

# Freedom of Speech on Campus

**GUIDELINES FOR GOVERNING BOARDS  
AND INSTITUTIONAL LEADERS**

AGB Press

1133 20th Street NW, Suite 300, Washington, DC 20036

©2017 by Association of Governing Boards of Universities and Colleges

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or using any information storage and retrieval system, without permission in writing from AGB.

Printed in the United States of America

## **CONTENTS**

iii

Acknowledgments

1

Executive Summary

3

Introduction

5

Competing Tensions Over Freedom of Speech

9

Suggested Guidelines for Governing Boards and Institutional Leaders

15

Continuing Challenges

16

Questions for Boards and Presidents to Consider

17

Notes

## ACKNOWLEDGMENTS

The guidelines presented in this publication were informed by the input and advice of those listed below. The Association of Governing Boards of Universities and Colleges (AGB) gratefully acknowledges their contributions and thanks Jonathan Alger, president of James Madison University, for facilitating a conversation among many of them. The views and opinions expressed in this publication are attributable solely to AGB.

Craig A. Alexander  
*Director of Legal Resources,  
National Association of College  
and University Attorneys*

William Bearden  
*Student, College of William & Mary*

Randy Burba  
*Immediate Past President,  
International Association of Campus  
Law Enforcement Administrators; Chief  
of Public Safety, Chapman University*

Mary Schmidt Campbell  
*President, Spelman College*

Raymond E. Crossman  
*President, Adler University*

Teri Lyn Hinds  
*Director of Policy Research and Advocacy,  
National Association of  
Student Personnel Administrators*

Thomas K. Hyatt  
*General Counsel, AGB; Partner, Dentons US, LLP*

Robert W. Iuliano  
*Vice President and General Counsel,  
Harvard University*

William R. Kauffman  
*General Counsel, Saint Louis University*

Walter M. Kimbrough  
*President, Dillard University*

Steven B. Long  
*Member, University of North Carolina  
Board of Governors*

Roderick J. McDavis  
*Principal, AGB Search; President Emeritus,  
Ohio University*

Charles R. Middleton  
*President Emeritus, Roosevelt University;  
Chair, Board of Trustees, City Colleges  
of Chicago*

Michael A. Middleton  
*Interim President, Lincoln University;  
Former Interim President,  
University of Missouri System*

David W. Miles  
*Chair, AGB Board of Directors;  
Trustee, Drake University*

Robert M. O'Neil  
*Senior Fellow, AGB; President Emeritus,  
University of Virginia*

Christopher M. Patti  
*Chief Campus Counsel and Associate General  
Counsel, University of California, Berkeley*

Kevin P. Reilly  
*Consultant, AGB Consulting; President  
Emeritus, University of Wisconsin System*

Larry Roper  
*Trustee, Heidelberg University;  
Former Vice Provost of Student Affairs,  
Oregon State University*

Kathleen Curry Santora  
*President, National Association of College  
and University Attorneys*

Teresa A. Sullivan  
*President, University of Virginia*

Hans-Joerg Tiede  
*Senior Program Officer, American Association  
of University Professors*

Jeffrey B. Trammell  
*Former Rector, College of William & Mary;  
Former Member, AGB Board of Directors*

Lee Tyner  
*General Counsel, University of Mississippi*

George W. Waldner  
*President Emeritus, York College*

## A NOTE ON TERMINOLOGY

### **Freedom of Speech**

The terms *freedom of speech* and *freedom of expression* are often used synonymously. The term *freedom of speech* refers to the individual right, guaranteed by the First Amendment of the US Constitution, to articulate ideas and opinions without fear of government retaliation, censorship, or other sanction. As defined in Article 19 of the Universal Declaration of Human Rights, the closely related term *freedom of expression* refers to “the right to hold opinions without interference” and includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.” The exercise of the right to both freedom of speech and freedom of expression carries responsibilities and may be subject to restrictions. As it is used in this publication, *freedom of speech* is understood to be inclusive of freedom of expression.

### **President**

Titles vary across institutions. In this publication, the term *president* is used generically to refer to the chief executive officer of a college, university, or higher education system.

## EXECUTIVE SUMMARY

In July 2017, the Association of Governing Boards of Universities and Colleges (AGB) convened a group of presidents, board members, campus general counsel, student affairs officers, scholars, and representatives of faculty and students to discuss freedom of speech on campus, an issue that has captured the interest of the nation and has attracted high-profile media attention. The discussion led to the development by AGB of a set of guidelines. *Freedom of Speech on Campus: Guidelines for Governing Boards and Institutional Leaders* explains the context of the issue and explores related tensions, identifies key points of consensus about the boundaries of freedom of speech, and provides guidelines for consideration by governing boards and the senior administrators who work with them.

Questions related to freedom of speech on college and university campuses are difficult. There is widely shared agreement among all institutional stakeholders as to the fundamental value of the First Amendment and its principles in support of free speech. Students, faculty, and administrators may express their views on controversial issues. And on most campuses, external speakers are likewise welcome to share their views on provocative issues. At the same time, some members of a campus community may object to speech they find offensive or threatening and assert their right to be free from exposure to it on a campus that values inclusion and civility. Governing boards need to be aware of these competing tensions—between individual freedom and the expectation of civility and personal safety—and should understand the difficult balance between restricting certain speech and speakers, on the one hand, and having campus buildings and grounds that may be open to members of the public who are unaffiliated with the institution, on the other. This balance is especially difficult to achieve at public institutions, where speakers may be invited by internal groups and space may be reserved by external groups—often without the knowledge of the administration.

There are distinctions as well between public and private institutions. There is robust protection of First Amendment rights in public institutions, where the law requires it, while private institutions generally retain their independence to determine the scope of applicability of First Amendment principles and may set their own standards of free speech.

*It is essential for institutional leaders to establish and implement policies in support of freedom of speech that further their institution's values and mission.*

In addition, today's students hold various views on the proper boundaries of freedom of speech; for example, some racial, ethnic, and religious minority and LGBTQ students question whether traditional principles of free speech address their concerns about campus civility and personal safety. College and university presidents have devoted considerable time and attention to communicating with students about their concerns and about the challenge of finding a proper balance. In addressing this challenge, it is essential for institutional leaders to establish and implement policies in support of freedom of speech that further their institution's values and mission. Policies should support the expression of diverse views and opinions, even in those instances when speech may be intentionally unsettling or provocative, in accordance with the academic ideal of freedom of thought and expression and the robust exchange of ideas.

To provide some clarity about the tensions that emerge as colleges and universities navigate the sometimes complex and uncertain issues related to freedom of speech on campus, AGB developed a set of guidelines for governing boards and institutional leaders:

1. Board members should be well informed about the rights established by the First Amendment, and its principles, and how they apply to the campus's commitment to freedom of speech.
2. Governing boards should understand and recognize the alignment between freedom of speech and academic freedom.
3. Governing boards should ensure that policies that clarify campus freedom of speech rights are reflective of institutional mission and values.
4. Board discussion and debate should model civil and open dialogue.
5. Board members should encourage presidents to initiate communication with, and be available to, those students who want to be heard by institutional leaders about campus culture and issues related to freedom of speech.
6. Governing boards should make clear their support of presidents in the implementation of campus freedom of speech policies.

As with all higher education governance principles, these guidelines should be applied within the context of each institution's or system's standards and values.

## INTRODUCTION

Twenty-first-century higher education exists in a volatile environment. Concerns about college costs, graduation rates, and student career preparation, as well as pervasive questions about the value of a college education are front and center among campus administrators and governing boards, students, parents, alumni, donors, and policy leaders. However, one of the most visible challenges for higher education's stakeholders concerns the principles of freedom of speech that are considered core values throughout American higher education—and that are legally protected at public institutions by the First Amendment of the US Constitution and by state constitutions—but about which there are some fundamental tensions. While most colleges and universities have a foundational commitment to the unfettered pursuit of knowledge and artistic expression that recognizes the need for debate, discussion, and sharing of divergent ideas both inside and outside the classroom, the past several years have seen debate over that inherent value and how it plays out for students, academic leaders, faculty, and institutions themselves, as well as the communities in which institutions are located.

Debate about the scope and limits of free speech in higher education is not new, and it is not driven solely by today's highly charged political rhetoric. Indeed, debate about freedom of speech on campus has extended over many decades and across the political spectrum: from the Red Scares of the early twentieth century and McCarthyism in the 1950s, to campus disruptions during the Vietnam War in the 1960s and 1970s, to the culture wars of the 1980s and 1990s. Nonetheless, freedom of speech has been widely protected and reinforced over time by higher education institutions, supported by the direction of federal and state jurisprudence.

More recently, questions about freedom of speech have flared on campuses in sometimes surprising ways. Student protests and campuses' handling of controversial speakers have dominated news headlines. Protestors advocate for freedom *from* speech as often as for freedom to use it. State and federal policy leaders have begun to advocate for rules defining how colleges and universities should address freedom of speech issues, raising complex questions about academic freedom and institutional autonomy.



Because of the relationship between freedom of speech and the fundamental values of higher education, the integrity of the educational missions and the public reputations of colleges and universities are at stake. Governing boards, which bear fiduciary responsibility for higher education institutions, must have a clear understanding of the cultural concerns, legal and educational mission-based responsibilities, and nuances of issues related to freedom of speech on campus. Other important matters—campus civility, nondiscrimination, diversity, and student inclusion—are also linked to the freedom of speech debate. Governing boards should be focused and intentional in supporting and implementing institutional policy that clearly defines what freedom of speech means in their institutions.

The Association of Governing Boards of Universities and Colleges (AGB) recognizes that boards have a unique role in working with institutional administrators to address the question of freedom of speech:

protecting essential rights that reflect fundamental educational values (as well as legal responsibilities in many instances) while respecting the concerns of students and others about the impact of these fundamental rights on a civil and inclusive campus culture.

The AGB Board of Directors, in its *Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility*, commented on the essential values of freedom of speech and offered related recommendations and questions for board consideration.<sup>1</sup> However, AGB recognizes that there are complex and challenging questions associated with this high-profile issue and that additional clarification for boards and institutional leaders would be helpful. Headlines

and media coverage in recent years reinforce the importance of boards being informed about these issues and able to meet their responsibilities in support of institutional leadership, student learning, and campus safety. In the end, successfully addressing the issue of freedom of speech requires a commitment and the courage to do what is in the best interests of the institution and its students in accordance with its mission and values, while monitoring institutional risks involving civility, safety, inclusion, resources, and reputation.

*Because of the relationship between freedom of speech and the fundamental values of higher education, the integrity of the educational missions and the public reputations of colleges and universities are at stake.*

## COMPETING TENSIONS OVER FREEDOM OF SPEECH

Campus protests related to freedom of speech, disruptions of controversial speakers, and on-campus presentations and protests sponsored by outside groups have attracted extensive news coverage in recent years, exacerbating the decline in higher education's public standing in some quarters. Governing boards are ultimately accountable for ensuring, through policy and support for effective institutional leadership, a campus environment that is supportive of learning. This includes supporting policies that help make clear the distinctions between the right to protest, on the one hand, and disruption, on the other—particularly disruption that might compromise campus or student safety. It also includes supporting classroom settings and a campus community in which students are able and encouraged to participate and express their ideas and opinions candidly.

Of course, freedom of speech rights must be accompanied by corresponding responsibilities in order for healthy educational environments to function effectively. Students may be held responsible for learning subject matter content and for developing and articulating arguments based on facts, evidence, research, and analysis. As the American Association of University Professors (AAUP) recognizes in its *Joint Statement on Rights and Freedoms of Students*, “students should be free to take reasoned exception to the data or views offered in any course of study..., but they are responsible for learning the content of any course of study for which they are enrolled.”<sup>2</sup>

Demands for unfettered freedom of speech can be perceived by some as at odds with the desires of students and communities for a safer, more civil environment. The resulting tension requires institutional leadership to be aware of the forces at play on both ends of the spectrum. Jeffrey Herbst, former president of Colgate University and now president of the Newseum, asserts in a white paper on campus freedom of speech that “with little comment, an alternate understanding of the First Amendment has emerged among young people that can be called ‘the right to non-offensive speech.’”<sup>3</sup> This desire for “non-offensive speech” further complicates the task of educating and encouraging the development of students while also defending the right to free speech.

*Have students now come to the conclusion that civility and inclusion require protection from controversial ideas?*

Ultimately, governing boards need to balance those tensions appropriately and to determine how far institutional policy should go in protecting students from exposure to offensive speech. In his white paper on campus free speech, Herbst refers to today's students as "a generation that increasingly censors itself and others, largely silently but sometimes through active protest."<sup>4</sup> This dynamic raises a number of questions that boards should consider, together with presidents and other campus leaders. Have students now come to the conclusion that civility and inclusion require protection from controversial ideas? How do designated safe spaces on campus and trigger warnings in classrooms serve the educational needs of students in higher education? Are conservative and liberal students alike freely able to express their views in classes, even when they believe that their professors and fellow students might not agree or even want to hear them? And how should institutional leaders respond to concerns from students and others who note that the First Amendment is an imperfect standard, having been crafted in the eighteenth century by white male landowners, many of whom were slaveholders, when biases about women and abuses against non-white people were accepted societal norms?

A 2016 Gallup study, commissioned by the Knight Foundation, uncovered some revealing beliefs held by college students between the ages of eighteen and twenty-four. Seventy-eight percent of the students surveyed indicated that colleges and universities should expose students to all types of speech and viewpoints. However, 69 percent of students favored limitations on campus speech that involves slurs or other language that is perceived as intentionally offensive to certain groups. And 54 percent of respondents noted that the climate on their campuses prevents some people from saying what they believe out of concern that others might find it to be offensive.<sup>5</sup> While many students enrolled in colleges and universities are older than those surveyed, and an increasing percentage of enrolled students take their courses online, rarely, if ever, appearing on campus, the attitudes of these younger, often residential students have largely driven the debate.

Institutional leaders face complex and varied pressures that require them to assess and manage potential crises without crossing the line of censorship. Examples in recent years include

- campus protests centered on racism and on religious and LGBTQ persecution;

- controversial speakers disrupted or prevented by students from appearing on campus;
- funding of on-campus appearances of provocative speakers by political and ideological groups not affiliated with the college or university;
- aggressive use of social media to fuel threats of campus violence in response to free speech issues;
- federal and state governmental scrutiny of free speech on campus.

With regard to governmental involvement, the chairman of the US Senate Judiciary Committee publicly criticized college and university presidents for their handling of these issues during a recent hearing on “The Assault on the First Amendment on College Campuses.”<sup>6</sup> A 2017 US Supreme Court decision affirmed First Amendment protection of language that many might find offensive,<sup>7</sup> and more than thirty bills have been introduced in state legislatures in response to what many lawmakers see as a First Amendment crisis on college and university campuses.

These challenges are real and should be acknowledged by governing boards and institutional leaders; accountability requires that respect for educational values and legal requirements be balanced with support for a campus culture distinguished by civility and inclusion. With educational leadership comes the opportunity to advance learning, improve understanding of different perspectives, and nurture the ability to present well thought-out arguments.

College and university leaders should not take lightly the expressed fears of students for their personal safety. At a growing number of colleges and universities, institutional leaders have established reporting pathways and emotional support for students who experience bias, threats, or physical harm based on their racial, ethnic, or religious backgrounds; their political beliefs; or their gender identities.

However, college and university leaders have a competing obligation to communicate to students that exposure to ideas and opinions that differ from their own or that may even make them uncomfortable is part of the educational experience—whether in a classroom or a campus social setting, during an address by an outside speaker, or online. All members of a campus community have the right to speak—and the right to listen. Institutional leaders and individual faculty members have a responsibility to ensure students understand that demonstrating openness and tolerance when engaging in civil

*College and university leaders should not take lightly the expressed fears of students for their personal safety.*

dialogue and debate is an educational ideal. This is central to preparing students to be engaged citizens.

College and university governing boards must recognize their responsibility to be informed about these competing tensions and to work closely with their presidents, faculty leaders, compliance officers, and legal counsel to address them. Boards should understand the risks that are present, the scope of policies designed to protect freedom of speech in the classroom and across the campus, and their own responsibility to ensure the safety of the campus and those who inhabit it.

## SUGGESTED GUIDELINES FOR GOVERNING BOARDS AND INSTITUTIONAL LEADERS

**1. Board members should be well informed about the rights established by the First Amendment, and its principles, and how they apply to the campus's commitment to freedom of speech.** Service on the governing board of a higher education institution or system has always necessitated awareness of, engagement with, and understanding of campus climate and culture. In today's uncertain environment, this voluntary service has taken on heightened expectations. Balancing board engagement and leadership with appropriate oversight and respect for higher education's inherent values of shared governance and delegated authority can be challenging, and the path forward is at times unclear. Perhaps most essential to effective board governance is a board's awareness of the impact its policy decisions and degree of engagement can have on an institution's reputation.

Boards, especially when addressing issues of considerable risk, must be diligent as to their own education and awareness. Accordingly, board members should be knowledgeable about the free speech protections offered by the institution. Student affairs officers and academic affairs officers as well as legal counsel and board professionals should be available to inform the board about institutional or system policies, legal requirements, current risks, and recent incidents. Particular issues to be aware of include the following:

- Speech might be categorized as “hate speech”—that is, speech that attacks or offends a person or group on the basis of attributes such as race, religion, ethnic origin, sexual orientation, disability, or gender. This type of speech generally cannot be restricted under federal or state law unless it rises to the level of a true threat of harm directed at an individual or group, the speaker's intention is to incite lawless action, or such speech constitutes conduct that qualifies as prohibited discrimination or harassment. Determining whether “hate speech” may run the risk of a substantial threat to individuals, campus

*Perhaps most essential to effective board governance is a board's awareness of the impact its policy decisions and degree of engagement can have on an institution's reputation.*

property, or the nearby community is among the more challenging aspects of balancing free speech rights with the obligation to protect a campus and its inhabitants. Administrators, campus security personnel, and others on campus are often left with few options and little opportunity to plan, especially where outside groups are allowed to book campus space without limits or information about their intentions. Most campus leaders will default to protecting the rights of speech, while being prepared to protect campus assets. Board members need to be aware of competing values and the pressures on those who are expected to make difficult decisions (often under significant time pressures and with incomplete or imperfect information) or react to situations that might actually be out of their direct control.

- Colleges and universities are obligated to prevent and remedy harassment based on protected classifications such as sex, race, religion, and ethnicity. However, an institution's obligation to prevent and remedy harassment does not give it broad authority to prohibit or punish speech that might be offensive to some individuals or groups but that does not rise to the level of harassment as defined by law.
- Higher education institutions may choose to restrict the time, date, place, or manner of speech so long as the restrictions are unrelated to the speech's anticipated content. Campus space can be made available for the expression of views that may be controversial or provocative, consistent with a uniformly applied campus policy and subject to the resolution of safety and resource usage concerns—e.g., the number of participants in the available space, the availability of security personnel, and avoidance of substantial disruption of institutional operations.
- Boards need a clear understanding of key terms or concepts—e.g., trigger warnings, safe spaces, and free speech zones—and how they are used and experienced on campus.

**2. Governing boards should understand and recognize the alignment between freedom of speech and academic freedom.** The link between freedom of speech and academic freedom may be difficult to discern. From the principle of academic freedom are derived the rights of members of the faculty to teach, publish, conduct research, and otherwise communicate ideas—including ideas that might be considered inconvenient or even offensive to some internal or external stakeholders. With the rise of social media, there have been more frequent attacks on faculty from external groups or stakeholders and increased pressure

on governing boards to take action against those faculty. Boards should not respond to this external pressure, but instead refer such matters to the institution's president or legal counsel.

The concept of academic freedom was originally recognized by the US Supreme Court in a decision that also invoked the First Amendment.<sup>8</sup> Other court cases have also addressed the link between academic freedom and the rights associated with free speech.<sup>9</sup> While statutes, case law, contractual agreements, accreditation requirements, and academic custom ensure that the protections associated with academic freedom apply at all higher education institutions, private colleges and universities determine the applicability of First Amendment protections on their campuses. Recent state policy initiatives, often built around Academic Bill of Rights legislation,<sup>10</sup> threaten institutional autonomy by seeking to delimit academic freedom and campus free speech and to impose governmental standards on what is taught in the classroom.

*Academic freedom is a core value that must be protected.*

Institutional policy, codified in faculty handbooks and supported by the governing board, should recognize that faculty have the same right to freedom of speech as do other campus stakeholders and that academic freedom is a core value that must be protected. Governing boards should partner with the faculty in protecting and ensuring freedom of speech. As the AAUP statement *On Freedom of Expression and Campus Speech Codes* recognizes, "Members of the faculty, too, have a major role... in condemning intolerance... and making clear to their students that civility and tolerance are hallmarks of educated men and women."<sup>11</sup> Faculty have an essential role in advancing a culture of freedom of speech on campus—protecting the standard of academic freedom and supporting the values of free speech.

**3. Governing boards should ensure that policies that clarify campus freedom of speech rights are reflective of institutional mission and values.** Colleges and universities are communities that are committed to learning and the perpetuation of societal values. A policy will provide clarity for all institutional stakeholders if it recognizes these core values; is consistent with federal, state, and local law; and demonstrates the governing board's commitment to freedom of speech. The AAUP statement *On Freedom of Expression and Campus Speech Codes* calls on institutional leaders to adopt measures that penalize conduct, rather than the content of speech. Recognition of, and commitment to, the institution's support for freedom



of speech should be expected of all board members; for those boards that require members to sign a formal statement of expectations, this expectation should be explicitly included in the statement.

Because the legal requirements for public and private institutions differ, board members should be advised as to the application of these standards on their campus as part of their orientation and through regular legal briefings. US Supreme Court precedent establishes that the rights provided by the First Amendment must be protected at all public colleges and universities. While most private institutions accept that First Amendment principles are at the core of freedom of speech, these institutions are not legally bound to require adherence to those

*Setting campus tone and culture starts at the top.*

principles absent some other applicable law or policy. For example, in some instances, such as at private institutions whose religious affiliation and tenets inform institutional policy, institutions may define for themselves how First Amendment principles are interpreted on their campuses. However, state law may require private institutions to adhere to First Amendment principles. For example, California's Leonard Law prohibits private colleges and universities from taking actions that, if taken by a public institution, would infringe upon a student's First Amendment rights.

**4. Board discussion and debate should model civil and open dialogue.** Board debate on important issues should welcome civil dialogue and dissent among members and with invited guests, both to advance important policy objectives and to set an example for the campus. The board chair assumes special responsibility for fostering such expectations for the board. It is also important for governing boards to recognize and consider their role on occasions when students or groups choose to engage them by appearing at a board meeting to express a point of view or advocate for or against a specific board action. Such instances can provide the board opportunities to demonstrate support for free speech and to demonstrate that those expressing a point of view are welcome, so long as applicable board policies are followed (including time limits for public statements) and the security of those in the board room (and the physical space itself) is assured. As on campus, civility should be a hallmark of interactions in the boardroom.

**5. Board members should encourage presidents to initiate communication with, and be available to, those students who want to be heard by institutional leaders about campus culture and issues related to freedom of speech.** Student concerns should be respected, and presidents have a special duty to be available for

dialogue regarding these concerns. Setting campus tone and culture starts at the top. Open conversation between presidents and those students who are committed to airing alternative opinions can go a long way in establishing trust and respect for institutional policy, even when consensus may be difficult to achieve. Boards should respect and champion the process of engagement by their president with students and other stakeholders who feel at risk because of campus speech policy and its application (or non-application) in particular situations.

While many issues related to freedom of speech on campus may be seen by the broader community as reflective of a debate about inherent rights and values, some issues that may be less visible also need the attention of leadership. For example, students who feel intimidated in their classrooms to express viewpoints perceived as inconsistent with the opinions of other students and the professor may seek relief from institutional academic leaders and departmental leadership. Boards, perhaps through a committee on student affairs, can provide support for faculty training in ensuring open and civil dialogue in the classroom. Students must be able to express their ideas and opinions inside and outside the classroom (within reasonable, content-neutral limitations), yet they should not presume that the institution will or should protect them from exposure to ideas that might be uncomfortable or even offensive.

Ultimately, all institutional leaders should clearly communicate to students the essential nature of freedom of speech on campus and across society, while respecting the personal difficulties that students may face as a consequence of harmful speech or hateful expression. Presidents, while important in the process of communication, will certainly look to faculty and to student and academic affairs professionals to engage with, listen to, and communicate with students.

**6. Governing boards should make clear their support of presidents in the implementation of campus freedom of speech policies.** While ultimately accountable for policy currency and application, governing boards must be clear in their delegation of authority for the implementation of those policies to campus and system leaders. Notwithstanding the significant risks associated with some instances of campus unrest, boards should refrain from interfering while events unfold. In a time when news spreads almost instantly through social media, presidents must be confident that they can depend upon board support as they

*Notwithstanding the significant risks associated with some instances of campus unrest, boards should refrain from interfering while events unfold.*

respond to challenges that arise—whether by reaffirming institutional policy; making tough decisions based on counsel and advice from student affairs officers or legal counsel; meeting with students about their concerns related to the scope of, or limits to, freedom of speech; or, when appropriate, declining to engage.

Presidents should be confident that their leadership will be trusted and respected. Presidents, in turn, should keep their boards informed as campus speech issues arise; however, the mandate for action might preclude immediate reporting to the board. As appropriate, the president should remain in contact

*Presidents should be confident that their leadership will be trusted and respected.*

with the board chair as events unfold. The president should review campus issues and crises with the board at either regularly scheduled board meetings or, if necessary, in special sessions of the board. As appropriate, the board's executive committee should be authorized to take action when time is of the essence or when rapidly developing

situations threaten campus safety.

Ultimately, boards should hold institutional leaders accountable for crisis management and for the development and implementation of communication policies, which should include a role for the board chair, if appropriate. To ensure campus safety, agreements and protocols between campus security or police and local law enforcement should be in place. A crisis communications plan should be broadly known by those who have a role in its implementation, including the board. The communications plan for incidents related to free speech should include communications by the board chair, who can demonstrate that the board is supportive of institutional leadership's decisions and actions. The plan should include a post-event assessment.

## CONTINUING CHALLENGES

The issues surrounding freedom of speech in higher education today are sensitive and volatile. No college or university wants its above-the-fold moment to be about a campus speech incident gone awry. Setting and implementing effective policy in support of long-held values is a core governing board responsibility, and boards—in collaboration with the president whom they hire and support—need to pay attention as the circumstances and legal developments that clarify freedom of speech continue to evolve.

The challenge for higher education and its leadership is how best to address the tensions associated with a campus's expectations of an almost unlimited exchange of ideas. Board members bear responsibility for fostering a campus culture that protects the integrity of their institution's commitment to openness, scholarship, and the educational mission. Meeting this responsibility is not easy, but it goes to the very essence of the academic enterprise.

## **QUESTIONS FOR BOARDS AND PRESIDENTS TO CONSIDER**

- When does the board review the institution's or system's policies on freedom of speech? Are these policies reviewed as part of the orientation of new board members?
- Does the governing board have a policy that delegates responsibility for implementing institutional policies related to freedom of speech to the president of the institution or system? Is there a clear decision-making process in place related to issues of freedom of speech?
- Does the governing board clearly understand the relationship between freedom of speech and academic freedom?
- How often, if at all, does the institution's president, general counsel, or other senior staff inform the board about specific events related to campus freedom of speech protests or disruptions?
- How often does the board discuss the various risks—including financial, reputational, and security risks—associated with campus free speech policies?
- Does the institution have student and faculty guidelines for campus protests that clearly define what constitutes a violation and what disciplinary measures would be taken? Are campus security measures in place to address student protests or “controversial” speakers? And does the institution have discrete policies regarding the use of campus facilities by outside groups?
- How has the board engaged with students about issues related to freedom of speech and other campus climate matters? Is there a structured process for board engagement with students?

## NOTES

1. *AGB Board of Directors' Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility* (Washington, DC: Association of Governing Boards of Universities and Colleges, 2016), [http://agb.org/sites/default/files/agb-statements/statement\\_2016\\_campus\\_climate.pdf](http://agb.org/sites/default/files/agb-statements/statement_2016_campus_climate.pdf).
2. American Association of University Professors, "Joint Statement on Rights and Freedoms of Students," accessed August 16, 2017, <http://www.aaup.org/report/joint-statement-rights-and-freedoms-students>.
3. Jeffrey Herbst, *Addressing the Real Crisis of Free Expression on Campus* (Washington, DC: Newseum, 2017), 2.
4. *Ibid.*
5. Gallup, *Free Expression on Campus: A Survey of US College Students and US Adults* (Washington, DC: Gallup), 3, 12, 19.
6. "Prepared Statement by Senator Chuck Grassley of Iowa, Chairman, Senate Judiciary Committee Hearing on 'Free Speech 101: The Assault on the First Amendment on College Campuses,'" Committee on the Judiciary, June 20, 2017, <http://www.judiciary.senate.gov/imo/media/doc/06-20-17%20Grassley%20Statement.pdf>.
7. *Matal v. Tam*, 137 S. Ct. 1744 (2017).
8. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).
9. See Rachel Levinson, "Academic Freedom and the First Amendment" (presentation, AAUP Summer Institute, July 2007), <http://www.aaup.org/our-work/protecting-academic-freedom/academic-freedom-and-first-amendment-2007>.
10. For information about the "Academic Bill of Rights" and related legislation, see "The 'Academic Bill of Rights'—Coming to Your Campus," American Association of University Professors, accessed August 18, 2017, <http://www.aaup.org/our-work/government-relations/past-campaigns-academic-bill-rights/academic-bill-rights-coming-your>.
11. "On Freedom of Expression and Campus Speech Codes," American Association of University Professors, accessed August 16, 2017, <http://www.aaup.org/report/freedom-expression-and-campus-speech-codes>.



Since 1921, the Association of Governing Boards of Universities and Colleges (AGB) has had one mission: to strengthen and protect this country's unique form of institutional governance through its research, services, and advocacy. Serving more than 1,300 member boards, nearly 2,000 institutions, and 40,000 individuals, AGB is the only national organization providing university and college presidents, board chairs, trustees, and board professionals of both public and private institutions and institutionally related foundations with resources that enhance their effectiveness.

In accordance with its mission, AGB has developed programs and services that strengthen the partnership between the president and governing board; provide guidance to regents and trustees; identify issues that affect tomorrow's decision making; and foster cooperation among all constituencies in higher education. For more information, visit [agb.org](http://agb.org).



1133 20th Street NW, Suite 300, Washington, DC 20036

[agb.org](http://agb.org)