



## Ohio Administrative Code Rule 3337-1-41 Campus freedom of expression.

Effective: September 5, 2022

---

### (A) Basis for policy

Section 3345.0215 of the Revised Code requires that each state institution of higher education adopt a policy that affirms the principles stated in section B of this policy and establish a process under which a student, student group, or faculty member may submit a complaint about an alleged violation of this policy by any employee of the institution. Further, section 3345.0212 of the Revised Code requires each state institution of higher education to adopt a policy on harassment that is consistent with and adheres strictly to the definition of harassment in section 3345.0211 of the Revised Code. University policy 01.040 also communicates Ohio university's commitment to freedom of expression.

### (B) Rationale for policy

Ohio university is committed to maintaining the campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.

To support this commitment and ensure compliance with federal and state laws and regulations, Ohio university has developed this policy and related processes that inform members of the university community about prohibited behavior and provide a prompt, fair, and impartial process to address alleged violations of this policy.

Further, Ohio university affirms the following principles set forth in the Revised Code:

(1) "Students have a fundamental constitutional right to free speech."

(2) Ohio university is "committed to giving students broad latitude to speak, write, listen, challenge,



learn, and discuss any issue," subject to section E of this policy.

(3) It is for "individual students and faculty to make judgments about ideas for themselves and to act on those judgments not by seeking to suppress free speech but by openly and vigorously contesting the ideas they oppose."

(4) It is not the proper role of Ohio university "to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed."

(5) Although Ohio university greatly values civility and mutual respect, "concerns about civility and respect will not be used" by Ohio university "as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty."

(6) "Although all students and all faculty are free to state their views about and contest the views expressed on campus, and to state their views about and contest speakers who are invited to express their views on campus, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe." To that end, Ohio university "has a responsibility to promote lively and fearless freedom of debate and deliberation and protect that freedom."

(7) Ohio university is "committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study, and to evaluate, and to gain new understanding."

(8) "The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in areas of their competence."

#### (C) Definitions

As used in the policy:



- (1) "Benefits" include, without limitation: recognition, registration, the use of Ohio university facilities for meetings or speaking purposes, the use of Ohio university's channels of communication, and funding sources that are otherwise available to any student group at Ohio university.
- (2) "Constitutional time, place, and manner restrictions" means restrictions on the time, place, and manner of free speech that do not violate the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution that are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy a significant institutional interest, and leave open ample alternative channels for the communication of the information or message to its intended audience.
- (3) "Education program or activity" means locations, events, or circumstances, including employment, where the university exercises substantial control over both the respondent and the context in which the alleged policy violation occurs and includes any building owned or controlled by a student organization that is officially recognized by the university.
- (4) "Expressive activities" means any lawful verbal, written, audiovisual, or electronic means by which individuals may communicate ideas, including all forms of peaceful assembly, protests, speeches, distribution of literature, carrying and displaying signs, and circulating petitions.
- (5) "Faculty" or "faculty member" means any person, whether or not the person is compensated by a state institution of higher education, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching. For purposes of this policy, the term "faculty" includes tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions, however titled. For purposes of this policy, the term "faculty" does not include persons whose primary responsibilities are administrative or managerial.
- (6) "Free speech" means speech, expression, or assemblies protected by the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution, verbal or written, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service.



(7) "Harassment" is conduct and/or expression that is not protected by the First Amendment to the United States Constitution or Article I of the Ohio Constitution because it is:

(a) unwelcome; and

(b) so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the individual's education program or activity.

Expression (either in person, in writing, or by telecommunication) must meet both elements to be actionable under Ohio university policies addressing harassment. If there is a conflict with the definition of harassment found in university policies 03.004 or 40.001, those definitions take precedence.

(8) "Student" means any person who is enrolled on a full-time or part-time basis at Ohio university and includes student groups.

(9) "Student group" means an officially recognized group at Ohio university, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through Ohio university.

(D) Statement of policy

(1) No employee of Ohio university may suppress, restrict, limit, or otherwise hinder the constitutional right to free speech of a student, student group, or faculty member.

(2) Likewise, except as stated in section E of this policy, neither Ohio university nor any of its administrators acting in their official capacity shall prohibit any individual from engaging in noncommercial expressive activity on campus, so long as the individual's conduct is lawful and does not materially and substantially disrupt the functioning of the institution.

"Materially and substantially disrupt" means when a person, with the intent to, or with knowledge of doing so, significantly hinders another person's or group's expressive activity, prevents



communication of their message, or prevents the transaction of the business of a lawful meeting, gathering, or procession by either:

(a) Engaging in violent or otherwise unlawful behaviors; or

(b) physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity. This does not include conduct that is protected under the First Amendment to the United States Constitution or Section 3 Article I of the Ohio Constitution.

(3) No person may retaliate against any individual because the individual made a report, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. The exercise of rights protected under the First Amendment to the United States Constitution or Section 3 Article I of the Ohio Constitution does not constitute retaliation prohibited under this section.

(4) Ohio university's commitment to freedom of expression does not extend to harassment. Policies addressing harassment may be found in the student code of conduct, university policy 03.004, and university policy 40.001.

(E) Applicable scope of policy

Nothing contained in this policy shall be construed as prohibiting Ohio university from imposing measures that do not violate the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution such as (see also university policies 01.040, 01.042 and 01.044, linked below):

(1) Constitutional time, place, and manner restrictions;

(2) reasonable and viewpoint-neutral restrictions in nonpublic forums;

(3) restricting the use of Ohio university's property to protect the free speech rights of students and faculty members and preserve the use of the property for the advancement of the institution's



mission;

(4) prohibiting or limiting speech, expression, or assemblies that are not protected by the First Amendment to the United States Constitution or Article I, Sections 3 and 11 of the Ohio Constitution;

(5) content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty members.

Nothing in this policy shall be construed to grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.

Nothing in this policy enables individuals to engage in conduct that intentionally, materially, and substantially disrupts another individual's expressive activity if it occurs in a campus space reserved for exclusive use or control of a particular individual or group.

Further, nothing in this policy shall be interpreted as restricting or impairing the university's obligations under federal law, as addressed through its non-discrimination and Title IX policies. Such federal law includes, but is not limited to, Title IV of the Higher Education Act of 1965, Title VI of the Civil Rights Act of 1962, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Age Discrimination in Employment Act, and the Age Discrimination Act of 1975.

#### (F) Reporting violations

Students, student groups, and faculty members may use any of the options below to submit a complaint about an alleged violation of this policy by an Ohio university employee. Reports may be submitted regarding any alleged violation.

(1) Report online using the freedom of expression form by clicking on submit report at <https://www.ohio.edu/equity-civil-rights>. Reports submitted online are routed immediately to the director of university equity and civil rights compliance (ECRC).



(2) File a report with ECRC by mail, phone, or email. A report may be submitted at any time (including during non-business hours) using the contact information below. Reports may also be made in person at the ECRC office on business days when a staff member is available.

University equity and civil rights compliance

006 lindley hall

Ohio university

Athens, Ohio 45701

740-593-9140 (phone)

equity@ohio.edu

(3) Harassment that also rises to the level of a crime (e.g., an actual threat, child pornography) should also be reported to the Ohio university police department.

(G) Investigation and adjudication

Investigation and adjudication of complaints under this policy will be conducted pursuant to the freedom of expression policy grievance process (linked from the references part of this policy).