



FIRE

Foundation for Individual
Rights and Expression

**SPEECH CODE
SURVEY OF
PUBLIC INSTITUTIONS
IN VIRGINIA**



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Introduction

“Issues of free expression and academic freedom have been front and center in recent years, especially on our campuses. Declining trust in higher education as a force for good in the country is due in part to perceptions that our campuses restrict free speech.”¹ In December 2022, Virginia Tech President Timothy Sands highlighted this concerning national trend that the Foundation for Individual Rights and Expression (FIRE) has been tracking for years.

Weeks later, several of Virginia’s college and university presidents re-committed themselves, on behalf of the Council of Presidents of public colleges and universities in Virginia, to safeguarding free expression and academic freedom on their campuses, writing:

“With Virginia’s central role in the founding of this country, it is fitting that the commonwealth’s colleges and universities take up a leadership position in protecting and propagating our nation’s core aspirational values, ensuring that graduates in the class of 2026 and those who precede and follow them are well prepared to lead us forward.

Statements from college and university presidents alone are not sufficient. Our 39 public institutions are committed to action.”²

This full-throated commitment to America’s founding principles is laudable. It is also consistent both with these institutions’ legal obligations under the First Amendment, and with what most college students should expect when they set foot on campus.

Nonetheless, many of Virginia’s public institutions currently fall short of these free speech obligations.

In this report, FIRE examines the speech codes — policies that regulate student expression that would be protected by the First Amendment in society at large — at Virginia’s public colleges and universities.

This report is organized into three sections: First, we compare Virginia’s colleges and universities with institutions nationwide, including those institutions in neighboring states; second, we discuss common policy issues across institutions; and third, we identify steps institutions can take to improve the state of free speech on Virginia’s campuses.

1 Luke Weir, “Do universities restrict free speech? Virginia Tech, Radford presidents weigh in”, The Roanoke Times (Dec. 11, 2022), https://roanoke.com/news/local/education/do-universities-restrict-free-speech-virginia-tech-radford-presidents-weigh-in/article_bfb5b5a8-7595-11ed-827c-8b0a205536b5.html.

2 Jonathan Alger, Shannon Kennedy, Katherine Rowe, and Timothy Sands, “Column: Free expression is a foundation of excellence in education”, Richmond Times-Dispatch (Dec. 23, 2022), https://richmond.com/opinion/columnists/column-free-expression-is-a-foundation-of-excellence-in-education/article_02b639f7-f3dc-52cc-a840-98b0a8434645.html.

Methodology

For this report, FIRE surveyed publicly available policies at 38 four-year and two-year public institutions in Virginia.³ FIRE performed new research on policies at 22 institutions and updated the ratings of 16 institutions already included in our Spotlight database of school policies.⁴

FIRE rates colleges and universities as “red light,” “yellow light,” or “green light” institutions based on how much, if any, protected expression their written policies governing student conduct restrict. (It is important to note that these speech code ratings focus exclusively on written policies, and do not take into account a university’s “as-applied” violations of student speech rights or other cases of censorship, student- or faculty-led calls for punishment of protected speech, and related incidents and controversies.)⁵

The speech code ratings are defined as follows:



Red Light: A red light institution maintains at least one policy that both clearly and substantially restricts freedom of speech, or bars public access to its speech-related policies by requiring a university login and password for access.

A “clear” restriction unambiguously infringes on protected expression. In other words, the threat to free speech at a red light institution is obvious on the face of the policy and does not depend on how the policy is applied. A “substantial” restriction on free speech is one that is broadly

applicable to campus expression. For example, a ban on “offensive speech” would be a clear violation (in that it is unambiguous) as well as a substantial violation (in that it covers a great deal of what is protected under First Amendment standards). Such a policy would earn a university a red light rating.

When a university restricts access to its speech-related policies by requiring a login and password, it denies prospective students and their parents the ability to weigh this crucial information prior to matriculation. At FIRE, we consider this denial to be so deceptive and serious that it alone warrants an overall red light rating.



Yellow Light: A yellow light institution maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict relatively narrow categories of speech.

For example, a policy banning “verbal abuse” has broad applicability and poses a substantial threat to free speech, but is not a clear violation because “abuse” might refer to unprotected speech and conduct, such as threats of violence or unlawful harassment. Similarly, while a policy banning “profanity on residence hall door whiteboards” clearly restricts speech, it is relatively limited in scope. **Yellow light policies are typically unconstitutional when maintained by public universities,⁶ and a rating of yellow light**

3 This survey did not include the Marine Corps University, Virginia Military Institute, or the Virginia-Maryland Regional College of Veterinary Medicine.

4 FIRE’s Spotlight Database, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION. (last visited Oct. 30, 2023), <https://www.thefire.org/research-learn/fires-spotlight-database>.

5 Discussion of many, if not all, such incidents and controversies may generally be found on FIRE’s website. See Newsdesk, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION. (last visited Oct. 30, 2023), <https://www.thefire.org/news>.

6 See, e.g., *Gooding v. Wilson*, 405 U.S. 518, 519, 528 (1972) (holding that a Georgia statute prohibiting “opprobrious words or abusive language” was unconstitutional because those terms, as commonly understood, encompass speech protected by the First Amendment). Under this and related precedents, a public university maintaining a ban on “verbal abuse” and similar expression would be constitutionally deficient.

rather than red light in no way means that FIRE condones a university's restrictions on speech. Rather, it means that in FIRE's judgment, those restrictions do not clearly and substantially restrict speech in the manner necessary to warrant a red light rating.



Green Light: If FIRE finds that a university's policies do not seriously threaten campus expression, that college or university receives a green light rating. A green light rating does not necessarily indicate that a school actively supports free expression in practice; it simply means that the school's *written* policies do not pose a serious threat to free speech.



“Warning” Rating: FIRE believes that free speech is not only a moral imperative, but an essential element of a college education. However, private universities, as private associations, possess their own right to free association, which allows them to prioritize other values above the right to free speech, if they

wish to do so. Therefore, when a private university *clearly and consistently* states that it holds a certain set of values above a commitment to freedom of speech, FIRE gives it a Warning rating in order to warn prospective students and faculty members of this fact.⁷

Overall ratings: To determine overall ratings, FIRE does not produce an “average” of an institution's policy ratings; a school with five yellow light policies and one red light policy earns an overall red light rating, just as a school with one yellow light policy and five red light policies earns an overall red light rating.

FIRE typically divides restrictions on expressive rights into the following categories of speech codes: Harassment Policies; Bullying Policies; Policies on Tolerance, Respect, and Civility; Protest and Demonstration Policies; Internet Usage and Social Media Policies; Policies on “Bias” and “Hate Speech”; Security Fees Policies; and Posting Policies.

⁷ See Mary Griffin, *What does a school with a “Warning” rating look like? BYU-Idaho demonstrates.*, FOUND. FOR INDIVIDUAL RIGHTS AND EXPRESSION, (Dec. 5, 2019), <https://www.thefire.org/news/what-does-school-warning-rating-look-byu-idaho-demonstrates>.

Findings

Overall, 34% (or 13) of the reviewed schools earn a red light rating, while another 55% (21) earn a yellow light rating. The College of William and Mary, George Mason University, Radford University and the University of Virginia are the only four institutions in Virginia to earn a green light rating for not maintaining any policies that seriously threaten campus expression.

The findings are summarized in full in the following chart:

Institution	Rating	2-Year or 4-year
Blue Ridge Community College	● Yellow	2-Year
Brightpoint Community College	● Red	2-Year
Central Virginia Community College	● Red	2-Year
Christopher Newport University	● Yellow	4-Year
College of William and Mary	● Green	4-Year
Danville Community College	● Yellow	2-Year
Eastern Shore Community College	● Red	2-Year
George Mason University	● Green	4-Year
Germanna Community College	● Red	2-Year
J. Sargeant Reynolds Community College	● Red	2-Year
James Madison University	● Yellow	4-Year
Laurel Ridge Community College	● Yellow	2-Year
Longwood University	● Yellow	4-Year
Mountain Empire Community College	● Red	2-Year
Mountain Gateway Community College	● Red	2-Year
New River Community College	● Yellow	2-Year

Institution	Rating	2-Year or 4-year
Norfolk State University	● Yellow	4-Year
Northern Virginia Community College	● Yellow	2-Year
Old Dominion University	● Yellow	4-Year
Patrick & Henry Community College	● Red	2-Year
Paul D. Camp Community College	● Red	2-Year
Piedmont Virginia Community College	● Yellow	2-Year
Radford University	● Green	4-Year
Rappahannock Community College	● Yellow	2-Year
Richard Bland College	● Yellow	2-Year
Southside Virginia Community College	● Yellow	2-Year
Southwest Virginia Community College	● Yellow	2-Year
Tidewater Community College	● Red	2-Year
University of Mary Washington	● Yellow	4-Year
University of Virginia	● Green	4-Year
University of Virginia's College at Wise	● Yellow	4-Year
Virginia Commonwealth University	● Yellow	4-Year
Virginia Highlands Community College	● Yellow	2-Year
Virginia Peninsula Community College	● Yellow	2-Year
Virginia Polytechnic Institute and State University	● Yellow	4-Year
Virginia State University	● Red	4-Year
Virginia Western Community College	● Red	2-Year
Wytheville Community College	● Red	2-Year

Discussion

I. Virginia vs. The Country

On average, Virginia schools earn worse ratings than the national average in FIRE's most recent Spotlight on Speech Codes report. While 13.9% of public schools in the Spotlight report earn a red light rating, 34% of the Virginia schools we reviewed earn a red light rating for maintaining at least one policy that clearly and substantially restricts free speech — more than double the national average.

Further, 14.9% of public schools in the Spotlight report earn a green light rating, meaning they have no written policies that seriously threaten free expression. However, just four (11%) of the Virginia schools we reviewed earn a green light rating. While our Spotlight database only includes four-year institutions, and this report includes two-year institutions, we apply the same rating system across all institutions, as all public schools are bound by the same legal standards and must live up to their First Amendment obligations.

A. Virginia Universities vs. North Carolina Universities

In addition to earning worse ratings than the nationwide average, Virginia schools also underperformed when compared to their neighbors in North Carolina.

Not one of the 19 North Carolina institutions rated in our Spotlight database earns a red light rating, compared to 34% of the reviewed Virginia schools. While only four Virginia schools earn green light ratings, 15 North Carolina institutions earn a green light rating.

Indeed, no state in the country has as many green light institutions as North Carolina. Over a decade ago, a similar report to this one found that zero North Carolina schools earned a green light rating. After substantial collaboration with several schools to revise their speech codes, North Carolina became the top state for green light institutions, with a remarkable 15 fully compliant institutions.

It is our hope that this report encourages Virginia's institutions to follow North Carolina's sterling example.

B. Virginia Universities vs. West Virginia Universities

In 2022, we reviewed institutions across West Virginia in a comparable report.⁸ Of the 17 West Virginia institutions surveyed in that report, 47% earned an overall red light rating, while the other 53% earned an overall yellow light rating. None earned an overall green light rating.

While Virginia's institutions outperform their counterparts in West Virginia, the Old Dominion State currently bears greater statistical similarity to West Virginia than North Carolina, a trend that can and should be reversed.

West Virginia's poor performance makes clear that these issues are not unique to Virginia. However, North Carolina provides the model for improving written policies to ensure that free expression is not under threat.

8 FIRE, *Free Speech at West Virginia Colleges and Universities: Peril and Promise*, <https://www.thefire.org/research-learn/free-speech-west-virginia-colleges-and-universities-peril-and-promise>.

II. Common Issues and Noteworthy Examples

A. Internet Usage and Ethics Guidelines

Just as institutions must respect free expression that occurs in-person, so too must they refrain from infringing on free speech that occurs online. However, many of the reviewed institutions maintain policies that encompass constitutionally protected expression online.

For example, several schools in the Virginia Community College System (VCCS) have some version of a particularly restrictive Computer Use policy. While the specific language used in each policy is often customized for the individual campus, at least seven VCCS institutions currently have a version of this policy on the books. These guidelines are responsible for more red light policies in this report than any other category of speech code.

Patrick & Henry Community College's Computer Use Guidelines are illustrative:

You must not use any computing facility irresponsibly or needlessly affect the work of others. This includes transmitting or making accessible offensive, annoying or harassing material.⁹

This policy earns a red light rating because it prohibits transmitting any material subjectively deemed “offensive” or “annoying.”¹⁰ Prohibiting the transmission or access to “offensive material”

in university policy is both overbroad and vague. Banning offensive material is overbroad because “offensive” includes speech that is typically protected by the First Amendment, such as a subjectively rude email.¹¹ It is also vague, because the term is not defined in the policy, leaving students guessing at what an administrator may personally deem impermissible.¹²

While offensive speech may rub some people the wrong way and annoying speech may at times be disruptive to an educational environment, under the First Amendment, speech cannot be limited by a public institution on the basis that it has been found offensive or annoying alone. Without defining “offensive” and “annoying” materials to ensure free expression is not restricted, this policy earns a red light rating.

In the course of conducting research for this report, it was difficult to identify when or from where this policy originated. However, according to a file on Eastern Shore Community College's website, this may be a VCCS system-wide policy dating back to 2000.¹³

Regardless, we urge all schools to update their computer use guidelines to ensure they comply with the First Amendment. At six institutions, this is the only red light policy in place. By revising only this single policy, each of those colleges could change their overall rating from a red light to a yellow light rating, a significant improvement.

9 Computer Use Guidelines, Patrick & Henry Community Coll., <http://catalog.patrickhenry.edu/content.php?catoid=7&navoid=365> (last visited Nov. 6, 2023).

10 The seven colleges that maintain a version of this policy are Brightpoint Community College, Central Virginia Community College, Eastern Shore Community College, Mountain Empire Community College, Patrick & Henry Community College, Paul D. Camp Community College, and Wytheville Community College.

11 See *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 864 (E.D. Mich. 1989) (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973)) (holding that a statute or law regulating speech is unconstitutionally overbroad “if it sweeps within its ambit a substantial amount of protected speech along with that which it may legitimately regulate”).

12 See *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (holding that a law or policy is unconstitutionally vague when it does not “give a person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly”).

13 VCCS Computer Ethics Policy, Eastern Shore Community Coll. <https://es.vccs.edu/wp-content/uploads/2013/04/VCCS-Computer-Ethics-Policy.pdf> (last visited Nov. 6, 2023).

B. Harassment Policies

Another common difficulty comes in correctly defining harassment. To be clear, hostile environment harassment, when properly defined, is not protected by the First Amendment. In the educational context, the Supreme Court of the United States defined student-on-student (or peer) harassment in *Davis v. Monroe County Board of Education* as discriminatory, unwelcome, and targeted conduct that is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”¹⁴

The *Davis* Court made clear that peer harassment is not mere expression: It is conduct that goes far beyond the protected speech that too often finds itself swept into the broad definitions of “harassment” in speech codes on college campuses. Harassment policies that fall short of the Supreme Court’s *Davis* standard risk encompassing protected speech, and must be revised.

Schools often define harassment and bullying so broadly that their policies encompass protected speech. Instead, policies must include each element of the formulation set forth by the *Davis* Court, including the “severe” and “pervasive” components, as well as an objective, “reasonable person” standard. Many policies merely prohibit all unwelcome, unwanted conduct, leaving a person’s subjective feeling about what constitutes harassment sufficient to satisfy institutional standards. This could render anything from unlawful harassment to an off-color or sarcastic joke punishable.

We urge schools to work with FIRE to ensure that their policies comport with the standards set forth by the Supreme Court, while still targeting

unprotected conduct that leaves the campus community at risk. Our Model Speech Policies page highlights policies, including harassment and internet usage policies, that do just that, earning green light ratings in our Spotlight database.¹⁵

III. Next Steps: Improving the State of Free Speech on Virginia’s Campuses

This report shows that there is still work to be done to safeguard freedom of expression at Virginia’s colleges and universities. With only four of the 38 reviewed Virginia institutions earning a green light rating, almost every Virginia school has concrete steps it can take to roll back problematic speech codes that pose a threat to the ability of students to engage in free expression on campus. Fortunately, other colleges and universities, like those in North Carolina, have demonstrated that this reform is attainable.

At the nearly 90% of surveyed Virginia schools that earn a yellow or red light speech code rating, immediate steps can be taken to improve those policies and regulations to secure students’ expressive rights. We urge Virginia institutions to follow North Carolina’s schools’ example and work with FIRE to revise their speech codes. We would be happy to provide any institution included in this report with an individual report including each of their speech codes, along with detailed explanations for how they can revise them to comply with First Amendment standards.

Virginia’s colleges and universities can improve their campus climate in other ways as well. By adopting principled policy statements regarding campus freedom of expression, a school signals to students, faculty, administrators, alumni, and the general public alike that the institution seeks to foster a climate of free inquiry and robust debate.

14 526 U.S. 629, 633 (1999).

15 *Model Speech Policies for College Campuses*, FIRE, <https://www.thefire.org/research-learn/model-speech-policies-college-campuses> (last visited Nov. 6, 2023). We’d be pleased to provide additional policy examples upon request.

Any school, regardless of speech code rating, can (and should) adopt such a statement. Virginia’s institutions have a model to follow, should they wish to adopt this type of free speech statement: the “Report of the Committee on Freedom of Expression” at the University of Chicago, better known as the “Chicago Statement.” Authored in 2015, the Chicago Statement is an important reflection of how the principles of free speech are essential to the core purpose of a university. It provides, in relevant part:

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 . . . [I]t 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.¹⁶

Over 100 institutions or faculty bodies have adopted or endorsed the Chicago Statement or a substantially similar statement but, to date, just five of the 38 institutions in this report have adopted such a statement.¹⁷ Other Virginia institutions would benefit from adopting a version of the Statement. In addition to the benefit the Chicago Statement itself brings to campus, the process of reviewing and deliberating over the particulars of the Statement may spur further action, such as speech code reform, as campus stakeholders learn more about free speech issues and the shortcomings of their own school.

Finally, university presidents can defend the free speech rights of students and faculty loudly, clearly, and swiftly. When speech controversies do arise, and calls for censorship begin, presidents must unambiguously state that punishments based on unpopular but protected speech will not stand at their campus.



16 Committee on Freedom of Expression at the University of Chicago, *Report of the Committee on Freedom of Expression* (last visited Nov. 4, 2023), available at <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>.

17 Christopher Newport University, George Mason University, Virginia Tech, University of Virginia, and University of Virginia College at Wise are the five reviewed schools that have officially adopted the Chicago Statement. Two private Virginia institutions have also adopted the Chicago Statement but were not reviewed for this report. For a complete list of institutions that have adopted a version of the Chicago Statement, see <https://www.thefire.org/research-learn/chicago-statement-university-and-faculty-body-support> (last visited Nov. 4, 2023).

Conclusion

This report demonstrates that Virginia's higher education institutions have significant room for improvement in their protection of First Amendment rights on campus. With a combined 89% of all reviewed institutions earning either a yellow light or red light rating, students at a majority of Virginia schools face policies that threaten their free speech rights.

Still, the types of restrictions discussed in this report can be reformed. Campus administrators and policymakers have the opportunity to build on a strong foundation and propel Virginia institutions in the right direction.

FIRE provides a number of resources to assist administrators as they revise speech codes, including our Model Code of Student Conduct and our Model Speech Policies webpage. We also stand ready to assist any institutions that wish to work with our Policy Reform team directly to revise their policies and improve their campus climate.

We are greatly encouraged by the statements and actions that have been taken by leadership at institutions across Virginia these last several years and are excited to collaborate. FIRE hopes this report can serve as a positive step in providing Virginia institutions with the information they need to revise their policies and do more to live up to First Amendment legal standards and their commitments, and we welcome the opportunity to assist in this process.¹⁸

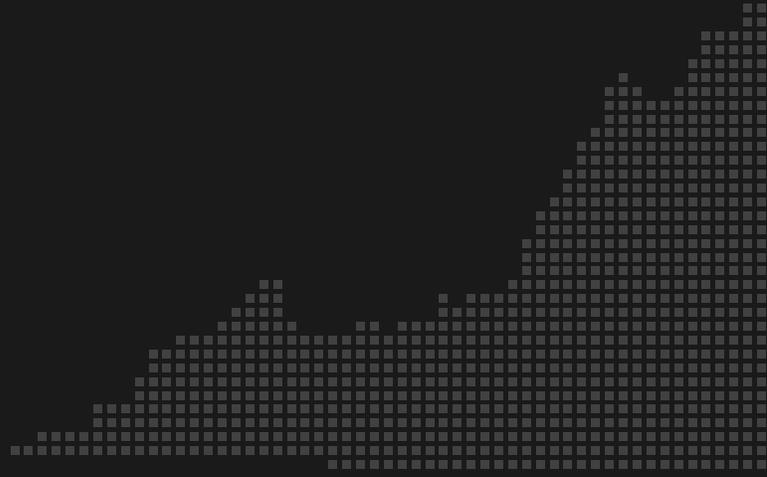
¹⁸ If you would like to learn more about the speech codes in place at a specific institution or work with us to reform them to comply with the First Amendment, please reach out to us at speechcodes@thefire.org.





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