



**STATE OF THE
SPEECH CODES:
MICHIGAN**





Introduction

In early 2018, then-Michigan State University President Lou Anna K. Simon declared that her university is “wholly dedicated to freedom of speech, not just as a public institution, but as an institution of higher education. Here, ideas—not people—are meant to clash and to be evaluated based on their merits. As I noted in a long-standing statement on freedom of speech, ‘Without this freedom, effective sifting and testing of ideas cease, and research, teaching, and learning are stifled.’”¹

This laudable commitment to free expression on campus is consistent with what most college students should expect, and with good reason. Public institutions are legally bound by the First Amendment, and the vast majority of private colleges and universities promise their students commensurate free speech rights.

However, far too many institutions fail to live up to these free speech obligations, in policy and in practice—including Michigan State itself.

In this report, the Foundation for Individual Rights in Education (FIRE) examines the speech codes—policies that regulate student expression that would be protected by the First Amendment in society at large—on Michigan’s campuses, including all public four-year institutions as well as the two-year public and private schools in Ottawa and Kent counties.

The report is organized into four sections: First, we compare Michigan’s colleges and universities with institutions nationwide, with particular focus on private schools; second, we discuss common issues and noteworthy examples from the policies; third, we explore recent cases and controversies in the state; and fourth, we identify steps institutions can take to improve the state of free speech on Michigan’s campuses.

¹ ASSOCIATED PRESS, *Michigan State Univ. allows white nationalist Richard Spencer to speak*, Jan. 18, 2018, <https://www.wxyz.com/news/michigan-state-univ-allows-white-nationalist-richard-spencer-to-speak>.

Methodology

For this report, FIRE surveyed publicly available policies at 17 four- and two-year public institutions and nine private institutions in Michigan. FIRE performed new research on policies at 11 institutions, and reviewed and updated the ratings of 15 institutions already included in our Spotlight database of school policies.²

FIRE rates colleges and universities as “red light,” “yellow light,” or “green light” institutions based on how much, if any, protected expression their written policies governing student conduct restrict. (It is important to note that these speech code ratings focus exclusively on written policies, and do not take into account a university’s “as-applied” violations of student speech rights or other cases of censorship, student- or faculty-led calls for punishment of protected speech, or related incidents and controversies.)³

The speech code ratings apply equally to public universities and most private universities. While private institutions are not legally bound by the First Amendment (as public institutions are), those that promise freedom of expression are morally bound—and may be contractually bound, depending on the circumstances—to uphold the fundamental principles of free speech and academic freedom.

The speech code ratings are defined as follows:



Red Light: A red light institution maintains at least one policy that both clearly and substantially restricts freedom of speech, or bars public access to its speech-related policies by requiring a university login and password for access.

A “clear” restriction unambiguously infringes on 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. A “substantial” restriction on free speech is one that is broadly applicable to

campus expression. For example, a ban on “offensive speech” would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what is protected under First Amendment standards). Such a policy would earn a university a red light.

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 prior to matriculation. At FIRE, we consider this denial to be so deceptive and serious that it alone warrants an overall red light rating.



Yellow Light: A yellow light institution maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict relatively narrow categories of speech.

For example, a policy banning “verbal abuse” has broad applicability and poses a substantial threat to free speech, but is not a clear violation because “abuse” might refer to unprotected speech and conduct, such as threats of violence or unlawful harassment. Similarly, while a policy banning “profanity on residence hall door whiteboards” clearly restricts speech, it is relatively limited in scope. **Yellow light policies are typically unconstitutional when maintained by public universities,⁴ and a rating of yellow light rather than red light in no way means that FIRE condones a university’s restrictions on speech.** Rather, it means that in FIRE’s judgment, those restrictions do not clearly and substantially restrict speech in the manner necessary to warrant a red light rating.



Green Light: If FIRE finds that a university’s policies do not seriously threaten campus expression, that college or university receives a green light rating. A green light rating does not necessarily indicate that a school

² FIRE’s Spotlight Database, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (last visited Feb. 11, 2022), <https://www.thefire.org/resources/spotlight>.

³ Discussion of many, if not all, such incidents and controversies may generally be found on FIRE’s website. See Newsdesk, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (last visited Feb. 10, 2022), <https://www.thefire.org/category/newsdesk>.

⁴ See, e.g., *Gooding v. Wilson*, 405 U.S. 518, 519, 528 (1972) (holding that a Georgia statute prohibiting “opprobrious words or abusive language” was unconstitutional because those terms, as commonly understood, encompass speech protected by the First Amendment). Under this and related precedents, a public university maintaining a ban on “verbal abuse” and similar expression would be constitutionally deficient.

actively supports free expression in practice; it simply means that the school's *written* policies do not pose a serious threat to free speech.



Warning Rating: FIRE believes that free speech is not only a moral imperative, but an essential element of a college education. However, private universities, as private associations, possess their own right to free association, which allows them to prioritize other values above the right to free speech if they wish to do so. Therefore, when a private university *clearly and consistently* states that it holds a certain set of values above a commitment to freedom of speech, FIRE gives it a Warning rating in order to warn prospective students and faculty members of this fact.⁵

Overall ratings: To determine overall ratings, FIRE does not produce an “average” of an institution’s policy ratings; a school with five yellow light policies and one red light policy earns an overall red light rating, just as a school with one yellow light policy and five red light policies earns an overall red light rating.

FIRE divides restrictions on expressive rights into the following categories of speech codes: harassment policies; bullying policies; policies on tolerance, respect, and civility; protest and demonstration policies; internet usage and social media policies; policies on “bias” and “hate speech”; security fees policies; and posting policies.

⁵See Mary Griffin, *What does a school with a “Warning” rating look like? BYU-Idaho demonstrates.*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Dec. 5, 2019), <https://www.thefire.org/what-does-a-school-with-a-warning-rating-look-like-byu-idaho-demonstrates>.

Findings

Overall, 26.9% of reviewed schools earn a red light rating, while another 19.2% (55.6% of private schools) earn a Warning rating. Exactly half (50%) earn a yellow light rating. Michigan Technological University is the lone school in the state to earn a green light rating for not having any policies that seriously threaten campus expression.

The findings are summarized in full in the following chart:

Institution	Rating	Public or Private
Aquinas College	● Red	Private
Calvin Theological Seminary	● Warning	Private
Calvin University	● Warning	Private
Central Michigan University	● Yellow	Public
Cornerstone University	● Warning	Private
Davenport University	● Red	Private
Eastern Michigan University	● Yellow	Public
Ferris State University	● Yellow	Public
Grace Christian University	● Warning	Private
Grand Rapids Community College	● Red	Public
Grand Valley State University	● Yellow	Public
Hope College	● Yellow	Private
Kuyper College	● Warning	Private
Lake Superior State University	● Red	Public
Michigan State University	● Yellow	Public
Michigan Technological University	● Green	Public
Muskegon Community College (Ottawa County extension campus)	● Red	Public
Northern Michigan University	● Yellow	Public
Oakland University	● Red	Public
Saginaw Valley State University	● Yellow	Public
University of Michigan - Ann Arbor	● Yellow	Public
University of Michigan - Dearborn	● Yellow	Public
University of Michigan - Flint	● Yellow	Public
Wayne State University	● Yellow	Public
Western Michigan University	● Red	Public
Western Theological Seminary	● Yellow	Private

Discussion

I. MICHIGAN VS. THE COUNTRY

On average, Michigan schools earn worse ratings than the national average in FIRE’s Spotlight database. While 18.5% of schools in the database earn a red light, 26.9% of the Michigan schools we reviewed earn a red light rating for maintaining at least one policy that clearly and substantially restricts free speech. Further, 19.2% of reviewed Michigan institutions (and a staggering 55.6% of private schools) earn a Warning rating for making clear in written policy that the school will not protect students’ free speech rights. In the Spotlight database, just 1.5% of institutions nationwide earn a Warning rating.

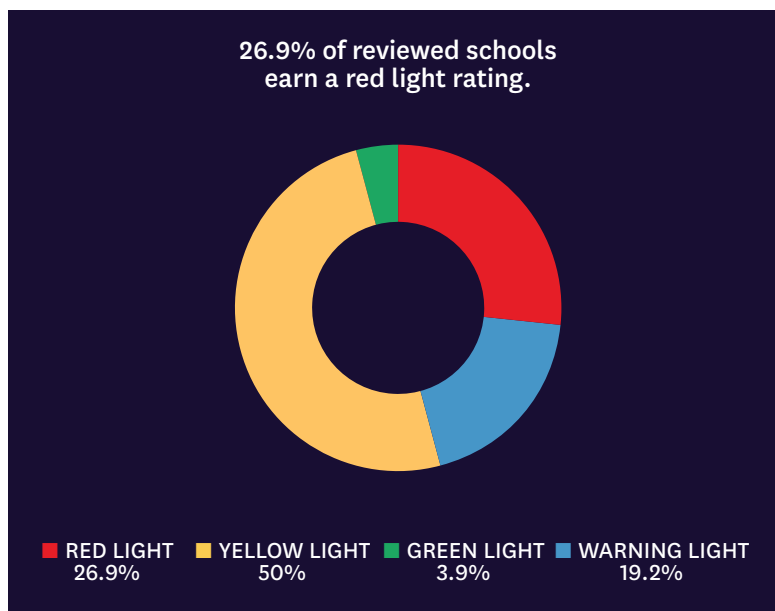
Next, we’ll provide more detailed context for how the universities in Michigan stack up against schools nationally.

a. Public vs. Private

Michigan public institutions perform on par with the national average. FIRE’s Spotlight database includes substantially more public schools than private schools (374 vs. 107, respectively), and when the private and two-year institutions are removed from the Michigan sample, we see that Michigan’s four-year public institutions perform more competitively with the rest of the country. Just 20% of Michigan’s four-year public schools earn a red light, while 73.3% earn a yellow light and 6.7% earn a green light. Nationwide, 18.5% of colleges and universities earn a red light, 68% earn a yellow light, and 12.1% earn a green light.

Of Michigan’s private institutions that promise free speech rights to students, 50% earn a red light and the other 50% earn a yellow light. Private colleges and universities in Michigan also fare worse than their public counterparts in the nationwide Spotlight database, where 43.1% of those promising free speech rights to students earn a red light rating, 52.9% earn a yellow light, and 3.9% earn a green light.

Private institutions more frequently maintain speech codes in large part because, as a result of their status, they are not directly bound by the First Amendment. Importantly, however, the vast majority of private universities have traditionally viewed themselves—and advertised themselves—as bastions of free thought and expression in the spirit of the First Amendment. When universities make such guarantees, they should be held to account and measured against that standard. When they are held to First Amendment standards, over 90% of private institutions earn a red or yellow light rating in the Spotlight database.



A majority of Michigan’s private institutions present the separate, perhaps slightly less concerning issue of declining to guarantee free speech rights altogether. A private institution is well within its rights to place a particular set of moral, philosophical, or religious teachings above a commitment to free expression. If a private university states clearly and publicly that it values other commitments more highly than freedom of expression, that institution has considerably more leeway in maintaining more speech-restrictive policies, as students have chosen to attend with that information available.

While just 4.7% of private institutions nationwide earn a Warning rating, 55.6% of Michigan’s private institutions earn

Warning ratings for prioritizing some other value over free expression. As mentioned above, the Spotlight database contains far fewer private institutions than public. As a result, it's unclear whether Michigan's private schools earn warning ratings at a higher rate than other states or if the database simply lacks many of the small private institutions nationwide that may be more likely to earn those ratings. Regardless, while these Michigan institutions may be within their rights to take this approach, these Warning ratings exist for a reason: Students should have no expectation that free speech or expression is welcome at over half of Michigan's reviewed private schools.

b. Michigan Universities vs. The State of Ohio Universities (and a few others)

In addition to earning worse ratings than the nationwide average, Michigan schools also underperformed when compared to institutions in neighboring states in the Spotlight database.

Of the 15 rated Ohio institutions, only 13.3% earn red light ratings, significantly fewer than the 26.9% of Michigan schools. No Ohio schools earn Warning ratings and 80% earn yellow lights. Both Michigan and Ohio have a single green light institution, despite 11 more Michigan schools than Ohio schools having been reviewed for this report.

Sixteen Indiana schools are rated in the Spotlight database, with 18.8% earning a red light rating, again lower than the percentage in Michigan. Another 62.5% of Indiana schools earn a yellow light rating, compared to 50% of Michigan schools. Notably, 18.8% of Indiana institutions earn a green light rating, while just 3.8% of Michigan schools can say the same.

Only eight Wisconsin institutions are rated in the Spotlight database, with 75% earning a yellow light and 25% earning a red light.

Between Ohio, Indiana, and Wisconsin, 17.9% of the 39 institutions earn a red light rating, 71.8% earn a yellow light, and 10.3% earn a green light. Michigan institutions maintain

significantly more red light policies and fewer overall green lights than their counterparts in neighboring states.

c. Persistently Problematic Policies

While the review of Michigan schools' policies turned up issues in every category of speech codes monitored in FIRE's Spotlight database, some policy categories popped up most frequently: namely, policies related to harassment, internet usage and social media ("IT policies"), and restrictions on posting flyers and other materials on campus ("posting policies"). This finding is consistent with data on which policies tend to earn poor ratings nationwide. Examples of red light policies from each category, along with a brief explanation of why they are unconstitutional when maintained at public institutions, will be analyzed in section II.

Of the 481 institutions reviewed in the Spotlight database, 67.7% maintain at least one harassment policy earning a yellow light rating, while 11.4% maintain one earning a red light rating.⁶ Occurring with even more regularity, 77% of Michigan institutions maintain at least one yellow light harassment policy, with 11.5% maintaining a red light harassment policy.

Roughly 45% of Spotlight institutions maintain an IT policy that earns a yellow light, while 7.3% have a red light IT policy. Meanwhile, 38.4% of Michigan schools maintain a yellow light IT policy, as 7.7% have a red light IT policy on the books.

Finally, 42% of Spotlight institutions have a posting policy that earns a yellow light rating, while only four universities, less than 1%, maintain a red light posting policy. Thirty-five percent of Michigan schools maintain a yellow light posting policy, while one school, accounting for 3.8% of Michigan schools, has a red light posting policy.

That certain categories of restrictive policies recur at Michigan institutions with roughly the same regularity as is seen nationwide makes clear that these issues are not unique to Michigan. Given that, it is important to delve deeper into particular policies to examine whether common issues can be identified to aid in targeting them for revision.

⁶ Note that this does not mean that 79.1% of schools maintain either a yellow or red light harassment policy, as a university with a red light harassment policy may also maintain an additional harassment policy that earns a yellow light, resulting in the institution being represented in each category. This same principle holds for breakdowns of IT policies and posting policies in the Spotlight database.

II. COMMON ISSUES AND NOTEWORTHY EXAMPLES

a. Harassment Policies

Hostile environment harassment, when properly defined, is not protected by the First Amendment. In the educational context, the Supreme Court defined student-on-student (or peer) harassment in *Davis v. Monroe County Board of Education* as discriminatory, unwelcome, and targeted conduct that is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”⁷

The *Davis* Court made clear that peer harassment is not mere expression: It is *conduct* that goes far beyond the protected speech that too often finds itself swept into the broad definitions of “harassment” in speech codes on college campuses. Harassment policies that fall short of the Supreme Court’s *Davis* standard risk encompassing protected speech, and must be revised.

For example, Grand Rapids Community College’s policy defines harassment as any “unwelcome, unwanted conduct related to a protected status,” including “written, verbal, non-verbal, and physical contact.”⁸ The policy concludes by noting that harassment “is not conduct that is simply incivility or rudeness but conduct that violates the protections afforded to employees and/or students who are members of a protected class under state and federal law.” However, this savings clause is not sufficient to narrow the overly broad definition because the definition can still be applied to punish protected speech that does not constitute unlawful harassment.

This policy lacks any elements of the formulation set forth by the *Davis* Court, including the “severe” and “pervasive” components from the Court’s standard. The policy also fails to include an objective, “reasonable person” standard, leaving a person’s subjective feeling about what constitutes

harassment sufficient to satisfy the standard. Concerningly, the policy prohibits all unwelcome, unwanted conduct related to a protected status. Under such a broad standard, anything from unlawful harassment to an off-color or sarcastic joke is punishable.

The policy should be revised to comply with the *Davis* standard, requiring that the proscribed conduct be “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”⁹

b. Internet Usage and Social Media Policies

Institutions have no more latitude to infringe on free speech online than on campus, but that wouldn’t be obvious if one reviews speech codes from universities across the nation. Both nationally and in Michigan, IT policies earn the second-highest number of red light ratings, only after harassment policies. This is a problem brought to the fore during the COVID-19 pandemic, as many schools pivoted to remote learning, shifting more student speech online than ever before.

Aquinas College’s “Acceptable Use Policy” lays out “policies and guidelines” for use of the college’s network, excerpted, in relevant part, below:

Malicious use is not acceptable.

[. . .]

Malicious use includes, but is not limited to, the following:

[. . .]

- Displaying, sending, or creating links to offensive materials.¹⁰

This policy earns a red light rating because it targets “offensive materials,” a subjective category of expression that is typically protected under First Amendment standards. A ban on “offensive” speech is about as broad as a policy can get and, without defining the term, provides an administrator

⁷ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629, 633 (1999).

⁸ Harassment Policy, GRAND RAPIDS COMMUNITY COLL., <https://www.grcc.edu/sites/default/files/docs/6.3%20Harassment%20Policy.pdf> (last visited Feb. 6, 2022).

⁹ *Davis*, 526 U.S. at 651.

¹⁰ Aquinas College Network Acceptable Use Policy, AQUINAS COLL., <https://www.aquinas.edu/sites/default/files/aup.pdf> (last visited Feb. 8, 2022).

carte blanche to target any expression they personally deem out of bounds. While offensive speech may rub some people the wrong way, the risk of hurt feelings and shocked sensibilities is not enough to punish the speaker.

Universities may prohibit speech that would be unprotected under First Amendment standards like true threats, obscenity, or harassing messages. However, this policy goes considerably further, specifically identifying a category of speech that is protected, while failing to define other terms in a way that would bring this policy in line with Supreme Court precedent. The policy should be revised to simply ban use of college IT resources that causes a substantial disruption to university activities or functions.

Lake Superior State University managed to check several of those ignominious boxes with its policy, excerpted below:

All postings must first be approved by the Campus Life Office, located in the Cisler Center. Postings must bear the most recent stamp of approval. Postings can only be placed in designated areas. ... Postings deemed offensive, sexist, vulgar, discriminatory or suggestive will not be approved. Failure to comply with this policy will result in the removal and disposal of the postings in addition to possible future posting denial and/or disciplinary sanctioning of the individual(s) involved.¹¹

This policy earns a red light rating because it requires advance approval from the Campus Life Office, which will be denied if an administrator subjectively determines the content of the posting to be “offensive, sexist, vulgar,” or “suggestive.” Requiring that postings adhere to a certain viewpoint is entirely inconsistent with fundamental First Amendment standards. The policy should be revised to guarantee reasonable space indoors and outdoors for non commercial postings, and to only restrict postings that contain unlawful or otherwise unprotected speech.

Michigan State University’s “Distribution of Literature” policy earns a green light rating and may serve as a model for institutions seeking to revise their own speech codes:

A. Students and student groups shall have maximum freedom to express opinions and communicate ideas by preparing and distributing independent student publications. [...]
Hand-to-hand distribution is permitted in all public areas of campus buildings, subject to building security and access rules and such limitations as are necessary to prevent interference with scheduled University activities.¹²



c. Posting Policies

Institutions often adopt policies governing posted materials on campus. These restrictions can take several forms. Some speech codes unreasonably limit the locations on campus where students and student groups can post such materials. Others require advance notice or approval from administrators before the materials can be posted, constituting a prior restraint on speech. Some speech codes explicitly place impermissible content-based restrictions on expression.

¹¹ Student Handbook, LAKE SUPERIOR STATE UNIV., <https://www.lssu.edu/campus-life/stay-informed/student-handbook/#toggle-id-5> (last visited Feb. 7, 2022).

¹² Independent and University Supported Student Publications, MICH. STATE UNIV., <https://studentlife.msu.edu/about/handbook/student-rights-responsibilities/article-nine-independent-and-university-supported-student-publications.html> (last visited Feb. 7, 2022).

III. RECENT MICHIGAN CASES AND CONTROVERSIES

Having discussed the policy ratings at Michigan schools, considered them in relation to nationwide ratings and neighboring states, and examined specific policies to explain the ratings and suggested revisions, it is useful to look at examples in which Michigan institutions have applied their speech codes in a manner that infringed on student or faculty speech. It is important to view these policies in context, as restrictive speech codes are far more than an academic exercise in constitutional law. They have tangible, real-world consequences, and these cases demonstrate why such policies must be revised now to prevent similar infringements in the future.

a. Ferris State University Punishes Performatively-Profane Professor

In January 2022, Ferris State University tenured professor Barry Mehler’s introductory video, welcoming students to his history class, went viral across social media.¹³ The video has an offbeat, provocative nature, as he dons a “space helmet,” uses profanity to parody a scene from the television show “Deadwood,” and says that students’ grades are predetermined under the Calvinist doctrine of predestination. This performance struck a sardonic tone immediately recognizable to anyone familiar with Mehler’s style. Ferris State administrators, for example, were certainly familiar with this style, as they had previously praised and even rewarded Mehler for his idiosyncratic approach.¹⁴

In spite of this, after selectively edited clips went viral, sparking outrage among many who saw only brief snippets out-of-context, administrators opted to place Mehler on administrative leave, alleging that he violated the university’s overbroad Employee and Student Dignity policy. This policy

earns a yellow light rating from FIRE because its vague terms can too easily be used to restrict protected expression, just as it was applied here. The policy requires “all students and employees to conduct themselves with dignity and respect” and to “behave in a civil manner and to make responsible choices about the manner in which they conduct themselves.”¹⁵ Mehler has since filed a lawsuit, alleging Ferris State’s punishment violated his free speech and academic freedom rights.¹⁶

It is important to view these policies in context, as restrictive speech codes are far more than an academic exercise in constitutional law. They have tangible, real-world consequences, and these cases demonstrate why such policies must be revised now to prevent similar infringements in the future.

b. University of Michigan Bias Response Policy Lawsuit

In 2019, Speech First, an organization committed to defending free speech on college campuses, sued the University of Michigan over its Bias Response Team and the policy governing that team, which could refer cases to governmental entities that could impose punishment and could also invite students to meet with them. FIRE supported Speech First’s suit by filing an amicus brief, urging the court to reach the merits of the case and secure Michigan students’ rights.¹⁷

The United States Court of Appeals for the Sixth Circuit found that the Bias Response Team was likely to chill students’ speech. The Sixth Circuit explained that because the Bias Response Team had the ability to refer cases to governmental

¹³ Barry Mehler, *The Viral Video that started it all (Week 1 Gen Intro 010922)*, YouTube (Jan. 16, 2022), <https://www.youtube.com/watch?v=RrOzY86YcEM&t=3s>.

¹⁴ Adam Steinbaugh, *Save Ferris Prof: Before it suspended tenured professor over profane syllabus skit, Ferris State praised it*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Jan. 20, 2022), <https://www.thefire.org/before-it-suspended-professor-over-profane-syllabus-skit-ferris-state-praised-it>.

¹⁵ *Employee Dignity/Harassment/Discrimination*, FERRIS STATE UNIV., <https://www.ferris.edu/administration/president/DiversityOffice/employee.htm> (last visited Feb. 7, 2022); see also Laura Beltz, *Suspension over profanity-laced video highlights unconstitutional policy at Ferris State*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Feb. 9, 2022), <https://www.thefire.org/suspension-over-profanity-laced-video-highlights-unconstitutional-policy-at-ferris-state>.

¹⁶ Jordan Howell, *Lawsuit: Professor suspended for profanity-laced video sues Ferris State*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Jan. 26, 2022), <https://www.thefire.org/lawsuit-professor-suspended-for-profanity-laced-video-sues-ferris-state/>.

¹⁷ Amicus Briefs — *Speech First v. Schlissel*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (Nov. 20, 2018), <https://www.thefire.org/speech-first-v-schlissel>.

entities that could impose punishment and could invite students to meet with them, there was an “implicit threat of consequence” if the student declined the invitation.¹⁸

Following the ruling, the University of Michigan settled the case, agreeing to revise all policies challenged in the litigation and instead adopting a “Campus Climate Support” policy to provide support for those who feel they may have been harmed by some event. This policy now earns a green light rating because it makes clear that students will not be investigated or punished for their protected speech. This policy can serve as a model for institutions who wish to avoid spending years and hundreds of thousands of dollars litigating a restrictive speech code.¹⁹

c. Western Michigan University Boots Riley Litigation

In 2014, the Kalamazoo Peace Center, a registered student organization at Western Michigan University, invited filmmaker Boots Riley on campus to deliver the keynote address at its annual Peace Week. WMU, citing “public safety” concerns, initially refused to allow Riley on campus. Once confronted with evidence that Riley had spoken at other universities without incident, WMU agreed to let Riley speak on campus, but only after KPC paid for private security. When it wasn’t able to afford this eleventh-hour fee, KPC was forced to change the venue to the basement of a privately owned building, which was smaller and less accessible to students.

The Kalamazoo Peace Center then filed a federal lawsuit with assistance from FIRE, challenging WMU’s posting and space reservation policies.²⁰ Eventually, in 2015, the two parties agreed to a settlement, in which WMU agreed to revise its policies to comply with the First Amendment and to pay \$35,000 in damages and attorneys’ fees.

While WMU still earns an overall red light rating, its revised security fees and posting policies each earn green light ratings.

The above examples demonstrate the concerns associated with enforcement of speech codes in the state of Michigan alone. Even so, their threat is not limited to application. As the Sixth Circuit recognized, even prior to enforcement, restrictive policies threaten to cast a chilling effect over the expression of students who read them and fear expressing themselves will land them in trouble. Policy revision, therefore, helps improve the overall climate for free expression on campus for all, not just those targeted when a policy is enforced.

¹⁸ *Speech First, Inc. v. Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019).

¹⁹ School Spotlight: University of Michigan— Ann Arbor, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., <https://www.thefire.org/schools/university-of-michigan-ann-arbor> (last visited Feb. 7, 2022).

²⁰ Western Michigan University — Stand Up For Speech Lawsuit, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., <https://www.thefire.org/cases/western-michigan-university-stand-speech> (last visited Feb. 11, 2022).

IV. NEXT STEPS: IMPROVING THE STATE OF FREE SPEECH ON MICHIGAN'S CAMPUSES

As this report has made clear, there is much work to be done to extend freedom of expression at Michigan's colleges and universities. With only one of the 26 reviewed Michigan institutions earning a green light, almost every Michigan school has steps that can be taken to roll back speech codes that may pose a threat to the ability of students to engage in free expression on campus.

At the more than 75% of the surveyed institutions that earn a yellow or red light speech code rating, immediate steps can be taken to improve those policies and regulations to secure students' expressive rights.

All of the nearly one in five of Michigan schools that earn a Warning rating are religious institutions. While FIRE believes freedom of expression is an essential component of a liberal education, we recognize that private colleges and universities possess their own First Amendment right to free association, which protects their decision to prioritize other values above the right to free speech. To ensure that institutional expectations are clearly understood, however, these colleges and universities must continue to publicly alert prospective students and faculty members to the fact that they hold other values above a commitment to freedom of speech. By doing so, students and faculty may make an informed choice about joining a given university community while foregoing the expressive rights they would otherwise have possessed on another campus.

Michigan's colleges and universities can improve their campus climate in other ways, as well. By adopting principled policy statements regarding campus freedom of expression, a school signals to students, faculty, administrators, alumni, and the general public alike that the institution wishes

to foster a climate of free inquiry and robust debate. Free speech rights benefit everyone on campus, and reaffirm the core purpose of an institution for higher learning—as a place for free inquiry, debate, and discourse.

Any school, regardless of speech code rating, can adopt such a statement. Michigan's institutions have a model to follow should they wish to adopt this type of free speech statement: the "Report of the Committee on Freedom of Expression" at the University of Chicago, better known as the "Chicago Statement." Authored in 2015, the Chicago Statement is an important reflection of how the principles of free speech are essential to the core purpose of a university. It provides, in relevant part:

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 [I]t 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.²¹

Over 80 institutions or faculty bodies have adopted or endorsed the Chicago Statement or a substantially similar statement but, to date, Michigan State University is the only school included in this report to have adopted such a statement.²² Other Michigan institutions would benefit from adopting a version of the Statement. In addition to the benefit the Chicago Statement itself brings to campus, the process of reviewing and deliberating over the particulars of the Statement may spur further action, such as speech code reform, as campus stakeholders learn more about free speech issues and the shortcomings of their own school.

FIRE's President and CEO, Greg Lukianoff, has identified five actions university presidents can take to improve the state of

²¹ Committee on Freedom of Expression at the University of Chicago, *Report of the Committee on Freedom of Expression* (last visited Feb. 11, 2022), available at <https://provost.uchicago.edu/sites/default/files/documents/reports/EOECommitteeReport.pdf>.

²² Adrian College and Kettering University are two other Michigan institutions that have adopted the Chicago Statement but were not reviewed for this Report. For a complete list of institutions that have adopted a version of the Chicago Statement, see thefire.org/chicago-statement-university-and-faculty-body-support (last visited Feb. 11, 2022).

free speech for their students and faculty members.²³ They can commit to revising restrictive speech codes, adopting free speech commitments like the Chicago Statement, and can teach free speech from day one using freshman orientations and first-year programming.²⁴ Colleges should also collect data, conducting annual surveys of students, professors, and administrators to understand attitudes toward free expression, and to gather opinions of the campus climate for debate, discussion, and dissent.

Finally, university presidents can defend the free speech rights of students and faculty loudly, clearly, and early. When speech controversies do arise, and calls for censorship begin, college presidents must unambiguously state that punishments based on unpopular, but protected, speech contradict the values of any university and will not stand at their campus.

²³ Greg Lukianoff, *Five ways university presidents can prove their commitment to free speech*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (June 25, 2019), <https://www.thefire.org/five-ways-university-presidents-can-prove-their-commitment-to-free-speech>.

²⁴ FIRE has partnered with New York University's First Amendment Watch to develop a series of modules for universities to utilize when teaching incoming students about their free speech rights and the principles behind the First Amendment. See *Free Speech Lessons for Freshman Orientation & First-Year Experience Programming*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (last visited Feb. 11, 2022), <https://www.thefire.org/resources/free-speech-freshman-orientation>.

Conclusion

This report demonstrates that Michigan's higher education institutions, and private institutions in particular, have a long way to go in their protection of First Amendment rights on campus. With a combined 46.1% of all reviewed institutions earning either a red light or a Warning rating, students at nearly half of Michigan schools face unconstitutional policies or no expectation of free speech rights whatsoever.

Still, the types of restrictions discussed in this report can be reformed. Students, faculty members, and alumni can all be highly effective advocates for change when they understand their expressive rights and are willing to industriously work with their administrators to revise problematic policies.

FIRE provides a number of resources to assist various constituencies and administrators as they revise speech codes, including our Model Code of Student Conduct and our Model Speech Policies webpage.²⁵ We also stand ready to assist any institutions that wish to improve their policies and campus climate.

FIRE hopes this report can serve as a first step in putting Michigan institutions on notice that it is necessary to revise their policies and do more to live up to their First Amendment legal standards and commitments, and we welcome the opportunity to assist in this process.

²⁵ *Model Code*, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC. (May 28, 2020),

thefire.org/legal/procedural-advocacy/model-code; Model Speech Policies, FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., thefire.org/resources/fires-speech-code-resources/model-speech-policies (last visited Feb. 2, 2022).



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