

CONTENT

[Front Page](#)[News](#)[Sports](#)[Opinion](#)[Features](#)[Welcome Back](#)[34th Street](#)[Dining Guide](#)[Housing Guide](#)[Classifieds](#)[Archives](#)

INTERACTION

[TheDirectory](#)[Contact Us](#)[Feedback](#)[Letters](#)[Campus Events](#)

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Ed. Dept. addresses speech codes

By Lina Shustarovich
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Through a letter issued in late July, the Department of Education made efforts to clarify questions about speech codes that attempt to prevent harassment, but may also violate the First Amendment on college campuses.

The letter, written by Assistant Secretary Gerald Reynolds of the Office of Civil Rights, stated that its "regulations and policies do not require or prescribe speech conduct or harassment codes that impair the exercise of rights protected under the First Amendment," but rather seek to prohibit discrimination based on sex, race, among other things, in educational programs that receive federal funding.

"Some colleges and universities have interpreted OCR's prohibition of 'harassment' as encompassing all offensive speech regarding sex, disability, race or other classifications," the letter read. "Harassment, however, to be prohibited by the statutes within OCR's jurisdiction, must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive."

History Professor Alan Kors, the co-director and president of the Foundation for Individual Rights in Education, said that his organization was among those that encouraged the OCR to issue a statement on the issue.

"The OCR had gotten some inquiries from universities and members of the public about the policy" and decided that now was a good time to clarify the issue, said Susan Aspey, OCR's deputy press secretary.

"There was some confusion and the letter is a reiteration of the existing civil rights policy," Aspey added.

The letter addressed the extent to which the OCR's regulations are enforced against private colleges and universities, noting that "any private post-secondary institution that chooses to limit free speech in ways that are more restrictive than at public education institutions does so on its own accord and not based on requirements imposed by OCR."

In other words, it argues that the claim that existing speech codes potentially violating the constitution are in place due to OCR regulations is inaccurate.

"To the extent that [private universities] deny [their] students constitutional levels of protected free speech, [they] are doing it on [their] own, not because of the OCR," Kors said.

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Aspey echoed his statements.

"The letter says that if colleges and universities choose to have speech codes they are doing it of their own volition, not because the OCR requires it," she said. "We do not require speech codes. We strongly support the First Amendment, period."

"There is no constitutional right never to be offended," Kors said. "It's not a question of whether someone was offended or not but whether there is severe and persistent and pervasive conduct that denies someone the ability to work, study and profit from an education."

Kors said that although the letter was a good step -- one he would have liked to see 10 years ago -- he believes public universities "will only change when pressured."

In an attempt to bring about these changes, FIRE has begun litigation against public universities that "deny constitutionally protected free speech to their students," he said.

He noted a current case involving Shippensburg University of Pennsylvania, a public university that, he said, "wants to outlaw speech that annoys people" and that "requires a certain attitude on the part of students."

While Shippensburg has filed a motion to dismiss the lawsuit, Kors thinks that FIRE will prevail and win the case.

Although FIRE is currently concentrating on public universities, Kors said that once their policies are brought into the public, they too will probably change their speech codes.

"Most private universities cannot defend in public what they do in private in giving their students fewer rights than those enjoyed by students in community colleges," Kors said.

Penn had its own controversy over speech codes in the spring of 1993 when then-College freshman Eden Jacobowitz yelled at a group of black women who were engaging in a sorority ritual from his high rise window, calling them "water buffalo."

Jacobowitz was charged with violating the University's speech code, plunging Penn headfirst into a sea of criticism from both the media and the academic world.

The charges against Jacobowitz were eventually dropped, along with Penn's speech codes.

The following fall, the University Board of Trustees passed a resolution to protect free speech at Penn, and the judicial system then in place was restructured.

While some colleges may be scared to discontinue their speech codes, Kors said he believes that in Penn's case "the absence of a speech code has led to less racism on campus."

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