FREEDOM OF SPEECH IN SCHOOLS

University & Higher Education Cases

In this University & Higher Education Free Speech Cases Fact Sheet, Jewish Federation of Northern has compiled key college campus First Amendment legal cases that define the boundaries of free speech in institutions of higher education. **The courts have played a key role in defining the balance between protecting free expression and maintaining an inclusive environment, particularly in university settings, where free speech is often deemed central to academic inquiry and student activism.**

These cases are vital for understanding the boundaries of free speech in higher education, especially when addressing antisemitic incidents. Universities must balance protecting their students from hate speech and discrimination while avoiding the prohibited overly broad restrictions that suppress First Amendment expression. B**y examining these cases, we can better advocate for policies that protect Jewish students and ensure that they are free from harassment, without compromising the fundamental right to free speech that is central to the mission of higher education.**

One landmark case, UWM v. Board of Regents of the University of Wisconsin (1991), addressed the constitutionality of campus speech codes. In this case, **the court struck down a university policy that broadly restricted speech deemed offensive, ruling that such policies must be carefully tailored to avoid infringing on First Amendment rights.**

Similarly, the Hoggard v. Rhodes (1991) ruling **reaffirmed the importance to the courts of protecting speech on public campuses, even in the face of policies that may seek to limit expression (i.e. hate speech).**

In understanding these legal precedents, we can more effectively engage university administrations and policymakers in the ongoing effort to combat antisemitism while fostering a campus environment where all students feel safe, respected, and able to express their views.

Jewish Federation of Northern New Jersey's Jewish Community Relations Committee (JCRC) hopes you find this document useful.

If you have questions of concerns, please contact our JCRC Director, Alana Burman AlanaB@jfnnj.org.

CASE 1: Healy v. James (1972)

Background: Students were barred from having a recognized local chapter of Students for a Democratic Society (SDS), because the college president was not satisfied that the group was independent of the National SDS, which he concluded has a philosophy of disruption and violence in conflict with the college's declaration of student rights. The students sued, and eventually, this case was brought to the Supreme Court. The Supreme Court held that the students First Amendment rights were violated when officials refused to recognize their radical student group as an official student organization.

Takeaway: According to the Court, First Amendment protections should apply on college campuses the same as in the community at large.

CASE 2: Papish v. Board of Curators of the University of Missouri (1973)

Background: A student newspaper editor was expelled for violating a board of curators' bylaw prohibiting distribution of newspapers "containing forms of indecent speech." Though the district court and the Eighth Circuit Court of Appeals went back and forth about whether Papish's rights were violated, the Supreme Court held that because the cartoons were not legally obscene or otherwise unprotected by the First Amendment, the university cannot push students for indecent speech that does not disrupt order.

Takeaway: Public college students have the right to distribute independently produced material on campus even in cases where the speech is deemed vulgar or "indecent."

CASE 3: UWM Post v. Bd. Of Regents of University of Wisconsin (1991)

Background: In May of 1988, the Board of Regents adopted "Design for Diversity," a plan to increase minority representation, multi-cultural understanding and greater diversity throughout the University of Wisconsin System's 26 campuses. Design for Diversity responded to concerns over an increase in incidents of discriminatory harassment, and Design for Diversity directed each of the UW System's institutions to prepare non-discriminatory conduct policies. The Board of Regents approved its "Policy and Guidelines on Racist and Discriminatory Conduct," which stated the Board's general policy against discrimination and provided guidance to the individual campuses in developing their own non-discrimination policies. The UW Rule provides that "the university may discipline a student in non-academic matters for racist or discriminatory comments, epithets...comments that would demean the race, sex, religion, color, creed, disability, sexual orientation, national origin, ancestry, or age of an individual. The Supreme Court ruled, however, that this rule was considered overly broad and vague and thus an imposition on the First Amendment right to freedom of expression.

Takeaway: The government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.

CASE 4: Iota Xi Chapter of Sigma Chi Fraternity v. George Mason University (1993)

Background: The IOTA Xi Chapter of Sigma Chi Fraternity, a student organization at George Mason University, held an annual Derby Days event on campus to raise money for charity and entertain fellow students. The fraternity held an "ugly woman contest" as part of the Derby Days event, in which the involved participants of the contest involved dressing as caricatures of different types of women. One member dressed as an offensive caricature of an African American woman, and many complained that the event was offensive, with the university administrators saying that it sent an inappropriate message contrary to the university's mission of promoting diversity. The fraternity was sanctioned by the university, banning all activities for the remainder of the school year, and implementing a two-year ban on certain social activities. The fraternity filed a lawsuit against the university, alleging its First Amendment was violated. The court did not permit the disciplining of the fraternity by quoting from Texas v. Johnson (1989).

Takeaway: In quoting Texas v. Johnson (1989), "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

CASE 5: Keefe v. Adams (8th Circ.) (2016)

Background: In Keefe v. Adams (8th Cir., 2016), the Eighth U.S. Circuit Court of Appeals ruled that a public college could expel a nursing student for Facebook posts that indicated a lack of professionalism. Concerns arose over several of the Facebook posts of Craig Keefe, a Nursing Student of Central Lakes College in Minnesota, which included inappropriate jokes about "giving someone a hemopneumothorax," calling a female student a 'stupid bitch,' and other offensive comments. After two classmates complained to an instructor, administrators removed Keefe from the Associate Degree Program for 'behavior unbecoming of the Nursing Profession' and 'transgression of professional boundaries.' Keefe sued in federal court, citing his First Amendment, free-speech rights being violated, for disciplining him for off-campus, online speech. A federal district court rejected his case, and on appeal, the U.S. Circuit Court of Appeals upheld the lower court's ruling, supporting the college officials' decision. The Appeals Court relied on the U.S. Supreme Court's decision in Hazelwood v. Kuhlemeier (1988).

Takeaway: A college can require students to comply with viewpoint-neutral standards of professionalism, and don't violate First Amendment, free-speech rights.

CASE 6: Hoggard v. Rhodes (2021)

Background: Ashlyn Hoggard, a student at Arkansas State University was denied from being able to set up a small table on campus near the student union building to promote a conservative student organization, Turning Point USA. The school argued her actions were not allowed under a university speech zone policy. The 8th Circuit ruled that policy was unconstitutional but said university officials were entitled to qualified immunity, a doctrine that protects government officials from liability unless they violate clearly established law. Hoggard appealed the decision to the U.S. Supreme Court, but the court declined review in July, 2021. Supreme Court Justice Clarence Thomas criticized the qualified immunity doctrine as a "one-size-fits-all" doctrine.

Takeaway: Public institutions can deny student's ability to promote a club, organization, or cause on campus based on a violation of speech policy, and schools are protected by qualified immunity.

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