

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. Generally speaking, the outdoor spaces of the University of Cincinnati are largely considered to be a public place. Therefore, persons may freely enter and remain in these areas just as they could on any public sidewalk or other public space. 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.

Q: What Is Protected Speech?

A: The First Amendment generally allows persons to speak freely and loudly while in a public place. Any topic is permissible as are 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 may generally 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 not defined by law, and no such category exists as an exception to the First Amendment. Thus, even if speech is hateful or offensive, it is still protected by the First Amendment unless it violates an exception, 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 are defined as words that tend to cause an immediate and violent response from a person. Although speaking generally about a topic may be received as controversial or offensive by those who hear it, it remains protected as long as it remains generalized. Thus, the fighting words exception does not apply to speakers addressing a large crowd on campus, no matter how offensive the speech is. Specifically addressing an individual with name calling, accusations, etc. that is received as offensive may be unprotected speech. However, **courts interpret the fighting words exception narrowly, and the analysis is very fact specific.** Specific examples where the courts have found that speech alone did not rise to the level of "fighting words" and was not actionable by the police include but are not limited to:

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

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. 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.

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 must be reported to SCCS. 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 Equity & Inclusion.

Questions?

Contact the Office of the General Counsel
513-556-3483

Available online at www.uc.edu/sa.