



**CONNECTICUT STATE
COLLEGES & UNIVERSITIES**

**Freedom of Speech & Academic Freedom Training
for CT State Community College Faculty**

August 27, 2024

PARTICIPANTS WILL:

- ✓ Review the legal principles of freedom of speech
- ✓ Understand what types of speech are and are not protected
- ✓ Review the nuances of student and faculty free speech rights
- ✓ Consider practical issues regarding faculty response to campus demonstrations and protests



Part 1: August 27, 2024

- Welcoming remarks
- First Amendment Rights and Principles
- Speech Rights of Students and Faculty
- Intersection of Freedom of Speech and Academic Freedom
- Campus Demonstrations and Faculty Roles
- Closing remarks

Part 2: Fall 2024 Semester

- TBD

***Freedom of Speech:
What is and What is Not Protected***

U.S. Constitution: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Connecticut Constitution, Article First:

- **Section 5:** “Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.”
- **Section 6:** “No law shall ever be passed to curtail or restrain the liberty of speech or of the press.”

Conn. Gen. Stat. § 31-51q:

- Protects First Amendment and Article First rights “provided such activity does not substantially or materially interfere with the employee’s bona fide job performance or the working relationship between the employee and the employer.”

The First Amendment guarantees freedom of speech by default, but some exceptions do exist.

Examples of speech **NOT** protected by the First Amendment include:

- Unlawful conduct;
- True threats and intimidation;
- Incitement of violence or lawless action;
- Obscenity;
- Harassment/harassing conduct; or
- Substantial disruption or material interference.

Unlawful Conduct:

- Vandalism
- Destruction of property
- Grabbing microphones
- Blocking entrances
- Trespassing



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True Threat: “Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”

Intimidation: “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death and exhibits a means to act on this threat.”

Threats and Intimidation (cont'd)



Haughwout v. Tordenti, 332 Conn. 559 (2019)

- (1) "made frequent shooting hand gestures as a form of greeting to students in the student center,"
- (2) "with his hand in a shooting gesture, [he] aimed at students and made firing noises as they were walking through the student center,"
- (3) "wondered aloud how many rounds he would need to shoot people at the school and referred to the fact that he had bullets at home and in his truck,"
- (4) "showed off pictures of the guns he owned and boasted about bringing a gun to school,"
- (5) "referred specifically and on more than one occasion to his `shooting up the school,'"
- (6) "during a test of the school's alarm system stated that `someone should really shoot up the school for real so it's not a drill,'"
- (7) "named as his `number one target' a particular student in the student center," and
- (8) "made specific reference to a shooting at an Oregon community college where several students had been killed and wounded, stating that the Oregon shooting had 'beat us.'"

There is no right to incite people to break the law, including committing actions of violence.

Speech becomes unprotected when it is used to promote imminent violence or lawless action.

“Imminence” requires a specific target, a plan of action, and likelihood that lawless action would occur.

Behavior must be:

- Unwelcome
- Discriminatory because of protected status, (e.g., gender, race, shared ancestry, or ethnic characteristic)
- Subjectively and objectively offensive
- Be directed at a particular individual*, and
- So severe or pervasive that it limits or denies a person's or persons' ability to participate in or benefit from CT State Community College's education program or activities.

Dear Colleague Letter *, November 7, 2023, U.S. Department of Education, Office of Civil Rights, stated that harassment/harassing conduct may be verbal or physical and need not be directed at a particular individual provided that the other criteria are met.

CT State Community College MUST take immediate and effective action to respond to harassment or harassing conduct that creates a hostile environment within the CT State community.

Note: Unless speech is harassing, a campus cannot censor or punish speech merely because a person or group considers it offensive or hateful.

Hate Crimes are NOT protected by the First Amendment



Hate crimes: overt acts that may include violence against persons and property, violation, or deprivation of civil rights, certain “true threats”, or acts of intimidation or conspiracy to commit these crimes.

Hate Speech Is Protected by the First Amendment

Hate speech refers to speech that insults or demeans a person or group of people based on attributes such as race, religion, ethnic origin, sexual orientation, disability, or gender.

While the Board of Regents, CSCU System, and CT State Community College condemn speech of this kind, and it may sometimes be difficult to accept, speech that is hateful or offensive, is protected by the First Amendment.

CT State encourages students, faculty, and staff to use their free-speech rights to help create opportunities for each campus community to understand, learn and thrive.

What can CT State campus communities do to denounce hate speech?

- Ensure that learning environments support the civil expression of ideas, even opposing and at times hurtful/offensive ideas.
- Clearly and publicly define *Hate Speech* and what is or is not permissible under the First Amendment.
- Communicate clear and powerful principles of community, stressing the importance of an inclusive environment.
- Partner with your campus or CT State DE&I committees to support the organization of co-curricular activities that celebrate cultural diversity and provide those harmed by hate or offensive speech the opportunity to be heard and supported, e.g., counseling services.

U.S. Supreme Court: “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas.’”

Healy v. James, 408 U.S. 169 (1972)

- CT State Community College supports the notion of a “marketplace of ideas,” in which speech that a person disagrees with should be met with more speech that engages and debates it.
- The First Amendment and the CSCU System are founded on the premise that we are all better off if ideas can be expressed and responded to, rather than be subject to an imposed orthodoxy of belief and punished for deviating from it.

***Free Speech on Campus:
Student and Employee Speech***

There are 4 main sources of speech on a college campus:

1. Students
2. Faculty/Staff
3. Institution
4. Public

Different considerations apply for each type of speaker.

***Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)**

The Tinker Standard: Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...” School officials may limit the First Amendment rights of students only when they reasonably forecast that permitting such speech will result in:

- **Substantial disruption of the educational process;**
- **Material interference with school activities; or**
- **The invasion of the rights of others.**

Freedom of Expression, Assembly & Advocacy

All students and student groups have a right to freedom of expression, assembly, and protest on CT State campuses within the limits of administrative guidelines and CSCU BOR policies.

Permissible expressive activity examples:

- Signs, banners, posters, boards, armbands, etc. placed in permitted areas of campuses or worn on the body
- Distribution of leaflets or pamphlets (*not during instructional time*)
- Groups of people peaceably assembling, protesting, or spectating

(provided they do not block access to an event or other CT State activities).



Demonstration, Protest, or Assembly Regulations

Individuals at CT State Community College demonstrations, protests, meetings or assemblies may NOT:

- Shout down or interfere with the freedom of any person to speak, including invited speakers;
- Occupy or utilize without authorization any institution property or portion thereof; or
- Interfere with or violate the directions of CT State institution officials acting in the performance of their duties.

Note: Excerpt from the CSCU GUIDELINES FOR FREEDOM OF EXPRESSION, PROTESTS, AND SPEAKERS AND EVENTS; See also [BOR/CSCU Interim Student Code of Conduct](#).

Free speech rights are not unlimited in the employment context.

“The First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.” (*Garcetti v. Ceballos*, SCOTUS 2006)

Conn. Gen. Stat. § 31-51q’s protections are also qualified: “provided such activity does not substantially or materially interfere with the employee’s bona fide job performance or the working relationship between the employee and the employer”

Is a government employee's speech protected or not?

Question 1: Did the employee speak as a citizen or as a public employee?

Question 2: Did the public employee speak on a matter of public concern?

Question 3: Did the speech have an adverse impact on the efficiency of the employer's operations?

Final Step: Balance the employee's interest as a citizen against the government employer's interest in efficient public services.

***Academic Freedom
And the Intersection with Free Speech***

Academic freedom and freedom of speech are distinct but related concepts.

Courts have repeatedly reaffirmed commitment to academic freedom and avoided deciding whether certain subject matters are areas of “public concern.”

“[W]e balance educators’ interest in speaking on matters of public concern against the interests of their state-school employers, taking care to protect the First Amendment principles that underlie both an employee’s interest in free speech and a university’s underlying mission.” *Heim v. Daniel* (2nd Circuit 2023)

- **Research:**

Faculty members are “entitled to full freedom in research and in the publication of the results, subject to the adequate performance of {his/her/their} other {professional/academic} duties.”

- **Teaching:**

Faculty members are entitled to freedom in the classroom in discussing their subject and to conduct their courses, but they “should be careful not to introduce into {his/her/their} teaching controversial matter which has no relation to {his/her/their} subject{s}.”

- **Community Involvement:**

Congress: “The professional staff member is a citizen, a member of a learned profession, and an officer of an educational institution. When he/she speaks or writes as a citizen, he/she should be free from institutional censorship or discipline but his/her special position in the community imposes special obligations. As a person of learning and an educational officer, he/she should remember that the public may judge his/her profession and his/her institution by his/her utterances. Hence he/she should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that he/she is not an institutional spokesperson.”

- **Community Involvement:**

AFT: “As members of their community, Faculty Members have the rights and obligations of all citizens. When they speak or write as members of society, they are free from institutional censorship or discipline, but their special position in the community imposes special obligations. As persons of learning they should remember that the public may judge their profession and their college(s) by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate they are not spokespersons for the college(s).”

***Campus Demonstrations and Protests:
How Should Faculty Respond?***

Demonstration, Protest, or Assembly Regulations Applicable to Faculty

Do faculty have a right to engage in student, student organization or any demonstrations or protests on campus?

Professionalism: While faculty have the right to engage in protests as citizens, they must balance this with their professional responsibilities. Participation in protests or demonstrations may not interfere with their duties, such as teaching, research, or administrative responsibilities.

Institutional Policies: Faculty should review and understand CSCU BOR policies to ensure their participation in protests does not conflict with applicable CSCU BOR policies.

Conflict of Interest: Faculty involvement in protests should not create a conflict of interest or compromise their professional duties. They should avoid situations where their participation might be perceived as influencing their role or judgments in academic settings.

Concern for Students: Remember that not all students may agree with the position taken by a particular demonstration or protest. Faculty and CT State administrators must be mindful of all students and ensure that all students can fully enjoy the educational experience, free from peer pressure or intimidation to take a particular position on an issue.

Faculty should think about **fair** and **equitable** treatment of students:

- i. Is it appropriate to allow students to make an announcement about a planned protest in class? Do you allow student announcements as a general practice?
- ii. Can faculty allow students to miss class for protest reasons? How do you deal with attendance and absences in general in the class syllabi?
- iii. Can faculty hold class at the encampment or the protest site? What is your ordinary practice about moving locations for class?

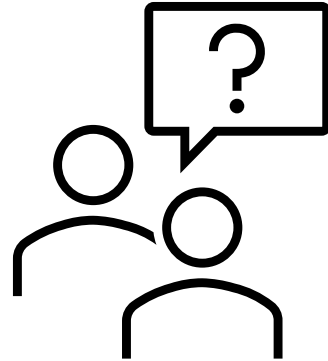
Faculty should consider whether moving classes to the encampments or protest sites is advisable. Does the faculty have confidence that the encampments or protest sites are accessible to all students who may be differently abled? Would such a move presumably make an environment very difficult for Jewish or Muslim or other groups of students to enter?

- iv. In the classroom, can faculty share political, ideological, religious, or other personal views not related to their field of study or the content of the course?

Faculty have a right to share their personal views, but they should consider how doing so can impact classroom dynamics—both in that discussion and throughout the course—and be clear about their goals for, and the academic value of, sharing such views. Among such considerations is the fact that there are unequal power dynamics in a classroom setting. When faculty share their political, ideological, religious, or other personal views beyond the academic content of a class, those views could be experienced as an endorsement or could have a chilling effect on student participation.

- ✓ **In the event of violent or substantially disruptive expressive activity, in which injury to persons or property occurs or appears imminent, the CT State Campus Police/Security and the campus CEO must be notified immediately.**
- ✓ Once the CT State Police and/or Campus CEO are notified, the CEO or Chief of Police will promptly involve the CT State Offices of the President, Provost, and VP of DEI. In most cases, additional institutional departments or supports (e.g. Counseling Services, CT State Public Affairs, CSCU Office of General Counsel, CSCU External Affairs, etc.) will be asked to support any preventive, facilitative, mitigative, and/or restorative efforts.
- ✓ For most campus level incidents, all operational decisions and response protocols are usually managed at the campus by the CEO and the CT State Police/Safety office with the support of relevant CT State and CSCU offices.

Final thoughts and questions?



**Please submit questions and topics for
future trainings.**