

# **Policy on Freedom of Speech and Expression**

Augustana University

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Approved by the President's Council on August 23, 2022

**Note:** The original version of this policy proposal, which was passed by Co-Curriculum Council and given initial consideration by President's Council, is available [here](#). The following is a reordered and edited version of that document.

## I. Statement on Freedom of Speech and Expression

Inspired by Martin Luther, who advanced his ideas despite the risk of imprisonment and excommunication, and by countless individuals who have spoken their minds in the face of determined opposition, Augustana University proudly affirms its commitment to freedom of speech and expression and to the forms of civil discourse that enable democracy to flourish. Augustana's commitment to fostering a diverse and inclusive campus community calls for an equally strong commitment to freedom of speech and expression.

We hold that freedom of speech and expression is a human right, recognized as such in the Universal Declaration of Human Rights and the United States Constitution. This right should be circumscribed only in rare cases by governments, universities, or other institutions.

Augustana's commitment to freedom of speech and expression advances the University's mission to challenge the intellect and foster integrity through spirited and respectful encounter and authentic engagement with difference. We hold, in addition, that freedom of speech and expression is essential to the pursuit of wisdom, to genuine understanding among diverse individuals, to defending justice and opposing injustice, and to the creation of art, literature, and music.

We celebrate our duty as educators to model the habits of responsible free inquiry, by ensuring that our campus and its classrooms are a place where individuals of good will can express and critically discuss a wide range of positions without fear of ostracism or retribution.

Standing in solidarity with other leading academic institutions, we hereby endorse the following findings of the Committee on Freedom of Expression at the University of Chicago:

*Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University . . . fully respects and supports the freedom of all members of the University community "to discuss any problem that presents itself."*

*Of course, the ideas of different members of the University community will often and quite naturally 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 deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.*

*The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University's commitment to a completely free and open discussion of ideas.*

*In a word, the University's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University's educational mission.*

*As a corollary to the University's commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.<sup>1</sup>*

## **II. Introduction to Speech and Expression Policies**

The exercise of free speech and expression, including through demonstrations, marches, rallies, social media posts, leafleting and picketing, has long been recognized as a legitimate form of self-expression in university communities. At times, this exercise of speech and expression results in exchanges that are controversial, deeply passionate, and uncomfortable. However, exposure to important social issues and the political process remains crucial to civic engagement. To this end, Augustana University is committed to protecting the free speech of all individuals authorized to use its facilities or invited to participate in university activities. Furthermore, it is committed to promoting and modeling civil dialogue for all its constituents.

The guidelines presented here represent a desire to protect freedom of speech and expression while preserving the regular and essential operations of the University. They include rules for conducting speech and expression activities on university premises and policies for supervising those activities. Together, these guidelines aim to balance the exercise of free speech and expression by students, faculty, and staff against the practical need to minimize threats to the health, safety, and welfare of individuals and property.

While committed to the principles of academic freedom and freedom of speech and expression, Augustana University itself need not remain neutral in regard to ideas or beliefs expressed on campus. The University enjoys its own freedom to respond or communicate the institution's values and principles.

## **III. Speaker Policy**

The process for planning and management of events involving speakers and other related activities has many purposes: to assist students, faculty, and staff organizers in hosting successful events; to encourage timely publicity and promotion of events; to coordinate scheduling so that events do not have an adverse effect on other university-sponsored programs or place an undue burden on institutional resources to provide the necessary support; to ensure that invited visitors (i.e., speakers, presenters, and the event's

<sup>1</sup> Full report available at <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

attendees from the campus community and the public) have a positive experience; and to consider measures necessary for the safety of all participants at events.

#### A. The Speaker Review Committee

The Speaker Review Committee will have ten members, as follows, with the representative from Academic Affairs serving as convener:

- Two students from the Augustana Student Association's Senate.
- Three faculty members, appointed by the Provost.
- One representative from each of the following administrative units: Dean of Students, Academic Affairs, Campus Safety, Business Office, and Strategic Communications.

The Committee will ensure equal opportunity and access to all requested speakers/events and will not favor one over another based on the content of expression.

#### B. Major Speakers

Major speakers are those individuals who are likely to draw a large crowd, provoke significant protests, and/or require significant outlay of University resources (including security). Requests to invite such speakers will be submitted online to the Speaker Review Committee, which will then make recommendations to the Dean of Students and the Provost.

Requests must be submitted with as much advance notice as possible, ideally at least one month prior to the anticipated event date. Requests should provide confirmation of the availability of the venue and a detailed budget. In addition to a speaker's fee, costs associated with travel, hospitality (housing and food), security services, and staging (lighting and sound) are likely to be necessary additions to the budget. There may be exceptions to the advance notice timeline in certain circumstances. Exceptions must be approved by the Associate VP for Integrated Learning and Student Life.

Once a request has been received, the Speaker Review Committee will have up to two weeks to deliberate and offer its recommendations. The Committee will assess the event's potential for disruption by researching the speaker's prior engagements. The committee will recommend contingency plans for speakers who are likely to be disruptive or who are likely to receive a disruptive response.

Most major speaker events will also require a binding contract between the speaker and Augustana University. No student organization is authorized to sign a contract or commit university-controlled funds without approval from the student organization's advisor.

#### C. Other Speakers and Entertainers

Normally, the following types of speakers and performers will not require review or approval: guest speakers in a classroom setting, individuals invited to speak at a meeting of an ASA-recognized club or organization, and musicians and other entertainers performing for small audiences. However, if the speaker or entertainer has a history of disrupting day-to-day university operations, or if additional university resources (including security) are needed to support an event, the event organizer should contact the Speaker's Review Committee for guidance. Faculty are encouraged to notify their respective Division Chair or Dean when guest speakers are invited into a classroom setting.

#### D. Reserving Campus Venues

Campus venues are normally reserved on a first-come, first-served basis. However, Augustana University reserves the right to restrict speech to certain places, based not on the content of that speech but rather on safety concerns and concern for the well-being of the campus community.

### E. Food and Beverage Services

Catering for events must be provided by the university's dining services. Charges are based upon the current pricing schedule.

### F. Solicitation

If a non-university group (representing a campaign, a political entity, or other organization) seeks to demonstrate on campus, or influence or incite action or interfere with normal operations on campus, without permission from the Conferences and Scheduling Office, then Campus Safety, in consultation with the Dean of Students and Provost, will inform the organization to cease and vacate the campus premises.

## **IV. Other Policies Regarding Speech and Expression**

### A. Table Space in the Commons

The use of the tables located near the information desk in the Morrison Commons are reserved through the Conferences and Scheduling Office. Tables are available free of charge to on-campus organizations, as well as to approved non-university groups that are sponsored by a campus office/department or a student organization. Non-university groups are limited to reserving a table once per month. Table use is granted only as space is available. Tables must be staffed at all times during the requested use period and cannot be left unattended as a “display” table.

### B. Chalking

Chalking for the purpose of promoting an activity or event is permitted only on campus sidewalks. Chalk must be water-soluble "sidewalk" chalk that wears away with water or foot traffic. Chalking is not permitted on buildings or on the interior of campus facilities. The following guidelines further clarify appropriate chalking on the Augustana University premises.

- Consistent with other university policies, chalked advertising may not promote alcohol, drug, or tobacco products. Messaging of an explicit sexual nature is prohibited, as is vulgar language and material that is demeaning or degrading to an individual or group.
- Students are expected to be respectful of others' chalked messages. Removal of another's chalked message or chalking over their announcement is prohibited and could result in a fine and a code of student conduct violation.
- The university will clean up chalked areas after a reasonable period of time or once the event has occurred. The university may also remove chalking deemed to be in violation of this policy.
- Students and/or organizations responsible for chalking that damages university property or that requires unreasonable clean up by university staff will be charged for the cost of removal.

### C. Protests and Demonstrations

Freedom of expression necessarily includes the freedom to engage in non-disruptive counter-speech or protest. Members of the University community are free to contest ideas expressed on campus and to criticize speakers who have been invited to present their views. In so protesting, however, members of this community may not obstruct or otherwise interfere with the freedom of others to invite speakers or engage in their own permitted acts of expression. Augustana University is committed not only to promoting the lively and fearless freedom of debate and deliberation, but also to protecting that freedom when others attempt to restrict it. It is an essential part of the University's educational mission to educate members of the campus community about these fundamental principles, and to foster the community's ability to engage in debate and deliberation in an effective and responsible manner.

Any individual who believes that a demonstration or demonstrator(s) violates university policies and/or presents a serious, substantial, and imminent risk of harm should contact Campus Safety and request that an officer be dispatched to the site of the demonstration. Campus Safety personnel, along with Associate VP of Safety and Logistics and the Dean of Students, will determine whether the demonstration or demonstrator(s) is in violation of policies or presents a substantial risk.

If so, university officials will obtain the identity and affiliation of the individual(s) involved while advising such person(s) or organization(s) that the demonstration both violates these guidelines and poses a serious, substantial, and imminent risk to the safety or security of the campus community. The university official will advise the person(s) or organization(s) to immediately cease and desist and inform them of the likelihood of the imposition of discipline related to conduct at the demonstration.

If the demonstrators fail to comply, the Associate VP of Safety and Logistics and the Dean of Students shall communicate to the President their determination that the demonstration presents a serious, substantial, and imminent risk. The President will consult with the appropriate university constituents in determining whether Campus Safety personnel can safely and effectively remove or ameliorate the risk(s) without the assistance of external law enforcement. While it is desirable that the President consult with members of the campus community to the maximum extent practicable in determining whether to involve external law enforcement, these guidelines in no way prohibit the President from acting immediately and expeditiously whenever, in their judgment, the demonstration presents a serious, substantial, and imminent risk to the campus community.

Following the event, the Associate VP of Safety and Logistics and the Dean of Students will each prepare a report to the President detailing the situation and their response, including the identity of the demonstrators whose actions created such risk. These reports will serve as the basis for the imposition of any related disciplinary actions. The President will consult with the Dean of Students and Provost before imposing any discipline or initiating any criminal or civil action.

## **V. Judicial Proceedings Following Policy Violations**

Violations of the speech and expression policies are also violations of the university Code of Conduct. The Code of Conduct indicates that when members of the university community are alleged to have committed a violation, they will be accorded the due process to which they are entitled. Members of the university community are granted a fair hearing, they are fully advised of any charges against them, they are afforded ample opportunity to respond to accusations, and they are given a clear explanation of the right to an appeal.

Individuals who are found to have violated these guidelines or other university policies bearing on freedom of expression will be subject to a range of penalties.

For students, the penalties indicated in the Code of Conduct are:

1. A warning that repetition of the wrongful conduct may be the cause for more severe sanctions following a clear instruction to desist.
2. Restitution for damage or loss to either university or individual property.
3. Placing the student on probation, so that a further violation of university rules and regulations while on probation may result in suspension or expulsion.
4. Restriction in the use of certain university facilities or the right to participate in certain activities or privileges for a specified period of time.
5. Suspension from all functions of the university for a stated period, and the possible requirement of a petition for readmission.

6. Expulsion from the university for violations judged to be so serious that the student is informed that readmission will not be considered.

For faculty and staff members, the range of applicable penalties includes a written warning, probationary status, suspension (including suspension of salary), and/or the termination of appointment.

Depending on the gravity of the violation, the university may, at its discretion, file a criminal or civil complaint with the appropriate public authority.

## APPENDIX A. PRINCIPLES OF WHAT AUGUSTANA CAN DO AND CANNOT DO

Augustana University supports the following guidelines in decisions about speech and expression on campus. They are adopted from Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (New Haven: Yale University Press, 2017).

	What Augustana Can Do	What Augustana Cannot Do
<b>Censorship</b>	<p>Augustana can censor or punish speech that meets the legal criteria for harassment,<sup>2</sup> true threats,<sup>3</sup> or other speech acts unprotected by the First Amendment.</p> <p>Augustana can create general content neutral regulations (such as time, place, and manner restrictions) governing on-campus expression such as posting handbills or chalking.</p> <p>Augustana also reserves the right to punish those who interfere with chalking or other forms of free expression.</p>	<p>Augustana cannot censor or punish speech merely because a person or group considers it offensive, hateful, or emotionally harmful.</p> <p>Augustana cannot censor or punish some speakers, but not others, for putting up handbills, writing messages in chalk, or engaging in similar acts of expression.</p>

<sup>2</sup> There are five elements, according to the Equal Employment Opportunity Commission (EEOC) that must be met for a claim of hostile workplace harassment: a) verbal or physical conduct of a sexual or sex-based nature, b) conduct is unwelcome, c) conduct is directed against an individual based on his or her sex, d) conduct has purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment, and e) the employer knew or should have known of the conduct and did not take adequate action to stop or prevent it. Title VI of the 1964 Civil Rights Act prohibits recipients of federal funding from discriminating based on race and race-based harassment is subject to the same five-part test. <sup>3</sup> True threats cause another person to reasonably fear for their physical safety. See Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus* (New Haven: Yale University Press, 2017), 117.

<p><b>Destruction of Property</b></p>	<p>There is no First Amendment right to destroy someone else’s property or expression, even if it is done to communicate a message. Augustana reserves the right to punish such conduct.</p>	
<p><b>Disruption of classes and campus activities</b></p>	<p>There is no First Amendment right to disrupt classes, speakers, campus activities, and/or otherwise interfere with normal university functions.</p>	
<p><b>Protests and Demonstrations</b></p>	<p>Augustana can impose time, place, and manner restrictions as long as they are content neutral and leave open other communication opportunities.</p> <p>Free speech “zones” are acceptable as long as they are content-neutral and do not prevent a speaker from having a meaningful way to express their views.</p> <p>Speech activities can be limited in or near classrooms.</p> <p>Augustana also reserves the right (as long as it is content-neutral) to require outside security officials, occupancy limits, and bonded/insured certification at scheduled events; and to deny requests for logistical/security challenges which impose costs above a generally agreed-upon threshold.</p>	<p>Augustana cannot prevent protests and protestors from having a meaningful opportunity to get their views across in an effective way. Augustana can impose time, place, and manner restrictions on protests for the purpose of preventing protestors from disrupting the normal work of the campus, including the educational environment and administrative operations.</p>
<p><b>Residence Halls, other University Buildings, and other Campus Property</b></p>	<p>Augustana can impose content-neutral restrictions in residence halls, other buildings, and other campus property in order to ensure a supportive living and learning environment for students.</p> <p>Augustana recognizes that there are places on campus where students and employees might be captive audiences. Augustana reserves the</p>	<p>Augustana cannot impose content-based speech restrictions in residence halls or other university buildings. For example, Augustana cannot impose restrictions that unfairly discriminate based on content (e.g., a restriction on “pro-life” content but not “pro-choice” content).</p>



	<p>right to limit/prohibit fliers, bulletin boards and other materials as long as this limitation/prohibition is content neutral. For example, Augustana can limit or prohibit fliers from being posted in the residence halls or the Commons, but cannot make this a content-based restriction.</p>	
<p><b>Expression outside of the professional educational context</b></p>		<p>Augustana cannot engage in content-based discrimination against faculty, students, or other speakers or writers who seek to express themselves outside of the professional educational context.</p>
<p><b>Evaluation of faculty and students</b></p>	<p>Augustana can engage in content-based evaluation of faculty who are operating within the professional educational context, as long as this evaluation is consistent with academic freedom and based on professional standards or peer assessment of the quality of scholarship or teaching.</p> <p>Augustana also supports the academic freedom of its students, including their right to think freely and exercise independent judgement.</p>	<p>Faculty members should not use the classroom, syllabi, or other course materials for the sole purpose of disseminating political views without regard to professional norms or to prevent students from having their fair opportunity to express views without fear of being punished.</p>
<p><b>Content warnings</b></p>	<p>Faculty members may choose to provide students warnings before presenting material that might be offensive or upsetting to them.</p>	<p>Augustana will not require faculty provide warnings before presenting or assigning material that might be offensive or upsetting to students.</p>
<p><b>Brave Spaces</b></p>	<p>Augustana can create brave spaces in educational settings that ensure individuals feel free to express the widest array of viewpoints, and can support student efforts to self-organize in ways that reflect shared interests and experiences.</p> <p>Brave spaces are for the expression of ideas, not for protecting members of campus from the expression of ideas.</p>	<p>Augustana cannot use the concept of a brave space to censor the expression of ideas considered as offensive or upsetting.</p>

<b>Respectful learning environment</b>	Augustana can sensitize students and faculty to the impact that certain words may have, as part of an effort to create a respectful work and learning environment.	Augustana cannot prohibit students or faculty from using words that some consider to be examples of microaggressions.
<b>Student Organizations</b>	Augustana can ensure that all student organizations, as a condition for recognition and receipt of funding, be open to all students, and can impose sanctions on student organizations for conduct if it is not protected by principles of free speech.	Augustana cannot deny recognition to a student organization or impose sanctions against it for the views or ideas expressed by the organization, its members, or its speakers.
<b>Online speech and expression</b>	Augustana can punish speech over the Internet and social media that otherwise is not protected, such as true threats, harassment, or speech inconsistent with professional standards.	Augustana cannot punish speech over the Internet or social media on the grounds that it is offensive.
<b>University administrators</b>	Augustana should expect university administrators to speak out against especially egregious speech acts and, most importantly, encourage the university community to make its own decisions about what speech acts deserve praise or condemnation.	Augustana should not expect university administrators to comment on or condemn every campus speech act that an individual or group considers offensive.

**APPENDIX B. RELATED POLICIES AND PROCEDURES**

The following represent current rules published in the Student Handbook that pertain to freedoms of speech and expression.

1. Code of Student Conduct, “Freedoms.”

<http://www.augie.edu/student-life/dean-students-office/student-handbook/code-student-conduct#freedoms>

- A. Preamble. Augustana is committed to the acquisition of knowledge, the pursuit of truth, the development of students, and promotion of the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals. As members of the Augustana community, students are encouraged to develop the capacity for critical judgment and to engage in a sustained and independent search for truth.
- B. Freedom of Inquiry and Expression. Students and their organizations are free to examine and discuss all questions of interest to them and to express opinions publicly and privately. They shall always be free to support causes by orderly means to the extent that these activities do not disrupt the regular and essential operations of the university.

Procedures for inviting and hosting guest speakers are specified in the Speech and Expression policy, also available from the Center for Campus Life. This office serves as an initial point of scheduling and approval for speaker-related events. Augustana University maintains the sole discretion to approve or place limits on the activities and use of its facilities. The university also clarifies that the invitation and/or sponsorship of speakers and non-institutional organizations by recognized student organizations does not imply approval or endorsement of the views expressed either by the sponsoring student organization or the university.

2. Code of Student Conduct, “Policies, Standards and Rules.”

<http://www.augie.edu/student-life/dean-students-office/student-handbook/code-student-conduct#policies>

A. Classroom Conduct. The responsibility to secure and respect conditions conducive to the freedom to learn is shared by all members of the campus community. An Augustana student is expected to show respect for faculty members, classmates, and the community; is expected to express oneself with civility and to exemplify a high sense of personal honor and integrity. The following further clarifies these freedoms and responsibilities.

- The faculty member in the classroom and in conference encourages freedom of expression including constructive disagreement so long as this freedom is exercised in a civil and respectful manner.
- Disruptive conduct as applied to these settings means behavior that interferes with the learning environment. Examples of disruption include, but are not limited to; persistently speaking without being recognized; interrupting speakers; behavior that distracts from the subject matter or discussion; and in extreme cases, physical threats, harassing behavior, personal insults, or failure to comply with faculty direction.

B. Disorderly conduct is prohibited on university premises and at university-sponsored activities. Disruptive conduct is an act that intentionally obstructs teaching, research, administration, disciplinary procedures, freedom of movement, and other lawful activities on the campus and at university-sponsored events. Augustana prohibits acts that violate the civil rights of others and any actions that obstruct university programs through the use of force, violence, or obstructive behavior.

C. Harassment is a form of discrimination that may be created by oral, written, graphic, or physical conduct that interferes with, limits, or denies the ability of an individual to participate in or benefit from university-sponsored programs, activities, or opportunities.