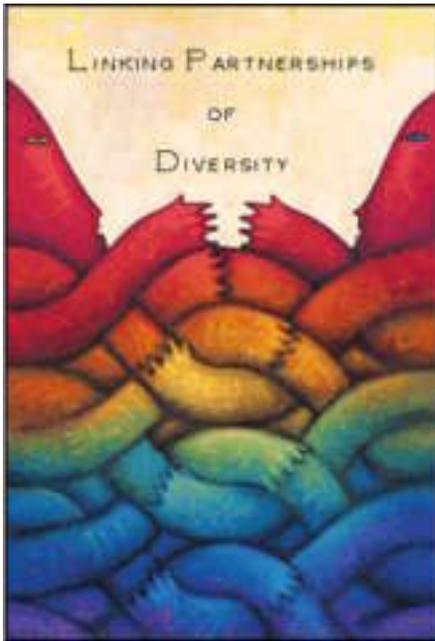


# CAMPUS ENVIRONMENT TEAM

## Linking Partnerships of Diversity



## Campus Environment Team Summary

### I. POLICY STATEMENT SUPPORTING DIVERSITY AND FREE SPEECH

Arizona State University (“ASU” or “the University”) is committed to maintaining hospitable educational, residential, and working environments that permit students and employees to pursue their goals without substantial interference from harassment. Additionally, diversity of views, cultures, and experiences is critical to the academic mission of higher education. Such diversity enriches the intellectual lives of all, and it increases the capacity of a university to serve the educational needs of its community.

ASU is also strongly committed to academic freedom and free speech. Respect for these rights requires that it tolerate expressions of opinion that differ from its own or that it may find abhorrent.

These values of free expression justify protection of speech that is critical of diversity and other principles central to the University’s academic mission. However, values of free expression are not supported but are undermined by acts of intolerance that suppress alternative views through intimidation or injury. As members of an institution of higher education, we must stand against any assault upon the dignity and value of any individual through harassment that substantially interferes with his or her educational opportunities, peaceful enjoyment of

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[CET Policy](#)

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[CET Meetings 2002-2003](#)

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residence, physical security, or terms or conditions of employment (collectively, “protected interests”).

In this spirit, the University adopts an anti-harassment policy, set forth in section III below, which prohibits substantial interference with protected interests, subject to constitutional limitations. In addition, through the work of the Campus Environment Team (“CET,” described in section II below), the University will take steps to foster an environment in which discriminatory harassment is less likely to occur, an environment that is hospitable to all members of the University community regardless of race, sex, color, national origin, religion, age, sexual orientation, disability, or Vietnam-era veteran status (collectively, “status”). At the same time, the CET will work with others in the University to help safeguard freedom of speech and academic freedom.

Through the efforts of the CET and the many other programs now underway, the University truly hopes to achieve these worthy goals. Ultimately, however, these goals will not be fully met unless every member of the University community takes a personal responsibility for fostering an environment in which diversity can be appreciated and in which all students and employees can reach their fullest potential. No committee or other entity can substitute for the good will, freely given, by the individuals who make up this University.

## **II. THE CAMPUS ENVIRONMENT TEAM**

### **A. Creation, Composition, and Support**

1. A Campus Environment Team (“CET”) advisory to the President is established on the ASU main campus. The CET is composed of fourteen members who broadly reflect the campus community. The members shall include at least one faculty member, academic professional, student, classified staff employee, and service professional employee. The President will appoint the members of the CET to staggered three-year terms from candidates nominated by any campus organization or any member of the campus community. The Chair of the CET, who normally

serves a one-year term, will be appointed by the President. The President will also appoint a Chair-elect, who will become the Chair following the year as Chair-elect. The Chair-elect shall serve in the absence of the Chair. The Director of Equal Opportunity/Affirmative Action, the Dean of Student Life, the Director of Intergroup Relations Center, the Director of Residence Life/Student Development, a representative from the General Counsel's Office and the Director, DPS will be ex-officio members of the CET. CET members will receive in-service training to enhance the effectiveness of their activities. After three consecutive unexcused absences from CET meetings by a CET member, the Chair of the CET will recommend to the President that the member be removed and a replacement appointed to the CET.

2. The Office of the President shall set aside appropriate funding for the CET to carry out its duties and fulfill its objectives.

## **B. Mission**

The mission of the CET is to: (1) create and maintain a civil and just campus environment that values diversity, (2) promote respect for all individuals regardless of their status, 3) protect free speech and academic freedom, and 4) promote the pursuit of individual goals without interference from discriminatory harassment.

Beyond its referral activities described below, the CET will not process complaints, nor does it have any authority to impose discipline or to compel attendance at its meetings or cooperation with its efforts. Instead, it will seek to work in tandem with persons who voluntarily approach it for assistance or who voluntarily respond to its invitations for cooperation.

## **C. Specific Objectives**

The specific objectives and activities of the CET are:

### **1. Education**

The CET should support and participate in efforts to

educate the campus community for the purposes of (1) preventing harassment and creating a campus environment that reflects respect for all individuals regardless of status, and (2) preventing infringements of free speech and academic freedom and helping the campus community to understand the University's obligations to protect free speech and academic freedom.

## **2. Monitoring and Reporting**

The CET should monitor the campus environment by gathering data concerning discriminatory harassment and should report such data annually to the University President. Whenever appropriate, the CET should make recommendations to the President with respect to specific policies and programs that will help carry out the CET's goals.

## **3. Referrals and other Responses to Harassment**

### **a. Referral**

Any member of the campus community who believes that he or she has been subjected to discriminatory harassment, as defined by Arizona Board of Regents or University policy, may obtain assistance from the CET to file a complaint or grievance with the appropriate office or committee, or to secure counseling, mediation, or other relief.

### **b. Prevention and Response**

Members of the CET should be "in touch" with the campus environment. CET members may be aware of the potential for discriminatory harassment and may have special knowledge of how to ease tensions when harassment has occurred or is about to occur. The CET should work closely with the University administration to help implement strategies, consistent with free speech and academic freedom, to resolve tensions that may lead to discriminatory

harassment and to mitigate such harassment after it has occurred.

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## **APPENDIX A**

### **UNIVERSITY POLICY PROHIBITING HARASSMENT**

#### **A. Harassment Prohibited**

Subject to the limiting provisions of section C below, it is a violation of University policy for any University employee or student to subject any person to harassment on University property or at a University-sponsored activity.

#### **B. Harassment Defined**

Actions constitute harassment if

1. they substantially interfere with another's educational or employment opportunities, peaceful enjoyment of residence, or physical security, and
2. they are taken with a general intent to engage in the actions and with the knowledge that the actions are likely to substantially interfere with a protected interest identified in subsection (1) above. Such intent and knowledge may be inferred from all the circumstances.

#### **C. Freedom of Speech and Academic Freedom**

1. Neither this nor any other university policy is violated by actions that amount to expression protected by the state or federal constitutions or by related principles of academic freedom. This limitation is further described in the ASU First Amendment Guidelines, the current version of which supplements this policy and is available in the Office of the General Counsel.

#### **C. Relationship to the Work of the CET**

If harassment is discriminatory, it falls within the education,

monitoring, reporting, and referral functions of the CET. Harassment is discriminatory if taken with the purpose or effect of differentiating on the basis of another person's race, sex, color, national origin, religion, age, sexual orientation, disability, or Vietnam era veteran status.

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**APPENDIX B**  
**FIRST AMENDMENT GUIDELINES**  
**UNIVERSITY POLICY PROHIBITING HARASSMENT**

**A. Introduction**

**1. General Goals of the CET**

The CET hopes to focus its attention on education, monitoring, and referral as described in section II of the CET policy. It also performs the important function of providing information to victims of alleged violations of the anti-harassment policy stated in Appendix A of the policy. However, the primary goal of the CET is to encourage a harmonious campus environment in which at least discriminatory harassment is unlikely to occur. If it succeeds in this goal of preventing at least some forms of harassment, disciplinary procedures should play a relatively minor role in the University's efforts to maintain a campus environment that enables all to learn, work, or reside on campus without serious interference.

Whenever appropriate, University officials should respond to harassing behavior through mediation or by counseling and educating the wrongdoer. However, when violations do occur, University officials may seek immediate discipline.

**2. The University's Legal Obligations**

As a university and employer, ASU has moral, legal, and to a limited extent contractual obligations to maintain reasonable educational, residential, and working environments that permit students and employees to pursue their goals without substantial interference stemming from harassment. Additionally, as a state university, ASU has a constitutional obligation under the fourteenth amendment to

provide equal educational and employment opportunity and thus to refrain from invidious discrimination. Related legislation reinforces these obligations. Consistent with these obligations, ASU is committed to the goal of achieving diversity within the campus community. Principles of academic freedom and constitutional guarantees of free speech, however, limit the University's ability to use restrictions on speech as a means of promoting diversity and opposing harassment and discrimination. Thus, as stated in section III of these policies, the anti-harassment policy does not restrict speech protected by state and federal constitutional law or by principles of academic freedom.

The following notes and illustrations provide a general guide to the relevant issues. They are intended to reflect current principles of constitutional law, primarily federal. These guidelines also seek to anticipate how the state constitution will apply to speech in the university context, particularly because it may protect speech to a higher degree than does the federal constitution. State constitutional law in this area, however, is in an early state of development and does not currently provide detailed guidance beyond federal constitutional law. The University will closely monitor developments in both state and federal constitutional law and revise these guidelines accordingly. Finally, these guidelines also reflect long established principles of academic freedom, such as those set forth in the 1940 Statement and in subsequent statements of the American Association of University Professors.

These guidelines certainly do not answer every question that may arise under the anti-harassment policy, but they should remind the University community to be sensitive to the need to avoid a "chilling effect" on academic inquiry and the expression of ideas. The purpose of the guidelines is to provide ample breathing room for protected speech. Accordingly, in any case that presents a serious question regarding freedom of expression, anyone seeking to

administer the anti-harassment policy should consult the General Counsel's Office before taking any action that might interfere with protected speech. In appropriate cases, the General Counsel's Office may seek a judicial adjudication before authorizing other action.

### **3. The University Does Not Necessarily Endorse Ideas Conveyed in Protected Speech**

Because the first amendment protects even highly offensive speech in some contexts, readers may find some of the examples in these guidelines to be offensive. By using such examples for illustration, the University does not encourage offensive or insensitive speech; it simply acknowledges the constitutional limitations on its ability to regulate such speech. Indeed, the University is free to express its own views opposing or commenting on offensive speech, even though it cannot restrict the speech.

## **B. Definition of Discriminatory Harassment**

As further illustrated in the following subsections, section III applies to conduct or expression if it substantially interferes with another's educational opportunities, peaceful enjoyment of residence, physical security, or terms or conditions of employment and if it is not protected by constitutional guarantees of free speech or principles of academic freedom.

1. Some injurious or intimidating conduct, such as assault or battery, normally has no significant speech content and can be regulated to protect other important interests without infringing upon the right to free speech or academic freedom. For example, unless clearly trivial in scope, and absent some mitigating circumstance such as inadvertence, self-defense, or consent, section III or other University policies normally would apply to such conduct as:
  - a. touching a person in a manner that a reasonable person would view as hostile, offensive, or intimidating;
  - b. taking some action that causes a person to reasonably fear imminent hostile, offensive, or intimidating physical contact;

- c. damaging, defacing, or destroying University property or the property of another; or
- d. engaging in extreme and outrageous conduct for the purpose of inflicting severe emotional distress upon another person.

Even speech, or conduct combined with speech, can be regulated if it is merely a tool to advance some activity that is unlawful under valid laws independent of this anti-harassment policy. In many cases, the anti-harassment policy has only incidental effects on the communication of ideas, because it is aimed at noncommunicative acts and effects touching upon matters in which the University has a great interest. For example, section III or other University policies normally would apply to the acts of:

- e. communicating a threat of physical harm that causes a person to reasonably fear imminent hostile, offensive, or intimidating physical contact;
- f. communicating in a manner that damages, defaces, or destroys University property or the property of another; or
- g. inciting violence or other acts that would be unlawful independent of this policy, if the actor or speaker encourages immediate action and if the conduct or speech is reasonably certain to result in imminent violence or other unlawful action. Such conduct or speech could include:

- 1. directing another person to engage in a battery as defined in subsection 1(a) above, or
- 2. closely confronting a person or persons with threatening or intimidating remarks if in light of all the circumstances the remarks would be reasonably certain to provide a violent breach of the peace.

- 1. As a further example of harassment described in section B(2) above, the anti-harassment policy also applies to speech or conduct by a University official or other state

actor that is merely a vehicle for substantially interfering with a protected interest through discrimination prohibited by the fourteenth amendment or related statutes, such as:

- a. a professor's stated requirement in a mathematics class that all female students sit in the back of the class on the stereotyped assumption that each of them has a low aptitude for learning mathematics; or
  - b. the psychological equivalent of requiring the female students to sit in the back of a mathematics class, such as repeated statements by the mathematics professor that the female students in the class should not hope or try to match the performance of the male students.
2. Other expression or conduct may be covered by section III, or may be protected speech, depending upon the context of the expression.
- a. The expression even of ideas that are extreme or offensive to many listeners is protected and does not amount to unlawful harassment if offered in a suitable time, place, and manner, such as the expression of ideas for public debate
    1. in a classroom discussion or a related discussion outside the classroom, if the expression is reasonably germane to the academic subject matter of the course or classroom discussion;
    2. in academic scholarship or other publication or in a related discussion; or
    3. in a campus forum, such as an auditorium, a public gathering place outdoors, or a public bulletin board.
  - b. Even when expression and related conduct is protected by the first amendment, the University can impose reasonable regulations on the time, place, and manner of the presentation of the expression. For example, the University could compel students to move or postpone an unscheduled rally that disrupts a meeting or rally held by another group of students who properly reserved the time and location for its

own function.

- c. Similarly, even though similar speech might be protected if presented in another forum, threatening or intimidating speech or related conduct may be subject to regulation if it is forced upon specific individuals in a non-public forum who are unwilling targets of the conduct or speech and who cannot reasonably avoid it, such as:
  1. the unwelcome posting of threatening neo-Nazi symbols on the dormitory door of a Jewish student for the purpose of intimidating the Jewish student;
  2. the act of knocking the books out of the hands of a student each time he tries to enter a classroom; or
  3. the verbal psychological equivalent of knocking the books out of the student's hands, such as repeated statements at the doorway to a classroom that the student should not enter the classroom.

## **B. Commentary and Illustrations**

### **1. Relationships Among Multiple Goals**

The anti-harassment Policy, including these interpretive guidelines, reflects an effort to accommodate diverse University goals and obligations. Members of the University community who have a special allegiance to one goal to the exclusion of others may view the policy as an unacceptable compromise of that goal. The University, however, must take a broader view of its multiple obligations.

In many cases, interests in promoting a hospitable campus environment will be perfectly consistent with interests in free expression and academic freedom. For example, suppose the Director of the School of Art directs his or her faculty to discourage art students from creating even non-obscene art that might be construed as homoerotic. As a result, faculty could suffer a loss of academic freedom,

students could suffer loss of freedom of expression, and some students and faculty might suffer serious interference with their educational opportunities or terms or conditions of employment. Administrative measures to eliminate the Director's policy would tend to restore interests in free expression and academic freedom as well as interests in maintaining a campus environment free of harassment. Similarly, suppose that a campus official responsible for preventing and investigating crimes unreasonably detains and searches a minority student on his way to class, causing the student to miss all or part of his class. Suppose further that the detention and search is unreasonable because the official acts largely on the basis of his stereotyped assumptions about the student's propensity to commit crime because of the students' race and ethnic attire. Such conduct by the official might violate the anti-harassment policy by substantially interfering with the student's educational opportunities. It would also place a burden on the student's constitutional interests in being free of unreasonable searches and seizures, in expressing himself through T-shirt slogans or other clothing, and in being free of racial discrimination. A University policy that sought to prevent such conduct could help vindicate all of these concurrent interests.

Even when these interests do not so clearly coincide, the anti-harassment policy primarily seeks to regulate conduct with no significant speech component, raising no first amendment problems. In some cases, however, efforts by the University to maintain a hospitable campus environment may raise questions about the University's obligations to preserve freedom of speech. These interpretive guidelines are designed to assist an administrator in addressing those questions and in avoiding any violation of state or federal constitutional provisions protecting speech.

The University's constitutional and statutory obligations to provide equal educational and employment opportunities

may require it to regulate some conduct and speech. For example, suppose a professor threatens to lower the grades of female students unless they submit to his sexual demands. Although the threats are conveyed through speech in the most general sense, the constitutional protection would not extend to them, because the threats are simply a tool for illegally coercing sexual favors. Moreover, the University may in some circumstances be responsible under the fourteenth amendment and related legislation for the professor's harassment, particularly if University officials adopt or implicitly ratify the harassment as University policy by failing to intervene in the harassment after receiving notice of it. Thus, in some circumstances, University regulation of speech and conduct is not only permitted, it is the University's legal obligation, notwithstanding interests in free speech and academic freedom.

This could extend to harassment of students by fellow students: if University officials receive notice that students are harassing another student on the basis of a classification protected under the fourteenth amendment or related legislation and fail to take reasonable steps to intervene, they may be guilty of maintaining unequal educational opportunities, in violation of the fourteenth amendment and related legislation. On the other hand, if the University restricts protected speech, it will violate the first amendment.

Thus, the enactment of the University anti-harassment policy should not be viewed as a rejection of interests in free speech; nor should the recognition of first amendment limitations be viewed as a diminution of the University's commitment to diversity. The University has a wide range of legal responsibilities that extend to equal opportunity, to freedom of expression, and to maintenance of reasonable educational, working, and residential environments for all members of the campus community. The University will be faithful to all of these obligations if it pursues its goals of

diversity, equal opportunity, and non-harassment in a way that fully respects rights to free speech and academic freedom. In some cases, as illustrated by these guidelines, interests in free speech will limit the University's ability to pursue other goals. In those cases, the University is fully committed to honoring those limits.

**2. Defacement or destruction of property**

Just as a person may burn his own flag but not one stolen from another, a student would be free to display a symbol on his T-shirt but could be disciplined for spray-painting the symbol on a classroom wall or over a poster owned and displayed by another. As discussed in section D(3) below, this presumes that the University would mete out discipline for any defacement or destruction of property, regardless of the presence, absence, or content of any expression associated with it.

**3. Free Speech and Academic Freedom in an Academic Context**

Students, faculty, and others are entitled to express any view in an academic context, even if the content of the speech offends or even shocks some of the speaker's listeners. For example,

- a. a student or instructor in a history, sociology, or philosophy class is free to express the shocking view that Hitler's programs and policies during World War II were morally defensible or that slavery and apartheid are just institutions;
- b. a staff member could express the view in a campus radio talk show that laws mandating wheelchair access in public buildings should be repealed and that persons who use wheelchairs should be banned from campus;
- c. a professor could write an article arguing that women generally have a lower aptitude than men for learning mathematics;
- d. a student could write a letter to the editor of a campus newspaper arguing that Native Americans did not

belong at the University and should stay on their reservations; or

- e. a student could publish his own campus journal in which he argues that homosexual lifestyles are immoral and contrary to religious teachings.

Those who disagree with such speech can, among other things, silently reject the view or respond to it with more speech in such form as class discussion or a letter to the editor of a campus newspaper. However, the University cannot, and should not, seek to regulate the content of intellectual debate.

Nonetheless, like many residential and employment environments on campus, educational facilities are not necessarily full public forums. A university administrator who has assigned a mathematics instructor to teach calculus can demand that the instructor teach that topic rather than use the classroom as a forum for expressing his unrelated political views regarding the Persian Gulf War.

Similarly, for pedagogical reasons, a classroom instructor can exercise a high degree of control over the process of communication in his or her class. The instructor can demand, for example, that students raise their hands and be recognized before speaking, that they speak to the topic raised by the instructor, that they address the instructor rather than speak among themselves, and that they adopt a classroom demeanor that does not disrupt the educational activity of the moment. Although deviations from such rules set down by an administrator or instructor would not necessarily violate university policy, the examples serve to help illustrate the scope of interests in free speech and academic freedom.

#### **4. Time, Place, and Manner Restrictions on Speech**

Subject to certain narrow exceptions outlined in section B above, a person enjoys the right to express even offensive ideas in such forums as (1) a written statement posted at appropriate sites after getting approval on a content-neutral

basis from the appropriate University office, or (2) a private or public meeting staged at a room or other site properly reserved on campus. Those offended by such expression can, among other things, ignore the speech, avoid it, or respond to it with more speech; however, the University cannot ban the speech simply because it offends others. On the other hand, the University may adopt content-neutral restrictions on the time, place, and manner of speech to avoid conflicts and disruptions. For example, it could require presentations at West Hall Lawn to be sufficiently limited in scope as to avoid obstructing foot traffic on the bordering sidewalks and to be sufficiently limited in volume as to avoid disrupting work or study in the library or in nearby offices or classrooms. Similarly, if a campus organization has reserved a time and location on campus to celebrate the birthday of Martin Luther King, Jr., the University could prohibit another group that did not reserve the same time and location from disrupting the celebration with a conflicting rally or speech. This interest in freedom from disruption may be enhanced when the event is scheduled inside a room, thus generating expectations of separation from those who do not identify with the goals of the event. It may be stronger still when the event is open only to invited participants, thus generating expectations of privacy.

Time, place, and manner restrictions must be reasonable. For example, if the University prohibits students from posting any notices or affixing any other materials on the hallway walls and exterior doors of dormitory rooms and in the common bathrooms, it must provide other reasonable areas for the posting of public notices. Similarly, if a group of students has reserved West Hall Lawn for a presentation celebrating the birthday of Martin Luther King, Jr., University officials could not prohibit other students in an adjacent area within eyesight of West Hall Lawn from carrying picket signs or handing out leaflets that disparaged King, so long as they do not disrupt the scheduled

celebration. Moreover, sometimes those expressing ideas at a rally invite debate and reactions from listeners; in such cases, the expression of competing views in the same time and place would not be expression in an unsuitable time, place, or manner. Nonetheless, such expression could be subject to university regulation if it amounted to exercise of a “heckler’s veto,” which drowns out the scheduled presentation or otherwise prevents it from proceeding.

#### 5. **Slurs and Epithets**

Derogatory terms may amount to harassment or may be protected speech, depending upon the context. For example, a drama student writing a play about racism in America would be free to use the ugly, disparaging term “nigger” in her script to drive home her points about racism. Indeed, if he or she were willing to lose credibility and to weather the outpouring of criticism and counterspeech, a person would be free to use such a term in a speech disparaging an ethnic group, gender, or sexual orientation.

On the other hand, a student would violate university policy by referring to another student by the term “nigger,” “stupid jerk,” or other epithet in such a manner or in such a context as to put the listener in reasonable fear of imminent physical harm. For example, suppose that one or more students stopped an African-American student in an isolated area of campus at night and invoked racially disparaging terms in a threatening manner. In light of the long history of racial violence in our society, the racially disparaging terms in this context could very well put the African-American student in reasonable fear of imminent harm. Under that analysis, the speech and conduct could be regulated without infringing upon interests in free speech. Because of the high incidence of violence against women and against homosexuals in our society, this analysis might apply with particular force also to disparaging terms directed to women or homosexuals, particularly in a volatile context that presents a risk of physical harm to the target of the speech. Other kinds of confrontations, such as a woman

referring to a man as a “male chauvinist pig,” or a student calling a professor a “windbag,” might not place the listener in reasonable fear of imminent physical harm as frequently, because the incidence of violence historically associated with such disparagement is relatively low. However, the immediate context is more important than the actual language, status of the parties, or historical context. Thus, if the term “male chauvinist pig” or “windbag” were communicated in a threatening manner and in circumstances underscoring the viability and immediacy of the threat, the speech and conduct could be regulated. Other kinds of cases illustrate further that the context may be more important than the term used. For example, in a public forum that unwilling listeners are free to avoid, a speaker has a right to make the highly offensive statement that “women are whores”; the speaker has no duty to make his or her voluntary listeners comfortable or to treat them equally. In another context, however, even the less offensive term “girl” could contribute to harassment. For example, suppose that a professor in a political science class addressed his male students with great respect, but that each time a female student raised her hand the professor paused and said condescendingly: “Oh, no; let’s see what the girls have to say.” Particularly when frequently repeated, such condescending speech might provide unequal educational opportunity for women, thus violating the fourteenth amendment and federal legislation such as Title IX. In these circumstances, the University could constitutionally regulate the speech.

#### **6. Intent and Foreseeability**

The general intent requirements in section III(B)(2) of the anti-harassment policy excludes inadvertent harassment, such as purely accidental physical contact. Additionally, the requirement of knowledge of likelihood of serious interference defines a foreseeability test that helps reinforce protection for speech. For example, it helps to ensure that section III distinguishes merely offensive language from

threats and intimidation.

## **C. Role of the CET**

### **1. Relationship to Anti-harassment Policy**

In unusual circumstances, actions might constitute harassment only if discriminatory. For example, suppose that a law professor regularly employed a withering and sometimes humiliating inquisitorial teaching method in class, causing all students to feel uncomfortable and even intellectually threatened. Although others might question the efficacy of her pedagogy and might encourage her to alter it, the instructor's teaching method would generally lie within her academic freedom and would not constitute harassment unless it became physically or emotionally abusive. The same teaching method, on the other hand, would be unquestionably inappropriate if the instructor deliberately used it to discriminate against some students on the basis of an invidious classification. Thus, if the instructor employed the inquisitorial method to humiliate Asian students but engaged in a more popular intellectually collaborative approach with all other students, she would be engaging in state action that deprived some students of equal educational opportunities, in violation of state and federal laws and in violation of the anti-harassment policy. In sum, discriminatory conduct by a state official may be harassing even though the same conduct may be only questionable or offensive if applied equally to all. In most cases, however, the anti-harassment policy applies to substantial interference with protected interests regardless whether based on invidious discrimination. Nonetheless, it recognizes that discriminatory harassment presents special problems warranting study, educational efforts, and referral services, all of which are provided by the CET. Harassment is "discriminatory" if it is directed toward a person because of that person's "status" as defined in section III(D) of the anti-harassment policy. Discriminatory harassment presents special problems because it implicates the university's obligations under the

fourteenth amendment and related laws and because it has a high potential for raising tensions on campus generally.

## 2. **Action Because of Another's Status**

As assault by several students upon African-American students on campus would be discriminatory harassment if the assault was motivated by the assaulting students' racial hatred of African-Americans or even by their racist assumption that the African-American students, solely by virtue of the color of their skin, must be the same African-Americans who had earlier initiated an altercation with the assaulting students.

On the other hand, a brawl between fraternity members and visitors to campus motivated solely by a dispute over rights to park on fraternity property would not be **discriminatory** harassment if it did not relate to any protected status.

Although the anti-harassment policy would apply to the assaults and batteries, the CET would not be responsible for addressing the problem.

## 3. **University Disciplinary Action**

By focusing the efforts of the CET on discriminatory harassment, section III does not suggest that harassment would bring stiffer penalties solely because of the content of speech accompanying the harassment. For example, suppose that student A defaces property leased by another student by spray painting the slogan "Beat UofA" on the door of the other student's dormitory room, that student B defaces the door by spray painting a swastika on it, and that student C defaces the door by spraying black paint on it in a random pattern that does not suggest the expression of any idea other than the intent to accomplish the defacement. If all other factors are equal, students A, B, and C should receive the same punishment for their violations of school policies against interference with physical security or with peaceful enjoyment of residence; otherwise, one might be penalized more harshly because he or she engaged in speech, or engaged in a particular kind of speech, while also engaging in unquestionably objectionable conduct. This

principle would not prevent the University from reacting in other ways that differentiated between the three defacements, such as by expressing its disgust for Nazism but not for ASU sports supporters, or by paying University personnel overtime to remove the swastika immediately and letting personnel remove the other defacements in the normal course of work.

Moreover, the University could punish a discriminatory violation of policies more harshly than other violations of policies, if the violation were more egregious for reasons other than the pure speech or thought associated with the violation. For example, if the University is experiencing serious and continuing problems with gangs of students assaulting Arab students, the University could punish such assaults more harshly than it would an isolated assault over a parking space. In this case, elevated punishment would be justified by the University's need to react to a serious and pervasive problem of violent racial or ethnic origin discrimination and not solely by the University's disagreement with the content of the speech uttered by the students as they engaged in their assaults.

#### **4. Activities of the CET**

The efforts of the CET to promote diversity and non-harassment are consistent with freedom of speech. In effect, the CET simply enters the marketplace of ideas with its own speech, its efforts to collect information, and its referral activities.

##### **a. Examples of Educational Activities**

Following are examples of possible educational activities of the CET:

1. a public awareness program to inform the campus community of the existence of the CET, its purpose and the University's policy prohibiting discriminatory harassment;
2. a program to train counselors, resident assistants, employee assistance personnel, student development administrators, staff relations

personnel and ombudspersons to deal with harassment;

3. voluntary or mandatory cultural sensitivity workshops for all administrators and campus police officers;
4. voluntary or mandatory student orientation sessions on diversity;
5. a program to design and disseminate brochures, posters, and related materials that encourage members of the University community to appreciate diversity and to report harassment;
6. collaboration with the administration, curriculum committees, and Faculty Senate to develop and implement courses on diversity;
7. a program to offer incentives and assistance to faculty to develop new courses and modify old courses to include information on diversity;
8. a speaker's program on cultural diversity available to all organizations within and outside the campus community.

**b. Examples of Monitoring Activities**

Following are examples of possible monitoring activities of the CET:

1. distributing a questionnaire on the campus climate, conducted periodically to assess general feelings and attitudes of faculty, staff, and students;
2. recommending that exit interviews of University employees who leave their jobs include questions about the campus environment;
3. conducting studies on specific topics, either periodically or following a significant act of harassment; and
4. sponsoring public hearings on the campus environment and how it can be improved.

**c. Encouragement of Free Speech**

In addition to voicing its own opinions in the

marketplace of ideas, the CET can help safeguard the freedom of speech and academic freedom of others on campus with its educational, monitoring, and referral activities. The goals of promoting diversity, preventing harassment, and safeguarding free speech are so closely intertwined that they often must be addressed together. Following are examples of ways in which the CET can help protect freedom of speech and academic freedom while also promoting diversity and preventing harassment:

1. arranging for broad distribution of these policies and first amendment guidelines;
2. sponsoring or participating in workshops or other educational activities on issues of free speech and academic freedom;
3. ensuring that university staff and administrators are aware of issues of free speech and academic freedom when the CET consults with them regarding particular incidents or issues on campus;
4. when appropriate, directing the attention of potential complainants to issues of free speech and academic freedom when they approach a member of the CET for advice or referral.
5. informing persons that they have no obligation to meet or cooperate with the CET when a CET member invites them to participate in a CET activity.

#### **D. Severability**

These guidelines supplement the anti-harassment policy and are designed to give the policy definition and to restrict its scope within constitutional limits. If any portion of the policy, including a portion of these guidelines, is adjudicated to violate state or federal laws, the University intends to abandon the illegal portion and to maintain the severable legal portions.

#### **E. Relationship to other University or Regents Policies**

These policies and guidelines supplement provisions in the

Student Code of Conduct governing various forms of harassment. In addition, ASU policies against sexual harassment are more detailed on that topic than is this general anti-harassment policy and should be consulted for more specific standards and procedures governing sexual harassment claims. Conversely, under section III(C) of the CET Policies, limitations based on free speech and academic freedom apply to all university policies. Thus, these first amendment guidelines may help to define such limitations not only to section III of these policies but also to provisions of the Student Code of Conduct, to ASU's specific sexual harassment policies, and to any other policies that raise issues of free speech and academic freedom.

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