EAST TENNESSEE STATE UNIVERSITY

Freedom of Expression, Campus Free Speech, and University Role in Political and Social Action Policy

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Policy Name: Freedom of Expression, Campus Free Speech, and University Role in Political and Social Action Policy

Policy Purpose

This policy is in compliance with the Tennessee Campus Free Speech Protection Act, the Charlie Kirk Act, the First Amendment to the United States Constitution, Article I, Section 19 of the Tennessee Constitution, and related University policies addressing freedom of expression and the University's role in political and social action.

Applicability

This policy applies to ETSU Faculty, Staff, and Students.

Responsible Official, Office, and Interpretation

The Senior Vice President of Student Life and Enrollment is responsible for the review and revision of this policy. For questions about this policy, please contact the Office of Student Life and Enrollment. The Senior Vice President of Student Life and Enrollment, in consultation with the Office of University Counsel, has the final authority to interpret this policy.

Defined Terms

A defined term has a specific meaning within the context of this policy.

Substantially Obstruct or Interfere

Pursuant to T.C.A. § 49-7-3204, during invited-speaker events, "substantially obstruct or otherwise substantially interfere" includes conduct identified by applicable law, including making noise with the intent of drowning out an invited speaker or hindering the audience from hearing the speaker; standing between the speaker and audience with the intent of blocking or impeding visibility; using signs or objects to block or impede visibility; staging a walkout during an event or during the speaker's remarks that results in material and substantial disruption with the intent to cause such disruption; or physically obstructing an invited speaker or audience member from entering or attending an event; provided, however, that all other federal laws still apply. Nothing in this definition prohibits peaceful protest, counter-speech, signs, leafletting, picketing, silent demonstration, walkouts that do not materially and substantially disrupt the event, or other expressive activity that does not substantially obstruct or substantially interfere with another person's protected expression or access to an invited-speaker event.

Policy

Freedom of expression a foundational element of East Tennessee State University. ETSU is committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all, who must always remain free to inquire, to study and to evaluate, and to gain new understanding. ETSU is committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.

Nothing in this policy limits ETSU's authority to address expression or conduct that violates the law, constitutes a true threat, actionable harassment, unlawful discrimination, defamation, substantial disruption, or an unjustified invasion of substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. Any such limits must be applied narrowly and consistently with ETSU's commitment to free and open discussion of ideas.

1. Freedom of Expression.

   Pursuant to the requirements for T.C.A. § 49-7-3202 and not withstanding any other law to the contrary, the university recognizes that 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.

It is for ETSU students and faculty to make judgments about ideas for themselves, and to act on those judgments not by seeking to suppress free speech, but by openly and vigorously contesting the ideas that they oppose.

It is not ETSU's duty to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.

Although ETSU greatly values civility and mutual respect, concerns about civility and mutual respect shall never be used as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some.

Although all are free to state their own views about and contest the views expressed on campus, and to state their own views about and contest speakers who are invited to express their views on the ETSU campus subject to state and federal law and the requirements of this policy, they may not substantially obstruct or otherwise

substantially interfere with the freedom of others to express views they reject or even loathe. To this end, ETSU has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom. Consistent with ETSU's commitment to free expression, free inquiry, and viewpoint neutrality, ETSU shall not discriminate or retaliate specific to the requirements of TCA § 49-7-3206.

2. Students.

Students have a fundamental constitutional right to free speech. ETSU is committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to measures that do not violate the First Amendment of the United States Constitution or Article I, Section 19 of the Tennessee Constitution, such as constitutional time, place, and manner restrictions or reasonable and viewpoint-neutral restrictions in nonpublic forums.

3. Faculty.

Academic freedom is protected pursuant to Tennessee law and ETSU, its faculty and staff shall not retaliate or discriminate against a faculty member based on viewpoints expressed in the faculty member's scholarly work or based on speech or writing protected by the First Amendment of the United States Constitution, subject to otherwise applicable law and University policies governing academic responsibilities, professional duties, and classroom instruction

The primary responsibility of faculty is to engage in an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competence. Although faculty are free in the classroom to discuss subjects within areas of their competence, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided that no faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and compromises a substantial portion of classroom instruction.

4. The University's Role in Political and Social Action.

ETSU was founded in 1911 with the singular purpose to improve the quality of the life for people in the region and beyond. To that end, the discovery, improvement, and dissemination of knowledge is paramount and so is the domain of inquiry and scrutiny of all aspects of society which may create discontent and propose unique solutions that challenge the issues of the day facing society. In brief, a good university, like Socrates, will be upsetting.

Pursuant to the requirements for T.C.A. § 49-7-3203, and not withstanding any other law to the contrary, the university recognizes that the instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic. It is, to go back once again to the classic phrase, a community of scholars. To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community. It is a community but only for the limited, albeit great, purposes of teaching and research. It is not a club, it is not a trade association, it is not a lobby.

Since the university is a community only for these limited and distinctive purposes, it is a community which cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness. There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives. It cannot insist that all of its members favor a given view of social policy; if it takes collective action, therefore, it does so at the price of censuring any minority who do not agree with the view adopted. In brief, it is a community which cannot resort to majority vote to reach positions on public issues.

The policy provisions below implement these foundational statements and the applicable statutory requirements governing free speech, freedom of expression, invited speakers, academic freedom, and related protections.

5. Outdoor Areas.

ETSU maintains the generally accessible open, outdoor areas of its campus as traditional public forums for free speech by students. ETSU does not restrict students' free speech only to particular areas of the campus. ETSU does not impose requirements that prohibit spontaneous outdoor assemblies or outdoor distribution

of literature, though ETSU may maintain a policy that grants members of the college or university community the right to reserve certain outdoor spaces in advance

6. Student Organizations.

   ETSU does not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates. ETSU does not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to speech.

7. Guest Speakers.

   ETSU allows all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers. ETSU shall not disinvite a speaker invited by a student organization, or faculty member, require a student organization or faculty member to disinvite a speaker, prohibit a student organization or faculty member from inviting a speaker to campus, or restrict a student organization or faculty member in the choice of invited speakers in response to threatened protests, opposition from students or faculty, anticipated reaction, or the viewpoints expressed or espoused by the speaker.

Procedures

N/A

Applicable Forms and Websites

N/A

Authority and Revisions

Authority: Focus Act, T.C.A. § 49-8-203, et seq; Campus Free Speech Protection Act, T.C.A. § 49-7-2401, et seq; Charlie Kirk Act, T.C.A. § 49-7-3201, et seq. First Amendment to the United States Constitution; Article I, Section 19 of the Tennessee Constitution.

Previous Policy: University Free Speech Policy

The ETSU Board of Trustees is charged with policy making pursuant to TCA § 49-8-203, et seq. On March 24, 2017, the Board delegated its authority to ETSU's President to establish certain policies and procedures for educational program and other operations of the University, including this policy. The delegation of authority and required process for revision to this policy can be found on the Policy Development and Rule Making Policy webpage.

To suggest a revision to this policy, please contact the responsible official indicated in this policy. Before a substantive change to the policy section may take effect, the requested changes must be: (1) approved by the responsible office; (2) reviewed by the Office of University Counsel for legal sufficiency; (3) posted for public comment; (4) approved by either Academic Council or University Council; and (5) approved by ETSU's President.