

FAQs: Free Speech on Campus

Free speech issues are governed by the First Amendment to the United States Constitution, and the subsequent statutory and case law surrounding the issue. First Amendment protection applies to loathsome and unpopular speech with the same force as it does to speech that is celebrated and widely accepted. Because the University of Cincinnati is a public institution, generally many of the outdoor spaces of the University are considered to be a public place. However, speech is not completely without restrictions. **Students, faculty and staff are still governed by university policies, which prohibit harassment among other types of misconduct.** Additionally, content-neutral restrictions may be placed on the time, place and manner of speech. For example, persons in outdoor venues of the University (i.e. Nippert Stadium) have limited free speech rights in that they may not engage in conduct that interrupts any regularly scheduled event, game, performance, etc. The following Q and A is intended to be an educational primer on common free speech issues. Specific questions should be directed to either the Department of Public Safety or the Office of General Counsel.

Q: What Is Protected Speech?

A: The First Amendment generally allows persons to speak freely while in a public place. Almost any topic is generally permissible, as are most printed materials, visual images, photographs, or physical items put on display. A broad array of language is permissible, including words that some may consider to be profane, vulgar, or extremely descriptive. Issues that may be controversial within the community, such as religion, politics, sexuality, government, military or police issues, etc. are all permissible. Sound amplification can sometimes also be used by a speaker, subject to reasonable time, place and manner restrictions found in University policy. Due to the constitutional nature of this issue, great deference must be shown on the part of law enforcement when dealing with persons speaking in a public place. Police officers generally will not intervene, interrupt, or take any official action against a person who is engaged in protected speech other than enforcing reasonable time, place and manner restrictions.

Q: What Is Hate Speech?

A: The term “hate speech” is often misunderstood. Hate speech is not a separate category under the law. Thus, even if speech is hateful or offensive, it is still likely protected by the First Amendment (unless it falls within certain exceptions under the First Amendment, including, but not limited to, the “fighting words” exception explained more fully below).

Q: What Are “Fighting Words”?

A: Courts have held “fighting words” to be a category of unprotected speech. Fighting words have been defined as words that tend to incite an immediate and violent response from a person. Speaking generally about a controversial or offensive topic typically will remain protected as long as it remains generalized. The fighting words exception normally does not apply to speakers addressing a large crowd on campus, no matter how offensive the speech is. However, specifically addressing an individual in a manner that will tend to incite an immediate and violent threat may be unprotected speech, but courts interpret the fighting words exception narrowly, and **the analysis is very fact specific.** Courts have found the following types of language are entitled to First Amendment protection:

- “Return to Africa” comment directed at a crowd;
- Putting a pig’s head on a stick to offend a crowd of Muslims;
- Profane hand signals (i.e. extending a middle finger);
- Merely offensive language;
- Calling people names (e.g., racial epithets);
- Some form of referring to the student body as being fornicators, sinners, whores, homosexuals, devils, communists, etc.

Q: What Is a “Heckler’s Veto”?

A: This is the potentially unlawful suppression of particular speech due to an anticipated hostile reaction from the audience. Generally, action taken by the university must be based upon content-neutral factors.

Q: What Should We Do If We Believe People Are Engaging in Unprotected Speech, Such as Fighting Words or Other Misconduct?

A: If you believe individuals are engaging in speech or any behavior that is disturbing or intimidating, you should **call the University of Cincinnati Police Department at (513)556-1111**. An officer will respond to assess the situation, and work with the Office of General Counsel and the prosecutor’s office to determine the appropriate action.

Q: How Does Disorderly Conduct Relate to Free Speech?

A: Ohio punishes speech that amounts to fighting words, typically by a criminal charge of disorderly conduct. The crime of disorderly conduct includes the following definition: “making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person.” O.R.C. 2817.11(A)(2).

The following also constitutes disorderly conduct under Ohio law: “hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender” or “creating a condition that is physically offensive to persons or that presents a risk of physical harm to persons or property, by any act that serves no lawful and reasonable purpose of the offender.” O.R.C. 2917.11(A)(4), (5). Thus, civil disobedience (violating the law to make a political statement) is not protected speech and can lead to arrest. For example, in one case from Ohio, protestors laid in the street as part of their protest of nuclear war and were convicted of disorderly conduct.

Q: When Does Speech Become Harassment?

A: The First Amendment does not protect behavior on campus that crosses the line into targeted harassment or threats.

Current University of Cincinnati policies on Discriminatory Harassment can be found on the university Policies and Procedures website:

https://www.uc.edu/content/dam/uc/hr/labor_and_employee_relations/policies/11_02_discriminatory_harassment.pdf.

Further, students are bound by the Student Code of Conduct, which includes the “Bearcat Bond.”

It is important to note that university policies and procedures are only applicable to students, faculty, and staff unless otherwise noted. Violation of any policy by students, faculty, and staff will result in disciplinary procedures in accordance with applicable university policies and/or the Student Code of Conduct. Instances of alleged harassment of students should be reported to the Office of Student Conduct & Community Standards. Matters involving Title IX (discrimination, harassment or retaliation based on sex, sexual orientation, gender, and identity and expression) must be reported to the Title IX Coordinator or designee. A staff or faculty member who reasonably believes that discriminatory harassment has occurred should immediately contact his/her supervisor and/or the Office of Equal Opportunity & Access and/or the Office of Equity & Inclusion.

Q: Is the University Taking Steps to Prepare for a Controversial Speaker?

A: Yes. The University is working proactively to be prepared to manage controversial speech events. It has established a Protest Safety Response Team, which is a multi-disciplinary team that works together to address issues that arise from controversial speakers, demonstrations, or rallies planned on campus. Importantly, the Department of Public Safety has already and will continue to prepare for campus protests, including training for officers and coordinating with the City of Cincinnati Police Department. Further, Student Affairs proactively engages with relevant student groups and event organizers, and may assist with alternative programming when various events occur on campus.

Available online at www.uc.edu/sa.

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