



SYRACUSE UNIVERSITY

CHANCELLOR AND PRESIDENT

October 1, 2015

Ms. Aysha Seedat,
President, SU Student Association
336 Comstock Avenue
Syracuse, NY 13210

Mr. Can Aslan
President, SU Graduate Student Association
329 Link Hall
Syracuse, NY 13244

Mr. Charles DuNunzio
President, SU Student Bar Association
Dineen Hall
Syracuse, NY 13244

Prof. Can Isik
Chair, University Senate Agenda Committee
223 Link Hall
Syracuse, NY 13244

Dear Ms. Seedat, Mr. Aslan, Mr. DuNunzio, and Professor Isik:

In the fall of 2014, the Student Association (SA), the Graduate Student Organization (GSO), and the Student Bar Association passed resolutions urging University leadership to consider revisions to its Computer and Electronic Policy to address concerns regarding free speech across campus.

More clearly, these groups indicated that the University's current policy is "vague, overly broad and subjective, which restricts expression and stifles academic freedom by prohibiting the discussion of controversial yet important political, social and economic issues that form the basis of legitimate academic debate."

These resolutions were subsequently forwarded to me. Following their review, in February 2015, I appointed a Working Group to assess the SA, GSO, and Student Bar Association concerns. That working group was chaired by David Rubin, professor of communications and dean emeritus of the Newhouse School of Public Communications. It was comprised of two students appointed by the Student Association, two students appointed by the Graduate Student Association, and one faculty and one staff member, both appointed by the University Senate.

The Working Group spent the remainder of the Spring 2015 semester and the early portion of the Fall 2016 semester conducting their work, which was fully undertaken as an independent effort free from any University administrative input or influence.

Attached is the Working Group's transmittal letter and a copy of their report, which was sent to me. I ask that you review the report and assess it utilizing the formal structures of the SA, GSO, Student Bar Association, and University Senate. You should note that while appreciated, the Working Group's report addresses matters beyond the scope of the SA, GSO, Student Bar Association resolutions. I would ask for now that you start with a focus on the Working Group's recommendations centered on issues about which your resolutions focused ~ the definition of "harassment". Some of the other issues included in the Working Group's report have potential legal and policy impacts that need to be further analyzed.

As you will see in their transmittal letter, the Working Group would like to hold campus forums. I would urge each of you to work with Dean Rubin and the members you appointed to the Working Group to ensure there is significant, substantive, and honest debate among the campus community about the recommendations made in the report regarding the University's Computing and Electronic Policy. It is my hope that your organizations take ample time to discuss and debate this content in the report and make public your organizations' views and perspectives on it.

Recognizing that many members of the campus community will want to participate in this process and that four representative bodies are involved, I want to provide the appropriate timeframe for discussion and debate. Therefore I ask that you report back to me by no later than April 15, 2016 with a report expressing your organizations' perspectives and viewpoints. I also ask, to the extent possible, that each of you work together to produce one, unified report representing the recommendations of all four organizations.

Thank you in advance for your undertaking this important work.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent Syverud", written in a cursive style.

Kent Syverud

cc: Dean David Rubin

**RECOMMENDATIONS FROM
THE WORKING GROUP ON FREE SPEECH
SEPTEMBER 23, 2015**

INTRODUCTION

In February 2015, Chancellor Kent Syverud convened a working group (WG) to address concerns conveyed to him by two university student groups on the subject of free speech: the University Student Association (SA), and the Graduate Student Organization (GSO).

Each had passed resolutions in the fall term, 2014, expressing concern about the university's Computing and Electronic Policy and the way it defined "harassing" speech, thereby potentially limiting freedom of speech on campus. They found certain language in the policy to be "vague, overly broad, and subjective." The two student groups were concerned that this policy could stifle or chill free speech on campus, and that this policy was giving Syracuse University a poor national reputation on matters of free speech.

They asked the Chancellor to consider revisions to the policy. His response was to convene this WG to investigate the issue and report to him.

The WG met throughout March, April and May, 2015. The group reconvened in September, 2015 to complete its work. Undergraduate Janine Bogris was selected by the SA. Graduate students Amy Burnette and Zachary Greenberg were selected by the GSO. James Duah-Aygeman represented the staff. Crystal Bartolovich represented the faculty. The WG was chaired by David Rubin, who is also a member of the faculty.

(Note: A second undergraduate was originally selected to serve, but she never attended any meetings and played no role in the creation of this report. She never resigned from the WG and we never had the chance to replace her.)

The timing of the Chancellor's request was fortuitous, given the vigorous national debate that has been percolating on college campuses across the country on precisely these issues.

For example, in recent months, students at many schools have complained about harassing and bullying speech on the social media platform Yik Yak.

Students at the University of Oklahoma were disciplined by the university for singing a racist chant during a fraternity outing.

Students at a variety of schools have requested “trigger warnings” from faculty members if potentially upsetting content was to be discussed in class.

One professor was investigated by her university under Title IX of the Education Amendments of 1972 (prohibiting discrimination on the basis of sex in any federally-funded education program or activity). The professor had written an article critical of Title IX itself and how it was infantilizing women, creating an atmosphere of “sexual paranoia.” Two students complained to the university about the article, leading to the investigation. After a lengthy investigation she was exonerated.

The WG read through the many Syracuse University documents in which policies that touch on freedom of speech appear. The WG also read policies from many other universities—including the University of Rochester, Carnegie-Mellon, New York University, and others—to determine similarities and differences in their approach to campus speech.

Members of the WG debated best practices during the spring term and worked on this document over the summer and into the fall. It responds to the concerns of the SA and the GSO by suggesting modifications to Syracuse University’s current Computing and Electronic Communications Policy. However, the document goes considerably further. More broadly, we hope this document will stimulate a debate about freedom of speech on campus, how to define it, and how to protect it.

MISSION

Our original mission, as noted above, was to examine the university's free speech policy as it related to computer and electronic communication. However, we decided early on that it made little sense to divorce freedom of speech as it is exercised over the university's communications network from freedom of speech broadly. We decided that the same rules governing free speech—whatever they are—should cover speech in all its forms: face to face, in the classroom, in written communication, on campus media, in guest lectures, in symbolic form, and in e-mails and other electronic documents. Therefore, that is what we examined.

We did not attempt to rewrite specific existing policies. We have provided an approach or framework for thinking about free speech issues, along with an explanation of our reasoning. We did not believe we were authorized to draft new language. The university has a separate process for that. However, if our recommendations are accepted, it should not be difficult to edit and rewrite current policy and substitute new language.

We have tried to keep these recommendations short and clear. The more people on campus who read this document and engage with it, the better the resulting discussion will be. To that end, the document is in its tone more journalistic than legalistic or academic.

WORKING ASSUMPTIONS

The legal status of Syracuse University. While it is true that Syracuse University is a private university with more legal leeway to regulate speech than a public university would have (because public universities are government entities), we chose to reject that approach.

Students at SU should not have fewer free speech rights than students at public universities or non-students who are simply living their lives as Americans outside the system of higher education. We believe that freedom of speech for Syracuse University students, faculty members, staff members and administrators does not end at the entrance to the campus. We treated everyone on the SU campus as residents of the United States first, with full free speech rights under the First Amendment, as defined by the courts.

In addition, SU receives considerable federal support in the form of financial aid funds, research grants, and more. To claim, therefore, that the university is in any meaningful way independent of government is misleading.

We also believe that the best way to prepare Syracuse students to be citizens is to permit them to exercise their constitutional rights within the university setting. Creating an alternative world in which some rights are not recognized on campus—such as free speech rights—could produce graduates who are unprepared for the robust exercise of free speech in the world beyond the campus.

The scope of the recommendations. While the resolutions that gave rise to the WG came from two student groups, we did not make recommendations governing only student speech. Our recommendations cover all those on the campus and all interactions on the campus. In particular this includes speech occurring in the classroom, speech emanating from campus media, speech in the dormitory context, and the speech of faculty members, staff members and administrators.

Similarly, the medium in which speech occurs does not matter. Our recommendations cover written and spoken speech, broadcast speech, and speech that circulates in the digital sphere.

The free exchange of ideas. The WG believes the university will function at its best if it encourages a free exchange of ideas to which everyone is invited to contribute. In proposing specific rules and guidelines, we usually opted to broaden that exchange rather than restrict it. Robust, meaningful debate of campus issues depends on a free exchange of ideas. Efforts to limit that exchange, therefore, are antithetical to robust debate and to democratic self-governance.

Answering speech with speech. As a corollary to the above, we also prefer solutions in which speech answers speech. That is, offensive speech should be answered with speech, not with sanctions on the speaker or the removal of the offensive speech from the exchange. Answering speech with speech furthers the goal of expanding the exchange of ideas.

The importance of the First Amendment and the open exchange of ideas. The WG embraces the view that offensive speech is protected by the First Amendment and therefore should be protected on campus. If there were no offensive speech in society, a First Amendment would not be necessary because no one would object to it. Offensive speech can make important contributions to the exchange of ideas and must be protected.

It logically follows, therefore, that the hearer or receiver of offensive speech cannot for legal purposes define for the institution speech that is offensive and successfully rule it out of the campus exchange of ideas. The WG does not accept that if an individual finds speech to be offensive to him or her, it therefore has no place in the exchange. A more objective standard, one that protects speech, is necessary (see below).

The WG also recognizes that not all groups on campus feel equally comfortable in participating in this exchange. They may fear their views will be ignored or are unwelcome. They may not be as skilled as others at using various media platforms to gain access to an audience. The WG recommends, therefore, that the university foster a climate in which all members of the campus community feel comfortable and welcome to participate in this exchange of ideas. The WG understands that despite the university's best efforts, not everyone will choose to participate, but the opportunity should be open and no one should feel threatened for voicing his or her views.

The “reasonable person” standard. When the university assesses a claim that offensive speech has crossed a legal line into speech that harasses, frightens, or poses a threat to the public peace on campus, it should apply a “reasonable person” standard. That is, the view of a person sensitive to offensive speech should not be used as the standard for deciding if offensive speech should be protected. The views of a “reasonable person” should be the standard.

The hierarchy of speech. In determining the type of speech that merits sanction, the WG urges that speech viewed as sexually harassing not be privileged. Sexual speech should not be viewed as any more or less offensive than other types of speech that might be found offensive by other groups. This might include speech that is racially offensive, ethnically offensive, religiously offensive, or offensive to those with physical or mental challenges. To list certain types of speech as more worthy of condemnation than others is itself offensive. Harassment of any individual, as defined below, is unacceptable.

When restricting speech is acceptable. The WG agrees that the university is in the strongest position to restrict speech when that speech (or the freedom to assemble, also guaranteed in the First Amendment) threatens to undermine its educational mission. The purpose of the university is to provide an education to its students. When wide open, robust free speech or freedom of assembly threaten to make it difficult or impossible for the university to offer that education, the university is entitled to limit the speech or assembly. However, the burden rests with the university to demonstrate why such limitations are essential to achieving that goal.

As a corollary to this, disruptions meant to silence others should not be protected under a definition of free speech. The freedom to speak must be accorded to invited guests, professors and students in classrooms, student leaders chairing meetings, and so on. Disrupting the efforts of these speakers to communicate with their audience is meant to restrict a free exchange of ideas. Opponents are welcome to picket, distribute their own literature, ask questions, protest silently, and make use of the digital sphere to express views counter to those of other speakers. But shouting down speakers or otherwise disrupting classroom sessions, guest-speaker events, and the meetings of student organizations is not an acceptable contribution to a free exchange of ideas.

PROPOSALS

(Note: The proposals below are meant to guide members of the university community who draft new language covering free speech rights on campus.)

Harassing Speech. One of the most difficult challenges is defining and combating speech that is offensive, harassing, bullying, or threatening. This concerns not only how the speech is heard or interpreted by the listener, but also what the intent of the speaker was in employing such language.

As noted above, merely offensive speech is fully protected. The First Amendment was written in part to protect offensive speech. However, speech that poses a serious and credible threat to the listener is not protected. Drawing that line is a challenge.

The university's current efforts are vague and overbroad, and they permit the listener to weigh in too heavily in defining speech that is harassing.

We suggest the university community consider the following standard: ***Conduct (physical, verbal, graphic, written, or electronic) that is (1) unwelcome; (2) directed at an individual; and (3) so severe, persistent, pervasive, and objectively offensive that a reasonable person would be adversely affected to a degree that interferes with her or his ability to participate in or to realize the intended benefits of an institutional activity, opportunity, or resource.*** (This standard is adapted from one in effect at Mississippi State University.)

This standard is applied in cases where speech is aimed at a specific individual or individuals. Offensive or threatening speech aimed at groups is fully protected within the meaning of the First Amendment. Those who oppose speech that attacks groups should answer it with their own speech, thereby broadening the exchange of ideas.

To protect minority viewpoints from being silenced by the majority, the university, as a site for the free exchange of ideas, should support forums for such an exchange and educate the university community on the value of multiple viewpoints in the competition of ideas. Such activities support the university's educational mission. They will help to guarantee that no voices are excluded from the exchange.

Speech that threatens the public peace on campus. This should be viewed as a separate and distinct category from harassing speech, as discussed above. University regulations should make that distinction clear.

For purposes of sanction, we rely on the standard articulated by the Supreme Court of the United States in *Brandenburg v. Ohio*: **[speech that] “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”** For example, speech designed to urge a crowd of angry students to sack the Bursar’s Office because of a proposed tuition increase could be punished.

The campus as a public forum. As a private university, Syracuse University could be closed to all those who are not members of the campus community. Outsiders could access the campus only by invitation.

This policy is clearly not workable, however. We welcome outsiders all the time, such as those attending athletic events, those visiting on an admissions visit, and those who simply use the campus grounds as they would a park.

Therefore, it seems sensible to assume that the campus is, indeed, a public forum, but to rule out specific spaces where outsiders are not welcome except by specific invitation. These spaces include: classrooms, faculty and staff offices, administrative offices, dormitories, eating halls, designated study spaces, and the offices of student groups.

Use of and access to other areas, such as the Quad and other outdoor spaces, may be regulated by the university under normal time, place and manner restrictions aimed at supporting the educational mission of the institution. This means that the use of sound equipment on the Quad, for example, may be regulated if it interferes with the educational mission. Similarly, if an assembly of persons interferes with the ability of students or faculty members to access classrooms, it could be limited under time, place, and manner restrictions.

The occupation of a campus building. The WG recognizes that an assembly occupying a campus building is itself an act of speech. That speech should be protected, if it occurs in a public forum space, unless and until it interferes with the educational mission of the institution. If the university can demonstrate that the educational mission is being hindered by an occupation of a public forum space, then the university is entitled to end the protest. The university need not

tolerate the occupation of any space that is not deemed part of the public forum, such as a dormitory, a classroom building, the library, a dining commons, and so on.

Posting policies. The WG recognizes that in the digital age, with the spread of social media, the need to communicate on campus about events or ideas through posters on bulletin boards or other surfaces is fast losing its relevance. However, posting continues, and it is a venerable form of speech.

Policy on posting should be set by an appropriate administrator in each building—dorms, classroom buildings, administrative buildings—where bulletin boards and other appropriate surfaces for posting exist. That individual may set rules for the content of posters, and for how long posters may remain on display.

The WG urges administrators not to disfavor speech dealing with political topics in the broadest sense; that is, content that may not pertain directly to activities in the building. However, the WG is mindful of the limited available space for posting and the need to focus on germane activities, such as upcoming talks, recitals, the meetings of student groups, and the like.

The WG also respects “campus beautification” as a legitimate standard for restricting the time, place and manner of posting so long as these limitations are content neutral.

The exhibition of banners and signs. Students, staff and faculty members may not express themselves through banners and signs hung on campus except if they are hung inside personal offices or dorm rooms. This does not include banners or posters hung outside of, or visible outside of, personal offices or dorm rooms. Banners and signs may not be hung in common areas of classroom buildings or dorms without permission of the designated administrator of the building.

If students living in a dorm disagree about whether a banner or sign should be hung inside the space, the disagreement should be worked out by the students themselves (as a learning experience). However, if no such resolution is possible, the dispute should be referred to the Director of Residence Life (or his or her designee) for resolution.

Room-to-room distribution of content. Students should not be prohibited—as they now are—from slipping materials under doors in dormitories. In an era of constant electronic “submissions” through e-mails and texts, it seems quaint to limit such a basic and simple form for the distribution of information as sliding content under a door.

Disrupting speakers. Given the importance to the educational mission of invited speakers and faculty members teaching in classrooms, attempts to disrupt such persons and to stop them from speaking should be swiftly curtailed by the university. It is an appropriate use of campus security to remove protestors from teaching spaces if they have ignored warnings to cease and desist such disruption. In short, the free speech rights of the speaker—whether invited guest or faculty member—trump the free speech rights of protestors.

As noted earlier, protestors have other ways to express their views of a speaker. These include picketing, silent protests inside the room, making use of social media, and so on.

(Note: The WG does not believe student groups should be assessed a **special fee for security services** if it chooses to invite a potentially controversial speaker. It is the role of Public Safety, as a matter of routine, to provide for security without the assessment of a special fee at any gathering where a disruption is anticipated. Such fees might be beyond the ability of a student group to pay. They would certainly discourage the invitation of controversial speakers, and that diminishes the free exchange of ideas on campus.)

Profanity. The mere use of profanity is protected speech, unless the profanity is part of speech that violates the threatening speech policy outlined above.

The one exception to this rule applies to students working at WAER and WJPZ radio stations, which are licensed by the FCC. Students broadcasting on these stations are bound by the FCC’s indecency rules. The use of profanity or other indecent language, as defined by the FCC (not the university), could endanger the university’s licenses. The university would, therefore, be within its rights to discipline students who violate these rules.

Computing and electronic communications. The WG strongly disagrees with the assertion in current policy that the university owns all the messages, files and programs stored or transmitted on the system. Given the prevalence of electronic communications, and given how much content faculty members and students send and store on the system, this implies that the university owns everything. We reject this.

Rather, the creator of these documents owns them if they relate to the scholarly or creative mission of the university, or if they are personal in nature. The university only “owns” documents that relate to the administration of the institution, such as personnel records, student grades, financial data, and so on.

Nor should the university be allowed to access the scholarly, creative or personal information of students, faculty, and staff without a subpoena served on the university by a legal authority.

The WG agrees that any criminal use of the system is prohibited. In addition, the university has the right to ban any use of the system that would jeopardize the university’s not-for-profit, tax-exempt status.

At present, however, university language on prohibited uses of the system is vague and overbroad; it threatens protected scholarly, creative and educational uses of the system.

Use of the computing and electronic system for communication that may be threatening or harassing is subject to the language outlined in our proposed policy on harassment. The fact that a computing system is the medium of communication—as opposed to face-to-face speech or a written note—is not relevant.

Distribution of copyrighted material on the university’s computing system. The university should make it clear that faculty members and students have the right to use the computing system to distribute copyrighted material for educational purposes subject to fair use rules. Further, student work may be distributed to other students for educational purposes with the permission of the students, or with identifying marks removed.

The “Stop Bias” website. The WG discussed at some length the “Stop Bias” website where students have been encouraged to post examples of what they have perceived as harassment, bullying or rudeness directed at them or at others. The site is an example of individuals deciding for themselves what constitutes offensive speech.

So long as this site is not an official undertaking of the university administration and is organized entirely by students or a student group, it can contribute in important ways to the exchange of ideas. The campus community can access it to determine the climate of offensive speech on campus; at least it is one imperfect measure of that climate.

But if the university were to monitor the site and use the postings to investigate the events discussed, that would constitute intimidation and an infringement on campus free speech.

This would be even more troubling if the university tolerated anonymous postings to the site. Such postings raise a significant opportunity for abuse. If the site is curated by students, it is up to them to determine whether anonymous posting is welcome. However, if the university gives it imprimatur to the site and exercises editorial control, then it should not permit anonymous postings.

Overall, if the university remains at arm’s length from the site, the WG sees no reason to curtail it.

Aggregation of policies on free speech. The WG strongly recommends that when the university rewrites its many policies on freedom of speech and assembly on campus, it make them clear, concise, and easily accessible to all. At present these policies appear in many different university publications and areas of the website. They are internally inconsistent and confusing. This should be remedied. The policies should be collected and made easily available at one location on the website and in a single print publication.