

CAMPUS PROTESTS

In a Time of Tension, Universities Craft New Free-Speech Policies

By Arielle Martinez

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AP IMAGES

Members of Concerned Student 1950 protest last fall at the U. of Missouri at Columbia. After a year of widespread campus protests, Mizzou and other colleges are reworking their free-speech policies.

If things had gone according to the administration's plans, the 24-campus City University of New York would have a new free-speech policy by now. But that didn't happen.

CUNY's Board of Trustees was to vote on a proposed policy at its June 27 meeting, but the decision has been postponed indefinitely. "It was clear from testimony at the public hearing on June 20, 2016, and other communications that there are questions and concerns about the proposed policy," the [online calendar](#) for the meeting reads. "A proposed policy will be considered by the Board of Trustees at a later time, following additional consultation and discussion."

The policy would, among other things, regulate the use of university property and facilities for "expressive conduct" like demonstrations and leafleting.

Supporters say the proposal would advance the university's commitment to protecting free speech, but opponents say it contains restrictions that would inhibit demonstrations.

College campuses were the sites of [highly publicized protests](#) against racism this past year, and [one survey](#) shows that freshmen in 2015 were more likely to join protests than freshmen in any of the previous five decades. This summer, new free-speech policies are growing out of the protests, and colleges must decide what the balance between free speech and public order will look like in the coming academic year.

'Restrictions Should Be Rolled Back'

Frederick P. Schaffer, CUNY's senior vice chancellor for legal affairs and general counsel, points to Black Lives Matter and the Boycott, Divestment, and Sanctions movement as contributing to his university's proposal.

“There’s just been a number of incidents and controversies across the country that have raised questions where people have said either, ‘My free-speech rights are being violated,’ or other people have said, ‘There should be limits,’” he said.

A working group — led by Mr. Schaffer with representatives from the University Faculty Senate, the University Student Senate, and college presidents in the system — began laying the groundwork for the proposal in the fall.

But the Doctoral Students’ Council, the student government representing CUNY’s Graduate Center, has renounced the proposal and [petitioned](#) on Change.org for its dismissal.

“We are advocating for a policy that guarantees free speech and does not have any restrictions on time, place, and manner,” said Hamad Sindhi, the council’s co-chair for communications. “We denounce any efforts by the police to suppress protests.”

Mr. Schaffer has criticized the council’s stance on the proposal, saying that supporting no limits on free speech is “a point of view I don’t think is one that any university can accept. It certainly isn’t one that is accepted by First Amendment jurisprudence.”

One problem the council has with the policy is its definition of the term “prohibited conduct,” including “any behavior that adversely affects or directly threatens to negatively affect the health or safety of persons or their opportunity to enjoy the benefits of the university.”

Mr. Sindhi suspects that administrators and law-enforcement officials would use a broad interpretation of “prohibited conduct” to crack down on free speech. He is also concerned that the proposed policy was made in response to protest movements that were led by minority students. The resulting policy is racist, he said, and the institution should focus on improving the experiences of its marginalized students.

Before the public hearing on the proposed free-speech policy, CUNY revised the proposal to take out sections that would have prohibited demonstrations in areas other than those “that have been designated by the educational units of CUNY for demonstrations.”

But Sean M. Kennedy, coordinator of advocacy and education for the CUNY Adjunct Project, which is affiliated with the Doctoral Students’ Council, argued that the revision was not enough because some prohibitions remain. “CUNY is a public institution,” he wrote in an email, “so ostensibly all of it is a public area, and demonstrations should be able to occur anywhere.”

Azhar Majeed, director of policy reform at the Foundation for Individual Right in Education, or FIRE, said his organization opposed CUNY’s initial proposal for designated demonstration areas.

The proposal “seemed to leave it up to the discretion of the individual CUNY campuses to determine where or where not students could demonstrate,” Mr. Majeed said. “We were pleased that due to student feedback, the office of the general counsel proposed to get rid of those sections, with the rest of it being acceptable.”

FIRE has no problems with the current version of the proposal, and any concerns about the wording seem to be misguided, Mr. Majeed said.

Mr. Schaffer said part of the proposal had been modeled after a [statement adopted](#) by the faculty at the University of Chicago in 2014 that has been widely regarded as one of the strongest declarations in support of free speech to come out of any college or university.

“That’s a key point that a number of student groups ... either are missing or choosing to ignore,” Mr. Schaffer said. “CUNY is joining other universities around the country

who are standing firm in favor of a very, very wide — almost unlimited, but not quite — berth for freedom of expression.”

But Mr. Kennedy said that he is against the adoption of any new policy regulating free speech, adding that the administration “already tries to limit and chill protest under existing protocols.”

‘As Light a Touch as Possible’

Meanwhile, the University of Missouri at Columbia is [working on its own proposal](#) for a policy concerning the use of university facilities and grounds for free speech, but the governing board will not vote on it before the fall.

The university’s flagship was the [site of protests](#) of racism organized by the group Concerned Student 1950 last fall that led to the resignations of the university system’s president, Timothy M. Wolfe, and the Columbia chancellor, R. Bowen Loftin. The protests also stirred national debates about First Amendment rights when demonstrators tried to block student journalists from entering their encampment.

Ben Trachtenberg, a professor of law and chair of the university’s Faculty Council, and Hank Foley, the interim chancellor, started the committee that drafted the policy.

“We want to regulate free speech with as light a touch as possible but not so light a touch where people think they can say whatever they want whenever they want however they want wherever they want,” Mr. Trachtenberg said. “For example, you can’t protest in the ambulance bay of the hospital, no matter how important your message is.”

The proposed policy would reinforce an existing ban on camping overnight on the campus — a practice used in the Concerned Student 1950 protests — and would prohibit violence, disruption of educational activities, and disruption of events for which an area of campus has already been reserved.

“Let’s say you want to have a wedding on campus, and you reserve one of the fields for it,” he said. “Should students be able to start a pick-up soccer game on the field and kick the ball at your head? No. If protesters are on the sidewalk next to the field and they get so loud that you can’t hear the priest, should they have to leave? Maybe. It does get a little complicated.”

The University of Missouri’s proposed policy, like CUNY’s, is modeled after the University of Chicago statement on free speech.

Mr. Trachtenberg said that although he understands the concern that critics of the CUNY policy may have about potential abuse of phrases like “prohibited conduct,” interpretation will be a concern with any policy.

“As a law professor, I don’t think I’ve ever read an unambiguous statute,” he said. “That’s just the limits of human language. All policy requires some ambiguity and some discretion. If a person feels as though a law-enforcement officer has violated their First Amendment right, I suppose they can go to court, but we try to keep things from escalating to that level.”

Questioning Free-Speech Zones

Colleges’ free-speech policies aren’t just statements of ideals. They can sometimes end up landing an institution in court.

The University of Georgia [revised its policies](#) last year after the libertarian group Young Americans for Liberty said the university had banned demonstrations outside of two designated areas on its campus.

And the University of South Carolina at Columbia is [facing a lawsuit](#) from its chapters of College Libertarians and Young Americans for Liberty after a student said the university had investigated him for his role in organizing a protest of speech restrictions last fall.

Last month a federal judge ordered North Carolina State University to temporarily halt enforcement of a policy that requires a permit for solicitation on the campus after a Christian student group claimed the policy was unconstitutional.

The group, Grace Christian Life, alleged that administrators had prohibited its members from speaking and distributing literature about the group to other students.

“Students live on the campus. It’s like their city,” said Tyson Langhofer, a lawyer for the Alliance Defending Freedom, which is representing Grace Christian Life in the lawsuit. “They do everything there, they live there, they eat there. So we want the university to think of it like our cities. A city wouldn’t have free-speech zones.”

But the university said in a statement that it “has never required students to get permits to engage and talk to other students — regardless of the subject matter. The university’s administrative process for handling thousands of solicitation requests each year was never intended to prohibit student conversations and has never been applied in that manner.”

The judge’s preliminary injunction is a temporary fix, Mr. Langhofer said, and the lawsuit’s ultimate goal is for the university to permanently change its free-speech policies.

“The only permit students need,” he said, “is the First Amendment.”

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