

THE CITY UNIVERSITY OF NEW YORK

POLICY ON FREEDOM OF EXPRESSION AND EXPRESSIVE CONDUCT

RESOLVED, That the Board of Trustees of The City University of New York hereby approves the following policy:

1. General Principles

1.1 The City University of New York (“CUNY” or “the University”) is committed to academic freedom and the free exchange of ideas and expression of all points of view for members of the University community, including individual students, faculty, and staff and recognized groups of those constituencies. Such exchange is at the core of the mission of higher education. The ideas of different members of the University community will often conflict, but it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable or even offensive. Although members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility can never be used as a justification for closing off discussion of ideas, however disagreeable or offensive they may be to some members of the University community. The appropriate response to false or offensive speech is not to prohibit it but to respond with more speech.

1.2 The freedom to express ideas does not mean that individuals may exercise that freedom in ways that are incompatible with the functioning of the University and the rights of other members of the community to freedom of expression and to a full and equal opportunity to pursue their education and to participate in the benefits of the University.

1.3 It is well established that certain forms of expressive conduct may appropriately be subject to reasonable restrictions as to time, place and manner. In particular, demonstrations, leafleting and tabling must be carried out so as to ensure the safety of individuals, the protection of property, and the continuity of the University’s educational activities and business operations. However, any such restrictions must be narrowly tailored and applied in a non-discriminatory manner and without regard to the content of the speech at issue. Similarly, meetings or forums that are open to members of the University or the public must also be conducted so as to protect their rights to participate on equal terms and without discrimination as to point of view.

2. Prohibited Conduct

2.1 Any conduct that violates the Rules and Regulations for the Maintenance of Public Order pursuant to Article 129-A of the Education Law, also known as the Henderson Rules, also violates this policy. Prohibited conduct generally includes any behavior that adversely affects or

directly threatens to negatively affect the health or safety of persons or their opportunity to enjoy the benefits of the University or materially disrupts or seriously threatens to materially disrupt University functions or operations, whether or not such conduct occurs on property owned, leased or licensed by the University.

2.2 Examples of prohibited conduct that adversely affects or directly threatens to adversely affect the health or safety of persons or their right to a full and equal opportunity to pursue their education and to participate in the benefits of the University include:

- causing actual physical harm to a person;
- interfering with the freedom of movement of any person, including such person's free entry to or exit from University property or facilities;
- shouting down or otherwise preventing a speaker from delivering remarks at a program or event at a college campus or ejecting participants in a public forum or meeting because of their viewpoint;
- directing threats at a person or attempting to coerce or intimidate a person with the intent to cause that person to fear for his/her safety; and
- engaging in harassing behavior toward a person that is so persistent, pervasive or severe that it denies the person's ability to pursue an education or to participate in the activities of the University community, including not only the academic work but also the other activities and programs that occur outside of the classroom.

2.3 Examples of prohibited conduct that disrupts University functions or operations include:

- threatening to destroy or destroying University property or other public or private property located on University property;
- preventing the performance of educational or other institutional duties by any member of the University community;
- occupying or remaining on any property or facility owned or operated by the University after receiving due notice to depart; and
- using amplified sound without prior notice, or otherwise making loud noise that interferes or seriously threatens to interfere with classes, meetings, or other scheduled or routine University functions or activities.

2.4 Students who engage in prohibited conduct are subject to discipline under Article XV of the CUNY Bylaws. Employees who engage in prohibited conduct are also subject to disciplinary action as prescribed under the governing collective bargaining agreement and/or University policy. In addition, in cases in which the conduct at issue may violate the law, the University may take appropriate action, including seeking judicial remedies or referring the matter to external law enforcement authorities.

3. Guidelines for Conducting Demonstrations

3.1 Subject to the procedures and terms set forth in campus guidelines, and consistent with the General Principles set forth in Section 1 of this Policy and the freedom of speech and assembly guaranteed by the First Amendment, students and/or employees of CUNY, including but not limited to officially-recognized student and/or employee organizations, as well as persons invited and sponsored by such student and/or employee organizations, shall have access to public areas of the campus owned, leased or licensed and controlled by the college for demonstrations. Persons and groups wishing to demonstrate in public areas not owned, leased, licensed or controlled by the University, such as sidewalk adjacent to a campus, should address their requests to the New York Police Department.

3.2 Members of the University community may not demonstrate in a manner that materially impedes or disrupts the University's educational activities (including, but not limited to classes as well as public conferences and forums) or business operations or materially interferes with the rights of others. Furthermore, demonstrators shall comply with building or facility closing times set by the College; overnight camping on University property is prohibited.

4. Procedure for Handling Disruptive Demonstrations at CUNY Facilities

4.1 At each educational unit of CUNY, the President or his or her designee, in consultation with the Director of Public Safety or designee, will determine the point at which individuals involved in a demonstration taking place on a CUNY campus continue to exhibit prohibited conduct based upon the criteria set forth in Sections 2 and 3 of this Policy.

4.2 Unless there is an imminent threat to safety or circumstances prevent such communication, the President or his or her designee or the Director of Public Safety or his or her designee will direct the demonstrators to discontinue their prohibited conduct, explain which conduct violates the Policy, and inform them how to continue their demonstration in a manner that does not violate this Policy. If the prohibited conduct continues, the President or his or her designee or the Director of Public Safety or his or her designee may take appropriate action to end the prohibited conduct, including where necessary to terminate the demonstration and to seek the immediate intervention of public safety officers or external law enforcement authorities or to seek other legal remedies.

4.3 If the conduct presents an immediate threat to persons or property, the President or his or her designee or the Director of Public Safety or his or her designee may take immediate action to address the threat, including where necessary to terminate the demonstration and to seek the immediate intervention of public safety officers or external law enforcement authorities.

5. Leafleting, Tabling and Posting

4 5.1 The distribution of written materials by hand is permissible in locations that do not block entry or egress or interfere with the educational activities or business operations of a campus as designated by each of the educational units of CUNY. It is within the discretion of the educational units of CUNY whether to permit individuals and groups who are not members of the University or campus community to distribute materials and/or to give priority to members of the campus community.

5.2 The educational units of CUNY shall designate areas where members of the University community and invitees will be permitted to set up tables. Such areas must be sufficient for students and employees to communicate their message while not interfering with the college or unit's educational mission or business operations. Requests for tabling must be granted on a neutral, nondiscriminatory basis in light of the availability of space. It is within the discretion of the educational units of CUNY whether to permit individuals and groups who are not members of the University or campus community to set up tables and/or to give priority to members of the campus community.

5.3 Each college and unit of CUNY shall provide access by members of the University community to bulletin boards and systems of digital signage intended for general college use to provide information about events, subject to reasonable limitations as to size and quantity by a single organization. College or unit personnel may remove notices on a regularly scheduled basis and may remove outdated notices but may not remove notices based on their viewpoint. It is within the discretion of the educational units of CUNY whether to permit individuals and groups who are not members of the University or campus community to have access to such facilities and/or to give priority to members of the campus community.

6. Media Access to University Facilities

News media are permitted to enter areas of the University campuses that are open to the public but are encouraged to first contact the college's media relations office so that staff may help facilitate campus visits. News media who have arranged to conduct an interview with faculty, staff or students may use a designated area over which the interviewee has authority (e.g., a faculty members' own office) or for which the interviewee has obtained permission from the college (e.g., a student lounge or cafeteria). Media representatives are not permitted access to nonpublic areas, such as libraries and classrooms (except to participate in educational activities at the request of the instructor), laboratories, business offices or residence halls without prior permission from the college. During emergencies, colleges may require news media to remain within a designated area for law enforcement or safety reasons. Media personnel who interfere with a college's normal operations may be asked to leave the campus. Each college may establish further guidelines consistent with this policy.

7. Publication of this Policy and Campus Regulations and Designations

This Policy shall be posted on an accessible location on the CUNY website and on the websites of all educational units of CUNY. In addition, each educational unit shall post on its website any additional, reasonable time, place and manner restrictions on expressive conduct permitted by and consistent with this Policy. This Policy and any additional restrictions shall also be included in the handbook of each educational unit of CUNY relating to student activities.

8. Training about this Policy

8.1 Training of public safety personnel shall include training in the contents and implementation of this policy and of best practices in the handling of expressive conduct in a university setting, consistent with the principles of academic freedom and freedom of speech and assembly.

8.2 The leadership of student government organizations and recognized student groups, their faculty advisors and appropriate student affairs staff shall also receive training in the contents of this policy.

EXPLANATION: Recent events have raised once again the issue of whether and to what extent there are permissible and appropriate limits to the free expression of ideas on a university campus. Issues with strong emotional resonance have caused some participants to argue that speech by their ideological adversaries constitutes bullying, harassment, hate speech or is otherwise beyond the scope of protection for free speech or academic freedom. In addition, protests activities have sometimes interfered with the opportunity of students to pursue their education and on other occasions have been met by force or restrictions that infringe upon protected rights. CUNY does not have a policy affirming the importance of free expression on its campuses or describing what, if any, limits may be imposed, other than the “Henderson Rules” regarding public order, this policy fills that gap with due consideration for the purpose and nature of a university and the appropriate balance of interests recognized by the First Amendment and academic freedom.

HENDERSON RULES

Rules and regulations for the maintenance of public order pursuant to article 129A of the education law.

Henderson Rules to Maintain Public Order and Campus Codes of Conduct

RESOLVED, that The City University, in compliance with Chapter 191 of the Laws of 1969 hereby adopt the following rules and regulations for the maintenance of public order on college campuses and other college property used for educational purposes.

RULES AND REGULATIONS FOR THE MAINTENANCE OF PUBLIC ORDER PURSUANT TO ARTICLE 129A OF THE EDUCATION LAW

The tradition of the university as a sanctuary of academic freedom and center of informed discussion is an honored one, to be guarded vigilantly. The basic significance of that sanctuary lies in the protection of intellectual freedoms; the rights of professors to teach, of scholars to engage in the advancement of knowledge, of students to learn and to express their views, free from external pressures or interference. These freedoms can flourish only in an atmosphere of mutual respect, civility and trust among teachers and students, only when members of the university community are willing to accept self-restraint and reciprocity as the condition upon which they share in its intellectual autonomy.

Academic freedom and the sanctuary of the university campus extend to all who share these aims and responsibilities. They cannot be invoked by those who would subordinate intellectual freedom to political ends, or who violate the norms of conduct established to protect that freedom. Against such offenders the university has the right, and indeed the obligation, to defend itself. We accordingly announce the following rules and regulations to be in effect at each of our colleges which are to be administered in accordance with the requirements of due process as provided in the bylaws of The City University of New York.

With respect to enforcement of these rules and regulations we note that the bylaws of the CUNY Board provide that: The president, with respect to his educational unit shall: a. have the affirmative responsibility of conserving and enhancing the educational standards of the college and schools under his jurisdiction; b. be the advisor and executive agent to the board and of his respective College Committee and as such shall have the immediate supervision with full discretionary power in carrying into effect the bylaws, resolutions and policies of the board, the lawful resolutions of any of its committees and the policies, programs and lawful resolutions of the several faculties; c. exercise general superintendence over the concerns, officers, employees, and students of his educational unit.

Henderson Rules to Maintain Public Order

1. A member of the academic community shall not intentionally obstruct and/or forcibly prevent others from the exercise of their rights. Nor shall he/she interfere with the institutions educational process or facilities, or the rights of those who wish to avail themselves of any of the institution s instructional, personal, administrative, recreational, and community services.
2. Individuals are liable for failure to comply with lawful directions issued by representatives of the university/college when they are acting in their official capacities. Members of the academic community are required to show their identification cards when requested to do so by an official of the college.
3. Unauthorized occupancy of the university/college facilities or blocking access to or from such areas is prohibited. Permission from appropriate college authorities must be obtained for removal, relocation and use of university/college equipment and/or supplies.
4. Theft from or damage to university/college premises or property, or theft of or damage to property of any person on university/college premises is prohibited.
5. Each member of the academic community or an invited guest has the right to advocate his position without having to fear abuse, physical, verbal, or otherwise from others supporting conflicting points of view. Members of the academic community and other persons on the college grounds, shall not use language or take actions reasonably likely to provoke or encourage physical violence by demonstrators, those demonstrated against or spectators.
6. Action may be taken against any and all persons who have no legitimate reasons for their presence on any campus within the university/college, or whose presence on any such campus obstructs and/or forcibly prevents others from the exercise of their rights or interferes with the institutions educational processes or facilities, or the rights of those who wish to avail themselves of any of the institutions instructional, personal, administrative, recreational and community services.
7. Disorderly or indecent conduct on university/college-owned or controlled property is prohibited.
8. No individual shall have in his possession a rifle, shotgun or firearm or knowingly have in his possession any other dangerous instrument or material that can be used to inflict bodily harm on any individual or damage upon a building or the grounds of the university/college without the written authorization of such educational institution. Nor shall any individual have in his possession any other instrument or material which can be used and is intended to

inflict bodily harm on an individual or damage upon a building or the grounds of the university/college.

9. It is a violation of acceptable standards of conduct at the college, and it is prohibited for any individual, group or organization to engage in the practice of hazing: Hazing is defined as any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization.
10. In accordance with the policy of The City University of New York, the college prohibits sexual harassment of employees or students.