



January 26, 2024

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*Sent via U.S. Mail and Electronic Mail (president@mit.edu, kornbluth@mit.edu)*

Dear President Kornbluth:

FIRE<sup>1</sup> and the MIT Free Speech Alliance<sup>2</sup> write jointly to offer guidance on the Institute's ongoing efforts to improve the campus's free expression climate, in light of your recent promise of forthcoming policy reforms to that effect.<sup>3</sup>

For several years now, we have been encouraged by the Institute's stated willingness to make important policy changes and amend practices to ensure MIT keeps its binding promises to respect fundamental expressive rights. Yet because MIT continues to express hesitancy about the best way to address controversial campus speech, has yet to complete its long-promised policy changes, and has adopted at least one policy making the campus speech climate less hospitable, we offer here our collective expertise to help MIT finalize its efforts.

In addition to bringing all policies in line with its overarching commitments to free expression and academic freedom, we believe MIT must also embrace a necessary mindset shift around the idea of free expression. Articulating the scope of these rights and responsibilities is not a

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<sup>1</sup> As you may recall from recent correspondence, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses for more than 20 years. More information is available at [thefire.org](https://thefire.org).

<sup>2</sup> The MIT Free Speech Alliance is an independent nonprofit founded by Institute alumni and working to ensure MIT remains a place for innovation and engagement with diverse perspectives. More information is available at [mitfreespeech.org](https://mitfreespeech.org).

<sup>3</sup> Sally Kornbluth, *New Step for a New Year*, MASS. INST. OF TECH., (Jan. 3, 2024) <https://orgchart.mit.edu/letters/new-steps-new-year> [<https://perma.cc/8JY8-GBWW>].

“problem” demanding endless iteration.<sup>4</sup> Rather, MIT’s history of free speech commitments correctly presume students and faculty are fully capable of exercising these fundamental rights without excessive administrative oversight. For those who might unwisely engage in unprotected speech, policies prohibiting actionable misconduct like true threats,<sup>5</sup> discriminatory harassment,<sup>6</sup> vandalism,<sup>7</sup> and similar conduct are already on the books.

To its credit, MIT has striven in recent years—particularly during your presidency—to rectify serious deficiencies in application of its free expression policies.<sup>8</sup> Most significant of these improvements was the Faculty’s December 2022 adoption of the MIT Statement on Freedom of Expression and Academic Freedom.<sup>9</sup> While MIT has long guaranteed robust expressive freedoms in documents like its student handbook (“freedom of expression is essential to the mission of a university”<sup>10</sup>) and its Values Statement (“Because learning is nourished by a diversity of views, we cherish free expression, debate, and dialogue ...”<sup>11</sup>), the faculty statement went further in defining the broad scope of these freedoms, even for “speech some experience as offensive or injurious.”<sup>12</sup>

When that process concluded in February 2023, you announced to the campus community that it could expect to see progress as these subsequent “vital” changes were implemented.<sup>13</sup> Specifically, MIT would bring its policies “in line with the final statement” and create “a range of different opportunities to engage and inspire all of us, across our community, to learn about,

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<sup>4</sup> *Id.* (“Seeing MIT up close for a year now, I’ve come to value something I could not fully appreciate from the outside: the matter-of-fact problem-solving ethos, the willingness to name a problem, measure it, design a solution and keep iterating until it’s right.”).

<sup>5</sup> *II (24). Threats, Intimidation, Coercion*, 2023-2024 Mind and Hand Book, MASS. INST. OF TECH., <https://handbook.mit.edu/threats> [<https://perma.cc/9E7K-F93B>].

<sup>6</sup> *II (7). Discrimination and Discriminatory Harassment*, 2023-2024 Mind and Hand Book, MASS. INST. OF TECH., <https://handbook.mit.edu/discrimination> [<https://perma.cc/K58U-93H>].

<sup>7</sup> *II (22). Property Damage and Destruction*, 2023-2024 Mind and Hand Book, MASS. INST. OF TECH., <https://handbook.mit.edu/property-damage> [<https://perma.cc/2NTY-P3AU>].

<sup>8</sup> See e.g., Michael Powell, *M.I.T.’s Choice of Lecturer Ignited Criticism. So Did Its Decision to Cancel*, N.Y. TIMES, Oct. 20, 2021, <https://www.nytimes.com/2021/10/20/us/dorian-abbot-mit.html>; Grant Welker, *MIT’s New Mask Policy Bars People From Asking Others to Mask Up*, NBC 10 BOSTON, Mar. 17, 2022, <https://www.nbcboston.com/boston-business-journal/mits-new-mask-policy-bars-people-from-asking-others-to-mask-up>.

<sup>9</sup> MIT News Office, *Letter to the MIT Community: Embracing freedom of expression in the life of the Institute*, MASS. INST. OF TECH., (Feb. 17, 2023) <https://news.mit.edu/2023/letter-mit-community-embracing-freedom-expression-0217> [<https://perma.cc/G47F-DYZB>].

<sup>10</sup> *Freedom of Expression*, 2023-2024 Mind and Hand Book, MASS. INST. OF TECH., <https://handbook.mit.edu/expression> [<https://perma.cc/3NKA-MHXP>].

<sup>11</sup> *Values Statement*, MASS. INST. OF TECH., <https://www.mit.edu/values/> [<https://perma.cc/UXQ7-LG42>].

<sup>12</sup> *MIT Statement on Freedom of Expression and Academic Freedom*, MASS. INST. OF TECH (Dec. 21, 2022), [https://facultygovernance.mit.edu/sites/default/files/reports/20221221\\_MIT\\_Statement\\_on\\_Freedom\\_of\\_Expression\\_and\\_Academic\\_Freedom.pdf](https://facultygovernance.mit.edu/sites/default/files/reports/20221221_MIT_Statement_on_Freedom_of_Expression_and_Academic_Freedom.pdf) [<https://perma.cc/8UQW-PV9E>].

<sup>13</sup> *Freedom of Expression in the Life of MIT*, MASS. INST. OF TECH (Feb. 16, 2023), <https://president.mit.edu/writing-speeches/embracing-freedom-expression-life-mit> [<https://perma.cc/G47F-DYZB>].

practice and model the skills to confidently, constructively, respectfully express ourselves – and listen to each other – across differences.”<sup>14</sup>

Almost a year later, we’re eager to see MIT make good on these promises, though we note with disappointment it has adopted at least one policy moving the Institute further from its goal. FIRE wrote you in the fall requesting clarity,<sup>15</sup> which it has yet to receive, about a then newly announced “rapid response team” of high-level administrators who would become the sole arbiters of viewpoints acceptable for campus posters, chalkings, and other displays.<sup>16</sup> The free speech concerns that policy creates are clearly set forth in our letter of November 1, 2023.

Meanwhile, MIT’s need for quality free speech policies and practices has become greater than ever. Earlier this month, amid nationwide tensions around how the Israel/Hamas conflict impacts campus speech, you promised renewed policy reform efforts. FIRE and the MIT Free Speech Alliance believe those efforts should start with updating the following policies:

### **Racist Conduct and Bias Incident Reporting policies**

First, MIT’s Discrimination & Harassment Response Office maintains an incident-report policy that chills campus speech.<sup>17</sup> It encourages students to report “any concern about discrimination, discriminatory harassment, and bias” and includes vague, subjectively defined examples, such as “Racist Conduct.” The policy should clarify that conduct must violate existing university policies to be punishable or, alternatively, provide support for students experiencing bias, rather than punishing accused students under these vague, overbroad definitions.

MIT should also update for clarity its “Racist Conduct” policy, which also uses the suspect definitions in the bias reporting policy.<sup>18</sup> While the Racist Conduct policy directly references existing MIT harassment and discrimination policies and, *should* reasonably be interpreted to apply only to allegedly racist conduct that *also* violates those policies, the language is insufficiently clear on that front. The policy is therefore too ripe for abuse to punish speech that some may subjectively find “racist,” yet is protected under all other MIT policies.

### **Policy on Harassment**

MIT should also update its Policy on Harassment to incorporate the United States Supreme Court’s definition of peer-on-peer harassment in higher education.<sup>19</sup> The *Davis* definition

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<sup>14</sup> *Id.*

<sup>15</sup> *FIRE Letter to Massachusetts Institute of Technology, November 1, 2023*, FIRE, <https://www.thefire.org/research-learn/fire-letter-massachusetts-institute-technology-november-1-2023>.

<sup>16</sup> Suzy Nelson, *Timely reminders about safety and community, MIT Organization Chart*, MASS. INST. OF TECH., (Oct. 12, 2023) <https://orgchart.mit.edu/letters/timely-reminders-about-safety-and-community> [<https://perma.cc/59VG-K6CL>].

<sup>17</sup> Institute Discrimination & Harassment Response Office: Submit an Incident Report <https://idhr.mit.edu/submitincidentreport> [<https://perma.cc/SW93-FT5Q>].

<sup>18</sup> *9.4 Racist Conduct*, MASS. INST. OF TECH., <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/94-racist-conduct>.

<sup>19</sup> *9.5 Harassment*, MASS. INST. OF TECH., <https://policies.mit.edu/policies-procedures/90-relations-and-responsibilities-within-mit-community/95-harassment>.

ensures an educational environment free from discriminatory harassment, while also respecting fundamental campus speech rights. Under *Davis*, speech does not qualify as harassment unless it is unwelcome, discriminatory on the basis of gender or another protected class, and “so severe, pervasive, and objectively offensive that it can be said to deprive the victim[] of access to the educational opportunities or benefits provided by the school.”<sup>20</sup>

MIT’s current policy improperly broadens the third prong, defining harassment and sexual harassment as conduct that is severe *or* pervasive, rather than severe *and* pervasive. This one word creates critically important distinctions that either protect, or chill, campus speech. We recognize the current “severe *or* pervasive” language may appear in this policy because that is the standard applicable to employment discrimination under Title VII. But that workplace standard is inapplicable to peer harassment in the educational setting. Accordingly, MIT should regulate student-on-student and other harassment separately to reflect these different legal standards.

The policy also provides lists of examples of “possibly harassing conduct” that may constitute either harassment or sexual harassment including: “[p]ublic and personal tirades; deliberate and repeated humiliation; deliberate interference with the life or work of another person; the use of certain racial epithets; deliberate desecration of religious articles or places; repeated insults about loss of personal and professional competence based on age.”

These examples *may* constitute conduct that meets *Davis* under some circumstances, but under others they would be wholly protected speech. The way the policy introduces these examples, however, may suggest to students that such speech is prohibited across the board. A “public and personal tirade,” for example, is not harassing where it consists of nothing more than delivering an impassioned speech at a campus protest; “deliberate desecration of religious articles” is not harassing if done as protected artistic expression; and “use of certain racial epithets,” would be protected as part of a faculty member’s lesson on the use-mention distinction.

And those are just a few examples of potential problematic applications of this overbroad and vague policy. Our recommended revisions would adjust the policy language to clarify that the provided examples would be punishable when they also constitute conduct that reaches the standard for harassment.

### **Civility Mandate**

MIT’s Mind and Hand Book’s Freedom of Expression policy muddies its excellent free speech promises with vague and overbroad civility caveats.<sup>21</sup> The policy opens with overtures to freedom of speech and its value (“Freedom of expression is essential to the mission of a university,”) but then wavers (“So [too] is freedom from unreasonable and disruptive offense,”; “[p]eople who are offended ... should consider speaking up promptly and in a civil fashion, ... [and] “[p]eople who learn they have offended others by their manner of expression should consider immediately stopping the offense and apologizing.”).

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<sup>20</sup> *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651 (1999).

<sup>21</sup> See *Freedom of Expression*, 2023-2024 Mind and Hand Book *supra* note 10.

MIT can certainly encourage students and faculty to aspire to civil discourse, but the inclusion of this civility policy in a disciplinary handbook inappropriately suggests failing to conform to subjective civility standards risks punishment. This is a perfect example of a policy MIT can quickly and easily bring in line with its Statement on Freedom of Expression and Academic Freedom.<sup>22</sup>

The MIT Statement on Freedom of Expression and Academic Freedom statement properly presupposes MIT students and faculty will exercise their expressive rights consistent with the spirit of a university dedicated to open inquiry. If they don't, they risk discipline. But MIT administrators must resist the temptation to micromanage protected speech or to give into requests for such micromanagement, whether those requests originate on campus or off.

FIRE and the MIT Free Speech Alliance believe the above policy changes, alongside the provision of requisite breathing room for campus expression, will make the free speech climate far more habitable for students, faculty, and administrators. We stand ready to assist in bringing these reforms to fruition and welcome questions you have.

Sincerely,



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Campus Rights Advocacy Director, FIRE



Peter Bonilla  
Executive Director, MIT Free Speech Alliance

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<sup>22</sup> MIT News Office, *Letter to the MIT Community: Embracing freedom of expression in the life of the Institute*, MASS. INST. OF TECH., (Feb. 17, 2023) <https://news.mit.edu/2023/letter-mit-community-embracing-freedom-expression-0217> [<https://perma.cc/G47F-DYZB>].