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FIRE QUARTERLY

WINTER 2020



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STIFLED

6.4 million students denied free speech by top American colleges

Millions of students nationwide check their free speech rights at the door when they arrive on campus, according to a new report from FIRE.

Spotlight on Speech Codes 2020: The State of Free Speech on Our Nation's Campuses, released in December, analyzes the written policies at 471 of America's top colleges and universities for their protection of free speech. The report finds that 89% of American colleges maintain policies that restrict — or could too easily be applied to restrict — student expression. FIRE rates schools as “red light,” “yellow light,” or “green light” institutions based on how much, if any, speech their policies restrict.

“Many college administrators are scrubbing the most egregious policies from the books, but they're increasingly crafting subtler policies that still limit student expression,” said FIRE Senior Program Officer Laura Beltz, the lead author of the study. **“Yellow light policies aren't good enough — they still restrict protected speech. Colleges must go green or go back to the drawing board.”**

Almost a quarter of institutions in the report received FIRE's poorest, red light rating for maintaining speech codes that both “clearly and substantially” restrict freedom of speech.

Only 11% of institutions — 50 schools — do not maintain any written policies that compromise student expression, earning FIRE's highest, green light rating. (Two more universities have

earned the rating since the report was written, bringing the total to 52 green light schools.) The percentage of green light schools is up from only 2% in 2009.

Meanwhile, the number of institutions earning a yellow light rating has tripled in recent years: from 21% in 2009 to 64% today. While less restrictive than red light policies, yellow light policies still prohibit or have an impermissible chilling effect on constitutionally protected speech.



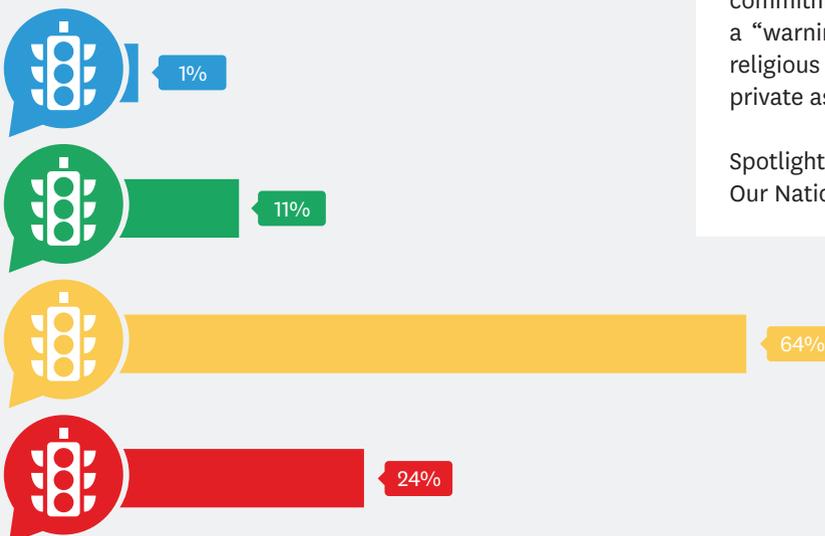
YELLOW LIGHT RATINGS HAVE TRIPLED
from 2009 to today.

In rating schools, FIRE measures an institution's policies against First Amendment standards. FIRE's rating system examines universities' written policies and regulations and does not take into account specific cases or incidents, which FIRE may also weigh in on.

While private institutions are generally not bound by the First Amendment, they are responsible for living up to their institutional commitments to free speech. Although most private institutions pledge to protect the free speech rights of their students, almost 92% of surveyed private institutions fall short of those promises. Only 3% live up to their pledged commitments, earning a green light rating. Another 6% earn a “warning” rating for clearly placing other values, such as religious values, over free speech, which is their right as a private association.

Spotlight on Speech Codes 2020: The State of Free Speech on Our Nation's Campuses can be read in full on FIRE's website.

OVERALL RATINGS of 471 colleges and universities



New Title IX regulations are coming.

FIRE's newest report shows why reform is desperately needed.

Innocent until proven guilty? Not on college campuses.

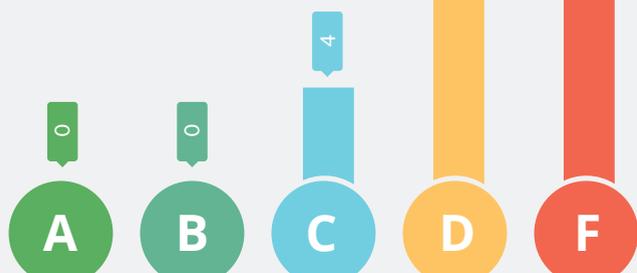
Top universities fail to provide students accused of campus misconduct with fair procedures, according to a new report from FIRE. With new Department of Education regulations on Title IX enforcement expected soon (as of press time, they had not been released), universities may have to revise their policies significantly to include a number of important procedural safeguards in student disciplinary procedures.

“Would you feel comfortable defending yourself without information about what you supposedly did wrong? Would you trust a jury that didn't get a chance to see all the evidence?” You shouldn't — but college students across the country routinely face these troubling circumstances,” said FIRE's Susan Kruth, lead author of the report. “Disciplinary procedures at top universities aren't fundamentally fair because they don't guarantee even the most basic safeguards against incorrect conclusions.”

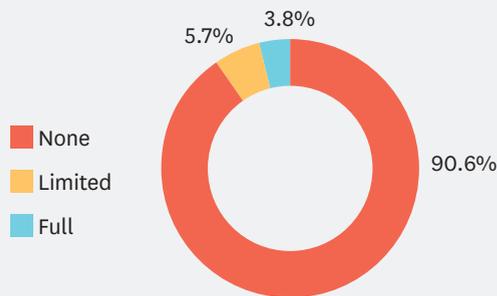
“Spotlight on Due Process 2019–2020” examines policies at 53 top national universities to see how many of 10 fundamental procedural safeguards they guarantee students. These include basic protections familiar to all Americans, such as the presumption of innocence, the right to impartial fact-finders, and the right to appeal. Of the 53 universities studied, 49 receive an overall D or F grade for guaranteeing no more than 4 of those 10 safeguards.

Most institutions maintain one set of policies for charges of sexual misconduct and another for all other non-academic misconduct, such as theft or physical assault.

OVERALL RATINGS
of 53 colleges and universities



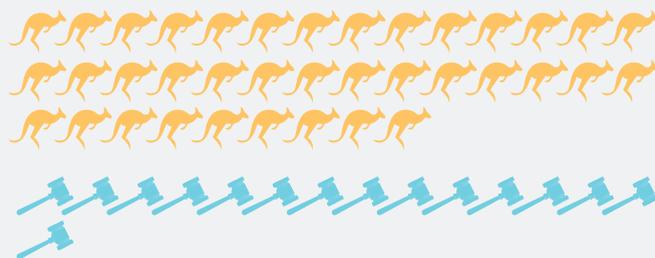
CROSS-EXAMINATION GUARANTEED
at institutions



Notably, of the 22 institutions that received an F grade for their sexual misconduct policies, 17 have been sued by accused students over the lack of fair procedure.

Less than 30% of top universities expressly guarantee the presumption of innocence in all serious non-academic misconduct cases, and less than 60% explicitly require that fact-finders — the institution's version of a jury — be impartial. Only 28% guarantee a meaningful hearing, where each party may see and hear the evidence being presented to fact-finders by the opposing party, before a finding of responsibility.

38 OF 53 INSTITUTIONS DO NOT PRESUME INNOCENCE



This landscape may shift if the proposed Department of Education regulations on Title IX — the 1972 law that prohibits sex discrimination in federally funded educational programs — are enacted. Today, 87% of institutions receive a D or F grade for their failure to protect the due process rights of students accused of sexual misconduct. Enacting only the proposed regulations would raise surveyed universities' grades to a C or better.

“All over the country, students accused of misconduct on campus routinely face life-altering consequences without any of the procedural protections one would expect in such serious cases,” said Samantha Harris, FIRE vice president for procedural advocacy. “It looks like the Department of Education's new regulations will ensure greater due process for students involved in certain types of cases, but universities should already be providing these important protections in all cases of serious non-academic misconduct.”

DON'T STOP BULL-IEVING

Animal rights club approved by public university
after FIRE's First Amendment uproar

One month after FIRE growled at a Missouri university for denying recognition to a prospective animal rights student group, Truman State University President Susan Thomas pledged on Jan. 17 to recognize the group and reform the university's approval process for student organizations.

A university committee denied the club in November for the “reputational risk” of a student group associating with PETA, but failed to consider the reputational and legal risk of violating the First Amendment.

“I was so excited when I heard the news,” said Naomi Mathew, whose application for club recognition was denied. “Our club is already planning our first events now. The administration definitely made the right choice because reforming the process doesn't just help our group, but any students trying to start a new organization.”

On Dec. 10, FIRE wrote to Thomas, asking her to recognize Animal Alliance and stop violating students' First Amendment rights. FIRE will review Truman State's revised policies when they become public. The details have not been solidified as of the Quarterly's press time, but FIRE continues to watch Truman State — and institutions across the country — like a hawk.

Students forming the Animal Alliance had done everything necessary: Mathew submitted an application form, selected an adviser, and identified more than 10 interested students. But following a hearing and closed-door deliberations, administrators denied their application on Nov. 21, citing “the emotional risk” of potentially hostile student reactions, and the possibility that police responding to such situations could be emotionally upsetting to other students. Administrators also expressed concern about the “reputational risk” of associating with PETA.

“We're delighted that Truman State recognized that their decision did not square with the First Amendment, and that the university pledged to bring its approval process in line with its constitutional obligations,” said Lindsie Rank, author of FIRE's letter. “We encourage students everywhere who are facing viewpoint discrimination to get in touch.”

Since 2015, administrators denied at least 43 prospective groups, including those advocating for first-generation college students, transgender students, and children with cancer. Other groups to face Truman's axe include clubs promoting religious causes, the elimination of the global slave trade, and consent in sexual relationships. Animal Alliance was the third prospective student group promoting veganism or vegetarianism to be denied recognition in as many years.



The university rejected a proposed Vegetarian Club in 2017, after a committee member objected to part of its mission statement as “very very very extreme” and said they would not go vegetarian themselves.

Universities may use objective criteria to grant or deny student groups' bids for official recognition. But Truman State's subjective process violated students' First Amendment rights and resulted in a double standard, with some groups approved



and others ousted. Groups without official recognition can be denied a wide range of resources, including funding, room reservations, and the ability to publicize events on campus.

FIRE will continue to monitor the situation to ensure that Truman State's forthcoming policies on club recognition don't trample students' First Amendment rights.

"Any system that results in students being asked what 'emotional risk' might come from associating with like-minded individuals and then being told that risk is too great is cruel and raises serious questions about the institution's fair-weather friendship with the First Amendment," said Adam Steinbaugh, director of FIRE's Individual Rights Defense Program. "Students' rights can't be subordinated to what administrators feel is in their best emotional interest."

“ Reforming the process doesn't just help our group, but any students trying to start a new organization. ”

Naomi Mathew



Babson College fires professor over political Facebook post

On Jan. 9, Massachusetts’ Babson College announced its completion of a “thorough investigation” — started the day before — into an adjunct professor’s Facebook post. As a result of its investigation, the college terminated the professor.

The professor’s post was a response to President Donald Trump’s tweeted threat to target 52 Iranian sites, including cultural sites — which drew criticism that the threat, if carried out, would constitute a war crime. Asheen Phansey, an adjunct professor and staff member at Babson College, posted on his personal Facebook page: “In retaliation, Ayatollah Khomeini should tweet a list of 52 sites of beloved American cultural heritage that he would bomb. Um... Mall of America? ...Kardashian residence?”

That drew the attention of a local gossip blog, which published screenshots of Phansey’s post, leading critics on Twitter to call on the college to take action. Administrators obliged — launching an investigation and suggesting Phansey’s post condoned violence.

It strains credulity to read Phansey’s post as sincerely advocating violence. In political rhetoric, figurative and hyperbolic language have long been familiar tools, and Phansey’s post is quite obviously a criticism — not an endorsement — of threats of violence, mixed with snark about American culture. (The Babylon Bee, a satirical news site, similarly riffed: “Iranian Leaders Vow To Destroy American Cultural Sites Like Walmart Or Dairy Queen.”)

For argument’s sake, even after stripping Phansey’s post of its obvious intent, it still did not amount to unprotected speech. As we explained in a letter to Babson President Stephen Spinelli, Phansey’s post simply cannot be characterized as either a “true threat” or “incitement,” which are not considered protected speech.

Although Babson is a private institution, and thus not bound by the First Amendment, it does promise its faculty and students that the college will respect their freedom of expression. We know that from its faculty handbook, which adopts the AAUP’s 1940 Statement of Principles, under which extramural statements such as these are insufficient to justify terminating faculty members. We also know it from other statements in its student policies, on its website, and from our experience in defending conservative students from Babson who faced punishment for celebrating Trump’s 2016 election by waving a Trump flag on the campus of Wellesley College, Hillary Clinton’s alma mater. In that case, Babson rightfully protected freedom of expression. But not this time.



While some might prefer that faculty and students speak only in sober, considered tones, freedom of expression embraces “the right to criticize public men and measures—and that means not only informed and responsible criticism, but the freedom to speak foolishly and without moderation.” It certainly embraces a right to comment on political matters.

FIRE defended Phansey’s freedom of expression in The New York Times and USA Today, and on local TV. **We continue to monitor the situation and are working with a coalition of other organizations to restore free expression at Babson.**

Babson’s process-free departure from its stated commitments threatens to do far more damage to its reputation than a momentary social media storm ever could. To save its good name, FIRE urges Babson to reinstate Phansey immediately.

Victory at Santa Ana College:

Deflated 'free speech ball' spurs critical speech code reforms after pressure from students, FIRE

Almost a year after Santa Ana College enforced unconstitutional speech codes against three students hosting a "free speech ball" event, reforms will help protect the First Amendment rights of approximately 53,000 students.

The November policy changes follow a dogged campaign by FIRE-represented members of a Santa Ana student organization to vindicate their First Amendment rights and those of their fellow students.

"These students have been there every step of the way, fighting for their own rights and the rights of their peers," said Marieke Tuthill Beck-Coon, FIRE's director of litigation. "Their dedication to defending their civil liberties and those of others is admirable and necessary to our democracy."

“ We think everyone has the right to say whatever they want. ”
Jocabed Torres

Former students Andrew Rivas, Boston Bolles, and Jocabed Torres didn't ask for this fight. In November 2018, their chapter of Young Americans for Liberty set up a "free speech ball" — an oversized beach ball upon which students are invited to write messages of their choice — on Santa Ana's campus. But after an hour, an administrator and campus police officer demanded that the ball be deflated.

The students asked what policies they were violating, but received no answer. Instead, the administrator claimed that writing on the ball, which included a drawing of a penis and a swastika, violated Santa Ana's code of conduct. As a police officer took photographs and asked the students for their identification, the students deflated the free speech ball.

"We think everyone has the right to say whatever they want," Torres told student newspaper *el Don* at the November 2018 event. **"That's what I want, to protect everyone's freedom, even if I don't agree with it."**

A few days later, Rivas, Bolles, and Torres were charged with violating the Standards of Student Conduct of the Rancho Santiago Community College District (of which Santa Ana College is a member). They faced potential discipline for violating provisions of the code banning "obscene" expression, "vulgarity," and "hate speech."

FIRE wrote to Santa Ana President Linda Rose to remind her that Santa Ana is a public college bound by the First Amendment — and thus forbidden from punishing students for their protected expression. The college quickly cleared the students of all charges.

Even with their charges dropped, the students didn't stop fighting for free expression. Represented by FIRE, the students pressed for permanent revisions to the conduct code to ensure that the unconstitutional speech codes wouldn't silence them — or any of the district's 53,000 students — again.

In a 2019 letter to the district chancellor, FIRE wrote, "Without knowing that the YAL members can expect to encounter constitutionally-compliant policies and practices in future semesters, we will be forced to file a lawsuit to protect their ability to fully exercise their rights on campus."

In late November, the college district revised its conduct code to bring it in line with the First Amendment, securing a lasting victory for the expressive rights of all students within the district.

On that note...

Down in Mississippi, FIRE's lawsuit against Jones County Junior College reached another exciting development. The Department of Justice filed a Statement of Interest in FIRE's lawsuit on behalf of a student who was stopped by campus police twice for attempting to speak with fellow students about free speech and civil liberties issues without the college's explicit permission. The DOJ said, in part: "Such extreme preconditions to speech might not be out of place in Oceania, the fictional dystopian superstate in George Orwell's *Nineteen Eighty-Four*. The First Amendment to the United States

Constitution, however, ensures that preconditions like these have no place in the United States of America."

Throughout the state, colleges are making big advances toward protecting free speech: Four institutions earned a green light rating in 2019 alone, meaning all six Mississippi colleges rated in Spotlight now earn the top rating. And even schools not rated in the database — such as Mississippi Valley State University and Mississippi University for Women — recently worked with FIRE to improve their speech policies.



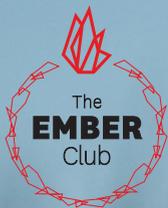


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INTRODUCING FIRE'S EMBER CLUB

I want to take a moment to thank all the supporters who made FIRE's work possible in 2019. After 12 years of working with our donors, I am still humbled and inspired by your incredible generosity. I am excited to announce that this year, we are launching FIRE's Ember Club, which helps our closest friends and investors advance our shared commitment to preserving First Amendment liberties.

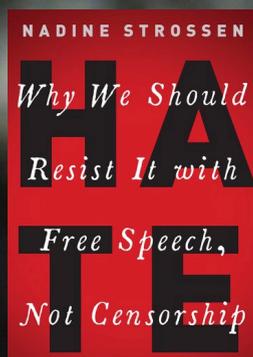
Members help ensure that the work we have accomplished together in the past 20 years — and the changes it has inspired — will not fade away, but will instead evolve and strengthen in the face of future challenges that lie ahead. They play a critical role in advancing our mission by making a yearly commitment to FIRE at various levels starting at \$2,500 (or \$208 a month). If you have any questions about the Ember Club or want more information, please reach out to us at support@thefire.org or 215-717-3473.

Alisha Glennon, FIRE Senior Vice President of Finance and Development

STUDENTS: APPLY TODAY FOR FIRE'S 2020 REGIONAL CONFERENCE

FIRE's 2020 Regional Conference, "Campaigning on Campus," will take place on March 28 in Nashville, Tennessee. This one-day event offers a crash course on freedom of expression, with particular emphasis on this year's political campaigns on campus.

Attendees will learn about the history of censorship on campus. Participants will work closely with FIRE staff to develop strategies to campaign with confidence, backed by a robust understanding of the First Amendment and its protections. The conference is free and open to current students, including graduate students, at U.S. colleges and universities. Meals will be provided, as well as a travel reimbursement of up to \$300 for students traveling to and from the conference. Apply on FIRE's website, or contact FIRE for more information: conference@thefire.org



FIRE PRESIDENT AND CEO GREG LUKIANOFF'S BOOK RECOMMENDATION

"HATE: Why We Should Resist it With Free Speech, Not Censorship" by Nadine Strossen

This book may be the most thorough takedown of all of the rationales used to defend hate speech codes ever written. Bristling with real world examples and powerful legal, practical, and philosophical arguments, it is nonetheless concise and readable. Do not take any advocate of hate speech codes seriously unless they have both read this book and contended with its overpowering arguments.

Greg Lukianoff, FIRE President and CEO

BUT WAIT! There's more...