

*Do North
Carolina
Students Have
Freedom of
Speech?*



“

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.

”

— Hanna Holborn Gray, Professor Emerita,
University of Chicago

Introduction

This report examines the speech and assembly protections for students and faculty members at North Carolina’s universities, both public and private. It is a follow-up to the 2010 report, “Do North Carolina Students Have Freedom of Speech? A Review of Campus Speech Codes.” In the eight years since the publication of that report, North Carolina colleges and universities have made remarkable progress in their protection of First Amendment rights on campus.

This report is a collaborative project of the James G. Martin Center for Academic Renewal and the Foundation for Individual Rights in Education (FIRE). It uses FIRE’s speech code rating system to evaluate policies and regulations affecting students’ and professors’ free speech rights at North Carolina universities.

The report is organized into three sections: first, an explanation of the methodology for rating campus speech codes; second, a snapshot of school-by-school policy ratings in 2010 and 2018; and third, a discussion of relevant trends and developments since 2010.

Methodology

FIRE rates colleges and universities as “**red light**,” “**yellow light**,” or “**green light**” institutions depending upon the degree to which free speech is curtailed in written policy at that institution.

The speech code ratings apply equally to public and most private universities. While private institutions are not legally bound to abide by the First Amendment, 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.

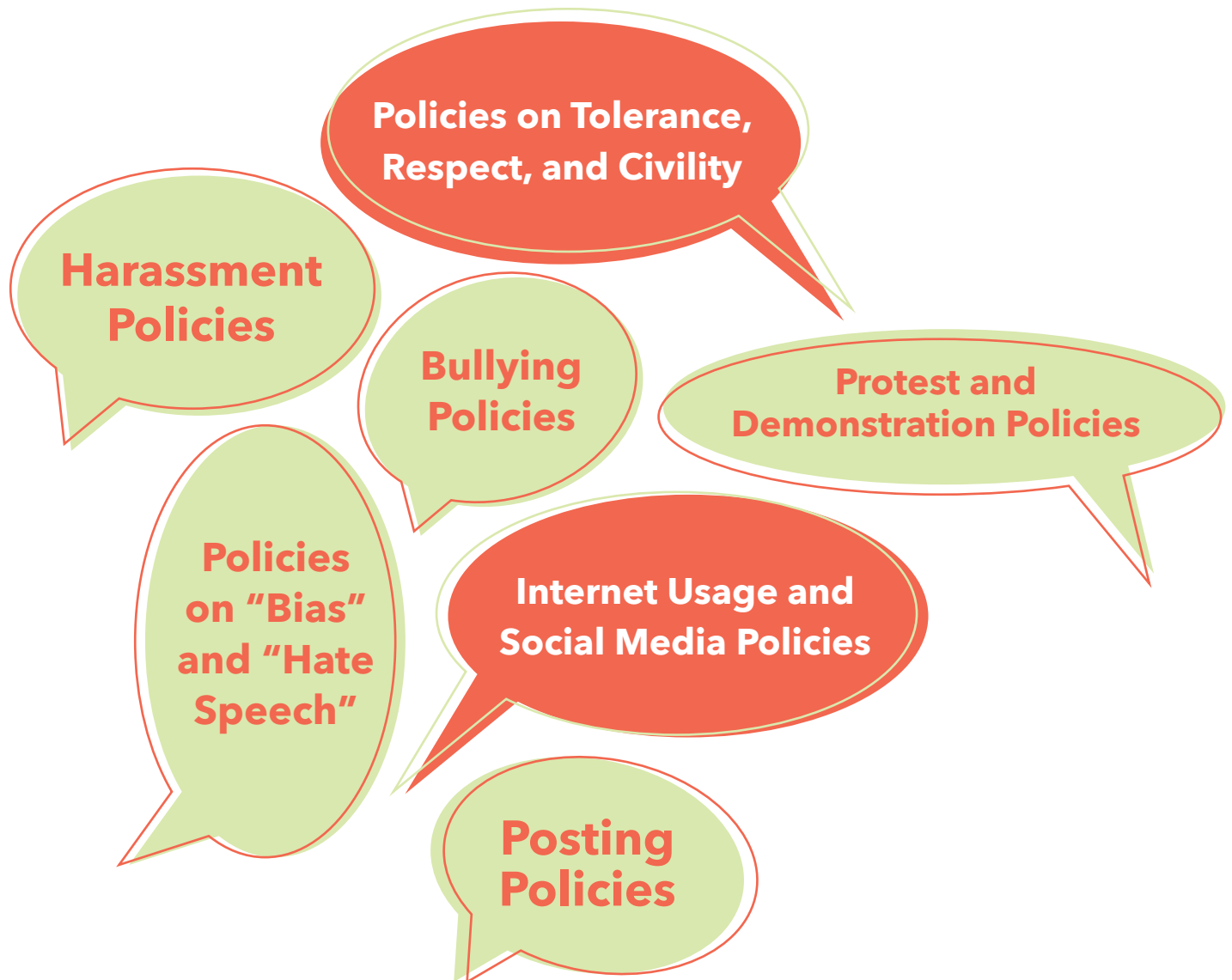
A “red light” institution has at least one policy that both clearly and substantially restricts freedom of speech. A “clear” restriction is one that unambiguously infringes on what is protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of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

A “yellow light” institution maintains policies that 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 relatively 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. In other words, the extent of the threat to free speech depends on how a yellow light policy is applied.

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

FIRE believes that free speech is not only a moral imperative, but also an essential element of a college education. However, private universities are just that—private associations—and as such, they 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 warns prospective students and faculty members of this fact, and gives that institution a “warning” rating.

FIRE Divides Restrictions on Expressive Rights into the Following Categories of Speech Codes:



Findings

From 2010 to 2018, numerous North Carolina colleges and universities made policy changes that improved their protections for campus free speech. The research for this report found that 11 institutions improved their free speech protections, 23 schools remained the same, and three received lower ratings than in 2010.

Of the 11 institutions that improved their policy ratings, eight now earn a green light rating, as compared to no green light institutions in 2010. These findings speak to the effort that administrators, attorneys, and other leaders have put forth at those universities to improve protections for students' and faculty members' rights. The findings are summarized in full in the following chart:

School Name	2010 Rating	2018 Rating
Appalachian State University	Red	Green
Campbell University	Red	Red
Catawba College	Yellow	Yellow
Davidson College	Red	Red
Duke University	Yellow	Green
East Carolina University	Red	Green
Elizabeth City State University	Yellow	Yellow
Elon University	Red	Red
Fayetteville State University	Yellow	Yellow
Gardner-Webb University	Warning	Warning
Guilford College	Red	Red
Johnson & Wales University Charlotte	Yellow	Red
Johnson C. Smith University	Red	Red
Lenoir-Rhyne University	Red	Red
Mars Hill University	Yellow	Red
Methodist University	Red	Red
North Carolina A&T State University	Yellow	Yellow
North Carolina Central University	Red	Green
North Carolina State University – Raleigh	Yellow	Yellow
North Carolina Wesleyan College	Red	Red
Pfeiffer University	Red	Red
Queens University of Charlotte	Red	Red
Salem College	Yellow	Yellow
Shaw University	Yellow	Red
University of Mount Olive (formerly known as Mount Olive College)	Red	Red
University of North Carolina – Asheville	Yellow	Yellow
University of North Carolina – Chapel Hill	Yellow	Green

School Name	2010 Rating	2018 Rating
University of North Carolina – Charlotte	Red	Green
University of North Carolina – Greensboro	Red	Green
University of North Carolina – Pembroke	Yellow	Yellow
University of North Carolina – Wilmington	Yellow	Green
University of North Carolina School of Arts	Red	Yellow
Wake Forest University	Red	Red
Western Carolina University	Red	Yellow
William Peace University (formerly known as Peace College)	Red	Red
Wingate University	Red	Red
Winston-Salem State University	Red	Yellow

Discussion

A. Green Light Schools

Perhaps the most exciting finding in this report is the number of institutions earning a green light rating in 2018 as compared to 2010.

Since the 2010 report, the University of North Carolina – Chapel Hill became the first public green light university in the state of North Carolina, setting a positive example that other state institutions would soon follow. In 2015, UNC – Chapel Hill revised two speech codes that formerly earned a yellow light rating: a regulation of distribution of student flyers in the residence halls and a policy banning speech that “disparages” others. In doing so, UNC – Chapel Hill joined elite company, becoming only the twenty-first institution in the entire country at the time to earn an overall green light rating for its policies.

UNC – Chapel Hill’s accomplishment ultimately led to similar results at other schools within the UNC system, as the campuses at Charlotte, Greensboro, and Wilmington all earned green light ratings in 2017. These changes are note worthy for the sheer number of policies that the universities revised. UNC – Wilmington, for example, reformed nine speech-related policies, ranging from residence hall regulations to harassment policies to a facility use policy. UNC –Charlotte reformed three policies of its own, while UNC – Greensboro eliminated infirmities contained in its sexual misconduct and sexual harassment regulations by consolidating the two into one, constitutionally sound policy.

“Part of UNC – Charlotte’s stated vision is to cultivate a campus culture that embraces free expression, robust debate, and mutual respect,” said Jesh Humphrey, Vice Chancellor for Institutional Integrity and General Counsel at UNC – Charlotte. “FIRE’s green light rating not only confirms that our policies align with our vision, it also reflects how we put that vision into practice by working collaboratively with FIRE and members of the university community to discuss and improve policies that could be viewed as vague or over broad.”

Discussion

“At UNC – Greensboro, we are committed to our role as an enabler of free speech—providing an open platform for individuals, regardless of their particular point of view, to express themselves in a way that promotes important, thoughtful, and civil conversations,” said Julia Jackson-Newsom, Associate Vice Chancellor for Strategy and Policy at UNC – Greensboro.

North Carolina Central University earned a green light rating in 2017, changing or eliminating eight speech codes—including a residential life regulation, a posting provision, two sexual harassment policies, and an information technology responsible use policy. East Carolina University joined the elite ranks in 2017 as well, reforming four different yellow light speech codes. Likewise, Appalachian State University earned a green light rating in 2017 by changing several of its policies, including a harassment policy, a computer use regulation, and a facility use policy.

“North Carolina Central University, both in practice and in its policies, upholds the First Amendment rights of its students, faculty, and staff,” said NCCU chancellor Johnson O. Akinleye. “NCCU strives to create an environment that ensures inclusivity and promotes personal development, citizenship, involvement, and leadership.”

Lastly, Duke University is to date the only private institution in the state to earn a green light rating. Duke earned its green light rating in 2016 by revising a bias incident policy as well as a demonstration policy, both of which previously earned a yellow light rating. In so doing, Duke has hopefully provided an example for other private colleges and universities to follow, both within and outside of the state of North Carolina, of how a private institution can provide students with the same free speech protections that their counterparts can expect at a public university.

North Carolina is now far and away the nation’s leader in terms of the number of green light schools found within the state. This fact should be a point of pride for state residents, because it speaks well about the protections for freedom of expression that students and faculty members are able to enjoy at these institutions. With that being said, there is still plenty of work to be done at the remaining colleges and universities in the state, as will be discussed later in this report.

B. Legislation

In July 2017, House Bill 527 (“An Act to Restore and Preserve Free Speech on the Campuses of the Constituent Institutions of the University of North Carolina”) became law in North Carolina. The legislation, which applies to public universities in the state, includes several provisions for the protection of free speech. Two such provisions mandate that campus rules be consistent with First Amendment jurisprudence regarding traditional public forums and that campuses be open to any invited speaker. The legislation states:

“ Access to campus for purposes of free speech and expression shall be consistent with First Amendment jurisprudence regarding traditional public forums, designated public forums, and nonpublic forums, subject to reasonable time, place, and manner restrictions.

...

Consistent with First Amendment jurisprudence, including any reasonable time, place, and manner restrictions adopted by a constituent institution, campuses of the constituent institutions are open to any speaker whom students, student groups, or members of the faculty have invited. ”

Discussion

The law also prescribes a yearly report by a committee of the UNC Board of Governors, which will track “barriers or disruptions to free expression within the constituent institutions.”

These provisions, even before they became law, proved to be an added incentive for public universities to modify their speech codes. Several public universities earned their green light designations while House Bill 527 was making its way through the North Carolina legislature.

C. Next Steps

As the Findings section of this report demonstrates, there is still plenty of work to be done to protect freedom of expression at North Carolina’s colleges and universities. While 11 institutions have improved their speech code ratings since the aforementioned 2010 report, 23 schools have maintained the same rating, and three schools actually received lower ratings than in 2010. Likewise, while eight North Carolina universities now earn a green light rating for their policies, 17 of the colleges and universities surveyed for this report earn the worst, red light rating, and an additional 11 earn a yellow light speech code rating.

Moving forward, one hopes that the institutions currently earning a red light or yellow light rating will place an emphasis on improving their policies and regulations so that they, too, secure students’ and faculty members’ expressive rights.

North Carolina’s colleges and universities can shore up their free speech protections not only by revising their existing regulations, but also by adopting principled policy statements regarding campus freedom of expression. The adoption of such a statement signals to students, faculty, administrators, alumni, and the general public that the college wishes to foster a climate of free inquiry and robust debate.

Moreover, this type of policy statement will be useful to university leadership when faced with a particular free speech controversy on campus, as the administration can simply point to its principled statement to explain why it cannot and will not silence expression even if it is deeply offensive or disagreeable. In this way, the university’s leaders will be able to withstand criticism and accusations that they favor certain viewpoints or ideas, because—as their statement should make clear—they take the same, even-handed approach to any constitutionally protected speech, no matter who voices it and no matter who objects to it.

Fortunately, North Carolina’s colleges and universities 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 eloquently captures the essence of campus free expression and why it is so vital to any university community. The Chicago Statement 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.”

...

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. »

The Chicago Statement provides members of any campus community with guiding principles regarding the exercise of their own free speech rights and the necessity of respecting the right of others to speak freely as well.

To date, administrations and faculty bodies at more than 40 institutions nationwide have endorsed their own version of the Chicago Statement. This includes Winston-Salem State University, where a version of the Chicago Statement was affirmed by the Faculty Senate; Appalachian State University, where it was similarly endorsed by the Faculty Senate; and UNC – Chapel Hill, where it was adopted by the Faculty Council. It would be great to see the administrations at these three schools follow the lead of their faculty bodies and adopt the Chicago Statement as an official policy statement.

Other colleges and universities in the state would do well to consider adopting a version of the Chicago Statement. The result would be beneficial for the climate for freedom of expression at those schools, and for the ability of campus community members to take part in a true marketplace of ideas. Furthermore, the process of reviewing and deliberating over the Chicago Statement may galvanize speech code reform at some schools, as students, faculty, and administrators become more attuned to free speech issues and more aware of the deficiencies in their universities' existing regulations. This, too, would be a welcome development at those institutions currently earning a red light or yellow light rating.

Conclusion

This report demonstrates that higher education institutions in North Carolina have made remarkable progress in their protection of First Amendment rights on campus. Just eight years ago, not a single North Carolina institution earned a green light rating. Today, eight universities in North Carolina are rated as green light schools—more than in any other state. Free speech advocates, both within and outside the state of North Carolina, should take note of this success and work to emulate it elsewhere.

North Carolinians have cause to celebrate this progress, but there is still room for improvement. Many schools still fail to uphold their responsibility to protect freedom of expression and assembly for students and faculty. Given this reality, this report urges students, faculty, and administrators at those institutions to remain vigilant about the protection of freedom of speech on campus.

Furthermore, as campus free speech advocates face new challenges, those advocates will need to respond accordingly and think of novel approaches and solutions. In today's climate for freedom of expression in higher education, for example, institutional adoption of a principled free speech statement will go a long way toward educating campus community members and affirming the values of the First Amendment. More and varied measures will be necessary to continue the progress that has been made to date.

About the Foundation for Individual Rights in Education (FIRE)

FIRE's mission is to defend and sustain the individual rights of students and faculty members at America's colleges and universities. These rights include freedom of speech, freedom of association, due process, legal equality, religious liberty, and sanctity of conscience—the essential qualities of liberty. FIRE educates students, faculty, alumni, trustees, and the public about the threats to these rights on our campuses, and provides the means to preserve them.

About the James G. Martin Center for Academic Renewal

The James G. Martin Center for Academic Renewal is a nonprofit institute dedicated to improving higher education in North Carolina and the nation. Located in Raleigh, North Carolina, it has been an independent 501(c)(3) organization since 2003. It was known as the John W. Pope Center for Higher Education Policy until January 2017.

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