



MONTANA
UNIVERSITY SYSTEM

Free Speech

Principles of Free Speech on College Campuses

Office of the Commissioner of Higher Education

- **United States and Montana Constitutional Provisions**
- **Free Speech and Higher Education**
- **Seminal U.S. Supreme Court Cases For Student Rights**
- **The MUS and Free Speech**
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- **How Students Can Exercise Their Rights**
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First Amendment: 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.

Montana Constitution, Article II, Section 7

No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Montana Constitution, Article II, Section 6

The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.



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Higher Education and Free Speech

“Teachers and students must always remain free to inquire, to study, to evaluate, to gain new maturity and understanding otherwise our civilization will stagnate and die.”

Sweezy v. New Hampshire, 354 U.S. 234 (1957)



Seminal US Supreme Court Cases for Student Rights

Healy v. James (1972): The Supreme Court held that public college students' First Amendment rights apply on campus, just as they do in the community at large. The Court found that a state college's refusal to recognize a student group violated the students' rights to freedom of association.

"The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."



Seminal US Supreme Court Cases for Student Rights

Papish v. Board of Curators of the University of Missouri (1973): The Court ruled that a state university could not punish a student for distributing a campus newspaper that contained “indecent” material. This case established that students can express themselves on campus, including through materials that might be considered offensive, as long as they do not disrupt the educational environment.

“The mere dissemination of ideas-no matter how offensive to good taste-on a state university campus may not be shut off in the name alone of ‘conventions of decency.’”

Seminal US Supreme Court Cases for Student Rights

Widmar v. Vincent (1981): The Court ruled that the University of Missouri must allow its facilities to be used by student groups “for purposes of religious worship or religious teaching.” The Court’s decision ensured greater access to public facilities by religious organizations. The Court held that the state was not assumed to be in support of all messages that were communicated in their facilities. In so ruling, the Court reaffirmed its consistent recognition of the applicability of the First Amendment to the public university.

“With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities.”



The MUS and Free Speech

During the 2023 session, the MUS and the Legislature adopted a **shared policy goal** regarding free speech.

Free Speech: Reaffirm the Montana University System's commitment to fostering environments that ensure the free expression and open exchange of ideas and viewpoints in accordance with the First Amendment.

Ensuring all campuses have policies and procedures that comply with the First Amendment and affirm the rights of individuals to freely express their views.

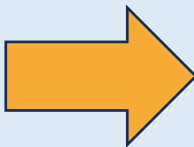
Providing a system-wide training module for campus faculty, staff, and students on free speech and expressive activities.

Establishing the Office of the Commissioner of Higher Education as a resource hub for training materials, guidance, and best practices for upholding rights guaranteed by the First Amendment.



Quick Links

The MUS and Free Speech



The MUS and Free Speech

Know Your Rights

These pages constitute a summary of local, state, and federal laws, policies, and regulations dealing with issues of free speech, free expression, and free assembly. There are also suggestions for holding events and appropriately responding to events.



The Montana University System (MUS) affirms and supports freedom of expression and the open exchange of ideas and viewpoints. These freedoms are integral both to our democracy and to the purpose and processes of colleges and universities.

We want all members of our community to feel empowered to speak up, to ask challenging questions, and to present new and controversial ideas. It is only through the presentation and scrutiny of different perspectives that we develop the ability to confront and solve complex problems and exercise forms of collaborative leadership in diverse social and professional settings.

To engage each member of our community, the MUS institutions, and the general public in the study and practice of these values and to facilitate a clear understanding of relevant policies and practices, we have developed the attached PowerPoint presentation.

To further help campuses design effective ways to educate students about their free expression rights, we include the following resources and examples.

[U.S. Constitution](#)

[Federal Law](#)

[Montana's
Constitution](#)

[Montana Law](#)

[Board of Regents/
OCHE](#)

[FAQs](#)

[Scenarios](#)

[The Ground Rules](#)

Additional Information

- ACLU ["Speech on Campus" FAQ](#)
- FIRE and First Amendment Watch ["Free Speech Lessons for Freshman Orientation & First-Year Experience"](#) curriculum

For more information about the MUS and free speech, contact:

[Hannah Tokerud](#)

OCHE Associate Legal Counsel

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The MUS and Free Speech

Free Speech

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Rights and Responsibilities of
Academic Personnel

Facilities Use Procedures

President's Statement



The University of Montana upholds freedom of speech as a core value of our university and our country. It is a principle of constitutional magnitude, enshrined in our First Amendment.

As a public university, we promote free expression and open exchange of ideas as core to an excellent education, one that

thrives on the asking of difficult questions and on the coming together of challenging and diverse perspectives. The absence of free expression would compromise the quality of our students' education and deprive the UM family of the rigorous inquiry and testing of preconceptions that characterize a healthy academic environment.

By protecting an environment of free expression, we ensure the UM family has ample opportunity to practice what lies at the heart of a UM education: a rich exchange of diverse ideas and the rigorous collection, testing, analysis, and interpretation of varied forms of evidence. This is a way of thinking and being in the world that allows human intellect to prosper and our Griz community to continuously learn.

In practice, this means that we will sometimes encounter ideas that provoke, anger, or wound us. Protecting the right of free expression can therefore sometimes conflict with our strong commitment to foster a campus that is welcoming and inclusive. This is a challenging tension with which we grapple as a society and as a university.

The solution to this tension, however, does not lie in censorship. Once we begin to pick and choose on the basis of which speech may occur, we open the gates to having our own voices silenced—yours, mine, and all those who do not voice majority opinions.

Allowing on our campus the expression of ideas with which we disagree does not mean we endorse those views, nor does it mean we condone speech that is hateful or that targets people based on their identities. What a person says may define that individual, but it does not have to define us. It is possible for us to stand firmly in support of free speech while also standing firm in our values.

The Constitution and a long history of case law makes it clear that public universities cannot ban speech based on content or viewpoint. And when those views are offensive, we have a right to speak out strongly, clearly, and critically to challenge speech with which we disagree. In doing so, we demonstrate not just the importance of rigorous academic inquiry but also the fact that, as the Supreme Court has repeatedly held, the best remedy for bad ideas is good ones.

Free Speech at Montana State



Listen. Speak. Respect.

Montana State University recognizes that the freedom of expression is integral both to our democracy and to the purpose and processes of a university.

But freedom of expression does not mean you can always say anything you want — like the classic example of shouting “fire” in a crowded theater and causing a panic. Having the freedom of speech means that your right to say something is protected within certain limits. There may be consequences for the things you say, but you still have the right to say them.

At MSU, free speech and expression is only limited in order to avoid conflict with the normal uses of campus, the rights of others and the limitations that already exist in law. No university policy or rule will infringe on the rights protected by the First Amendment to the U.S. Constitution.

On this site, you can learn more about your rights, how to express disagreement through assembly and how to report concerns.

The MUS and Free Speech



Know Your Rights

Learn about the First Amendment and other laws and regulations regarding free speech.



Frequently Asked Questions

Get the answers to common questions about free speech and various scenarios you might encounter.



Use Your Voice

Discover your options for expressing your views on campus.



Get Support

Find help with various resources from all across MSU.

Questions about free speech and expression

Providing universal answers on issues of free speech and free expression is difficult. Often, the circumstances of each situation must be considered individually before any conclusions can be drawn. If you have questions about a free expression matter not covered on this site or about any of the policies summarized here, reach out to the following people for help:

- [Matt Caires, Dean of Students](#) – 406-994-2826 or deanofstudents@montana.edu – Students can begin most inquiries with the Dean of Students who can address issues including student conduct and campus events.
- General questions about the First Amendment and protected speech can be directed to Michael Becker, Interim Vice President of [University Communications](#) at 406-994-4565 or michael.becker@montana.edu and to Kellie Peterson, [MSU Legal Counsel](#), 406-994-4572 or kellie.peterson@montana.edu.

Disclaimer

The information presented on this site intended only as an introduction to MSU's policies and as a guide. It is not legal advice. Legal advice for students is available from [ASMSU Legal Services](#). Employees of MSU can consult with the university's [legal counsel](#) or [human resources](#).

Boundaries of Free Speech



The First Amendment protects the right to dissent in many forms but not civil disobedience.

Actions and speech in civil disobedience may conflict with the free speech rights enjoyed by others and may disrupt or interfere with university business and academic efforts or even threaten public safety or university assets in ways that require the university or law enforcement to act to protect those other interests.

Boundaries of Free Speech

Examples of speech not protected by the First Amendment:

- True threats, including speech and other conduct that communicates a serious intent to commit an act of unlawful violence to a particular individual or group of individuals.
- Harassment, including speech and other conduct based on a protected class, targeted at an individual, that effectively denies educational access, opportunities, or rights.
- Defamation, libel or slander (i.e. written or spoken false statements).
- Incitement of illegal action.
- Invasion of privacy and confidentiality, as protected by federal and state law.
- Child pornography.

Boundaries of Free Speech

Harassment

Offensive speech alone is not enough to constitute “harassment.”

Harassment is prohibited by university policy and is not protected by the First Amendment.

Campus policies prohibit discriminatory and sexual harassment. Discriminatory harassment is unwanted conduct that is based on a person’s status as a member of a protected class and **which has the purpose of unreasonably interfering with their participation in a university program or activity**. The factors considered when assessing whether conduct is discriminatory harassment include:

- The identity of the parties, the nature of their relationship and the influence of that relationship on complainant’s employment or education.
- The nature, scope, frequency and duration of the conduct—to be illegal, the harassment must be severe and pervasive.
- The degree to which the conduct affected a student’s education or an individual’s employment.
- The nature of higher education.

Boundaries of Free Speech

Hate Crimes

- Hate speech is protected by the First Amendment. Hate crimes are not.
- “Hate speech” is not defined by law and is not an exception to the First Amendment. Even if speech is hateful or offensive, **it is still protected by the First Amendment.** However, hate speech that involves illegal conduct is not protected by the First Amendment.
- Hate crimes are not separate, distinct crimes. Classifying a crime as a hate crime depends on whether the offender was motivated by bias. For example, if a person assaults someone else, it’s a crime. If the facts of the case show that the assailant was motivated to commit the crime because of bias against the victim’s protected class status, the assault would also be classified as a hate crime.



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How Students Can Exercise their Rights

Joining clubs that align with their values

Organizing and attending events on campus

Tabling

Engaging in peaceful, non-disruptive protests

Civil Rights Protections on Campus

All MUS campuses have processes for students who believe that their civil rights have been violated or that they've been subject to discrimination or retaliation. These protections include protection against discrimination for political affiliation.

Campuses have Civil Rights and Title IX offices that are designated to handle these concerns

The process safeguards and protects student privacy

When a student files a complaint, there is a process for an investigation and hearing. These processes ensure that principles of fair consideration and due process are respected.

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A student also has the right to appeal any decision of the campus to the Commissioner of Higher Education and to the Board of Regents.

There are multiple layers of review built into this process.



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Civil Rights Protections on Campus

Federal Process

A student may also file a complaint at the Federal level with the Department of Education, Office of Civil Rights (“OCR”). If a student feels like the campus process is unfair, this is another path available to them. If OCR finds a violation, it can withhold funds or require policy changes.

Our Freedom of Speech is a Bedrock of our Democracy

- “Without Freedom of Thought, there can be no such thing as Wisdom; and no such thing as public liberty, without Freedom of Speech.” — *Benjamin Franklin, Letter from Silence Dogood, printed in The New England Courant, July 9, 1722.*
- “The First Amendment is often inconvenient. But that is beside the point. Inconvenience does not absolve the government of its obligation to tolerate speech.” — Anthony Kennedy, United States Supreme Court.
- “My freedom of speech stimulates your freedom to tell me I’m wrong.” — P.J. O’Rourke, author and satirist.