas, hopefully preventing them from engaging in conduct that might cause more tangible harm.
- Thus, all members of the University community shall be free to criticize and contest views expressed by other community members or by other speakers who are invited to express their views on our campus, limited by the principles set forth in this document. This includes views expressed by administrators, members of the Board of Trustees, and the Faculty Senate. Students, faculty, and staff shall have the right to express their views on all issues, including the right to dissent from the opinions and/or judgments of colleagues, administrators, and trustees without overt or covert reprisals. Given their special role in institutional governance at several levels, faculty members should be free from coercion.<sup>4</sup> Likewise, in exercising their rights of free expression, University community members must not obstruct or otherwise interfere with the freedom of others to express views that such members disagree with, however passionately. Senators, administrators, and members of the Board of Trustees have a special responsibility to ensure that lively and free debate and deliberation can occur across the campus, to set an outstanding example of tolerance, to physically protect speakers from those who attempt to silence them, and to immediately condemn serious breaches of civility when they occur.

#### **IV. The Responsibility of the University and its Community Members to Foster an Open Learning Environment**

We adhere to the above statement of principles because these freedoms are intrinsic to the larger goals of promoting robust discourse. In dedicating itself to maintaining a community of open dialogue and candid inquiry, the University of Denver has a responsibility to provide opportunities for its community members as individuals to learn how to address controversial, offensive, or provocative speech. Furthermore, fully consistent with freedom of speech, the University may and should protect community members from physically harmful conduct, harassment, true threats, intimidation, incitement of others to imminent lawless conduct, or assault (words that place a reasonable person in imminent fear of immediate harm). These categories of conduct and speech have long been recognized to be outside First Amendment protection and need not be tolerated by the University. Thus, the University may prohibit these narrowly defined categories of expression without violating basic free speech principles. It is also permissible to place reasonable restrictions on the time, place, and manner of speech while not regulating its content.

The University of Denver Code of Conduct and Student Honor Code also permit the University to prohibit harassment or actionable invasions of another community member's privacy. The University is also free to regulate behavior that constitutes unlawful discrimination, violence, and violations of equal opportunity policy in keeping with the University's commitment

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<sup>4</sup> The American Association of University Professors has a succinct statement on the danger that accompanies the use of a separate and distinct "collegiality" criterion for evaluating faculty job performance. See "On Collegiality as a Criterion for Faculty Evaluation:" <https://www.aaup.org/report/collegiality-criterion-faculty-evaluation>.

to insuring that those who have been marginalized and lack privilege feel equally welcome to participate in discourse and receive divergent information. In addition, federal laws such as Title VI, which “protects people from discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance,” justifiably permit the regulation of “conduct . . . considered sufficiently serious to deny or limit a student’s ability to participate in or benefit from” education programs.<sup>5</sup> The University is also free to regulate behavior that constitutes unlawful discrimination, violence, and violations of equal opportunity policy.

In addition, the right to speak in a university setting comes with great responsibilities to the community and its members. At times, therefore, it may be within the realm of responsibilities for an individual community member to exercise discretion about precisely how and where to exercise the precious freedom of speech to best promote the good of the University and its constituents. The University still cannot in any way punish or sanction any community member who fails to exercise such discretion unless that expression falls within one of the categories of unprotected expression previously mentioned. But the goals of free speech should certainly be more, rather than less, speech and the opportunities for productive exchanges of competing ideas may be maximized by thinking seriously about better ways to communicate to those with whom we strongly disagree.

## **V. The University Committee for the Promotion of Free Expression**

It is inevitable that, in a community as richly diverse as DU, robust protection of the freedom of express may be in tension with other important community values. It is therefore imperative that the University establish opportunities for public discourse among all constituencies concerning precisely the types of issues that are likely to lead to tensions on campus. This is particularly important for our students, who will benefit from acquiring the critical life skills of debating such issues in a reasoned, deliberative, and thoughtful way and to be able to entertain, hear, and respond to opposing arguments, even if those arguments are deeply antithetical to their own personal values.

Thus, the Faculty Senate shall appoint a University Committee for the Promotion of Free Expression, discussed above, to address such conflicts as they arise and tasked with creating opportunities for meaningful dialogue, keeping in mind this statement of policy and principles as well as other University policies. Any such body shall include representation from all relevant constituencies of the University, including faculty, staff, administration, and students.

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<sup>5</sup> The United States Department of Education’s Office for Civil Rights has issued guidance that explains that Title VI’s provisions may be used to address such serious conduct, but should not be interpreted to authorize universities to proscribe speech that is protected by the First Amendment. See <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>.