

Frequently Asked Questions

What does the First Amendment protect?

There are five freedoms in the First Amendment of the United States Constitution: freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and freedom of petition. While these freedoms appear absolute, they are not. Exceptions arise in particular cases because they often come into conflict with other rights guaranteed by the Constitution. This means that courts are forced to consider exceptions to rights in cases where one right comes into conflict with another right. For example, we have the freedom of assembly but that does not mean we can assemble to block people from entering a polling place to exercise their right to vote.

Does the First Amendment protect speech and expression at Sac State?

Yes, for the most part. Sac State is a public school. The Supreme Court has ruled that the First Amendment does protect students and teachers in public schools. In the landmark case of *Tinker v. Des Moines*, the Supreme Court explained, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years." The Court did, however, note that the First Amendment rights of students are not absolute, "conduct by the student, in class or out of it, which for any reason-whether it stems from time, place, or type of behavior-materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." Sac State is committed to making all efforts to preserve both freedom of speech and the many other rights in the Constitution that are guaranteed to members of the campus community.

Does the First Amendment protect civil disobedience on campus?

No. The First Amendment protects the right to dissent in many forms, but not civil disobedience. By definition, civil disobedience refers to the refusal to obey laws by violating them. A founding premise for society based on the rule of law and order is to adhere to the laws that are voted into existence. In the United States, we have guaranteed the right to dissent, to protest, to assemble peaceably, to petition against a law, and to pose legal challenges to laws we believe violate constitutional rights. When dissent crosses over into the area called "time, place, manner" restrictions, dissent moves to civil disobedience. Students may dissent against a range of policies

and against political ideas in a number of ways. Such dissent becomes unprotected civil disobedience when taking over a campus building, materially disrupting classes or events, trespassing, vandalizing, disturbing the peace, or other types of conduct subject to time, place, manner restrictions. Sac State protects the freedom to dissent, and also seeks to raise awareness that participation in civil disobedience could potentially result in serious criminal or conduct charges.

What is "hate speech"? Is it illegal?

The term "hate speech" is not defined by law. The trouble with regulating hate speech is in the very attempt to define "hate speech" and how that type of speech would be regulated in practice. Advocates and scholars of the First Amendment have wrestled with a few issues pertaining to the regulation of hate speech. For example, three fundamental areas address the issue of "hate speech":

1. Advocates of the First Amendment, tend to advocate a "more speech" solution to hate speech. This solution was made famous by the *Whitney v. California* Supreme Court decision: "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression." The American Civil Liberties Union explained, for example, that, "where racist, sexist, and homophobic speech is concerned, the ACLU believes that more speech-not less-is the best revenge. This is particularly true at universities, where the mission is to facilitate learning through open debate and study, and to enlighten." Sac State believes in the "processes of learning" as central to addressing "hate speech." Sac State encourages active listening, dissent, and is committed to cultivating an educational environment to allow for the "processes of education" as a condition for fulfilling the Court's directions concerning the "more speech" solution.
2. Scholars have wrestled for quite some time to generate ways to regulate "hate speech"- the trouble in discerning a workable standard lies in at least two realities: (1) The standard must be general enough to apply to any number of cases where "hate speech" is expressed. If standards are too specific, those that hate find alternative forms of expression that would then need to be addressed in additional legislation (they may also fail to pass the viewpoint discrimination test of the court that targets legislation cannot target particular viewpoints), (2) General standards may serve as instruments that run counter to the desired objective. In most cases, groups accuse each other of "hate speech." If sorted out in court, both sides run the risk of violating hate speech laws depending on the court making a given decision.
3. There are many things that might be constitutionally permissible when it comes to working through issues of "hate speech" on campus.
4. Imminent lawless action, established in *Brandenburg v. Ohio* (1969), is a standard in determining the limits of free speech. When a speaker intends to incite an imminent and likely violation of the law, the courts evaluate this action based on the following legal

analysis: If the advocacy is directed to inciting or producing imminent lawless action and if the advocacy is likely to incite or produce such action.

What is "academic freedom"?

"Academic freedom" is an idea rooted in the idea that the common good depends upon the free search for truth and its free exposition. This includes freedom to research and teach.

"Academic freedom" includes correlative duties. Sac State remains committed to academic freedom-educational institutions can advance knowledge and truth only by being open to the contestation of ideas. This means protecting scientific, literary, artistic, and political speech as a condition of thought. Information is the currency of democracy and is the key to a life in pursuit of knowledge to advance the common good. For more information on "academic freedom", visit the [American Association Of University Professors website](https://www.aaup.org/our-programs/academic-freedom/resources-academic-freedom) (https://www.aaup.org/our-programs/academic-freedom/resources-academic-freedom).

When does speech become harassment?

There is no line that determines when student speech becomes harassment. Hence, we are left to interpret harassment based on general standards. Generally, harassment requires that speech be of the following nature: (1) specifically targeted at a student or group of students, (2) repeated, (3) intimidating or threatening. In addition, for harassing speech to be identified, there generally must be demonstrable harm to a student, damage to a student's property, interference with the student's education, or disruption to the orderly operation of a school. Categories of harassment that are unprotected by the First Amendment include harassment based on gender, disability, religion, race, color, or national origin. Sexual harassment is also generally unprotected by the First Amendment. Sac State remains committed to working to maintain an educational environment free of harassing speech in order to encourage the free exchange of ideas and a robust learning environment.

Is speech on the Internet entitled to the same level of protection as speech in print and other media?

Yes and No. Mostly yes. In principle, the Supreme Court in *Reno v. ACLU* rejected the government's argument that speech on the Internet could be regulated more carefully than radio and television broadcasting. The Court's conclusion was that the Internet should be given the full protection of the First Amendment as it is with print media. One important caveat-speech within certain private forums on the Internet may be subject to private company policies on acceptable speech. The First Amendment pertains to congressional and government regulation of speech, and not the private regulation of speech. So, for example, social media companies may restrict the speech of its users in ways the First Amendment would not permit if such companies were government entities.

REPORTING CONCERNS AND/OR VIOLATIONS

If you believe you have experienced a violation of the Campus Regulations, the Office of Student Conduct and Ethical Development provides advice and guidance to students on answering questions and resolving concerns about their rights, as well as informal and formal grievance procedures. If you believe you have experienced discrimination and/or harassment you should report this to the OEO Office immediately. Sac State is committed to creating a community in which a diverse population can live, learn, and work in an atmosphere of tolerance, civility, and respect for the rights and sensibilities of each individual, without regard to economic status, political views, ethnic/racial background, sexual orientation, veteran status, or other personal characteristics or beliefs. It is the policy of Sac State that no student, employee, volunteer, member of the public, nor recipient of services and/or benefits provided by Sac State shall be subjected to any form of prohibited discrimination in any Sac State programs or activities.

Discrimination of an individual or class of individuals as articulated in State of California, federal, CSU, and Sac State laws, rules, regulations, guidelines, and executive orders is prohibited if based upon:

- Race
- National origin
- Ethnicity
- Age
- Pregnancy
- Religion
- Physical or mental disability
- Color
- Ancestry
- Gender (including sexual harassment)
- Marital status
- Sexual orientation (actual or perceived)
- Medical condition
- Military service during the Vietnam era or other covered service

What should I do if I'm being harassed and/or cyberbullied?

Being a member of the Hornet community means that you may come across things on campus or the internet and social media which you don't agree with - or that specifically targets you, a group individuals, or an ideology. The University makes every effort to make sure all students, staff, faculty, and guests are treated fairly. In that spirit, this guide is intended to help individuals navigate their response when confronted by such events.