

# Free to Learn? Think Again



## *Restoring the First Amendment at Texas Public Universities*

August 2016  
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# Freedom of Speech? Think Again

## *Restoring the First Amendment at Texas Public Universities*

by Thomas K. Lindsay, Ph.D.

### Executive Summary

Over the past few years, there has been a spate of media accounts exposing unconstitutional restrictions on free speech and debate on our country's campuses. From university [speech codes](#) and commencement speaker "[dis-invitations](#)" to overt [ideological indoctrination](#) in the classrooms, our colleges and universities, whose defining mission is the free, nonpartisan quest for truth, are instead becoming prisons of conformism, devoid of the Socratic vision from which liberal education originated.

Liberal education was born of Socrates' proposition that "the unexamined life is not worth living for a human being." The word "liberal" derives from the same root as the word "liberty." Liberal education is an education *in* and *through* liberty. Following Socrates, the highest and deepest purpose of liberal education is the freedom of the mind, or freedom from unexamined assumptions—that is, freedom from swings in intellectual fashion, partisan politics, and ideology. Liberty at its peak is therefore identical with the pursuit of truth.

Academic freedom is a subset of the freedom of speech and press promised under a modern, constitutional democracy. Regimes that do not protect free speech in the political sphere—as is accomplished by the First Amendment in this country—also do not protect it in the academy. Freedom of speech and press in the political sphere is animated by the conviction that the people, if free to witness and engage in robust debate over policy issues, will, through this process, be better able to choose wisely among competing policy alternatives and those candidates espousing them. Academic freedom is animated by the conviction that the quest for truth (Socrates' "examined life") is the highest capacity of human beings. In both spheres, truth-seeking is the end to which freedom of speech and press exist as indispensable means.

The Supreme Court has ruled that "State colleges and universities are not enclaves immune from the sweep of the First Amendment. . . . [T]he precedents of this Court leave no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large." However, too often today, the opponents of the freedom required to pursue truth are found in our universities themselves. The nonpartisan think tank, the Foundation for Individual Rights in Education (FIRE), has published its latest [report](#) on academic freedom, *Spotlight on Speech Codes 2016: The State of Free Speech on Our Nation's Campuses*. It finds that 49.3 percent of the 440 colleges and universities that it studied "maintain severely restrictive, [red light](#)" speech codes—policies that "clearly and substantially prohibit protected speech" (FIRE, 2016).

### Key Points

- A nationwide survey shows that the majority of American universities have enacted policies that unconstitutionally suppress the First Amendment rights of students and faculty.
- Our colleges and universities, whose defining mission is the free, nonpartisan quest for truth, are instead becoming prisons of conformism, devoid of the Socratic vision from which liberal education originated.
- Texas is no exception to these unhappy national findings. Fifteen Texas universities have been found to have enacted speech codes that are unconstitutional.
- The boards of trustees of the Texas public universities shown to be in violation of the First Amendment should right this wrong immediately.
- In the past year, the governors of both Missouri and Virginia have signed into law bills that prohibit campus "free speech zones," arguing that, in America, everywhere should be a free speech zone.

Sadly, of the 15 Texas universities rated by FIRE, all were found to be in violation of the First Amendment—seven, egregiously so. Seven of the 15 Texas universities surveyed received the lowest score possible (a Red Light rating) on this count. The remaining eight universities examined tallied the second-lowest score (a Yellow Light rating).

Among the ten worst (Red Light) offenders in Texas are some large, well known schools: Rice University, the University of Texas-Austin, the University of Houston, and the University of North Texas.

This research study examines FIRE’s analysis in detail, with a particular focus on the 15 Texas universities that FIRE surveyed and rated. The chronicled abuses of the First Amendment rights guaranteed students and faculty violate the very reason for being of universities. As former University of Chicago President Robert Maynard Hutchins rightly observed, “Freedom of inquiry, freedom of discussion, and freedom of teaching—without these a university cannot exist.”

In light of these findings, university boards should act to reestablish freedom of speech at our colleges and universities. Doing so would (1) restore the noble purposes that distinguish a genuinely “higher” education.

“The unexamined life is not worth living for a human being.” —*Socrates (Plato 1984, 20)*

“Freedom of inquiry, freedom of discussion, and freedom of teaching—without these a university cannot exist.”  
—*Robert Maynard Hutchins, former president, University of Chicago (Stone, et al. 2015)*

## Introduction: Serving Hemlock to Campus Freedom of Expression

Over the past few years, there has been a plethora of news accounts exposing serious restrictions on free speech and debate on our country’s campuses. From university [speech codes](#) and commencement speaker “[dis-invitations](#)” to overt [ideological indoctrination](#) in the classrooms, our colleges and universities, whose defining mission is the free, nonpartisan quest for truth, are instead becoming prisons of conformism, empty shells of the Socratic vision from which liberal education originated (Foundation for Individual Rights Report, 2016; Fitzsimmons, 2014; Leef, 2015).

How did we get to this point? To begin to comprehend the decline in the quality of American higher education, we need first to grasp more clearly the original purpose of liberal education, which has come to be doubted, if not usurped, in roughly the past 50 years in the United States.

The model for liberal education currently under attack consists in what is known as the “Socratic turn.” Liberal education is born of Socrates’ proposition that “the unexamined life is not worth living for a human being.” Socrates argues that science and philosophy’s quest—to gain greater knowledge of the whole—cannot take place in isolation. Instead, scientific and philosophic inquiry (the two meant the same thing for the classical philosophers) require that scientists and philosophers also “examine their act of examining;” that is to say, scientists and philosophers must also study the context in which they pursue discovery. For this reason, Socrates tells us that he turned away from the sole study of what we today label the “natural sciences,” and turned toward the “human things,” politics chief among them.

In light of the preceding reflections, it should come as no surprise the word “liberal” in “liberal education” derives from the same root as the word “liberty.” Liberal education, for Socrates, is an education *in* and *through* liberty. Following Socrates, the highest and deepest purpose of liberal education is the freedom of the mind; that is, freedom from unexamined assumptions, for example, swings in intellectual fashion, partisan politics, and ideology. Only when illuminated by intellectual freedom are both the possibilities and limitations of our other freedoms—political and economic—fully disclosed. Liberty at its peak is therefore identical with the pursuit of truth.

But truth-seeking, as Socrates’ ultimate fate suggests, is not without its dangers. Socrates was tried, convicted, and executed on charges of impiety and corrupting the youth of Athens.

Accordingly, the institutionalization of regimes devoted to cultivating intellectual liberty—in our case, colleges and universities—depends on their being situated in a system of political liberty. In this respect, it can be said that the cultivation of free minds both transcends and depends on the political freedom enshrined in the United States Constitution as well as the various state constitutions.

Simply stated, it is this quest for truth that is the foundation of the principle of academic freedom at our colleges and universities. It is because the quest for truth is the highest capacity of human beings that the doctrine of academic freedom exists. Truth-seeking, in this account, trumps political ends, all other things being equal. That said, just as liberty in the political sphere is distinguished from license, free academic speech and debate do not exist as ends in themselves; their value stems from their indispensability as means to the end of truth-seeking, and no further. As means, they are subservient to their respective ends. Freedom, in both spheres, is not absolute.

The Supreme Court has ruled that “State colleges and universities are not enclaves immune from the sweep of the First Amendment. . . . [T]he precedents of this Court leave no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large” (Healy v. James 1972). However, too often today, the opponents of the freedom required to pursue truth are found in our universities themselves. The nonpartisan think tank, the Foundation for Individual Rights in Education (FIRE), has published its latest [report](#) on academic freedom, *Spotlight on Speech Codes 2016: The State of Free Speech on Our Nation’s Campuses*. It found that 49.3 percent of the 440 colleges and universities it studied “maintain severely restrictive, ‘red light’” speech codes—policies that “clearly and substantially prohibit protected speech” (Foundation for Individual Rights in Education Report, 2016).

This study will examine FIRE’s analysis in detail, with a particular focus on the 15 Texas public that FIRE surveyed and rated. When it comes to protecting the First Amendment rights of students and faculty, Texas, sad to say, fares poorly. As we shall see, seven of the 15 Texas universities surveyed received the lowest score possible (a Red Light rating) on this count. The remaining eight public universities examined tallied the second-lowest score (a Yellow Light rating).

Such abuse of the rights guaranteed students and faculty under the First Amendment violates the very reason for being of universities. As former University of Chicago president, Robert Maynard Hutchins, rightly observed, “Freedom of inquiry, freedom of discussion, and freedom of teaching—without these a university cannot exist.” This research study recommends that Texas public university boards of trustees adopt policies to restore the noble purposes that distinguish a genuinely “higher” education.

## **FIRE on Campus: Which Texas Universities Fail to Uphold the First Amendment, and How?**

If any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility. . . . Though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied. . . . Even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice, with little comprehension [of] or feeling [for] its rational grounds.

—John Stuart Mill, *On Liberty* (Mill 1859, 2.41)

This section of the study looks in greater detail at each of the Texas public universities identified by FIRE to be in violation of the First Amendment. \*

FIRE rates each university’s protection of free speech with one of [four possible grades](#):

### **GREEN LIGHT**

If a college or university’s policies do not seriously imperil speech, that college or university receives a “Green Light” grade. A green light does not indicate that a school actively supports free expression; it simply means that FIRE is not currently aware of any serious threats to students’ free speech rights in the policies on that campus.

### **RED LIGHT**

A “Red Light” institution has at least one policy that both clearly and substantially restricts freedom of speech. A “clear” restriction is one that unambiguously infringes on what is or should be protected expression. In other words, the threat to free speech at a Red Light institution is obvious on the face of the policy and does not depend on how the policy is applied.

\* As of January 2016.



When a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to weigh this crucial information. FIRE considers this action by a university to be deceptive and serious enough that it alone warrants a Red Light rating.

### **YELLOW LIGHT**

A "Yellow Light" institution is one whose policies restrict a more limited amount of protected expression or, by virtue of their vague wording, could too easily be used to restrict protected expression. For example, a ban on "posters containing references to alcohol or drugs" violates the right to free speech because it unambiguously restricts speech on the basis of content and viewpoint, but its scope is very limited.

Alternatively, a policy banning "verbal abuse" could be applied to prohibit a substantial amount of protected speech, but is not a clear violation because "abuse" might refer to unprotected speech, such as threats of violence or harassment as defined in the common law. In other words, the extent of the threat to free speech depends on how such a policy is applied.

### **EXEMPT**

When a private university expresses its own values by stating both clearly and consistently that it holds a certain set of values above a commitment to freedom of speech, FIRE does not rate that university.

In addition to providing rating grades for each institution as a whole, FIRE also applies the grades—Green, Red, and Yellow Lights—to discrete policies within each institution.

### ***Texas Universities That Receive the Green Light Overall Rating from FIRE***

Sad to say, none of the Texas universities analyzed by FIRE received an overall clean bill of health when it comes to protecting the First Amendment rights of students and faculty.

### ***Texas Universities That Receive the Red Light Overall Rating from FIRE***

Of the Texas universities surveyed by FIRE, seven received a red light rating, which is the worst rating that FIRE offers. Six of these seven offending schools are public; one (Rice University) is private. Each school on the Red Light list is examined below in greater detail.

### **RICE UNIVERSITY**

Rice University, a private institution of higher education, located in Houston, Texas, has received the speech code rating, [Red Light](#), from FIRE.

#### ■ *Rice University's Red Light Policy*

FIRE finds one policy at Rice University that warrants a Red Light rating grade:

##### **Appropriate Use of Computer Resources 14-15:**

Unauthorized use includes, but is not limited to the following types of activities. Harassment or threats to specific individuals, or a class of individuals: \* Transmitting unsolicited information that contains obscene, indecent, lewd or lascivious material or other material which explicitly or implicitly refers to sexual conduct. \* Using e-mail or newsgroups to threaten or stalk someone. \* Transmitting unsolicited information that contains profane language or panders to bigotry, sexism, or other forms of prohibited discrimination.

#### ■ *Rice University's Yellow Light Policies*

FIRE finds four policies by Rice University that merit a Yellow Light rating grade. They are:

##### **1) Sexual Harassment Policy and Procedures 14-15:**

Unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical behavior of a sexual nature constitute sexual harassment when: . . . Such conduct is reasonably regarded as offensive and has the purpose or effect of substantially interfering with the educational or work opportunities of students, staff, faculty or colleagues, or creating an intimidating, hostile, or offensive educational or working environment. If it takes place in the teaching context, it must also be persistent, pervasive, and not germane to the subject matter.

The policy goes on to cite the following examples of the “kinds of conduct that may constitute sexual harassment,” which “include, but are not limited to: . . . Unwelcome verbal or written expressions of a sexual nature, including graphic sexual commentaries about a person’s body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene phone calls. Sexually suggestive objects, pictures, videotapes, audio recordings or literature, placed in the work or study area that may offend individuals.”

**2) Student Handbook: Using University Facilities 14-15:**

Outdoor events initiated by all other student organizations require the approval of the Office of Student Activities. After the required paperwork has been completed, Student Activities will forward details of the event to the office of the Vice President for Administration, which will in turn brief representatives of various campus constituencies on the event. . . . request for the use of a University facility will be approved provided that: (a) the facility requested is available, adequate and appropriate for the proposed use at the time requested; (b) the proposed use excludes fund solicitation or commercial solicitation other than the sale of official University items unless otherwise approved; (c) the campus organization making the request is able to meet the financial obligations to be incurred by the proposed use; (d) the proposed use will not constitute any danger to the peace and security of the University, its members or participants in the use; (e) the proposed use does not violate any federal, state or local law.

**3) Code of Student Conduct: Proscribed Conduct 14-15:**

Intentionally inflicting or attempting to inflict mental or bodily harm on any person, including the charged student; taking any reckless action, or showing reckless disregard, from which mental or bodily harm could result to any person, including the charged student. This includes, but is not limited to, actual or attempted behavior that includes physical abuse of all types, verbal abuse, threats, intimidation, harassment, coercion, sexual harassment. . . and/or other conduct which threatens or endangers the physical or mental health or safety of any person.

**4) Code of Student Conduct: Proscribed Conduct 14-15:**

Use of computational facilities to send obscene, abusive, harassing or threatening messages or to engage in stalking behavior or to repeatedly send unwanted e-mail to individuals.

■ *Rice University’s Green Light Policy*

Rice University’s lone Green Light rating is found in the following:

**Student Handbook: Privileges and Responsibilities 14-15:**

Members of the Rice community are entitled to the following privileges: Freedom of speech and action: Rice students may express their beliefs, feelings and opinions so long as the manner of expression does not violate another community member’s rights.

**Point/Counterpoint: Rice University Student Newspaper Takes Issue with FIRE’s Red Light Rating**

In 2009—after FIRE had assigned Rice University a Red Light rating grade due to the school’s policies that infringe on student speech—the Rice student newspaper, *The Thresher*, penned a [staff editorial](#) attacking FIRE’s rating (Staff 2009). By way of rejoinder to *The Thresher*, FIRE’s Samantha Harris wrote a piece on FIRE’s website defending FIRE’s evaluation. Her essay, titled, “[Rice Editorial Misses the Point on Free Speech](#),” explained that FIRE had assigned Rice the Red Light rating due to the school’s policy on “Appropriate Use of Information Technology Resources,” which prohibits (quoting from the policy) “[t]ransmitting unsolicited . . . material which explicitly or implicitly refers to sexual conduct” and “[t]ransmitting . . . unsolicited information that contains profane language or panders to bigotry, sexism, or other forms of prohibited discrimination” (Harris 2009).

Citing FIRE’s report, Harris explained how the policy posed the danger of being applied, for example, to “an e-mail from an LGBT student organization advertising a ‘coming out’ event (which could be perceived by a student receiving the message as ‘implicitly referring to sexual conduct’)” or to “an e-mail from a conservative student organization advertising a speech by an opponent of illegal immigration (which could be perceived by a student receiving the message as ‘pandering to bigotry’)”.

Harris went on to take issue with *The Thresher's* position that the Red Light rating was not only unwarranted but “laughable, because the university in fact allows free speech, ‘consistently overriding a rule that, yes, could be interpreted as silencing LGBT groups.’” Harris points out that this means that “the staff of *The Thresher* acknowledges that the policy could be applied to punish important categories of protected speech, but seems to believe that because this particular administration has chosen not to consistently enforce the rule, Rice is a haven for free expression.” Harris questions such blanket trust of the Rice administrators on the part of these students, because, “so long as written rules allowing for the punishment of legitimate expression exist, the right to free speech at Rice is not safe.”

Harris also targets and rejoins an [editorial](#) by Rice University Dean of Undergraduates, Robin Forman, whose piece appeared in the same issue of *The Thresher* (Jin 2009). Dean Forman agrees with the student newspaper’s criticism of FIRE’s rating grade for the school. Forman writes, “FIRE takes a very narrow approach to the issue of free speech. . . . In its view, if the policy allows one to imagine an abuse by an administrator that would inappropriately limit free speech, then that policy is as bad as an actual abuse.”

To Forman’s critique, Harris replies that FIRE’s tack is far from a ‘narrow approach’ to the issue of free speech; in fact, it is the law of free speech.” Courts nationwide have invalidated “university speech codes as *facially unconstitutional* (meaning the unconstitutionality lies in what is written, not in how the policy is applied), and for good reason—policies prohibiting protected expression have a ‘chilling effect’ on free speech.” That is to say, the effect of such policies is to incline students to “simply refrain from legitimate expression because they fear punishment.” Thus, even without enforcement of the speech code by the Rice University administration, “a substantial amount of speech is still suppressed. . . . The fact that the university *isn’t* currently punishing protected speech cannot legitimize policies that allow it to do so.”

## SAM HOUSTON STATE UNIVERSITY

FIRE gives Sam Houston State University an overall speech code rating of [Red Light](#).

### ■ *Sam Houston State University’s Red Light Policies*

Sam Houston State University has two policies on its books that FIRE finds to constitute Red Light violations of the First Amendment. They are as follows:

#### **Student Guidelines: Code of Student Conduct and Discipline 13-16**

Campus disruptive activities (see subparagraph 5.4) or disorderly conduct on Component-owned or controlled property or at a Component-sponsored or supervised function that inhibit or interfere with the educational responsibility of the Component community or the Component’s social-educational activities shall include but not be limited to: using abusive, indecent, profane or vulgar language; making offensive gestures or displays that tend to incite a breach of the peace; perpetrating fights, assaults, acts of sexual violence, abuse, or threats; or evincing some obviously offensive manner or committing an act that causes a person to feel threatened.

The second Red Light policy FIRE finds at Sam Houston State University is found under the school’s “**Acceptable Use Policy 14-15**.” This policy states:

All individuals are accountable for their actions relating to SHSU information technology resources. Direct violations include the following: Intentionally accessing, creating, storing or transmitting material which SHSU may deem to be offensive, indecent or obscene (other than in the course of academic research or authorized administrative duties where this aspect of the research or work has the explicit approval of the SHSU official processes for dealing with academic ethical issues).

### ■ *Sam Houston State University’s Yellow Light Policies*

FIRE finds four policies by Sam Houston State University that merit a Yellow Light rating grade. They include:

#### **1) Student Guidelines: Code of Student Conduct and Discipline 13-16**

Harassment where the individual intentionally threatens or bullies, in person, by telephone, electronically, in writing, or by other means, to take unlawful action against any person and by this action intentionally, knowingly, or recklessly annoys or alarms the recipient.



### 2) Student Guidelines: Parades, Publications, Demonstrations and Rallies 13-16

No group or person, whether or not a student or employee, shall publicly display, distribute, or disseminate on the component campus any petition, handbill, or piece of literature, work, or material that is obscene, vulgar, or libelous, or that advocates the deliberate violation of any federal, state, or local law.

### 3) Student Guidelines: Discrimination, Sexual Harassment, and Equal Employment Opportunity 13-16

**HARASSMENT**—A form of discrimination that's defined as verbal or physical conduct that is directed at an individual or group because of race, creed, ancestry, marital status, citizenship, color, national origin, sex, religion, age, disability, veteran's status, sexual orientation, or gender identity when such conduct is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance; or of creating a hostile academic or work environment. This conduct can include technology-based communications such as texting, online classroom chats, or social networking sites.

The policy goes on to define sexual harassment as "A form of sex discrimination and is described as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including but not limited to technology-based communications such as texting, online classroom chats, or social networking chats, even if carried out under the guise of humor, and constitutes sexual harassment. Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment, educational or living environment."

The policy further specifies that "verbal conduct, defined as oral, written, or symbolic expressions, that, depending on the totality of circumstances present, may constitute sexual harassment includes, but is not limited to,

1. Explicit or implicit propositions to engage in sexual activity;
2. Gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
3. Gratuitous remarks about sexual activities or speculation about sexual experiences;
4. Persistent, unwanted sexual or romantic attention...
5. Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other material."

### 4) Residence Hall Handbook: Offensive/Obscene Materials 14-15

Students who hang/place items in their room that are in public view (windows, doors, bathrooms etc.) that the University determines to be offensive and/or obscene will be asked to remove the items immediately and may be subject to disciplinary action. The University reserves the right to enter a student's room to remove items that are found offensive and/or obscene if the student is not present during the discovery.

#### ■ *Sam Houston State University's Green Light Policies*

Sam Houston State University's two Green Light rating grades are found in:

#### 1) Student Guidelines: Publications of Student Groups 13-16

The University affirms its position that freedom of expression, as well as inquiry, is essential to a student's educational development. Vigorous intellectual explorations by students may sometimes result in questioning of popular conceptions, and this in turn, may elicit the concern of society at large. One of the axioms upon which our nation was built, however, is that truth needs no protection, but is vital by vigorous debate in a market place where all ideas can be presented and then tested by the reason of free people.

#### 2) Student Guidelines: Racial Harassment Policy 13-16

"Racial Harassment" is defined as extreme or outrageous acts or communications that are intended to harass, intimidate, or humiliate students, faculty, staff, or visitors on account of race, color, or national origin and that reasonably cause them to suffer severe emotional distress.

## TEXAS WOMAN'S UNIVERSITY

FIRE gives Texas Woman's University an overall speech code rating of [Red Light](#).

### ■ *Texas Woman's University's Red Light Policy*

Texas Woman's University has one policy on its books that FIRE finds to constitute a Red Light violation of the First Amendment.

#### **Student Life Office: Title IX**

Sexual harassment may include any unwelcome sexual advance or request for sexual favor, made by an employee, student, or agent of the University to a student or employee of the University that substantially interferes with the person's educational or work performance, or creates an intimidating, hostile, or offensive environment.

Texas Woman's University provides the following examples of sexual harassment. These include:

- Unwelcome or uninvited sexual comments or innuendo
- Oral, written, or electronic communications that are sexually explicit in nature
- Sexually explicit questions, jokes, or anecdotes about gender specific traits
- Sexually suggestive sounds, gestures, gifts, or visual materials such as magazines, pictures, posters, photos, cartoons, or drawings
- Direct or indirect threats concerning sexual favors or retaliation because of the refusal to consent to sexual favors
- Sexual leering, uninvited touching, stroking, or gestures
- Communication of unsought sexual propositions, requests for dates or lewd remarks or sounds
- Coerced sexual intercourse
- Sexual assault or abuse.

### ■ *Texas Woman's University's Yellow Light Policies*

FIRE finds seven policies by Texas Woman's University that warrant a Yellow Light rating grade. They include:

#### 1) **Residence Life Handbook: Student Rights and Responsibilities**

Primary rights of the hall resident include: ... the right to be free from fear, intimidation, physical and/or emotional harm... Any violation of these rights is subject to review and action by the Residence Life Conduct Review Board or Area Manager, Residence Director, Hall Director, or both; the violation may be referred to the University Student Conduct Board for further action.

#### 2) **Student Handbook: Free Speech Areas**

Designated free speech areas are available to TWU students, faculty, staff and members of the community. The designated areas may be used for, but are not limited to, the expression of personal politics, philosophy, religious viewpoints, surveys, or announcements... Other areas on all campuses may also be utilized by departments or organizations for similar activities; however, reservations are required.

#### 3) **Student Handbook: Statement of Community Respect**

The pursuit of community respect requires tolerance of intellectual positions and the expression of ideas that are different from, and contrary to, one's own beliefs and values. The TWU community expects that the expression of these ideas will be exercised in ways that are consistent with norms of civility toward all people and that demonstrate respect for the cultural traditions of the diverse racial, religious, ethnic and national groups that comprise the University community.

#### 4) **Student Handbook: Student Code of Conduct**

Violations of the Code of Conduct fall into the following categories: Verbal, physical, or psychological abuse, including detention or threat of bodily harm to self or another person or persons in the university community.

#### 5) **Student Handbook: Distribution of Printed Material**

All persons and organizations, both those officially and those not officially connected with the university,

may come upon university property for effecting the distribution of announcements, notices, pictures, advertisements, or publications only after giving notice to the Center for Student Development of the time, place, and manner of such distribution and by filing a copy of the material to be distributed with the Center for Student Development at least one day prior to the time of distribution.

**6) Student Handbook: Student Code of Conduct**

This policy states: “Bullying—aggression that intends to harm, occurs repeatedly, including by electronic means.

**7) University Policy Manual: Sexual Harassment**

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: . . . such conduct has the purpose or effect of substantially or unreasonably interfering with an individual’s professional or academic performance or creating an intimidating, hostile, or offensive employment, education, or student living environment.

The policy goes on further to specify the range of actions constituting sexual harassment:

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual’s body, sexual prowess or sexual deficiencies; leering, catcalls or touching; insulting or obscene comments or gestures; display or circulation in the workplace of sexually suggestive objects or pictures (including through e-mail or other electronic means); and other physical, verbal or visual conduct of a sexual nature.

■ *Texas Woman’s University’s Green Light Policies*

Texas Woman’s University has two policies on its books that received the Green Light rating grade. They are:

**1) Student Handbook: Sexual Harassment**

Sexual harassment is: unwelcome, sexual or gender-based verbal, written or physical conduct that is sufficiently severe, persistent or pervasive such that it has the effect of unreasonably interfering with, denying or limiting education or employment opportunities or the ability to participate in or benefit from the university’s educational, social and/or residential program, and is based on power differentials (*quid pro quo*), or the creation of a hostile environment or retaliation.

**2) Student Handbook: Student Rights and Responsibilities**

Texas Woman’s University is a community of scholars in which the ideals of freedom of inquiry, freedom of thought, freedom of expression and freedom of the individual are sustained. TWU is committed to preserving the exercise of any right guaranteed to individuals by the Constitution. The exercise and preservation of these freedoms and rights require a respect for the rights of all people in the community to enjoy them to the same extent.

## THE UNIVERSITY OF HOUSTON

FIRE gives the University of Houston an overall speech code rating of [Red Light](#).

■ *The University of Houston’s Red Light Policy*

The University of Houston has one policy on its books that FIRE finds to constitute a Red Light violation of the First Amendment. The policy, titled, “**Discrimination and Harassment Policy 14-15**,” states:

Harassment—Defined as subjecting an individual on the basis of her or his membership in a Protected Class to unlawful severe and pervasive treatment that constitutes: \* Humiliating, abusive or threatening conduct or behavior that denigrates or shows hostility or aversion toward an individual or group; \* An intimidating, hostile or abusive learning, living or working environment or an environment that alters the conditions of learning, living or working; or \* An unreasonable interference with an individual’s academic or work performance.

The policy goes on to state that, under this standard, harassment “includes, but is not limited to, epithets or slurs, negative stereotyping, threatening, intimidating or hostile acts, denigrating jokes and display or circulation (including through e-mail) of written or graphic material in the learning, living or working environment.”

■ *The University of Houston’s Yellow Light Policies*

FIRE finds five policies by The University of Houston that warrant a Yellow Light rating grade. These include:

**1) Student Code of Conduct: Mental or Bodily Harm 14-15**

This policy states: “(a) Intentionally inflicting mental or bodily harm upon any person; (b) taking any action for the purpose of inflicting mental or bodily harm upon any person; (c) taking any reckless, but not accidental, action from which mental or bodily harm could result to any person; (d) engaging in conduct, including, but not limited to stalking, that causes a person to believe that the offender may cause mental or bodily harm; (e) any act which demeans, degrades, or disgraces any person and that causes, or would be reasonably likely to cause, mental or bodily harm.”

**2) Freedom of Expression Policy 14-15**

The University expects that persons engaging in expressive activities will demonstrate civility, concern for the safety of persons and property, respect for University activities, respect for those who may disagree with their message, and compliance with University policies and applicable local, state, and federal laws.

**3) Appropriate Use of Computing Resources: Harassment 14-15**

The following constitute examples of Computer Harassment: Intentionally using the computer to annoy, harass, terrify, intimidate, threaten, offend or bother another person by conveying obscene language, pictures, or other materials or threats of bodily harm to the recipient or the recipient’s immediate family...

The policy goes on to add that “[t]he display of offensive material in any publicly accessible area is likely to violate University harassment policy.”

**4) Sexual Misconduct Policy (Interim 2) 14-15**

Sexual harassment is a form of sex discrimination that includes verbal, written or physical behavior of a sexual nature, directed at someone, or against a particular group, because of that person’s or group’s sex, or based on gender stereotypes, when that behavior is unwelcome, severe or pervasive, and where it meets either of the following criteria: ... The behavior has the purpose or effect of substantially interfering with another’s work or educational performance by creating an intimidating or hostile environment for employment, education, on-campus living or participation in a University-affiliated activity. Examples of this type of sexual harassment can include, but is [are] not limited to:

- a. Persistent unwelcome efforts to develop a romantic or sexual relationship;
- b. Unwelcome commentary about an individual’s body or sexual activities;
- c. Unwanted sexual attention;
- d. Repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present; or
- e. Gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting even if not objected to by those present.

**5) Student Code of Conduct: Violation of Established Student Housing and Residential Life Policies, Procedures and/or License Agreements 14-15**

Displaying pornographic or discriminatory literature or other materials or any materials that cause, or would be reasonably likely to cause, mental harm to another.

■ *The University of Houston’s Green Light Policy*

The University of Houston’s lone Green Light rating grade is found in the following:

### Freedom of Expression Policy 14-15

University of Houston students, faculty, and staff who wish to engage in an expressive activity (including literature distribution) that is not an official University activity, and does not meet this policy's definition of an organized expressive activity (i.e., where an expressive activity is designed to attract an audience of less than 25 people), may engage in such expressive activity in the University's common areas (e.g., University parks and sidewalks) without prior registration or approval.

The University of Houston has designated 19 areas for outdoor organized expressive activities, indicated on the campus map titled "Areas for Organized Expressive Activities on Campus" (Addendum A). Thirteen areas do not require a reservation for use while the remaining six areas require advance reservation.

## THE UNIVERSITY OF NORTH TEXAS

FIRE gives the University of North Texas an overall speech code rating of "Red Light."

### ■ *The University of North Texas' Red Light Policy*

The University of North Texas has one policy on its books that FIRE finds to constitute a Red Light violation of the First Amendment:

#### **Code of Student Conduct: Definitions 14-15**

Sexual Harassment—unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, sexual violence and other verbal, nonverbal or physical conduct of a sexual nature.

### ■ *The University of North Texas' Yellow Light Policies*

FIRE finds three policies by The University of North Texas that warrant a Yellow Light rating grade:

#### **1) Code of Student Conduct: Acts Affecting Health, Safety or Welfare 14-15**

Engaging in physical, and/or verbal abuse, domestic violence, threats, intimidation, harassment, coercion, physical or electronic stalking or any other conduct which threatens or endangers the health, safety or welfare of any person. Speech protected by the First Amendment of the U.S. Constitution is not a violation of this provision, though fighting words and statements which reasonably threaten or endanger the health and safety of any person are not protected speech.

#### **2) Policy Manual: Sexual Harassment 14-15**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature (regardless of gender), even if carried out under the guise of humor, constitute a violation of this policy when ... [s]uch conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile or offensive employment, or educational environment.

The policy goes on to explain that "sexual harassment takes many forms." It provides the following "examples of conduct which might be considered sexual harassment under this policy include but are not limited to:

- repeated and unwanted requests for dates, sexual flirtations, or propositions of a sexual nature, subtle pressure for a sexual relationship,
- sexist remarks about a person's clothing, body or sexual activities
- conduct of a sexual nature that causes humiliation or discomfort, such as use of inappropriate terms of address, and
- sexually explicit or sexist comments, questions or jokes
- conduct of a sexual nature that creates a hostile work or educational environment."

#### **3) Policy Manual: Computer Use Policy 14-15**

When communicating with others via the University computer system, a user's communications should reflect high ethical standards, mutual respect and civility.



■ *The University of North Texas's Green Light Policy*

The University of North Texas's lone Green Light rating grade is found in the following:

**Policy Manual: Free Speech and Public Assembly on Campus Grounds 14-15**

The University of North Texas recognizes that freedom of expression and public assembly are fundamental rights of all persons and are essential components of the education process.

Campus grounds generally are open to students, employees and sponsoring organizations for expressive activity. However, these individuals and organizations are encouraged to reserve areas on campus that are designated for expressive activity when the activity is promoted in advance or when the activity may reasonably be anticipated to draw a crowd of 25 or more people.

## THE UNIVERSITY OF TEXAS

FIRE gives the University of Texas an overall speech code rating of “Red Light.”

■ *The University of Texas Red Light Policies*

The University of Texas at Austin has two policies on its books that FIRE finds to constitute Red Light violations of the First Amendment:

**1) Office of the Chief Information Officer: Acceptable Use Policy 14-15**

REQUIREMENTS: ... Be civil. Do not send rude or harassing correspondence... What are the consequences for violating the rules listed in Section V of this document?

The policy goes on to list punishments for these infractions, which include but are “not limited to:

- Verbal warnings
- Revocation of access privileges
- Disciplinary probation
- Suspension from the university
- Criminal prosecution.”

**2) Office of the Dean of Students: Student's Guide to Sexual Harassment and Misconduct 14-15**

Sexual misconduct is a concept taken from the Regents' Rules ethics statement. Sexual misconduct is conduct of a sexual nature that, although not so serious or pervasive that it rises to the level of sex discrimination or sexual harassment, is unprofessional and/or inappropriate for the educational and working environment. The purpose of prohibiting sexual misconduct is to discourage and, if necessary, take disciplinary action for inappropriate or unprofessional activity of a sexual nature in the workplace or classroom, even if that conduct appears to be welcomed and consensual or is not so serious or pervasive that it meets the definition of sex discrimination or sexual harassment.

The policy goes on to provide examples of acts “that could constitute sexual misconduct,” including, but “not limited to:

- Repeatedly engaging in sexually oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present;
- Gratuitous use of sexually oriented materials not directly related to the subject matter of a class, course, or meeting even if not objected to by those present ...”

■ *The University of Texas at Austin's Yellow Light Policies*

FIRE finds these policies on the books at The University of Texas at Austin that warrant a Yellow Light rating grade. They include:

**1) Policy on Sex Discrimination and Sexual Harassment 14-15**

Sexual Harassment. Unwelcome conduct of a sexual nature. Sexual harassment is a form of sex discrimination that includes: Sexual violence, as defined under the Texas Penal Code which includes rape, sexual assault, sexual battery, and sexual coercion, and can occur when:

- The submission to unwelcome physical conduct of a sexual nature, or to unwelcome requests for sexual favors or other verbal conduct of a sexual nature, is made an implicit or explicit term or condition of employment or education;
- The submission to or rejection of unwelcome physical conduct of a sexual nature, or unwelcome requests for sexual favors or other verbal conduct of a sexual nature, is used as a basis for academic or employment decisions or evaluations;
- Unwelcome physical acts of a sexual nature, or unwelcome requests for sexual favors or other verbal conduct of a sexual nature, that have the effect of creating an objectively hostile environment that substantially interferes with employment or education on the basis of sex; or
- Such conduct is intentionally directed towards a specific individual and has the purpose or effect of unreasonably interfering with that individual's education, employment, or participation in University activities, or creating an intimidating, hostile, or offensive atmosphere.

The policy goes on to specify the nature of “physical conduct that, depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment includes but is not limited to:

- Unwelcome intentional touching;
  - Deliberate physical interference with or restriction of movement;
  - Verbal conduct, including oral, written, or symbolic expression that, depending on the totality of the circumstances present, including frequency and severity, may constitute sexual harassment.”
- “Institutional Rules on Student Services and Activities: Student Discipline and Conduct 14-15.” This policy states: Notwithstanding any action taken by civil authorities or agencies charged with the enforcement of criminal laws on account of the violation, the dean may initiate disciplinary proceedings under subchapter 11-300 against a student who ... otherwise engages in the following acts of inappropriate conduct that hold the potential to interfere or disrupt the teaching function of the University: pranks, repeated contact of a harassing nature through a personal or electronic medium, and berating or otherwise abusive behavior.”
- “Institutional Rules on Student Services and Activities: Student Discipline and Conduct 14-15.” This policy states: “Notwithstanding any action taken by civil authorities or agencies charged with the enforcement of criminal laws on account of the violation, the dean may initiate disciplinary proceedings under subchapter 11-300 against a student who ... otherwise engages in the following acts of inappropriate conduct that hold the potential to interfere or disrupt the teaching function of the University: pranks,
  - Repeated contact of a harassing nature through a personal or electronic medium, and berating or otherwise abusive behavior.

## 2) Residence Hall Manual: Harassment 14-15

Members of an educational community should adhere to standards of civility and good taste that reflect mutual respect. A respectful environment is free of harassment, violence and verbal abuse. It is the policy of the University to maintain an educational environment free from harassment and intimidation.

The policy goes on to explain that, in its efforts to “foster an environment free from harassment and intimidation, ... Residence Life is committed to responding appropriately to acts of racism, sexism, heterosexism, ageism, ableism and any other force that seeks to suppress another individual or group of individuals. When acts of harassment or intimidation occur in the residence hall environment, the Residence Life staff, in conjunction with the Residence Hall Council, may lead a floor or hall meeting to discuss the incident and decide, as a community, appropriate steps that need to be taken to address the incident. Residents who are suspected to have engaged in harassment as defined in the Institutional Rules will be referred to the Dean of Students for possible disciplinary action.”

## 3) Campus Climate Response Team 14-15

- Do you know of a student organization hosting a party with a racist theme?

- Have you seen derogatory graffiti on bathroom walls and buildings regarding sexual orientation or gender identity and expression?
- Have you overheard malicious threats intended to intimidate another person because of their religion?
- Are you worried that somebody has created a hostile or offensive classroom environment?
- Do you have concerns about a campus climate incident but you are not sure what to do?
- If so, please contact the Campus Climate Response Team by submitting your concerns using the Campus Climate Incident Online Report Form.

■ *The University of Texas at Austin's Green Light Policies*

The University of Texas at Austin's two policies meriting Green Light rating grades are:

**1) Institutional Rules on Student Services and Activities: Student Discipline and Conduct 14-15**

Harassment is defined as conduct that is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the University.

**2) University Catalog: Speech, Expression, and Assembly 14-15, Subchapter 13-900; Public Assemblies without Amplified Sound. Sec. 13-901. General Rule on Public Assemblies**

"Publicly assemble" and "public assembly" include any gathering of persons, including discussions, rallies, and demonstrations. The rules in subchapter 13-800 apply to any use of amplified sound at a public assembly.

University persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. This right to assemble is subject to the rules in this subchapter, to the general rules in subchapter 13-200 and subchapter 13-300, and to the rules on use of University property in chapter 10 of the Institutional Rules.

## THE UNIVERSITY OF TEXAS AT ARLINGTON

FIRE gives the University of Texas at Arlington an overall speech code rating of "[Red Light](#)."

■ *The University of Texas at Arlington's Red Light Policy*

The University of Texas at Arlington has one policy on its books that FIRE finds to constitute Red Light violations of the First Amendment. The policy, titled, "Procedure 14-1: Complaint, Investigation, and Grievance Procedures for Sexual Harassment and Sexual Misconduct," states: "Sexual harassment is defined by the Equal Employment Opportunity Commission (EEOC) and the courts to be any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

- submission to such conduct is made either explicitly or implicitly a term or condition of employment (or a student's status in a course, program, or activity);
- submission to, or rejection of such conduct by an employee is used as a basis for employment decisions affecting the individual. In the case of a student, it is used as a basis for academic or decisions affecting a student; or,
- such conduct has the purpose or effect of unreasonably interfering with the individual's employment (or the student's educational experience) or creating an intimidating, hostile, or offensive academic environment."

The policy goes on to define sexual misconduct: "Sexual misconduct includes sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional and inappropriate for the workplace or classroom. Examples of behavior that could be considered sexual harassment or sexual misconduct includes [sic], but is [sic] not limited to, the following:

- physical contact of a sexual nature including touching, patting, hugging, or brushing against a person's body;
- explicit or implicit propositions or offers to engage in sexual activity;

- comments of a sexual nature including sexually explicit statement, questions, jokes or anecdotes, remarks of a sexual nature about a person's clothing or body, remarks about sexual activity, speculation about sexual experience;
  - exposure to sexually oriented graffiti, pictures, posters or materials;
  - physical interference with or restriction to an individual's movements."
- *The University of Texas at Arlington's Yellow Light Policies*  
 FIRE finds two policies on the books at The University of Texas at Arlington that warrant a Yellow Light rating grade. These include:

**1) Policy 11-200: Speech, Expression and Assembly- Prohibited Expression**

"Verbal harassment" means hostile or offensive speech, oral, written or symbolic that:

- personally describes or is personally directed to one or more specific individuals; and
- is sufficiently severe, pervasive or persistent to create an objectively hostile environment that interferes with or diminishes the victim's ability to participate in or benefit from the services, activities or privileges provided by the University; and
- is not necessary to the expression of any idea described in paragraph 2 of this subsection.

The policy goes on to clarify what is not "verbal harassment": "To make an argument for or against the substance of any political, religious, philosophical, ideological or academic idea is not verbal harassment even if some listeners are offended by the argument or idea. The categories of sexually harassing speech set forth by the UT Arlington Standards of Conduct Guide are rarely, if ever, necessary to argue for or against the substance of any political, religious, philosophical, ideological or academic idea."

The policy next lists the various manifestations of verbal harassment, which "may consist of threats, insults, epithets, ridicule, personal attacks or the categories of harassing sexual speech set forth by the UT Arlington Standards of Conduct Guide and is often based on the victim's appearance, personal characteristics or group membership, including but not limited to race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, ideology, political views or political affiliation."

**2) Policy 5-513: Sexual Harassment and Sexual Misconduct Policy**

This policy "applies to all University administrators, faculty, staff, students, third parties within the institution's control, including visitors, and applicants for employment. It applies to conduct regardless of where it occurs, including off University property, if it potentially affects the complainant's education or employment with the University."

The policy next provides definitions of "other inappropriate conduct of a sexual nature." These include: "unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom."

The policy provides examples of sexual harassment, which consist in "unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly. Sexual harassment is a form of sex discrimination that includes ... [v]erbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:

- explicit or implicit propositions to engage in sexual activity;
- gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- gratuitous remarks about sexual activities or speculation about sexual experiences;
- persistent, unwanted sexual or romantic attention;

- subtle or overt pressure for sexual favors;
  - exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
  - deliberate, repeated humiliation or intimidation based upon sex.”
- *The University of Texas at Arlington’s Green Light Policies*  
The University of Texas at Arlington’s two policies meriting Green Light rating grades are:
- 1) **Policy 11-900: Speech, Expression and Assembly- Public Assemblies Without Amplified Sound**  
“Publicly assemble” and “public assembly” include any gathering of persons, including discussions, rallies, and demonstrations.... University persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- 2) **Policy 11-100: Speech, Expression and Assembly- Governing Principles**  
The freedoms of speech, expression and assembly are fundamental rights of all persons and are central to the mission of the University. Students, faculty and staff have the right to assemble, to speak, and to attempt to attract the attention of others and corresponding rights to hear the speech of others when they choose to listen, and to ignore the speech of others when they choose not to listen.

### **Texas Public Universities That Receive the Yellow Light Overall Rating from FIRE**

#### **TEXAS A&M UNIVERSITY**

FIRE gives Texas A&M University an overall speech code rating of “[Yellow Light](#).”

- *Texas A&M University’s Yellow Light Policies*  
FIRE finds three policies by Texas A&M University that merit a Yellow Light rating grade. They include:
- 1) **Stop Hate 14-15**  
Bias/hate related events are those actions or behaviors committed that involve the intentional selection of a victim based on their membership in a group identified by race, ethnicity, disability, religion, national origin, ancestry, age, gender, or sexual orientation.
- Too often, acts of hate and bias go unreported for a number of reasons ranging from a lack of trust to fear of reprisal. Some events, like racial epithets written on bathroom walls, are occasionally dismissed as too trivial to report. However, research suggests that these types of events tend to build into much bigger ones. Furthermore, they create a hostile, unsafe, and unwelcoming climate for the people they target and do damage to our community as a whole.
- The policy goes on to include a “Hate/Bias Report Form.”
- Student Rules: Rules on Freedom of Expression 14-15**  
As a public institution of higher learning, Texas A&M University provides forums for the expression of ideas and opinions. These include:
- Traditional public forums include the University’s public streets, sidewalks, parks, and similar common areas. These areas are generally available for expressive activity, planned or spontaneous, for the individual or small groups (generally where a crowd of 25 or less will be present, and/or where an event is not promoted in advance, and/or when an event is not sponsored by a student organization) at any time without the need for reservation, or prior approval.
  - Rudder Fountain Area, Lawrence Sullivan Ross Statue Area, and the West Mall Area are designated free speech areas and will be reserved at the request of students and non-students for expressive activity. The act of confirming a reservation will ensure the availability of space. In an effort to ensure safety and to promote an environment conducive to study, advanced reservation for expressive activity is required (in the form of an approved Reservation Request for Space) for events or activities that are promoted in advance, and/or sponsored by student organizations, and/or expected to draw a crowd of more than 25 people.



## 2) System Policies: Student Rights and Obligations 14-15

The rights of students are to be respected. These rights include respect for personal feelings, freedom from indignity of any type, freedom from control by any person except as may be in accord with published rules of the academic institutions, and conditions allowing them to make the best use of their time and talents toward the objectives which brought them to the institutions. No officer or student, regardless of position or rank, shall violate those rights; no custom, tradition or rule in conflict will be allowed to prevail.

## 3) Student Rules: Rules on Freedom of Expression 14-15

As a public institution of higher learning, Texas A&M University provides forums for the expression of ideas and opinions. These include: Traditional public forums include the University's public streets, sidewalks, parks, and similar common areas. These areas are generally available for expressive activity, planned or spontaneous, for the individual or small groups (generally where a crowd of 25 or less will be present, and/or where an event is not promoted in advance, and/or when an event is not sponsored by a student organization) at any time without the need for reservation, or prior approval.

Rudder Fountain Area, Lawrence Sullivan Ross Statue Area, and the West Mall Area are designated free speech areas and will be reserved at the request of students and non-students for expressive activity. The act of confirming a reservation will ensure the availability of space. . . . In an effort to ensure safety and to promote an environment conducive to study, advanced reservation for expressive activity is required (in the form of an approved Reservation Request for Space) for events or activities that are promoted in advance, and/or sponsored by student organizations, and/or expected to draw a crowd of more than 25 people.

## 4) Student Rules: Individual Responsibility for Use of Computing Resources and Facilities 14-15

Respect the forum (talk groups, bulletin boards, public computing facilities) when communicating ideas to others via university computing facilities and resources (includes access to the Internet). All communications should reflect high ethical standards and mutual respect and civility.

### ■ *Texas A&M University's Green Light Policies*

Texas A&M University's five Green Light rating grades are found in:

#### 1) Student Rules: Racial and Ethnic Harassment 14-15

Racial and Ethnic Harassment is discrimination based on race, color, or national origin and involves behavior that is so severe and pervasive and objectively offensive so as to interfere with or limit the ability of a student to participate in or benefit from the services, activities or privileges provided by Texas A&M University. . . . To rise to the level of Racial and Ethnic Harassment, behaviors must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive. The conduct must also be sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program and/or experience.

The offensive conduct underlying some incidents might be protected speech, but may still be in contradiction to Texas A&M University's commitment to civility, diversity, academic freedom, equality of opportunity and the valuing of human dignity. In these instances, constitutional rights will continue to be protected, but University staff will also exercise their right to speak and engage in educational dialogue with those engaged in these types of behaviors.

#### 2) Student Rules: Students' Rights and Responsibilities 14-15

A student shall have the right to participate in a free exchange of ideas, and there shall be no university rule or administrative rule that in any way abridges the rights of freedom of speech, expression, petition and peaceful assembly as set forth in the U.S. Constitution.

#### 3) Student Rules: Sexual Harassment and Related Retaliation 14-15

Sexual harassment is a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature constitutes actionable sexual harassment when this conduct is so severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational performance, or creates an intimidating

or hostile work or educational environment. The University will use a reasonable person standard to determine these elements.

**4) Student Rules: Basic Rules and Procedures Governing Student Life 14-15**

The student retains the rights guaranteed under the Constitution of the United States ...

**5) Student Rules: Student Conduct Code 14-15**

Behavior that is severe, pervasive or persistent to a degree that a reasonable person similarly situated would be prevented from accessing an educational opportunity or benefit. This behavior includes, but is not limited to, verbal abuse, threats, intimidation, harassment, and coercion. In addition, harassment may be conducted by a variety of mediums, including but not limited to, physical, verbal, graphic, written, or electronic.

## TARLETON STATE UNIVERSITY

Tarleton State University, located in Stephenville, Texas, has received the speech code rating, “[Yellow Light](#),” by FIRE

■ *Tarleton State University’s Yellow Light Policies*

FIRE found nine policies at Tarleton State University that qualify for a Yellow Light rating, as follows:

**1) SAP 29.01.03.T0.05: Information Technology Services**

The following activities are prohibited: Sending email that is intimidating or harassing ....

**2) Campus Rules and Procedures: Publicity Rules and Procedures**

All publicity displayed on campus, other than those of academic or administrative departments, is to be approved by the Office of Student Engagement before being placed on campus. ... Publicity content should be in good taste. No sign may be posted that contains any material that is obscene, vulgar, offensive, libelous, or suggests a misrepresentation of the institution. The Director of Student Activities makes interpretation.

**3) Code of Student Conduct: Disruptive Behavior**

Engaging in disorderly conduct, which includes physical or verbal abuse and/or injury of another person.

**4) Code of Student Conduct: Sexual Misconduct**

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so frequent or severe that it explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work or educational performance, or creates an intimidating, hostile, or offensive work environment.

a) Submission to such conduct is made either explicitly or implicitly as a term or condition of instruction, employment, or participation in other university activity;

b) Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual;

c) Such conduct has the purpose or effect of unreasonably interfering with an individual’s performance or creating an intimidating, hostile, or offensive university environment.

**5) Campus Rules and Procedures: General Events and Activities**

An activity permit is required for any event, meeting or activity that any recognized student organization is sponsoring. This applies to events held on and off campus. ... The time and place of meetings for clubs or organizations must be approved a minimum of 10 days prior to the event by the Office of Student Activities through the approval of an activity permit.

**6) Code of Student Conduct: Unauthorized or Irresponsible Use of Electronic Equipment**

Misuse or abuse of computer equipment, programs, or data including, but not limited to: ... Use of computing and resources to send obscene or abusive messages.

**7) Code of Student Conduct: Bullying/Cyberbullying**

*5.8.4. Bullying.* Defined as the use of repeated or severe verbal and/or non-verbal means in order to coerce or force a person to do something or to degrade a person, including, but not limited to, the use of taunting, teasing, or coercive language, pushing, punching, or creating threatening notes/letters/signs.

5.8.5 *Cyberbullying*. Defined as an act of bullying that takes place using different kinds of technology and social media. Using various types of electronic devices to inflict emotional and/or mental pain, and to degrade another person.”

#### 8) Code of Student Conduct: Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. It can be sex-based and/or gender-based verbal, written, online and/or physical conduct. Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response. Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment. . . .

8.2.1 A hostile environment is created when sexual harassment is:

- a) sufficiently severe, or
- b) persistent or pervasive, and
- c) objectively offensive that it:
- d) unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational [and/or employment], social and/or residential program.

#### 9) SAP 08.01.01.T1.03: Sexual and Other Gender-Based Misconduct

Sexual Harassment: Sexual harassment is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone’s ability to participate in or benefit from the university’s educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation. . . .

*Examples of Sexual Harassment:*

- Offensive sexual flirtations, advances, or propositions, including propositions of sex for grades;
- Faculty led classroom discussions about sexual experiences not in any way germane to the subject matter of class.
- Verbal abuse of a sexual nature or threat of physical sexual harm;
- Graphic verbal comments about an individual’s body or sexual behaviors;
- Sexually degrading words used to describe an individual;
- Unwelcome touching or physical contact;
- The display of sexually suggestive objects, videos, posters, or pictures;
- Whistling, obscene gestures, suggestive or insulting sounds; and
- Unwelcome, repeated requests for dates. . . .

*Other Gender-Based Misconduct*

Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the First Amendment).

#### ■ Tarleton State University’s Green Light Policies

Tarleton’s two Green Light Policies are found on its website, under the title, “Code of Student Conduct: Harassment/Threatening Behaviors”:

##### 1) 5.8.2 Harassment

Stalking behavior in which an individual willfully, maliciously, and

- a) Repeatedly engages in a knowing course of conduct directed at a specific person, which reasonably and seriously alarms, torments, and/or terrorizes the person.
- b) Behavior that substantially interferes with the opportunity of other students to obtain an education.

##### 2) 5.8.3 Threatening Behaviors

- a) Threat. Extreme written or verbal conduct that causes a reasonable expectation of injury to the health or safety of any person or damage to any property.
- b) Intimidation. Intimidation defined as implied threats or acts that cause a reasonable fear of harm in another.

## THE UNIVERSITY OF TEXAS AT EL PASO

FIRE gives the University of Texas at El Paso an overall speech code rating of “[Yellow Light](#).”

### ■ *The University of Texas at El Paso’s Yellow Light Policies*

The University of Texas at El Paso has two policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

#### 1) **Acceptable Use Policy 14-15**

The following activities are, in general, prohibited: ... Sending unsolicited e-mail messages ...

#### 2) **Handbook of Operating Procedures: Sexual Harassment and Sexual Misconduct- Definitions 14-15**

3.4.1 Sexual Misconduct–Sexual misconduct includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual and is unprofessional and inappropriate for the workplace or classroom.

The policy goes on to define sexual harassment, which “includes unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when:

- submission to such conduct is made a term or condition of employment or student status, either explicitly or implicitly;
- submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual’s performance as an administrator, faculty member, staff, or student, or creating an intimidating, hostile, or offensive environment.”

The policy next provides examples of “behavior that could be considered sexual misconduct or sexual harassment.” These “include, but are not limited to:

- physical contact of a sexual nature, including touching, patting, hugging, or brushing against a person’s body;
- explicit or implicit propositions of offers to engage in sexual activity;
- comments of a sexual nature, including sexually explicit statements, questions, jokes, or anecdotes;
- remarks of a sexual nature about a person’s clothing or body;
- remarks about sexual activity;
- speculation about sexual experience; exposure to sexually-oriented graffiti, pictures, posters, or materials; and/or
- physical interference with or restriction of an individual’s movements.”

### ■ *The University of Texas at El Paso’s Green Light Policies*

The University of Texas at El Paso’s three policies meriting Green Light rating grades are:

#### 1) **Handbook of Operating Procedures: Speech, Expression and Assembly–General Rule on Public Assemblies 14-15**

“Publicly assemble” and “public assembly” include any gathering of persons, including discussions, rallies, and demonstrations.... University persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.

#### 2) **Handbook of Operating Procedures: Speech, Expression, and Assembly–Governing Principles 14-15**

This policy states: “The freedoms of speech, expression, and assembly are fundamental rights of all persons and are central to the mission of the University. Students, faculty, and staff have the right to assemble, to speak, and to attempt to attract the attention of others, and corresponding rights to hear the speech of others when they choose to listen, and to ignore the speech of others when they choose not to listen.

#### 3) **Handbook of Operating Procedures: Speech, Expression and Assembly–Prohibited Expression 14-15**

This policy states: “No person shall make, distribute, or display on the campus any statement that constitutes

verbal harassment of any other person. This section applies to all speech on the campus, including speech that is part of teaching, research, or other official functions of the University. “Verbal harassment” means hostile or offensive speech, oral, written, or symbolic, that:

- personally describes or is personally directed to one or more specific individuals; and
- is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the victim’s ability to participate in or benefit from the services, activities, or privileges provided by the University; and
- is not necessary to the expression of any idea described in paragraph 2.2.4.1.1 below.

The paragraph referred to in the immediately preceding passage states: “2.2.4.1.1- To make an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea is not verbal harassment, even if some listeners are offended by the argument or idea. The categories of sexually harassing speech set forth in Section V: Human Resources and Equal Opportunity of this Handbook are rarely, if ever, necessary to argue for or against the substance of any political, religious, philosophical, ideological, or academic idea.”

The policy next describes the various forms verbal harassment may take: “threats, insults, epithets, ridicule, personal attacks, or the categories of harassing sexual speech set forth in Section V: Human Resources and Equal Opportunity of this Handbook and is often based on the victim’s appearance, personal characteristics, or group membership, including but not limited to race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, ideology, political views, or political affiliation.”

## ANGELO STATE UNIVERSITY

FIRE gives Angelo State University an overall speech code rating of “[Yellow Light](#).”

### ■ *Angelo State University’s Yellow Light Policies*

Angelo State University has six policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

#### 1) Student handbook- Freedom of Expression

Students engaged in freedom of expression activities may be subject to disciplinary action under the Code of Student Conduct for the following actions: ... Activities that include the use of obscenities, libelous statements, or “fighting words,” as defined by law.

#### 2) Student Handbook: Distribution Policy 14-15

No materials that include “fighting words” expressions, obscenities, vulgarities, libel, slander, expressions that are an incitement to imminent lawlessness, or impermissible solicitation can be distributed.

#### 3) Student Handbook: Anti-Discrimination Policy 14-15

Discriminatory harassment is verbal or physical conduct based on a student’s sex, race, national origin, religion, age, disability, sexual orientation, genetic information, or other protected categories, classes, or characteristics and is so severe, persistent, or pervasive it adversely affects the victim’s education or creates an intimidating, hostile, abusive or offensive educational environment which interferes with the victim’s ability to realize the intended benefits of the university’s resources and opportunities.

The policy goes on to provide various examples of “inappropriate behavior that may constitute discriminatory harassment, including, but not limited to” the following:

- Slurs and jokes about a protected class of persons or about a particular person based on protected status, such as sex or race;
- Display of explicit or offensive calendars, posters, pictures, drawings, screen savers, e-mails, cartoons in any format that reflects disparagingly upon a class of persons or a particular person;
- Derogatory remarks about a person’s national origin, race, or other ethnic characteristic;
- Disparaging or disrespectful comments if such comments are made because of a person’s protected status;



- Loud or angry outbursts or obscenities in the academic environment directed toward another student, faculty, staff, or visitor; or
- Disparate treatment without a legitimate business reason.

#### 4) Student Handbook: Anti-Discrimination Policy 14-15

Sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that are unwelcome and expressly or implicitly imposes conditions upon, threatens, or creates an intimidating, hostile, or demeaning environment of such a severe and pervasive nature as to interfere with an individual's (a) academic pursuits, (b) university employment, (c) participation in activities sponsored by the university or organizations related to the university, or (d) opportunities to benefit from other aspects of university life.

The policy goes on to provide examples of "inappropriate behavior that may constitute unlawful sexual harassment," including but not limited to:

- Sexual teasing, jokes, remarks, or questions;
- Sexual looks and gestures;
- Sexual innuendos or stories;
- Sexual favoritism;
- Pressure for dates or sexual favors;
- Gifts, letters, calls, e-mails, or materials of a sexual nature;
- Unwelcome physical contact (touching, patting, stroking, rubbing);
- Sexually explicit visual materials (calendars, posters, cards, software, internet materials);
- Communicating in a demeaning manner with sexual overtones;
- Inappropriate comments about dress or physical appearance; or
- Inappropriate discussion of private sexual behavior.

#### 5) Student Handbook: Posting Rules and Regulations 14-15

The individual or campus organization wishing to post a sign must submit two copies of the sign to be posted to the University Center Program Office at least twenty four (24) hours in advance of the proposed posting. Weekends and holidays shall not be included in the calculation of the 24 hour period. The proposed sign will be checked for compliance with this policy.

#### 6) Student Handbook: Code of Student Conduct 14-15

Intentional "spamming" of students, faculty or staff (defined as the sending of unsolicited and unwanted e-mails, electronic communications including, but not limited to, e-mails and text messages to parties with whom the sender has no existing business, professional or personal acquaintance) using Angelo State University information resources.

#### ■ *Angelo State University's Green Light Policies*

Angelo State University's two policies meriting Green Light rating grades are:

##### 1) Student Handbook: Freedom of Expression Activities 14-15

The open exchange of information, opinions, and ideas between students is an essential element of the campus educational experience. These regulations are intended to protect the interests of all students as well as other members of the Angelo State University community. These regulations presume that students are generally free to engage in freedom of expression activities in those outdoor areas of the campus that are common and accessible to all students, such as park-like areas and sidewalks, without the need of prior approval of the University.

##### 2) Student Handbook: Code of Student Conduct 14-15

Bullying/Cyber bullying: (a) Repeated or severe aggressive behaviors that intimidate or intentionally harm or control another person physically. (b) Severe, pervasive, and objectively offensive behaviors that intimidate or intentionally harm or control another person emotionally.

## SOUTHERN METHODIST UNIVERSITY

FIRE gives Southern Methodist University an overall speech code rating of “[Yellow Light](#).”

### ■ *Southern Methodist University’s Yellow Light Policies*

Southern Methodist University has five policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

#### 1) **Residence Life & Student Housing: Community Standards–Disruptive**

I understand that any activity that has a negative impact on others will not be tolerated.

#### 2) **Student Handbook: Code of Conduct–Computing and Communications–Violating the University’s Computing and Communications Policy (University Policy 12.3)**

This includes, but is not limited to transmitting unsolicited information that contains obscene, indecent, lewd, or lascivious material; using University resources for any commercial venture; or violating the Copyright law in any manner.

#### 3) **Policy 2.5.1: Interim Title IX Harassment**

“Sexual harassment” is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when—such conduct has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment or unduly interfering with an individual’s work or academic performance. For purposes of this policy, “undue interference” is defined as improper, unreasonable or unjustifiable behavior going beyond what is appropriate, warranted or natural.

Sexual harassment includes two categories:

“Hostile environment sexual harassment” means verbal, physical or visual forms of harassment that are sexual in nature, “sufficiently severe, persistent, or pervasive” and unwelcome. A single, severe incident, such as a sexual assault, could create a hostile environment. A “hostile environment” is often created by a series of incidents. . . .

6.1. Members of the University community demonstrate insensitivity that necessitates remedial measures when, without establishing a pattern of doing so, they engage in isolated conduct that may give rise to acts of sexual harassment. When University officials become aware that such conduct has occurred or is occurring in their areas, they should direct those engaged in such conduct to undertake Title IX training and, in consultation with the Title IX Coordinator, document the incident and submit the documentation to the Title IX Coordinator.

6.2. After participating in the Title IX training or after failing or refusing to participate after being directed to do so, a person continues to engage in the conduct, the appropriate University official shall report the facts and circumstances to the Title IX Coordinator. The Title IX Coordinator shall act on the matter in accordance with Section 8 of this Policy 2.5.1.

#### 4) **Student Handbook: Code of Conduct–Irresponsible Conduct**

Engaging in irresponsible conduct or behavior that does not model good citizenship or reflects poorly upon the Southern Methodist University community.

#### 5) **Policy 2.6: Racial and Ethnic Harassment**

Racial and ethnic harassment includes, but is not limited to: Physical, psychological, verbal, and/or written abuse with regard to race, creed or ethnic origin that rises to the level of ‘fighting words.’

### ■ *Southern Methodist University’s Green Light Policy*

Southern Methodist University’s lone policy meriting a Green Light rating grade is found in the “Student Handbook: Code of Conduct–Harassment.” This policy states:

Engaging in harassment, whether physical, psychological, verbal, written or digital-based, which is beyond the bounds of protected free speech, and directed at a specific individual(s), and likely to cause an immediate breach of the peace; conduct which threatens the mental health, physical health or security of any person or persons including stalking, intimidation, or threat that unreasonably impairs the security or privacy of another member of the university community. . . .

Due to the University's commitment to freedom of speech and expression, harassment is more than insensitivity or conduct that offends or creates an uncomfortable situation for certain members of the community.

## TEXAS STATE UNIVERSITY

FIRE gives Texas State University an overall speech code rating of “[Yellow Light](#).”

### ■ *Texas State University's Yellow Light Policies*

Texas State University-San Marcos has four policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

#### 1) Sexual Misconduct Policy

Sexual Harassment is any unwelcome verbal, nonverbal, written, electronic or physical behavior of a sexual nature directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, severe or pervasive, and where it meets either of the following criteria: . . .

2.192 The behavior has the purpose or effect of substantially interfering with another's work or educational performance by creating an intimidating or hostile environment for employment, education, on-campus living or participation in a Component affiliated activity.

Examples of this type of sexual harassment can include, but are not limited to:

2.1921 persistent unwelcome efforts to develop a romantic or sexual relationship;

2.1922 unwelcome commentary about an individual's body or sexual activities;

2.1923 unwanted sexual attention;

2.1924 repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present; or

2.1925 gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting even if not objected to by those present.

#### 2) Prohibition of Discrimination or Harassment

Harassment as a form of discrimination is defined as verbal or physical conduct that is directed at an individual or group because of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity, or gender expression when such conduct is sufficiently severe, pervasive, or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance; or of creating a hostile academic or work environment.

#### 3) Appropriate Use of Information Resources

The following activities exemplify inappropriate use of the university's information resources. These and similar activities are strictly prohibited for all users. . . .

k. using university information resources in a manner that violates other university policies, such as racial, ethnic, religious, sexual, or other forms of harassment. See also UPPS No. 04.04.46, Prohibition of Discrimination or Harassment, and The Texas State University System (TSUS) Sexual Misconduct Policy

l. Using university information resources for the transmission of spam mail, chain letters, malicious software (e.g., viruses, worms, or spyware), or personal advertisements, solicitations or promotions. . . .

n. Using Texas State's information resources to affect the result of a local, state, or national election or to achieve any other political purpose (consistent with Texas Government Code § 556.004).

#### 4) Code of Student Conduct

Specific examples of conduct which are violations of this Code of Student Conduct include, but are not limited to, committing or attempting to commit the following: . . . endangering the physical or mental health or safety of any person or intentionally or recklessly causing injury to any person; . . . harassing or threatening (by any means) to take unlawful action against any person, causing or intending to cause annoyance or alarm . . .”

■ *Texas State University's Green Light Policy*

Texas State University's lone policy meriting a Green Light rating grade is found in the university document titled, "Posting/Distribution of Temporary Signs, Informational Booths & Banners on Campus." This policy states: "Any person may distribute outdoors, on grounds owned or controlled by Texas State, petitions, informational handbills, or other pieces of literature that are not obscene, as defined by Texas or federal law, or libelous.

## TEXAS TECH UNIVERSITY

FIRE gives Texas Tech University an overall speech code rating of "Yellow Light."

■ *Texas Tech University's Yellow Light Policies*

Texas Tech University has five policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

1) **Student Handbook: Anti-Discrimination Policy.** This policy states: "Examples of inappropriate behavior that may constitute unlawful sexual harassment include, but are not limited to:

- i. Sexual teasing, jokes, remarks, questions, looks, gestures, innuendoes or stories;
- ii. Sexual favoritism;
- iii. Pressure for dates or sexual favors;
- iv. Gifts, letters, calls, e-mails, or materials of a sexual nature;
- v. Sexually explicit visual material (calendars, posters, cards, software, internet materials);
- vi. Communicating in a demeaning manner with sexual overtones;
- vii. Inappropriate comments about dress or physical appearance; or
- viii. Non-consensual video or audio-taping of sexual activity;
- ix. Inappropriate discussion of private sexual behavior;
- x. Exposing one's genitals or inducing another to expose their genitals;
- xi. Unwelcome physical contact (touching, patting, stroking, rubbing);
- xii. Non-consensual sexual intercourse.
- xiii. Other gender-based threats, discrimination, intimidation, hazing, bullying, stalking, or violence."

2) **Acceptable Use Policy**

Users must not purposely engage in activity that may: harass (including sexual harassment), threaten or abuse others; degrade the performance of Information Resources; deprive an authorized user access to an information resource; obtain extra resources beyond those allocated; and/or circumvent computer security measures....

Users must not intentionally access, create, store or transmit material which Texas Tech University may deem to be offensive, indecent or obscene as defined by Chapter 43 of the State of Texas Penal Code on Public Indecency. (Exceptions may be made for academic research where this aspect of the research has the explicit approval of the Texas Tech University official processes for dealing with academic ethical issues).

3) **Student Handbook: Freedom of Expression Activities and Forum Areas**

Students engaged in freedom of expression activities may be subject to discipline under the Code of Student Conduct for the following actions: ... Activities that include the use of obscenities, libelous statements, or "fighting words," as defined by law.

4) **Student Handbook: Code of Student Conduct–Misconduct**

This policy defines "harmful, threatening, or endangering conduct" as "[i]ntentional or reckless behavior that harms, threatens, or endangers the physical or emotional health or safety of self or others..."

5) **Student Handbook: Anti-Discrimination Policy**

This policy defines "discriminatory harassment" as "verbal or physical conduct based on a student's sex, race, national origin, religion, age, disability, sexual orientation, or other protected categories, classes, or characteristics and is so severe, persistent, or pervasive it adversely affects the victim's education or creates an intimidating,

hostile, abusive or offensive educational environment which interferes with the student's ability to realize the intended benefits of the University's resources and opportunities."

The policy goes on to provide examples of "inappropriate behavior that may constitute discriminatory harassment." These include, but are not limited to:

- i. Slurs and jokes about a protected class of persons or about a particular person based on protected status, such as sex or race;
- ii. Display of explicit or offensive calendars, posters, pictures, drawings, screen savers, e-mails, or cartoons in any format that reflects disparagingly upon a class of persons or a particular person;
- iii. Derogatory remarks about a person's national origin, race or other ethnic characteristic;
- iv. Disparaging or disrespectful comments if such comments are made because of a person's protected status;
- v. Loud or angry outbursts or obscenities in the academic environment directed toward another student, faculty, staff, or visitor; or
- vi. Disparate treatment without a legitimate business reason.

#### ■ *Texas Tech University's Green Light Policies*

Texas Tech University has four policies on its books that merit a Green Light rating grade from FIRE. These are:

##### 1) Student Handbook: Freedom of Expression Activities and Forum Areas

The open exchange of information, opinions, and ideas between students is an essential element of the campus experience. These policies are intended to protect the interests of all students as well as other members of the university community. These policies presume that students are generally free to engage in freedom of expression activities in those outdoor areas of campus that are common and accessible to all students (such as park-like areas and sidewalks) without the need of prior approval of the university.

##### 2) Student Handbook: Code of Student Conduct–Misconduct

This policy defines sexual misconduct as "[n]onconsensual conduct of a sexual nature that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with the student's educational experience."

The policy goes on to define sexual harassment as "[u]nwelcome verbal, written or physical conduct of a sexual nature that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with the student's educational experience."

##### 3) Student Handbook: Membership in the TTU Community

As members of the academic community, University students enjoy the privileges and share the obligations of the larger community of which the University is a part... Freedom of discussion, inquiry and expression is protected and nurtured in the classroom as the safeguard of the freedom to learn.

##### 4) Student Handbook: Code of Student Conduct–Bullying/Cyberbullying

This policy defines "bullying / cyber bullying" as "severe, pervasive, and objectively offensive behaviors that intimidate or intentionally harm or control another person emotionally."

## THE UNIVERSITY OF TEXAS AT SAN ANTONIO

FIRE gives The University of Texas at San Antonio an overall speech code rating of "[Yellow Light](#)."

#### ■ *The University of Texas at San Antonio's Yellow Light Policies*

The University of Texas at San Antonio has six policies on its books that FIRE finds to constitute Yellow Light violations of the First Amendment. The policies are:

##### 1) Student Code of Conduct: Specific Conduct Proscribed 14-15

Disciplinary proceedings may be initiated against any student for any of the following acts or violations: ... engages in an inappropriate or disproportionate use of an information technology resource owned or controlled by the University or System or uses an information technology resource for an illegal, threatening, or disruptive/



destructive purpose; prohibited conduct includes but is not limited to circumventing system or network security, committing copyright infringement, transmitting unsolicited e-mail ....

**2) Handbook of Operating Procedures: Nondiscrimination, Sexual Harassment and Sexual Misconduct 14-15**

Harassment, as a form of discrimination, is defined as verbal or physical conduct that is directed at an individual or group because of race, color, sex, religion, national origin, age, disability, citizenship, veteran status, gender identity/expression or sexual orientation when such conduct is sufficiently severe, pervasive or persistent so as to have the purpose or effect of interfering with an individual's or group's academic or work performance; or of creating a hostile academic or work environment. Constitutionally protected expression cannot be considered harassment under this policy.

... Unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of employment, student status or participation in UTSA activities; or submission to or rejection of such conduct is used as a basis for evaluation in making personnel or academic decisions affecting that individual; or such conduct is sufficiently severe or pervasive that it substantially interferes with an individual's education, employment, or participation in UTSA activities, or creates an objectively hostile environment; or such conduct is intentionally directed towards a specific individual and has the effect of unreasonably interfering with that individual's education, employment, or participation in UTSA activities....

Behavior that could be considered sexual harassment include but are not limited to: Comments of a sexual nature including sexually explicit statements, questions, jokes or anecdotes; remarks of a sexual nature about a person's clothing or body; remarks about sexual activity; speculation about sexual experience; Exposure to sexually oriented graffiti, pictures, posters, or materials....

**3) Handbook of Operating Procedures: University Posting of Materials 14-15**

Materials to be posted may not: (1) Glorify, edify, promote, or support the use of alcohol and illegal drugs. (2) Display trademarks and/or brand names of alcoholic or illegal drug products. (3) Contain material that is obscene, vulgar, or libelous ....

**4) Handbook of Operating Procedures: Peaceful Public Assembly 14-15**

No person may attempt to coerce, intimidate, or badger any other person into viewing, listening to, or accepting a copy of any communication ....

**5) Resident Handbook: Hazing/Harassment 14-15**

UTSA is committed to providing an environment whereby students are free from any harassment or hazing. Harassment involves behavior toward a person that is unwanted (i.e., pranks, practical jokes, phone calls, emails, text messages, etc.) and will not be tolerated. If you feel you are being hazed or harassed, please contact a UTSA staff member immediately.

**6) Student Code of Conduct: Specific Conduct Proscribed 14-15**

Disciplinary proceedings may be initiated against any student for any of the following acts or violations: ... otherwise engaging in conduct that is inappropriate for members of an academic institution (such conduct includes, but is not limited to: pranks, choosing to remain where the odor of marijuana is confirmed by a University official, throwing food at persons or property, public nudity, unwanted communications, unwanted non-physical contact and harassing telephone calls).

■ *The University of Texas at San Antonio's Green Light Policy*

The University of Texas at San Antonio's lone Green Light Policy is found in the document titled, "Student Code of Conduct: Specific Conduct Proscribed 14-15," which states: "Disciplinary proceedings may be initiated against any student for any of the following acts or violations: ... engages in harassment; harassment is defined as conduct that is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the University ...."

### **The Future of an Intrusion: Moves Recently Taken To Restore Full Freedom on Campuses**

... [T]he University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

—University of Chicago's [Statement on "Freedom of Expression"](#) (Stone et al. 2015)

#### ***The "Chicago Way" on Academic Freedom***

American policymakers have, up until now, generally—but not universally—missed the opportunity to challenge our nation's universities' assault on free speech and debate by adopting the "Chicago Principles." The University of Chicago [recently reaffirmed](#) its commitment to free speech and debate "in light of recent events nationwide that have tested institutional commitments to free and open discourse." The Chicago Principles champion "the University's overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University's community" (Stone et al. 2015).

Agreeing with the Socratic vision of higher education advanced in this research study, the University of Chicago found itself compelled this year to craft this statement of core academic principles with the view to combating the growing intolerance on our college campuses. Following Socrates' maxim that "the unexamined life is not worth living for a human being," the University apparently recognized its responsibility to attempt to persuade other universities to return higher education to a place that is truly "higher"; that is, it recognized the need to reaffirm that a genuine institution of higher learning must be committed first and foremost to the quest for truth, in the light of which all its other commitments must take a backseat.

In taking the lead on this issue, the University of Chicago also reaffirms the educational vision of its former president, Robert Maynard Hutchins, who warned that, without "freedom of inquiry, freedom of discussion, and freedom of teaching, ... a university cannot exist." On these terms, one is compelled to wonder whether, today, a number of our free-speech-suppressing universities are driving themselves out of existence. Doubtless, they will continue to enroll students, award degrees, conduct research, participate in NCAA sports, and do all the other things universities do; but, as the FIRE report attests, they are in danger of turning themselves into ideological training camps rather than institutions that cherish and embody the Socratic desideratum—the "examined life."

Moreover (and as I have argued [elsewhere](#)), while some might dismiss these concerns as merely "academic matters," they ineluctably—and powerfully—affect our democratic polity. James Madison, regarded as the "Father of the U.S. Constitution," wrote in an 1822 letter: "A popular [democratic] Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both.... A people who mean to be their own Governors, must arm themselves with the power which knowledge gives" (Lindsay 2015).

Unfortunately, too many of today's dispensers of knowledge, the universities, are the very ones whose suppression of free speech and inquiry is depriving their students of "the power which knowledge gives." As a result, democratic discourse is suffering. Indeed, it is difficult to envision how constitutional democracy, which depends on an informed electorate, can survive the censorship perpetrated by those responsible for leading higher education.

Given the stakes involved, it is heartening that this disquieting state of affairs is finally beginning to be addressed, and not only at the University of Chicago. In the last year, the governors of both Virginia (Democrat Terry McAuliffe) and Missouri (Democrat Jay Nixon) have signed into law bills banning restrictive campus "free-speech zones" at public universities, arguing that, in America, *everywhere* should be a free-speech zone, especially our campuses. (The texts of both states' laws are printed in Appendix D: "Missouri and Virginia Legislation Aimed at Restoring Free Speech on Public University Campuses.") Still more encouraging, Princeton University [has signed on](#) to the Chicago Principles, and Purdue University has [now become](#) the first public university to adopt them (Office of Communications 2015; Purdue University 2015).

### ***American University***

The leadership of the University of Chicago, Princeton, and Purdue appears already to be exercising a positive effect. In September 2015, the American University faculty passed a [resolution](#) titled, “AU Faculty Senate Resolution on Freedom of Expression.” The document begins with a nod to Socrates’ vision, arguing that, “[f]or hundreds of years, the pursuit of knowledge has been at the center of university life.” It goes on to reaffirm the view that “unfettered discourse, no matter how controversial, inconvenient, or uncomfortable, is a condition necessary to that pursuit.” The resolution pledges to protect “the right to freely communicate ideas—without censorship—and to study material as it is written, produced, or stated, even material that some members of our community may find disturbing or that provokes uncomfortable feelings. This freedom is an integral part of the learning experience and an obligation from which we cannot shrink” (American University 2015).

To its credit, the American University Faculty Senate Resolution makes it clear that it “does not endorse offering ‘trigger warnings’ or otherwise labeling controversial material in such a way that students construe it as an option to ‘opt out’ of engaging with texts or concepts, or otherwise not participating in intellectual inquiries.” Although the Resolution reports that the faculty is sensitive to the needs of “students who experience personal difficulties from exposure to controversial issues,” it “affirms that shielding students from controversial material will deter them from becoming critical thinkers and responsible citizens.”

That the American University Faculty Senate endorsed this resolution unanimously gives the friends of academic freedom no small measure of consolation.

### ***The United States House of Representatives Takes on Campus Restrictions on Free Speech***

The efforts described above by the University of Chicago, Princeton, Purdue, and American University, as well as those of the states of Virginia and Missouri, appear to have percolated up to the national level.

In June 2015, the U.S. House Judiciary Committee’s Subcommittee on the Constitution and Civil Justice held a hearing titled, “First Amendment Protections on Public College and University Campuses,” which investigated the extent to which free speech is still protected on taxpayer-funded campuses. In light of what this research study has revealed already, it should come as no surprise to the reader that the findings from the investigation were not happy ones, to put it mildly.

As a result of the campus violations of the First Amendment that the subcommittee found, Representative Bob Goodlatte (R., Va.), chair of the House Judiciary Committee, sent a pointed letter to 162 public colleges and universities whose policies fail to ensure the First Amendment rights of their professors and students.

The House committee’s list of free speech-suppressing public universities comes from the same research that has informed much of this study—that conducted by FIRE. The committee’s focus was national. When it surveyed FIRE’s list of offenders, it found a number of public flagships, among them the University of Alabama, the University of Georgia, the University of Iowa, the University of Kansas, the University of Michigan, and Ohio State University.

At the June Subcommittee on the Constitution and Civil Justice hearing, Greg Lukianoff, FIRE’s president, [testified](#) that “speech codes—policies prohibiting student and faculty speech that would, outside the bounds of campus, be protected by the First Amendment—have repeatedly been struck down by federal and state courts. Yet they persist, even in the very jurisdictions where they have been ruled unconstitutional. The majority of American colleges and universities maintain speech codes” (Foundation for Individual Rights in Education 2015a).

Of the schools nationwide shown to be in violation of the First Amendment, the 162 recipients of the House committee’s letter were found to be the worst offenders. Chairman Goodlatte wrote the following to these schools: “In FIRE’s *Spotlight on Speech Codes 2015*, your institution received a ‘red light’ rating. According to FIRE, a ‘red light’ institution ‘is one that has at least one policy that both clearly and substantially restricts freedom of speech.’” In light of these findings, Goodlatte “ask[s] what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment.” The named offending schools have until August 28, 2015, to reply to Goodlatte’s inquiry. How they choose to respond will determine the committee’s next course of action.

As I [argued](#) when U.S. Representative Goodlatte first released his letter, this tough move by the House committee is but the latest sign of an academic world turned upside down: Academic freedom has always been supported, and rightly, as a defense against anti-intellectual pressure brought on universities by the political branches. The deepest defense of academic freedom is its indispensability to the nonpartisan truth-seeking that defines higher education's mission. But what happens when those who would deprive students and faculty of their First Amendment freedoms are within the universities themselves? As we have seen, this, unfortunately, is the crisis in which many universities find themselves today. For the solution, Congress has taken it upon itself to educate the educators in what those who supervise our universities should already know, namely, that when intellectual oppression rises, scientific progress and the quality of democratic deliberation decline (Lindsay 2015a).

As a former university professor and administrator, I have seen firsthand the effect that the intolerance on our campuses has on the minds and souls of our students. As is the case in political regimes that suppress free speech, university policies that stifle debate produce an atmosphere of anxiety, distrust, and ultimately, cynicism among those students who undergo it. "Students' education suffers when colleges and universities infringe on free speech," [observes](#) Azhar Majeed, director of FIRE's Individual Rights Education Program (Foundation for Individual Rights in Education 2015b).

In sum, intimidation and uniformity are usurping the free, robust inquiry and debate that are the lifeblood of a genuine institution of higher learning, undermining both academic truth-seeking and democracy, which depends on an informed citizenry. The effect of campus-promoted intolerance is to jettison an informed, independent-minded citizenry and to replace it with a [cowed, guilty, uncritical herd](#) (Lukianoff and Haidt 2015). From the students suffering under this regime will, in time, come our nation's leaders. Will they be able to face without blinking the profound moral challenges that every generation must face?

## **Recommendations:**

### ***General Principles Designed to Guide Measures Aimed at Restoring the First Amendment on Texas Public University Campuses***

As described earlier, the governors of Virginia and Missouri have, in the past year, signed legislation banning restrictive "free speech zones" on all their states' public university campuses. However, Texas, like every state, has priorities and constraints the uniqueness of which prevents a "universal" piece of model legislation from speaking adequately to each state's concerns. Moreover, we at the Texas Public Policy Foundation argue that it is university boards of trustees (regents) who bear the first responsibility for righting the wrongs that we have documented in this Research Study. Mindful of this, what follows are general principles that might guide public university board members:

#### ***Anti-Harassment Policies***

Under the law, institutions of higher education have dual obligations to reasonably respond to known instances of discriminatory peer-on-peer harassment that creates a hostile environment and to uphold students' right to free speech.

To meet both responsibilities, institutions must, under the law, define peer-on-peer harassment using the definition formulated by the United States Supreme Court in *Davis v. Monroe County Board of Education*. Accordingly, university policies should set forth that expression constitutes actionable discriminatory harassment only when directed at an individual and:

- part of a pattern of targeted, unwelcome conduct that is discriminatory on the basis of race, color, national origin, disability, religion, age, sex, sexual orientation, or gender;
- so severe, pervasive, and objectively offensive; and that
- so undermines and detracts from the victim's educational experience that the victim-student is effectively denied equal access to an institution's resources and opportunities.

Institutional policies must make clear that when the institution is aware of such conduct, it shall take immediate action to eliminate the discriminatory harassment and address its effects.

#### ***Policies to Open Up Campuses for Expressive Activities***

- The open exchange of ideas on public college campuses is critical to preserving academic freedom, and essential to the core mission of higher education.
- Boards of trustees should prohibit their institution from limiting lawful expressive activities to small areas of their

campuses (often titled, “free speech zones”). Instead, the outdoor areas of public campuses should be presumed to be traditional public forums.

- Board policy should allow its institution to maintain and enforce reasonable time, place, and manner restrictions in service of a significant institutional interest only when such restrictions employ clear, published, content, and viewpoint neutral criteria, and only when those restrictions provide for ample alternative means of expression.
- Board policy should clearly set forth that any institutional restrictions on expressive activities in the outdoor areas of a public campus must allow for the members of the university community to spontaneously and contemporaneously assemble.
- Board policy should make clear that persons wishing to engage in noncommercial expressive activity on a public college campus shall be permitted to do so freely, as long as the person’s conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject only to the reasonable time, place, and manner restrictions described above.

As Texas public university boards grapple with this issue, it is this writer’s hope that the principles and state examples provided here will be of assistance as they endeavor to ensure that Texas’ public universities once again follow the U.S. and Texas Constitutions.

More important, if boards of trustees are able, through new policies, to give flesh to the spirit of these principles, a renewed vitality might be breathed into higher education’s age-old promise to liberate their students from the “unexamined life.” ★



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## APPENDIX A

### Texas Higher Education Institutions Surveyed But Unrated By FIRE, or Receiving a “Warning”

#### BAYLOR UNIVERSITY

Baylor University has been given the speech code rating, “Warning,” by FIRE. A “[Warning](#)” rating indicates “to prospective students and faculty members when a private university clearly and consistently states that it holds a certain set of values above a commitment to freedom of speech.”

#### ■ *Baylor University Policies That Are Not Rated*

##### 1) Civil Rights Policy

Behavior that violates the student disciplinary policy or the personnel policy may be a basis for discipline, whether or not the behavior violates someone’s civil rights. For example, one statement regarding another’s sexual activity may not be sexual harassment as defined in civil rights laws, but such a statement may nonetheless be inappropriate and form the basis of discipline. . . .

Hostile environment sexual harassment contemplates unwelcome sexual conduct that is sufficiently severe or pervasive enough to alter the employment or educational environment. For example:

- a. It may be sexual harassment if a professor engages in a pattern of sexual comments (not legitimately related to the subject matter of the course if one is involved) intended to discomfort or humiliate a student.
- b. It may be sexual harassment for a supervisor to engage in a pattern of sexual comments, such as inquiries into sexual activity, or sexual behavior, such as touching of oneself or of the employee in a sexual manner, that would interfere with the working environment of a reasonable employee.

Whether or not such sexual conduct is sexual harassment depends on such factors as the nature of the conduct, the frequency of such conduct and whether or not the conduct was welcomed.

##### 2) Student Policies and Procedures: Campus Speakers

Speakers whose purposes and methods are basically contrary to the purposes and methods of a Christian university such as Baylor should not be invited. The use of profanity shall not be tolerated.

##### 3) Technology Systems Usage Policy

Fraudulent, harassing, offensive, or obscene messages or materials are not to be sent, printed, requested, displayed, or stored on Baylor-owned or operated technology systems. Information that invades an individual’s privacy or is disparaging of an individual or business must not be published without the express consent of the person or business entity. . . . Baylor University contracts with a professional Web-filtering service to block sites that this vendor designates as adult content (e.g. obscenity, pornography).

##### 4) Guide to Community Living: Residential Policies & Procedures–Obscene Material

This policy states: “Obscene material, including but not limited to, pornographic literature, X-rated movies, posters depicting full or partial nudity, displays of profanity (verbal or written), and language or images that are offensive to others are prohibited from all on-campus residential communities. This standard also applies to obscene material on computers. . . .

##### 5) Student Policies and Procedures: Statement on Human Sexuality

It is thus expected that Baylor students will not participate in advocacy groups which promote understandings of sexuality that are contrary to biblical teaching.

##### 6) Student Policies and Procedures: Student Conduct Code–Misconduct Defined

The following examples of misconduct are not inclusive but are intended to give a student an idea of the types of behavior that may result in disciplinary action. . . .

- Expression that is inappropriate in the setting of Baylor University and in opposition to the Christian ideals which it strives to uphold. . . .
- Contemptuous or disrespectful behavior.

**7) Student Organization Policies: Expectations for Events Involving Expressive Activity**

Student organization expressive activity must be registered with the Department of Student Activities and follow all guidelines as requested by Student Activities in the event approval notice. ... Signage, leaflets, or other distributable or displayable materials will be reviewed prior to expressive activity for approval. ... The University reserves the right to control time, place, message, and manner of the expressive activity.

**8) Student Policies and Procedures: Campus Facilities Use and Campus Solicitation Policy**

Baylor University is a private university controlled by an all-Baptist board of regents operated within the Christian-oriented aims and ideals of Baptists, and affiliated with the Baptist General Convention of Texas, a cooperative association of autonomous Texas Baptist churches. Accordingly, the campus is private property; and no party may enter or remain upon it without the consent of the University. Furthermore, no party may conduct or participate in an activity, including any facilities use or campus solicitation, that would embarrass or bring discredit to the Convention or to Baylor in the view of their constituencies.

**BLINN COLLEGE**

FIRE currently has [no rating for Blinn College](#). FIRE finds that Blinn College “does not have any speech codes at this time.”

**LONE STAR COLLEGE--TOMBALL**

Lone Star College-Tomball [has not been rated](#) by FIRE at this time. Nevertheless, FIRE finds a number of Red Light and Green Light policies at the school.

- *Lone Star College–Tomball’s Red Light Policies*

Lone Star College–Tomball has two policies on its books that FIRE finds to constitute Red Light violations of the First Amendment. The policies are:

- 1) Lone Star College System Policy Manual: Student Code of Conduct 09-10

Engaging in obscene, vulgar, offensively lewd, or indecent conduct, expression, or sexual conduct in or on LSCS property, including computer access of obscene material.

- 2) Lone Star College System Policy Manual: Computer Safety and Rules 09-10

The following conduct by computer users shall be treated as a violation of this policy and may subject the user to discipline, including loss of computing privileges, up to and including termination for a System employee, and dismissal for a student: ... the display or transmission of messages, images, cartoons, or other messages or images that are sexually explicit or that demean a person on the basis of age, race, ethnicity, gender, national origin, disability, or religion, which may constitute prohibited harassment under System policies.

- *Lone Star College–Tomball’s Green Light Policies*

Lone Star College–Tomball has four policies on its books that FIRE finds to constitute Green Light rating grades. The policies are:

- 1) Lone Star College System Policy Manual: Student Code of Conduct 09-10

Examples of non-academic misconduct, include, but are not limited to the following:

... Causing physical and/or psychological abuse, threats of violence, terroristic threats, stalking, or harassment of any member of the LSCS community or visitor on LSCS property, or conduct which threatens or endangers the health or safety of any such person. This includes verbal threats and threats made via electronic communication.

- 2) Lone Star College System Policy Manual: Prohibited Harassment 09-10

This policy states: “Harassment occurs by a System employee, student, or regular visitor to the System facilities that: ... Subjects a person to unwelcome sexual-, racial-, color-, creed, national origin-, gender-, age-, veteran’s status-, sexual orientation-, or disability-based conduct that is so severe or pervasive that is [sic] effectively alters the conditions of education or employment by creating an intimidating or hostile environment for work or learning.

- 3) Lone Star College System Policy Manual: Prohibited Harassment 09-10

Sexual harassment means unwelcome sexual advances, requests for sexual favors, verbal and written comments or physical conduct that is gender-based or of a sexual nature when: ... The conduct: has the purpose or effect of

creating an intimidating, hostile or offensive work or academic environment; or unreasonably interferes with an individual's work performance.

#### 4) Lone Star College System Policy Manual: Student and Community Use of System Facilities 09-10

The System will protect the rights of freedom of speech, petition, and peaceful assembly as set forth in the U.S. Constitution.

### TARRANT COUNTY COLLEGE

Tarrant County College has not been rated by FIRE at this time. Nevertheless, FIRE [finds a number of policies](#) at the school that warrant "Red," "Yellow," and "Green Light" rating grades.

#### ■ *Tarrant Community College's Red Light Policies*

Tarrant Community College has two policies on its books that FIRE finds to warrant a Red Light rating grade:

##### 1) Student Handbook: Bullying 11-12

TCC takes bullying seriously, and students should be assured that they will be supported when bullying is reported. Bullying will not be tolerated... Examples of bullying include:

1. Emotional: Being unfriendly, excluding, tormenting (e.g. hiding books, threatening gestures);
2. Physical: Pushing, kicking, hitting, punching or any use of violence;
3. Racist: Racial taunts, graffiti, gestures;
4. Sexual: Unwanted physical contact or sexually abusive comments;
5. Homophobic: Because of, or focusing on the issue of sexuality;
6. Verbal: Name-calling, sarcasm, spreading rumors, teasing;
7. Cyber: All areas of Internet, such as email and Internet chat room misuse, mobile threats by text messaging and calls, and misuse of associated technology such as camera and video facilities.

##### 2) Acceptable Use Guidelines for Computing and Technology Resources 11-12

The following activities are strictly prohibited, with no exceptions. Users shall not: (a) Send unsolicited email messages, including the sending of Spam, "junk mail" or other advertising material to individuals who did not specifically request such material. (b) Transmit any form of harassment via electronic communications, whether through language, frequency, or size of messages.

Violations of electronic communications use include, but are not limited to, accessing, downloading, uploading, saving, receiving, or sending material that includes sexually explicit content or other material using vulgar, sexist, racist, threatening, violent, or defamatory language.

#### ■ *Tarrant Community College's Yellow Light Policies*

Tarrant Community College has two policies on its books that FIRE finds to warrant a Yellow Light rating grade:

##### 1) Student Handbook: Social Media 11-12

Student Group or Organization: ... Protect the institutional voice: Posts on social media sites should protect the College's institutional voice by remaining professional in tone and in good taste.

##### 2) Student Handbook: Speech, Expression and Assembly 11-12

No person may attempt to coerce, intimidate, or badger any other person into viewing, listening to, or accepting a copy of any communication.

#### ■ *Tarrant Community College's Green Light Policies*

Tarrant Community College has two policies on its books that FIRE finds to warrant a Green Light rating grade:

##### 1) Student Handbook: Speech, Expression and Assembly 11-12

College District persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. This right to assemble is subject to the rules in this Section IX. No advance permission is required.

**2) Student Handbook: Discrimination, Harassment 11-12**

Prohibited harassment is defined as physical, verbal or nonverbal conduct based on the student's race, color, religion, gender, national origin, sexual orientation, disability, or on any other basis prohibited by law, that is so severe, persistent, or pervasive that the conduct: (1) affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile or offensive educational environment; (2) has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or (3) Otherwise adversely affects the student's educational opportunities.

**TEMPLE COLLEGE**

Temple College has not been rated by FIRE at this time. FIRE [finds](#) that the school currently has no speech codes on its books.

**TEXAS A&M UNIVERSITY-SAN ANTONIO**

Texas A&M University-San Antonio has not been rated by FIRE at this time. FIRE [finds](#) that the school currently has no speech codes on its books.

**TEXAS CHRISTIAN UNIVERSITY**

Texas Christian University has not been rated by FIRE at this time. FIRE [finds](#) that the school currently has no speech codes on its books.



## APPENDIX B

### The University of Chicago Statement on Freedom of Expression

#### Report of the Committee on Freedom of Expression

The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs “in light of recent events nationwide that have tested institutional commitments to free and open discourse.” The Committee’s charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.” The Committee has carefully reviewed the University’s history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University’s culture. In 1902, in his address marking the University’s decennial, President William Rainey Harper declared that “the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago” and that “this principle can neither now nor at any future time be called in question.”

Thirty years later, a student organization invited William Z. Foster, the Communist Party’s candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that “our students . . . should have freedom to discuss any problem that presents itself.” He insisted that the “cure” for ideas we oppose “lies through open discussion rather than through inhibition.” On a later occasion, Hutchins added that “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated “those virtues which from the beginning and until now have characterized our institution.” Central to the values of the University of Chicago, Levi explained, is a profound commitment to “freedom of inquiry.” This freedom, he proclaimed, “is our inheritance.” More recently, President Hanna Holborn Gray observed that “education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom.”

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.

In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.

As a corollary to the University's commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, 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.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's longstanding commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

*Geoffrey R. Stone*, Edward H. Levi Distinguished Service Professor of Law, Chair

*Marianne Bertrand*, Chris P. Dialynas Distinguished Service Professor of Economics, Booth School of Business

*Angela Olinto*, Homer J. Livingston Professor, Department of Astronomy and Astrophysics, Enrico Fermi Institute, and the College

*Mark Siegler*, Lindy Bergman Distinguished Service Professor of Medicine and Surgery

*David A. Strauss*, Gerald Ratner Distinguished Service Professor of Law

*Kenneth W. Warren*, Fairfax M. Cone Distinguished Service Professor, Department of English and the College

*Amanda Woodward*, William S. Gray Professor, Department of Psychology and the College

**APPENDIX C**  
**American University Faculty**  
**Senate Resolution on Freedom of Expression**

(9/9/15. Unanimously Approved)

For hundreds of years, the pursuit of knowledge has been at the center of university life. Unfettered discourse, no matter how controversial, inconvenient, or uncomfortable, is a condition necessary to that pursuit. American University stands in this tradition, as stated in section 4 of the Faculty Manual. (<http://www.american.edu/provost/academicaffairs/faculty-manualtoc.cfm>)

Freedom of speech—protected by the First Amendment to the United States Constitution—undergirds the cherished principle of academic freedom. As limits, either subtle or explicit, are increasingly placed on intellectual freedom in venues of public discourse, the academy is committed to the full expression of ideas.

American University is committed to protecting and championing the right to freely communicate ideas—without censorship—and to study material as it is written, produced, or stated, even material that some members of our community may find disturbing or that provokes uncomfortable feelings. This freedom is an integral part of the learning experience and an obligation from which we cannot shrink.

As laws and individual sensitivities may seek to restrict, label, warn, or exclude specific content, the academy must stand firm as a place that is open to diverse ideas and free expression. These are standards and principles that American University will not compromise. Faculty may advise students before exposing them to controversial readings and other materials that are part of their curricula. However, the Faculty Senate does not endorse offering “trigger warnings” or otherwise labeling controversial material in such a way that students construe it as an option to “opt out” of engaging with texts or concepts, or otherwise not participating in intellectual inquiries.

Faculty should direct students who experience personal difficulties from exposure to controversial issues to resources available at American University’s support-services offices.

In issuing this statement, the Faculty Senate affirms that shielding students from controversial material will deter them from becoming critical thinkers and responsible citizens. Helping them learn to process and evaluate such material fulfills one of the most important responsibilities of higher education.

## APPENDIX D

### Texts of Missouri and Virginia Legislation Aimed at Restoring Free Speech on Public University Campuses

FIRST REGULAR SESSION

# SENATE BILL NO. 93

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR EMERY.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0582S.011

## AN ACT

To amend chapter 173, RSMo, by adding thereto one new section relating to free speech at public institutions of higher education.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Chapter 173, RSMo, is amended by adding thereto one new section, to be known as section 173.1550, to read as follows:

173.1550. 1. The provisions of this section shall be known and cited as the "Campus Free Expression Act". Expressive activities protected under the provisions of this section include, but are not limited to, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying signs, and circulating petitions.

2. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed traditional public forums. Public institutions of higher education may maintain and enforce reasonable time, place, and manner restrictions in service of a compelling institutional interest only when such restrictions employ clear, published, content, and viewpoint-neutral criteria, and provide for ample alternative means of expression. Any such restrictions shall allow for members of the university community to spontaneously and contemporaneously assemble.

3. Any person who wishes to engage in expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution.

4. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

5. The following persons may bring an action in a court of

**VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION****CHAPTER 559**

*An Act to amend the Code of Virginia by adding in Chapter 1 of Title 23 a section numbered 23-9.2:13, relating to restrictions on student speech by public institutions of higher education.*

[H 258]

Approved April 4, 2014

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 1 of Title 23 a section numbered 23-9.2:13 as follows:**

**§ 23-9.2:13. Restrictions on student speech; limitations.**

*Public institutions of higher education shall not impose restrictions on the time, place, and manner of student speech that (i) occurs in the outdoor areas of the institution's campus and (ii) is protected by the First Amendment to the United States Constitution unless the restrictions (a) are reasonable, (b) are justified without reference to the content of the regulated speech, (c) are narrowly tailored to serve a significant governmental interest, and (d) leave open ample alternative channels for communication of the information.*



## About the Author



**Thomas K. Lindsay, Ph.D.**, is director of the Foundation's Center for Higher Education. He has more than two decades' experience in education management and instruction, including service as a dean, provost, and college president.

In 2006, Lindsay joined the National Endowment for the Humanities (NEH) staff as director of the agency's signature initiative, We the People, which supports teaching and scholarship in American history and culture. He was named Deputy Chairman and Chief Operating Officer of the NEH in 2007.

Lindsay received his B.A., *summa cum laude*, in Political Science, and went on to earn his M.A. and Ph.D. in Political Science from the University of Chicago. Oxford University Press published Lindsay's American Government college textbook, *Investigating American Democracy* (with Gary Glenn). He has published numerous articles on the subject of democratic education, many of which have appeared in the world's most prestigious academic journals, including *American Political Science Review*, *Journal of Politics*, and *American Journal of Political Science*.

Lindsay has published articles on higher-education reform in *Real Clear Policy*, *Los Angeles Times*, *National Review*, *Inside Higher Ed*, *Washington Examiner*, *Knight-Ridder Syndicate*, *Dallas Morning News*, *Houston Chronicle*, *American Spectator*, and *Austin American-Statesman*, among others. He has just accepted an offer to become a contributor to *Forbes*.

In recognition of his scholarship on democratic education, Lindsay was made the 1992-93 Bradley Resident Scholar at the Heritage Foundation in Washington, D.C.

## About the Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation's mission is to promote and defend liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

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The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.

