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COMMENTARY

A Free-Speech To-Do List for College Administrators

Set clear, neutral rules and support the rights of controversial speakers before a crisis begins.



At the University of California, Berkeley, Aug. 15. PHOTO: MARCIO JOSE SANCHEZ/ASSOCIATED PRESS

By *Erwin Chemerinsky and Howard Gillman*

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During the past year appearances by controversial speakers on college campuses have led to a string of tense, sometimes violent, incidents. As students return to school, administrators will again face the challenge of protecting freedom of speech while ensuring safety for their students, staff and faculty. We offer this checklist to help them prepare for the difficult issues that are sure to arise.

1. Disseminate a clear statement of free-speech values and create opportunities to teach the campus community about free speech. Senior administrators at colleges and universities need to communicate with their communities the vital importance of freedom of expression and academic freedom for higher education. At a minimum, they must state that all ideas and views can be expressed, no matter how controversial or offensive, and must explain why a university can't fulfill its core purpose without this freedom.

Campus officials can no longer assume this is obvious and therefore unnecessary. Our experience is that too many students, faculty and administrators lack familiarity with basic principles of free expression and academic freedom. Because protection of offensive speech comes naturally to few, campuses should supplement strong free-speech statements with online resources and educational programming that allow all members of the community to develop a better understanding of the issues. For example, schools can include a discussion of free-speech issues at their freshman orientation programs.

But freedom of expression is never absolute. Some speech—such as true threats and harassment and interfering with the speech of others—is not protected. Campuses can enact regulations that ensure ample opportunities for communication while preventing interference with the teaching and research of faculty and students.

2. Publish a clear statement supporting the presence of controversial speakers before particular incidents occur. Speakers should never be excluded because of their views, but campus officials also need to explain that it is completely appropriate, and indeed desirable, for students and faculty to express disagreement with speakers they find objectionable. There can be nondisruptive protests at events, statements of objection through the media, and counter-events that highlight different messages. As the old saying goes, the answer to speech we don't like is more speech.

3. Devise and publicize transparent and neutral procedures for approving events. Campuses typically require advance permission for use of their facilities. There is no

free-speech right for groups to demand unconditional access to limited campus venues at a time of their choosing. But the procedures and the criteria for receiving such approval must be clear, stated in advance and applicable to all. Otherwise such fair limitations could be abused.

4. Ensure everyone's safety. Campuses need to prepare security assessments that ensure adequate protection for controversial speakers and their audiences. A campus might insist on venues that make it easier to prevent protesters from blocking access to the event, and it might require tickets or university identification to minimize the chances of disruption. Speakers in uncontrolled venues on campus public spaces have no right to speak without interruption or rebuttal from a gathering audience, but they do have a right to be protected from violence or threats of violence.

5. Put in place rules that prohibit disrupting the speech of others during authorized campus events—with disciplinary measures when appropriate. Campuses undermine free speech by not responding adequately to those who disrupt others when they are exercising their First Amendment rights. Administrators must defend against the heckler's veto, where the reaction of the audience can silence the speaker. This does not mean that every minor disruption be treated with severe sanctions. That would also chill speech. But severe or persistent efforts by students to prevent the expression of certain views should be treated as a serious violation of codes of student conduct.

In our roles as university officials, we are aware of the difficulty many campuses face regarding free speech. Careful messaging and planning before crises develop can make a huge difference.

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