

Themes from Public Comments

Members of the Presidential Policy Advisory Group reviewed all electronically submitted comments about the Interim Policy on Freedom of Expression and the Interim Policy on Use of Outdoor Space. During December of 2017 and January of 2018, the advisory group thematically analyzed those public comments to develop a list of observed themes. The list below identifies the themes and sub-themes and provides example statements from the reviewed comments. Those themes, as well as other resources reviewed by the group, provided a foundation upon which considerations for policy revision were drafted.

THEME 1: Reactions to Process for Developing Interim Policy

Comments related to this theme addressed the perceived motivations for the interim policy as well as concerns regarding how the policy was developed.

Sub-Themes	Example Statement
Perceived Violation of Shared Governance	“Furthermore, the process by which the policy was approved and implemented inappropriately subverted OU’s established processes and violated the basic democratic principle of shared governance.” (Comment 88)
Interim Policy a Reaction to Recent Local and National Events	“The policy seems to be a knee-jerk reaction to the Athens city judge’s decision in the Baker 70 cases. He pointed to the traditional use of Baker Center as a designated public forum in dismissing charges against the first student brought to court. The February event on campus was in no way similar to the riot in Charlottesville and to suggest so with implementation of this policy is an insult to our students. Further, this policy is an unconstitutional overreach.” (Comment 40)
Policy Inappropriately Defines use of Space	“Any policy regulating the exercise of free speech must therefore start with the assumption that indoor and outdoor facilities be generally open to public use, unless actually used otherwise, as in the case of classrooms.” (Comment 36)
The Privileged Should Not Regulate Speech	“Freedom of speech should never be regulated by those with power and privilege (administration and student affairs professionals).” (Comment 37)

THEME 2: Opposition to the Interim Policy

Sub-themes related to this overall theme advanced specific reasons for opposing the interim policy. Various sub-themes addressed perceived vague wording of parts of the policies and other specific reasons why the interim policies were undesirable. One sub-theme also advances the position that there should be no policies to limit speech and expression.

Sub-Themes	Example Statement
Interim Policy Places Undesirable Restrictions	<p>“Although these new rules do not prima facie violate principles of academic freedom they nevertheless impose undue restrictions on the capacity of students and faculty to express themselves freely.” (Comment 1)</p> <p>“We are at our best when it is read to encourage vigorous debate in a lively marketplace of ideas, with the faith that the end result will be a furtherance of democratic ideals and policies. I believe the interim policy fails to achieve a good balance in this regard, potentially drowning out dissent for the sake of order.” (Comment 60)</p>
Regardless of Intent, the Outcome is Problematic	<p>“A university campus should be a place where people are welcomed and encouraged to share diverse opinions other than just in classrooms. In fact, that is a necessary and vital role of the university experience. In the Sept. 18 statement from President Duane Nellis and Interim Executive Vice President David Descutner, they said the purpose of the policy is not intended to constrain free expression. The intent is not what matters or what courts use in determining whether an attempt to regulate speech is unconstitutional. It’s the traditional use of the property and the effect of the policy or law. The effect of this policy is to stifle vital public participation on this campus, on which students have a tradition of speaking out or sitting down for social justice issues.” (Comment 40)</p>
Section C/4 Language Overly Restrictive	<p>“The interim policy that has been enacted fails this test of ensuring maximal expression. It is too broad in its prohibitions. For example, it institutes a complete interdiction on any type of protest action—“demonstrations, rallies, public speech-making, picketing, sit-ins, marches, protests, and similar assemblies [...]”—inside university buildings even in cases when the action is non-violent and does not disrupt other ongoing and educational activities. It also bans any action that would “deter” passersby.” (Comment 1)</p>
Section D has Vague Language	<p>“These concerns arise in part from the policies’ ambiguous rhetoric. As these documents undergo revision, we would like to see more clarity surrounding the question of who will decide whether a protest “substantially interferes” with university operations (24.014 section D), how the university will counteract the potential for bias on the part of these decision-makers, and what the consequences of producing a substantial interference will be.” (Comment 38)</p>

<p>Key Issues Need Definition</p>	<p>“After reviewing the recently approved conduct policy 24.014, I found myself with some concerns and confusion. Would it be possible for the institution to elaborate upon the circumstantial definition of “material disruption”? In the absence of elaboration upon the definition of material disruption, the policy seems to be too broad.” (Comment 3)</p> <p>“Respondents frequently quoted the ambiguous nature of the policy and the power the University had in making the distinctions in such cases. Several terms that are ambiguous are listed [below] ... a. Use of “disruption”, “substantially interferes”, “reasonable risk”, “similar assemblies” b. What constitutes “safety” and when will action be taken?” (Comment 87)</p>
<p>Interim Policy Should be Abolished/Not Replaced</p>	<p>“There should be NO policy of Freedom of Expression in place at all at a public institution. It violates the basic human rights of students, faculty, staff, and community members.” (Comment 4, Pg. 49)</p>
<p>Enforce Existing Local/State Requirements Rather Than Making New Policy</p>	<p>“The Constitution allows for diverse viewpoints to be expressed. However, it does not include a right for people to commit crimes in the name of protests. That’s why the City of Athens and the State of Ohio have ordinances and laws in place to govern disorderly conduct, creating a public nuisance, vandalism, assault and other infractions caused by rioting. The university should enforce those instead of narrowing free expression on campus.” (Comment 41)</p>

THEME 3: Unnecessary Limits on Speech/Expression are Harmful

This overall theme included multiple sub-themes advancing the general position that limitations on free speech and expression are harmful. Specific warrants included in the sub-themes are varied. For instance, some are rather specific, such as the sub-theme arguing against limitations to expression/speech in residence halls (more personal spaces for students), and another set of comments argued that limitations on free speech/expression has a disproportionate effect on marginalized groups. Other sub-themes were more general, such as the chilling effect sub-theme and the general fear that limitations on speech/expression could be used to serve only administrators' interests.

Sub-Themes	Example Statement
Limitations to Speech are a Slippery Slope	"The new policy that you are considering to have is a step backward, and I believe it is taking the baby step toward silencing every voice of opposition. I can clearly see the perspective of this, more restrictions could come and soon no protest will be allowed." (Comment 45)
Policies may Restrict Ideas Counter to University Leadership	"Several individuals feel like such a policy restricts constitutional right to free speech and the method of expression. Concerns that the university administration would control the type, content, and medium of expression and avenues to express was a commonly addressed theme. The idea that protests and public engagement through sit-ins, rallies, marches, etc. are by its nature meant to be spontaneous and should not need prior approval was brought up frequently. Individuals fear that the University would control the messages that were expressed by limiting those that did not align to that of the University." (Comment 87) "It does not take much imagination to envision how controversial or critical (of the university) protests could be refused under a number of the policies' points." (Comment 37)
Speech Limits Chill Expression	"Limiting student demonstrations to outdoor venues during the winter months will have chilling effect on free expression on campus." (Comment 4)
Opposition to Residence Hall Restrictions	"Banning peaceful protest in dormitories, which many students are mandated to reside in for 2 years, strikes a blow to self expression in the most personal of spaces." (Comment 2)

<p>Harmful to Marginalized Groups</p>	<p>“It is silencing, unfair and discriminates against minority students who are at the highest need for free speech use on campus.” (Comment 37)</p> <p>“Protest allows all groups to express their dissent—this is especially important for minority groups. The majority voice, that of the straight, white, male, heterosexual population is inherently represented everywhere—in the news, in politics, at Ohio University. Students who fall into these groups should also have full freedom of speech, but minority groups <i>need</i> this freedom—in a time when they are especially marginalized, when they may feel alone and hopeless because of hate groups and the current political climate, minority groups need to be able to express their opinions and dissent without limitations.” (Comment 65)</p>
<p>Restrictions Legitimize Dominant Repressive Views</p>	<p>“Of course education comes first and disruptive behavior should be minimized, but disruptive behavior against rape, queerphobia, and xenophobia should be taken very seriously and allowed to have their messages heard. An administration that blindly silences minority protests gives the message to the majority that they will be supported, even if their actions are unethical and illegal.” (Comment 59)</p>
<p>Limitations Discouraging and Harmful to International Students</p>	<p>“Last year, when we were protesting the immigration bans, my fellow Iranian friends were worried about being arrested for just holding a sign, or showing a disagreement with the system. I have told those people that one of the bases of this country is the freedom of expression and we can have peaceful protests. Now those illusions of fears are becoming real. I can assure you, having these policies will affect the international students much more, since we are terrified and these types of policies scare us more. Thus I highly oppose having the policy, and I am looking forward toward having more freedom of expression not less!” (Comment 45)</p>

THEME 4: Free Expression is an Essential Right

Many statements spoke to the general necessity of vibrant free speech in a democratic society. These comments tended to take on value propositions related to the necessity of free speech and expression and were often connected (implicitly or explicitly) to the next theme stressing the importance of free speech/expression on a college campus.

Sub-Themes	Example Statement
Free Speech is a Fundamental Right	“The ability to speak freely is a fundamental right in The United States Constitution. Speaking freely allows students, professors, faculty members, and the Athens community to debate the merits of ideas and beliefs. The current political climate seems to breed an animosity towards “the other” and undermines the reality that a fundamental way to understand our common humanity and humanize one another is through open interaction and dialogue. Regulating free speech is a slippery slope and can lead to an arms race to grab as much power as possible when discussion and consensus is truly what is needed. Infringing on the free speech rights of others does nothing to improve the lot of anyone in society, instead it will further increase a divide that seems to be ever-growing.” (Comment 57)
Protest and Disruption are Sometimes Necessary	“Sometimes, the most effective protests are disruptive because this disruption captures attention.” (Comment 37)
Some Disruption is an Acceptable Trade for Free Speech	“Instead, a certain level of disruption should be understood as an acceptable price we pay for the freedom of speech and protest.” (Comment 36)

THEME 5: Free Expression is Vital to Our University

This overall theme included sub-themes/statements arguing for the value of free speech and expression as part of the University’s educational mission. These sub-themes pointed out the critical nature of open debate and dialogue to promote critical thinking and citizenship—necessary values for an institution of higher education. One set of comments also noted that public disruption through protest should be part of a university culture.

Sub-Themes	Example Statement
Ohio University has a Vibrant Legacy of Free Speech	“OU has long provided important leadership in embracing those who were unwelcome at other universities, such as John Templeton in 1824, Margaret Boyd in 1869, and Martha Blackburn in 1912. It was in this spirit that the students protested the travel ban last year. We need a policy that boldly embraces this tradition, not one that runs from it when it may be needed most. Please let me know if there is anything I can do to help support that effort.” (Comment 60)
Open Expression Should be a Value on which we Lead	“What [a new policy] could do is create a campus that invites expressions of citizenship, not limits or regulates them. Is that not a vital function for a public university campus in this age when most other spaces have become corporatized, privatized, and policed? Why not take this opportunity as our new president to facilitate, to mobilize, and to proliferate acts of expression on campus – expressions that are creative, public, communal, socially-minded, and productive? Why not write a Freedom of Expression policy declaring Ohio University’s historic campus a place for public art and performance, for community engagement, for more “rallies, public speech-making, picketing, sit-ins, marches, protests, and similar assemblies”? Why not commission artists, writers, filmmakers, designers, planners, engineers, geographers, and other creative Bobcats to use our beautiful greens and brick-paved paths for the very actions you seek to restrict? Our campus is not an industrial park, nor a corporate headquarters, nor a sports field, nor a landscape intended only for recruiting brochures – this is a place for higher learning, for the creation and dissemination of knowledge. Set it free as such!” (Comment 39)

<p>Free Speech is Vital to the University</p>	<p>“The public speech and protest of students and faculty are central to the mission of universities to cultivate the values and practices of democratic citizenship. They are also critical to instigating institutional change in situations of injustice. As a university we need to ensure the maximum capacity for free expression, including public assembly and protest, while guaranteeing such actions do not impinge on the rights of others to speak or protest in public and to be secured against physical harm.” (Comment 1)</p> <p>“A new free speech policy should be carved out that takes into account the important role that dissent has played in the development of our country and university. I hope that the new policy will return the university to its previous stance of encouraging peaceful dissent and critical thinking, as they are vital parts of the lifeblood of our democracy and university.” (Comment 60)</p>
<p>Protests Draw Attention to Students' Concerns</p>	<p>“When it comes to peaceful yet disruptive protests like this – they should be allowed to utilize the spaces in the university without fear or being arrested. In order to get attention, in order to be heard – causing a disruption, a peaceful disruption – is the only way to make sure you cannot be ignored as students typically are.” (Comment 4, Pg. 48)</p>
<p>Preference for Maximally Open Campus</p>	<p>“I think Ohio University should go out of its way to allow students to speak out and protest in any manner and place that does not present an imminent threat of significant bodily injury or property damage.” (Comment 93)</p>
<p>Baker Center is a Symbolic Space for Expression</p>	<p>“I understand where y'all are coming from trying to keep demonstrations safe and peaceful. However, it seems like Baker is a sacred place for public forum and universities are sacred places for discussion and demonstration in this country. Thus, perhaps you would think of keeping that indoor place protected for public gathering and demonstrations. The First Amendment implores you!” (Comment 55)</p>

THEME 6: Positive Impressions of Aspects of Interim Policy

Some comments pointed out that the interim policy was trying to balance free speech and expression against (1) the need for unhindered university functions, and (2) the need for civil disobedience to have consequences in order to be effective. There were also comments analyzing the interim policy against those at similar institutions.

Sub-Themes	Example Statement
Policy Balances Free Expression with Open University Functions	<p>“I wanted to express my support for your Freedom of Expression Policy. I appreciate that you do not limit free speech on campus. And, I also appreciate that you consider student/faculty safety, crowd safety, etc. for indoor spaces. The university has a right to ensure ongoing operations, access to buildings for university functions, etc.” (Comment 54)</p> <p>“I do want my ability to work and conduct my University business unimpeded, and with expectation of safety on campus.” (Comment 53)</p>
Policy Strikes Balance Between Protest and Civil Disobedience	<p>“Another student brought up that there is a difference between protest and civil disobedience, and that the university is not wrong in trying to inhibit civil disobedience because it is illegal, but they are wrong if they are trying to inhibit protest that is not civil disobedience.” (Comment 6, Pg. 63)</p>
Policy Consistent with Similar Institutions	<p>“[Interim policy] is not incredibly over reaching, other universities around Ohio have similar or stricter policies.” (Comment 37)</p>
Policy Evaluated Positively by National Organizations	<p>“Several respondents [to a survey administered by Graduate Student Senate] wrote in favor of the policy and expressed that such a policy maintained some level of safety and accessibility at the University. One response even quoted the FIRE ranking of this policy and pointed out that having such a policy put the university at a better place. Another respondent pointed out events at the University in the past few years and that safety and openness of all opinions should be valued on this campus.” (Comment 87)</p>

THEME 7: Suggestions for Revised Policy

Many comments offered specific suggestions for what should be reflected in a revised policy. Those comments, reflected in the following sub-themes, are quite varied. Rather than trying to characterize each in this summary, the following themes are ordered from more general sentiments to very specific ideas.

Sub-Themes	Example Statement
Limitations Must be Reasonable and Specific	“There is a need for reasonable limits on expression primarily to ensure the right of speech and assembly of others and to safeguard the right to security for all—for example, through the prohibition against "fighting words" and hate speech that provokes violence. But, these restrictions must be specific and they must conduce toward the creation of conditions for the maximal expression of speech.” (Comment 4)
New Policy Should Set Appropriate Tone	“I’ve given a lot of thought to how best to revise the university policy on “Freedom of Expression” at OHIO. My primary concern is tone: the interim policy currently in force emphasizes what could be termed an adversarial tone rather than the central principle of the role of a public university to foster an environment where differing views may be freely expressed and debated in a civil, peaceful manner. As a public university, OHIO is and must be a bastion for the free exchange of ideas and cannot abridge the freedom of speech or the right of the people to peaceably assemble.” (Comment 47)
University Administration Must Better Manage Protests	“The police need to respect the need for free expression, too. They must deal with violence when it occurs, not when they are afraid it might potentially occur. The mass arrest by armed police this spring was a fine example of poor university policing! And finally, there is a fourth player: the OU Administration. The administration must always monitor potentially contentious meetings and demonstrations. The administration can never (as was done this spring) wash their hands of the situation and leave it to the police. I hope this is helpful. (Comment 14) “The procedures that will be followed by the university in response to future protests, whether scheduled or spontaneous. Such procedures should detail which university officials will respond and require the university to make a good faith effort to negotiate and de-escalate situations of conflict.” (Comment 36)
University Should React to Hate Speech This comment urged the university to take a stance against hate speech acts.	“Hate speech should be limited with strict guidelines and repercussions.” (Comment 27) “In my reading, the text of the policy is generally fine, however I think the procedure responding to violations of this policy needs consideration. Take graffiti put on OU’s wall yesterday, in which constituted what I believe to be not only highly inflammatory but also unprotected expression appeared. Whether this is regarded as “hate speech” or simply

	<p>“defamation/libel” and “obscenity” is less important than the clear indication that this goes against the grain of the University’s goal for positive discourse. Please refer to the attached photo – specifically the statements “Blue ‘lives’ murder”; “F**k [redacted for this email] CPD/APD/OUPD”. What is more troubling is that even a day later, this message still remained (as of noon 9/18) with no recourse from the University officials (i.e., no removal of the expression or response to the University community that has occurred in other cases of unprotected expression on that wall). I believe that hate speech, regardless of its source or the intended audience, shall not be promoted or allowed as determined by the US Constitution and its current interpretation.” (Comment 8)</p>
<p>New Policy Should Not Impose Financial Barriers on Speech</p>	<p>“Students cannot – unless they are affiliated with registered student organizations – reserve space for free. I urge the university to not charge students for reserving space” (Comment 37)</p> <p>“As an organization of graduate employees that is not registered as a student organization through the Campus Involvement Center, we are also concerned about a policy that requires us to pay money in order to reserve an indoor space for an event. Requiring groups of students and employees like ours to pay money to exercise our right to free speech seemingly contradicts the Freedom of Expression’s stated purpose, “to promote the free exchange of ideas” (Section A. 1). We encourage university administrators to make reservations of spaces free to all students and employees, particularly if reservations are mandatory for events that take place indoors.” (Comment 38)</p>
<p>New Policy Should Not Impose Barriers to Spontaneous Acts</p>	<p>“There will be provisions to accommodate spontaneous demonstrations outdoors and indoors.” (Comment 36)</p> <p>“This decision of making students/individuals rent out spaces in order to speak limits the purpose of protest. The idea is to speak against an issue freely and timely, in order to invoke conversation. In the time that individuals are renting spaces or waiting for spaces to open up, the velocity of the conversation has dwindled and the message is not powerful. For example, organizations I am involved in have to request a space far in advance to rent a large room in Baker. A powerful speech is created within its most powerful timeframe; if you cannot express concerns timely, the moment is gone and the freedom of expression becomes meaningless.” (Comment 48)</p>
<p>University Should Protect Protesters During Inclement Weather</p>	<p>“I believe that we as students should contact administration and request that shelters should be constructed outside of the Baker Center’s 1st and 4th floor entrances, and outside of Cutler Hall, so that students can reserve them for protest and be protected from the elements of weather.” (Comment 4, Pg. 7)</p>

**Engagement at Tables in Baker should be
Balanced**

“I believe that people should not be harassed or kept from passing, but there is a middle ground of reasonableness between ‘you must sit passively’ and shouting obscenities at people. Actively engaging people as they walk past the table and asking them to stop is good marketing practice, while still giving passersby the ability to choose whether they stop or not.” (Comment 4, Pg. 9)

THEME 8: Support for Reviewing Other University Policies

A few comments pointed to potentially good models at other universities.

Sub-Themes	Example Statement
University of Chicago	<p>“The [University of Chicago] policy also achieves what our current interim policy is lacking: It treats students as adults who may exercise their right to free speech without having to ask for prior permission. As I said before, the ability to gather for spontaneous protest is of particular importance in a university environment that claims to support transformative learning, critical thinking, and civic engagement. We need to make sure that we create welcoming structures rather than a prohibitive and punitive environment.” (Comment 13)</p> <p>“I support the adoption of the ‘Chicago Rules,’ which provide clear and concise language that the university is a neutral party in terms of both what speech is delivered and how it is delivered. It limits the university’s ability to limit speech except for in extreme cases of the inhibition of the university and its employees to function normally.” (Comment 37)</p>
University of Georgia	<p>“In searching for a model policy from a public institution, one that sets the kind of tone I wish to suggest is from the University of Georgia. It is reprinted below in its entirety.” (Comment 47)</p>