

Campus Free Speech Policy Advisory Group

Draft Considerations for Review

The Policy Advisory Group used information gained from the thematic analysis of public comments on the interim policy, as well as other educational resources analyzed by the group, to develop a draft set of considerations. These considerations were created with the premise that all core issues should be on the table for debate and eventual endorsement or non-endorsement by the group in the final report. Thus, the following list of considerations are not final and will be voted upon by the group following the March 21st Public Forum.

New Policy/Policies Should More Effectively Articulate Core Institutional Values

Several public comments pointed to the title of the interim policy and specific language in the policy as being overly restrictive. This list of considerations attempted to address those concerns by suggesting that core values for free expression be emphasized first, and that the tone of the policies be focused on the value of free speech at Ohio University.

Consideration 1: A new policy should begin with a preamble articulating the core values and purpose of the policy.

Rationale: The university policy should make it explicitly clear that, for Ohio University, free expression is a core value. Our interim policy lacked such contextualization. The new policy should articulate our broad and resolute commitment to free speech and expression while at the same time observing the need for reasonable time, place, and means restrictions to protect our core mission and related activities.

Vote:

Dissenting Opinion:

Consideration 2: Change tone of message. If you can deliver message in more positive way, more will support. Start with what is possible.

Rationale: Rather than focusing on what is forbidden, the new policy should focus on what is permissible. According to public comments, the interim policy was perceived as overly restrictive. By focusing on what is permissible with respect to expression and speech acts, a new policy can be more affirming of our commitment to free expression.

Vote:

Dissenting Opinion:

Consideration 3: A new policy should adopt the University of Chicago framework.

Rationale: Amidst nationwide events that began to test their institutional values, the University of Chicago conducted a review of Freedom of Expression in 2014. Having reviewed the history of their university, benchmarked other institutions, and consulted legal precedent they released a statement on Freedom of Expression. This statement highlights the

importance of freedom of expression, "*...the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed.*" Additionally, they recognized the role that institutions of higher education play in protecting this freedom, "*the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.*" A new policy should adopt that statement in principle, both recognizing the work the University of Chicago did and highlighting the historical context of both Ohio University and the Athens Community.

Vote:

Dissenting Opinion:

Consideration 4: The final policy must be consistent with the United States Constitution and other applicable laws.

Rationale: As a state institution, the university must comply with the United States Constitution, including its First Amendment, and other applicable federal and state laws.

Vote:

Dissenting Opinion:

Changing the Structure of the Policy/Policies

This set of considerations suggest alternatives for how to structure one or more policies related to freedom of speech/expression and use of space on campus. The intent of these suggestions is to emphasize a vigorous commitment to free speech in one policy, while at the same time specifying how the right to free speech may have reasonable time, place, and method restrictions in another. The considerations in this section are more generally about the structure of the policy/policies, and considerations in subsequent sections could layer into these suggestions (e.g., use of specific spaces on campus, having a preamble, etc.).

Consideration 5: The university should establish a permanent policy that affirms its commitment to free expression and establishes appropriate rules regulating expressive activities on campus.

Rationale: Many commenters observed that the university does not need a policy regarding free expression on campus.

We respectfully disagree. The university community has been engaged in a public conversation about the meaning of free expression on our campus, its importance to our mission and instances in which it is appropriate to regulate speech. The institution should express its views on these subjects and memorialize them in a policy statement of principles.

It also should codify rules for expressive activity on campus. Doing so will provide fair notice to the community about what is and is not permissible and will avoid arbitrary, case-by-case decisions. It also will provide the university with tools to manage large events safely.

Vote:

Dissenting Opinion:

Consideration 6: The two policies under review should be combined into a single policy entitled "Use of Space." A preamble should be added that frames the policy and emphasizes the importance of free speech, Constitutional rights, content neutrality, and other key tenets identified elsewhere in these recommendations. The preamble should be followed with a description of the general principles and expectations for the use of any campus space, then provide more detailed information pertaining to specific types of space and locations on campus.

Rationale: The interim Freedom of Expression policy has been perceived as controversial and confusing in its current state. Combining the two policies under the title "Use of Space" emphasizes the content neutral use of time, place, and manner to manage assemblies, rather than using a title that is ambiguous and open to misinterpretation. Additionally, the preamble should be foundational and create a framework that underpins the whole policy, thus providing "fall back guidance" for situations that fall between the cracks of the more detailed sections of the policy.

Vote:

Dissenting Opinion:

Consideration 7: Write two, separate policies to address free expression. Keep both policies simple, brief, and to the point. Ideally, the first document should simply reiterate the free speech rights guaranteed by the US Constitution and describe the vital role of higher education in teaching and maintaining those rights. The first document should also differentiate between constitutionally protected, so-called hate speech and harassment. The second document should simply, clearly, and briefly describe the time, place, and manner limitations on speech at Ohio University; these limitations should be few.

Rationale: Keeping both policies simple and to the point will provide clarity for the community and be more effective than the current multi-page documents. Simplicity means flexibility. We want a document that will be timeless and not simply be a reaction to an era and/or specific incidents on campus or nationally.

Vote:

Dissenting Opinion:

Considerations Related to Specific Locations

These considerations provide specific suggestions about use of particular spaces on campus. The intent behind these suggestions was to avoid broad statements that are perceived to restrict speech across campus, opting instead to identify and provide rationale for specific spaces that may or may not be used for protests and demonstrations.

Consideration 8: The policy should acknowledge that hallways, lobbies, and similar spaces are not designed for assembly and should not be used for that purpose.

Rationale: Areas not designed for assembly lack the infrastructure to minimize disruption to adjacent spaces. Thus, allowing assembly in places not so designed would be somewhat disingenuous as it would encourage people to gather with almost certainty that their event would be disruptive. In addition, hallways and lobbies lack the ability to effectively manage occupancy load, thus making it very difficult to prevent an assembly from creating an evacuation hazard. Finally, spaces such as these are often adjacent to stairwells or are confined in ways that make managing crowds difficult and unsafe. Keeping opposing groups of protestors safely separated in a lobby or hallway would be nearly impossible. Once again, allowing assembly in such spaces, knowing the hazards that such an assembly creates, would be very unwise.

The policy makers need to ensure that restrictions around assemblies in such spaces do not restrict other forms of expression and free speech, such as individuals engaging in debate, people moving through these spaces while wearing clothing or symbols representing political views, etc.

Vote:

Dissenting Opinion:

Consideration 9: The interior of Cutler Hall should not be a place where protest and demonstrations are allowed.

Rationale: Protests or demonstrations inside Cutler Hall could impede administrative functions that are essential to campus safety and normal operations. Alternative options exist on College Green and other adjacent outdoor spaces.

Vote:

Dissenting Opinion:

Consideration 10: The Baker Center rotunda (4th floor entryway) is not an appropriate or safe venue for protests, demonstrations, or similar activities. Accordingly, a final policy may prohibit those activities in the rotunda. If feasible, however, the final policy should identify alternative indoor spaces inside Baker Center that are available for those activities.

Rationale: The university must ensure that people can pass safely through lobbies, hallways and similar spaces. The Baker Center rotunda is a major thoroughfare and crossroads for pedestrians on campus, with a high volume of foot traffic along multiple paths of travel in a confined space. Gatherings there may easily impede pedestrians moving in and out of the building as well as use of the escalators. Also, protests and hostile counter-protests may quickly become dangerous, raising the prospect of physical confrontations next to a four-floor-high ledge, in a space where safely separating competing groups is difficult. Past gatherings in the rotunda generally have been peaceful. Given the risks in that area, the university cannot assume that will always be the case.

The university should, however, identify alternative spaces in Baker Center that can accommodate both spontaneous and scheduled assemblies. Such spaces may include the third, fourth and fifth floor atrium spaces, located on the south end of the building overlooking the escalators. These indoor spaces would be supplemented by the outdoor patio spaces outside the first and fourth floors.

Vote:

Dissenting Opinion:

Consideration 11: The final policy/policies should reflect thoughtful consideration to the titles of the policy/policies to make the intent and purpose clear.

Rationale: The title of the policy suggests that it will outline the university's stance on Freedom of Expression, and while it does that in some places, it is a policy more about procedure and the operations of facilities. The name should be changed to follow consideration 12 so that the language is consistent with other policies that discuss use of space. Additionally, the policy coding (Student subject) should be changed to "General Subject" because a policy on the right to hold demonstrations should affect everyone.

Vote:

Dissenting Opinion:

Consideration 12: Outdoor spaces should be available for expressive activity to the maximum possible extent.

Rationale: Outdoor spaces are given wide protections by the courts. Outdoor spaces on Ohio University's campuses should provide general accessibility for those exercising free speech/expression provided that such activities do not create substantial interference to the university's operations, destroy university property, or violate other federal, state, or local laws/ordinances, and recognizing that some outdoor space is reservable.

Vote:

Dissenting Opinion:

Consideration 13: Outdoor spaces, in general, should be available for public speech and expression except in cases where specific spaces have been officially reserved by others. Indoor public spaces, in general, should be available for public speech and expression only in designated spaces.

Rationale: This would be a positive approach that would mirror the endorsement of free speech in the first policy and clearly state where gatherings are permitted.

Vote:

Dissenting Opinion:

Consideration 14: In cases of inclement weather, alternative indoor spaces should be provided for protests and demonstrations.

Rationale: Protests and other public demonstrations or free speech activities must not be limited because of weather conditions. Allowing for indoor spaces is largely desired in the event of inclement weather.

Vote:

Dissenting Opinion:

New Policy Should Clarify Key Issues

A common criticism in public comments about the interim policy was that vague language led to the perception that the policy was sweeping in restrictions. Considerations in this final section assumed that a new policy would be re-written to avoid such vagueness and then provided specific areas in which precision and clarity were necessary.

Consideration 15: A new policy should distinguish free speech/expression from civil disobedience. It should note that speech and expression are protected rights, but civil disobedience is not. There is no right to civil disobedience without consequences.

Rationale: Civil disobedience theorists and practitioners, from Thoreau to Gandhi, Martin Luther King, Jr. to Nelson Mandela, have all recognized and promoted the idea that persons who break the law as an act of protest should be willing to accept the consequences of their actions. In fact,

these leaders themselves willingly accepted such consequences—including time in jail—as an inherent aspect of civil disobedience. Accepting the consequences of their disobedience demonstrated their dedication to the causes they promoted and weakened the institutions they were protesting by causing those institutions to expend valuable time and resources in meting out punishment to civil disobedience protesters. Bottom line: Historically, civil disobedience has only produced long-term change if its practitioners have accepted the consequences of their actions.

Vote:

Dissenting Opinion:

Consideration 16: The new policy should allow Ohio University stakeholders to engage freely in vibrant discussion and debate without impeding the university's educational mission.

Rationale: The university's primary function is the education of its students. Free discussion and debate are essential to the institution's core mission, but such activities should not impair students' access to classrooms or other facilities that support their ability to obtain a university education.

Vote:

Dissenting Opinion:

Consideration 17: The new policy should emphasize the content neutral use of time, place, and manner to manage assemblies and should be structured in such a way as to minimize the need for reliance on disruption as a criterion for managing assemblies.

Rationale: Time and place are the easiest, most objective terms for regulating assembly. Not permitting assembly in places that would make it difficult to be non-disruptive is preferable to allowing assembly, knowing that almost any gathering would be disruptive. Time and place can easily be regulated in advance, when there is almost no opportunity for decision-making based on content. Manner should be used as infrequently as possible, as disruption is very subjective, hard to define, and has to be determined on a case-by-case basis after the assembly is underway, thus creating greater opportunity for improper influence in the decision-making process.

Vote:

Dissenting Opinion:

Consideration 18: Policy needs to establish clear expectations and eliminate vague language.

Rationale: There was much concern about the language used in the interim policy being vague or the entire interim policy being ambiguous (e.g., “substantial interference”). It will be very important that the policy writers balance the need to not be so specific that they are implying the policy language is all-encompassing versus being so vague that reasonable individuals still question what is meant and what the policy covers.

Vote:

Dissenting Opinion:

Consideration 19: A new policy should formalize a process through which university officials will respond to public protests, demonstrations, and acts of civil disobedience.

Rationale: The new policy should formalize what university officials (or designees) will be involved in monitoring, engaging, directing, and reacting to protest groups. The policy may not need to articulate the exact protocol to be followed but should specify a need for identifying what university academic and administrative officials should be involved and that a general protocol should be developed, if possible.

Vote:

Dissenting Opinion:

Consideration 20: The Free Speech document should explain that a university cannot censor or punish speech because someone considers it to be offensive or hateful.

Rationale: A core mission of the University is to protect the airing of all views. The first amendment protects so-called hate speech because hate speech is in the eye of the beholder. In the 1960s, as just one example, many Americans characterized Martin Luther King’s words as hateful and threatening. Speech viewed as offensive by some is constitutionally protected because public discourse in a democracy is of no value without the airing and consideration of multiple views. Democracies function well only when citizens know, and have considered, all perspectives. If a community member judges speech to be offensive, meet the offensive speech with additional speech, not censorship.

Vote:

Dissenting Opinion:

Consideration 21: The new policy should disallow speech that incites violence and that is contrary to federal anti-discrimination law.

Rationale: The university has a responsibility to protect stakeholders from physical harm and from discrimination based on race, gender, religion, national origin, and other protected classes.

Vote:
Dissenting Opinion:

Consideration 22: The freedom of expression policy should state that the University cannot separate protestors, or anyone seeking to make their voice heard, from the audience they seek by restricting their protest to out-of-the-way areas.

Rationale: Marginalizing protestors, forcing them to protest where few will hear or see them, effectively strips them of their free speech rights.

Vote:
Dissenting Opinion:

Consideration 23: A new policy should preserve and memorialize the principle of academic freedom.

Rationale: The policy should ensure that faculty members can teach and communicate ideas or facts without the fear of retaliation.

Vote:
Dissenting Opinion:

Consideration 24: The new policy should maintain safety and respect for all, particularly those with special needs, of different nationalities, etc.

Rationale: Universities are increasingly a melting pot of individuals from all walks of life, students of all abilities, and from all over the world making it a global community in its truest sense. The University community owes it to these communities especially as a "public" institution to guarantee safety to its direct and indirect recipients.

Vote:
Dissenting Opinion:

Consideration 25: The university should not attempt to create "safe spaces" from controversial or unpopular ideas or opinions.

Rationale: To achieve our shared mission of learning and discovery, we must sometimes feel intellectually uncomfortable. Disagreement, challenging questions and expression of competing views bring us closer to truth and the qualities of mind we seek to cultivate in our students and ourselves. Members of our university community will encounter ideas and opinions with which they disagree or find repugnant. The university must not attempt to shield students and others on our campus from these intellectually uncomfortable experiences.

This does not mean that we must tolerate illegal or discriminatory conduct. University community members have the right to learn, teach and work in an environment that is free from harassment, intimidation and violence. The final policy must ensure that the university can prohibit and punish such conduct.

Vote:

Dissenting Opinion:

Consideration 26: A person's or group's exercise of free speech cannot limit another person's or group's exercise of free speech; in other words, free speech does not give anyone the right to disrupt the speech of others.

Rationale: Everyone has free speech rights, whether or not a competing individual or group agrees with what is being said.

Vote:

Dissenting Opinion:

Consideration 27: The final policy must be drafted in a way that can be consistently applied, regardless of the content of the message.

Rationale: The law requires that the university's rules for use of campus spaces be content neutral – that is, that the rules apply equally to all speakers regardless of the content of their message. The university is not permitted to enact one set of rules for groups or messages that are sympathetic and popular (*e.g.*, cancer awareness) and another set for those that are unpopular, disfavored or abhorrent. Whether the rules are relatively permissive or restrictive, they must apply equally regardless of the content of the speech.

The final policy must contain rules that the institution is able and willing to enforce equally.

Vote:

Dissenting Opinion:

Consideration 28: The policy should recognize that law enforcement personnel are held to both a criminal and civil standard that transcends policy. Furthermore, failing to meet those obligations—even if that failure is a result of complying with policy—can lead to personal consequences for the officer(s) involved. As such, the policy should not impair the ability of law enforcement to protect the safety of the public and comply with their legal obligations.

Rationale: It would be extremely unwise for a policy to create a circumstance that could force a police officer to have to choose between complying with the law or avoiding adverse personnel action by his/her employer.

Likewise, a policy should not be so cumbersome that it makes swift decision-making in the interest of safety difficult or impossible. Police officers are experts in crowd management and public order; a policy should not strip those experts of their ability to exercise their judgment in handling assemblies.

Vote:

Dissenting Opinion: