



Massachusetts

December 18, 2024

Via Email

Open Letter to Massachusetts Institutions of Higher Education Regarding Campus Speech Policies

Dear Presidents and Provosts of Massachusetts Colleges and Universities:¹

Institutions of higher education are the first line of defense in our democracy. Colleges and universities prepare the leaders of tomorrow. At their best, they provide a marketplace of ideas, where diverse viewpoints are explored, debate is encouraged, and students are taught the tools of democratic engagement. Student participation in peaceful demonstrations while on campus is part of that training, teaching students to advocate for issues affecting their own communities, the country, and the world.

Given this core institutional responsibility, the ACLU of Massachusetts (ACLUM) took note when numerous colleges and universities changed their student speech policies this fall in the wake of year-long student protests regarding Palestine and Israel.² Concerned about the potential impact on student expression, ACLUM reviewed more than a dozen school policies across the Commonwealth. While many aspects of school policies impact student speech, we identified aspects of those policies that pose special risks to free expression—particularly in light of threats from the incoming presidential administration—and offer recommendations on ways to mitigate those harms.

Public colleges and universities are subject to the First Amendment, which offers strong protections for speech, even expression that is unpopular, controversial or deeply offensive. Private colleges and universities are not similarly bound by the First Amendment, but these academic institutions share a commitment to free expression and civic education, and they are required under state law to apply their

¹ This letter has been sent to all universities, four-year colleges, and community colleges in Massachusetts with an enrollment over 1000 students.

² Carrie Jung, *Mass. Colleges Move to Curtail Protests, Pivot to School-led “Civil Discourse” Events*, WBUR (Sept. 26, 2024), <https://www.wbur.org/news/2024/09/26/massachusetts-students-campus-protests-gaza-new-rules>.

rules fairly and equally. We therefore offer the following recommendations for public and private institutions alike:

- **Recommendation #1:** Protect students' ability to spontaneously protest in response to unanticipated events, when speech is often the most essential.
- **Recommendation #2:** Ensure that students have ample channels for expression on campus.
- **Recommendation #3:** Prohibit suspicionless identification checks of student demonstrators.

Now more than ever, it is critically important that schools adopt these recommendations. Because institutions of higher learning serve as national standard-bearers for robust expression, academic freedom, and dissent, they have been targeted throughout history when anti-democratic and authoritarian impulses are in ascendance.³ Over the course of the last fifteen months, we have witnessed increased pressure from some members of Congress for institutions of higher learning to silence students engaged in pro-Palestinian protest.⁴ But the attack on freedom of expression at our colleges and universities did not start there: for years these institutions have faced external pressures to eliminate critical race theory curricula and ban diversity equity and inclusion programs.⁵

Nor will these attacks stop now. Indeed, institutions of higher learning are currently experiencing what some are calling a "New McCarthyism."⁶ As we have already seen in both word and deed, the incoming presidential administration and some members of Congress aim to override free expression and academic freedom in service of their own ideological agendas. These actors attack institutions of higher learning through threatened cuts to federal funding and increased endowment taxes, restrictive curriculum requirements, and unduly invasive congressional investigations. They also target students and faculty members through threatened

³ Marc Santora, *George Soros-Founded University Is Forced Out of Hungary*, The N.Y. Times (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/world/europe/soros-hungary-central-european-university.html>; Robert N. Bellah, *McCarthyism at Harvard*, The N.Y. Review (Feb. 10, 2005), <https://www.nybooks.com/articles/2005/02/10/mccarthyism-at-harvard/>.

⁴ Anemona Hartocollis et al., *In House Hearing, Republicans Demand Discipline for Student Protesters*, The N.Y. Times (May 23, 2024), <https://www.nytimes.com/2024/05/23/us/house-hearing-republicans-campus-antisemitism.html>.

⁵ Leah Watson, *Anti-DEI Efforts Are the Latest Attack on Racial Equity and Free Speech*, American Civil Liberties Union (Feb. 12, 2024), <https://www.aclu.org/news/free-speech/anti-dei-efforts-are-the-latest-attack-on-racial-equity-and-free-speech>.

⁶ *Is a new McCarthyism punishing pro-Palestine speech at US universities? Our panel reacts*, The Guardian (Dec. 13, 2023), <https://www.theguardian.com/commentisfree/2023/dec/13/israel-gaza-us-universities-free-speech>.

deportation of student activists, subpoenas of student disciplinary records, and interference with the academic freedom protections owed to faculty.⁷

In the face of these increasing attacks, it is imperative that institutions of higher learning remain a bulwark for democracy. School policies will apply equally to the broad spectrum of student expression, from demonstrations regarding international events to protests against new executive orders. College and university leaders must act now to ensure that campus rules do not subject students and faculty members to ideologically motivated law enforcement and federal investigations, and to ensure that free expression flourishes in the Commonwealth.

Recommendations

1. **Protect students' ability to spontaneously protest in response to unanticipated events, when speech is often the most essential.**

Rules that require students to register their demonstrations days in advance, without any exceptions for demonstrations that arise in response to newsworthy or unanticipated events, unacceptably burden student speech. Such policies silence the very voices the student body needs to hear at the times they need to hear them the most.

Students may wish to spontaneously assemble and demonstrate in response to a wide variety of newsworthy events. This includes the release of an important Supreme Court decision, the passage of a new law, the outbreak of foreign wars, or the issuance of an executive order. In the immediate aftermath of President Trump's first travel ban in January 2017, students and faculty members protested in campus spaces throughout the Commonwealth to voice their discontent and show

⁷ See, e.g., Lexi Cochran, *Student protesters face potential Trump crackdown*, The Hill (Nov. 17, 2024), <https://thehill.com/homenews/education/4993239-student-protesters-palestinians-israel-gaza-trump-crackdown/>; Sharon Otterman & Vimal Patel, *Colleges Wonder if They Will Be 'the Enemy' Under Trump*, The New York Times (Nov. 12, 2024), <https://www.nytimes.com/2024/11/12/us/trump-higher-education-policy-universities.html>; Hilary Burns & Mike Damiano, *Trump says universities are controlled by 'Marxist maniacs.' He has a plan to 'reclaim' them*, The Boston Globe (Oct. 27, 2024), <https://www.bostonglobe.com/2024/10/27/metro/trump-plans-a-crackdown-on-american-universities/>; Katherine Knott, *How a Second Trump Term Could Turn Up the Heat on Higher Ed*, Inside Higher Ed (Jul. 18, 2024), <https://www.insidehighered.com/news/government/politics-elections/2024/07/18/second-trump-term-could-bring-more-pressure-higher-ed>; Emma H. Haidar & Cam E. Kettles, *House Committee Releases Harvard Disciplinary Records*, The Harvard Crimson (Sept. 27, 2024), <https://www.thecrimson.com/article/2024/9/27/congress-releases-harvard-discipline-records/>.

their support for fellow classmates and educators.⁸ Their ability to do so in a timely manner—not days or weeks later—was critical. Institutions of higher education should foster an environment that encourages and allows for students to engage with such current events. It is this type of real-time participation that creates an informed and healthy citizenry.

Specific Recommendations:

- Universities and colleges should make advance registration optional for demonstrations. Under such policies, the school can encourage, but not require, students to notify the school of an upcoming demonstration so that the school can help coordinate and provide logistical support.

or

- If a school continues to impose a general rule of advance registration, it should make the advance registration window as short as possible *and* it should create an explicit exception to that general rule for demonstrations arising in response to unanticipated or newsworthy events.

2. Ensure that students have ample channels for expression on campus.

Schools can impose *reasonable* time, place and manner requirements on demonstrations. But policies that cordon students off to remote locations or narrowly limit the hours at which they can demonstrate dramatically limit their ability to effectively communicate their message and unreasonably inhibit free expression on campus. Any alleged concerns about disruption to studying and living environments are belied by the fact that college students routinely navigate around noisy events on campus, including concerts, sporting events, parties, and protests. Inconvenience or disagreement with the message of a particular protest does not justify broad prohibitions on speech. The educational mission of our universities and colleges means exposing students to challenging worldviews and competing—sometimes even upsetting—ideas. Schools should ensure that students can reach their audience by allowing them to demonstrate in or near high-traffic outdoor spaces around campus and during a broad range of time.

⁸ See, e.g., Claire E. Parker, *Harvard Affiliates Protest Revised Immigration Ban*, The Harvard Crimson (Mar. 18, 2017), <https://www.thecrimson.com/article/2017/3/8/rally-revised-executive-order/>; Emma Bingham, *Hundreds gather in Lobby 7 before Copley protest*, The Tech (Feb. 2, 2017), <https://thetech.com/2017/02/02/copley-square-immigration-protest/>; Isabel Tessier, *Students Organize Walkout to Protest Trump Executive Order*, The Amherst Student (Feb. 1, 2017), <https://amherststudent.amherst.edu/article/2017/02/01/students-organize-walkout-protest-trump-executive-order.html>; Joel Brown, *Hundreds Protest Trump's Immigration Ban at Marsh Plaza Rally*, BU Today (Jan. 31, 2017), <https://www.bu.edu/articles/2017/rally-against-trump-muslim-immigration-ban/>.

Additionally, policies that ban chalking unduly restrict the manner of speech permitted on campus. Chalking is an inexpensive and effective way to share ideas which students have used for decades to share everything from acapella concert announcements to school play try outs to political speech. There is no reason to ban this form of expression.

Specific Recommendations:

- Universities and colleges should allow students to demonstrate in many areas of campus, especially in outdoor, high-traffic locations.
- If a school continues to impose some time restrictions on demonstrations, it should narrowly limit these restrictions such that demonstrations are allowed during a broad range of time that spans morning, afternoon, and evening hours.
- Universities and colleges should not ban chalking or otherwise unduly restrict the modes of expression available to students.

3. Prohibit suspicionless identification checks of student demonstrators.

Policies that require students at demonstrations to show their IDs upon the request of a university official at any time—not just when they are suspected of breaking campus rules or the law—unquestionably chill expression. It is one thing to stand amongst hundreds of people during a public demonstration. It is quite another to face the possibility that one will have to interact with law enforcement even when no rules or laws have been broken, or that one's participation in a demonstration will be shared with school officials, police, congressional committees, or other arms of the federal government. Under the current environment, educational leaders must consider the serious consequences of creating records regarding student speech that Congress or federal agencies may attempt to subpoena. This is particularly, though not only, true with respect to foreign students.

What is more, suspicionless demands for identification are evocative of the kind of authoritarian climate that is contrary to open inquiry. It is especially concerning when policies provide no criteria for enforcing officials to determine when ID checks are appropriate. This failure creates a substantial risk that the policies will be applied unevenly, discriminatorily, and/or to chill controversial speakers and messages.

Specific Recommendations:

- Universities and colleges should narrowly limit the circumstances under which school officials are permitted to request that individuals present their IDs to situations where an individual on campus violates a specific campus rule or state law.
- Universities and colleges should clearly notify enforcing officials and students about the narrow circumstances under which school officials are permitted to request ID.
- Universities and colleges should ensure that enforcing officials apply such policies in a nondiscriminatory manner that is viewpoint neutral.

Conclusion

At a time when free expression, academic freedom, and higher education itself increasingly are under attack by the federal government, it is critical that institutions of higher education in Massachusetts protect these bedrock values and democratic institutions. This important work starts with school policies that foster robust expression and protect students and faculty against unwarranted interference by law enforcement and the federal government.

The ACLU of Massachusetts hopes to support colleges and universities in these efforts. Please do not hesitate to contact us if you wish to discuss this or other campus speech matters.

Sincerely,



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