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Freedom Of Expression On The University Campus: An Examination Of Policy Rhetoric At Public Universities

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FREEDOM OF EXPRESSION ON THE UNIVERSITY CAMPUS: AN EXAMINATION OF POLICY RHETORIC AT PUBLIC UNIVERSITIES

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ABSTRACT

Freedom of expression has historically been an issue in the United States on college and university campuses. With the recent rise of movements such as Black Lives Matter and Times Up, it is critically important that policies that govern student behavior reflect the constitutionally guaranteed right of students to engage in free speech. This study seeks to examine and compare policy and statement rhetoric that act as guidelines for freedom of expression on the public university campus. This study is significant because it will assist higher education administrators in framing a conversation surrounding freedom of expression policies at their respective higher education institutions. This study is also significant because there has been no similar comparative study that examines the rhetoric of higher education policies surrounding freedom of expression.

This study utilizes Chouliaraki and Fairclough's (1999) Critical Discourse Analysis (CDA) framework to explore and examine policy and statement rhetoric pertaining to freedom of expression at 15 public research institutions. This study also utilizes Kohlberg's (1981) moral development theory and Baxter Magolda's (1999, 2001) theory of self-authorship to discuss the analysis and how the policies and statements examined in this study support student development.

The results of this study show that some universities and policies and statements pertaining to freedom of expression are more restrictive than the policies and statements on freedom of expression at other universities. This study also determined that some universities do proactively

offer students education on engaging in freedom of expression acts, but that these educational initiatives are not a part of policy. This study also found that education being provided by universities was limited. Identified in this study are policies and statements at the universities included in the study pertaining to freedom of expression follow federal laws and regulations. Recommendations are also offered as a part of this study and are supported by Kohlberg's (1981) moral development theory and Baxter Magolda's (1999, 2001) theory of self-authorship. These recommendations for universities include keeping policy language open and less restrictive, providing educational programming regarding engaging in freedom of expression and providing a hate and bias incident reporting system that is designed to support students and managed by offices charged with managing diversity, equity, and inclusion.

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CHAPTER 1

THE ISSUE OF FREE EXPRESSION ON THE UNIVERSITY CAMPUS

The right to free speech is guaranteed to all individuals in the U.S. by the First Amendment to the U.S. Constitution. Thus, it is also applicable to all public, tax-supported properties in the U.S., including public colleges and universities. This is because each individual, whether or not they are a college student, has the same rights guaranteed by the U.S. Constitution when they are on public land. Many college students engage in their constitutionally protected right to freedom of expression on university campuses. Individuals without direct connections to universities also occupy spaces on university campuses with the intent to spread their messages through any means possible under the guise of protected freedom of expression. These external individuals/groups sometimes include campus preachers, Jehovah's Witnesses, pro-life groups, individuals from the community concerned about a particular social issue, and any other person or group that wishes to influence the moldable minds of the students. As students are still growing and developing morally, as well as grow and develop at different rates, the interactions students have with individuals engaging in freedom of expression can be formative and influential (Kohlberg, 1981). This study presents a critical discourse analysis of the rhetoric of freedom of expression policies at public colleges and universities. Such policies assist these institutions in navigating the challenging waters of student behavior related to freedom of expression on their campuses.

Statement of the Problem

The issue of speech on college campuses predates the American Revolution. The first documented student protest took place at Harvard in 1766 and is known as the Butter Rebellion (Dickey, 2016). This protest, specifically being over butter being "bad," marked the first documented occasion of students in North America engaging in group dissent over a defined issue. Previously, in 1638, Harvard students were severely beaten for complaining about the quality of the food.

This tradition of campus activism, in which college students exercise their rights of free speech and freedom of assembly, has continued to modern times, with students protesting a variety of social issues and practices of colleges and universities (Dickey, 2016). Throughout the U.S. during the 1960s and 1970s, there was a renewed period of student unrest in response to the war in Vietnam, the Civil Rights Movement, and other social concerns that had come to the attention of the American people (Broadhurst & Martin, 2014). This time marked an awakening of the American people regarding the need to protect their rights and the rights of others. Many of these movements were initiated and/or strongly supported by college students and faculty on campuses across the country, as the need to reform society to reflect current societal values became apparent.

In modern times, freedom of expression issues on college campuses look very different from those in the 18th, 19th, or 20th centuries (Dickey, 2016). This is likely due to the shaping of policies surrounding freedom of expression in higher education settings and an intentional shift away from colleges and universities acting *in loco parentis*, or "in lieu of the parents" (Gregory & Bennett, 2014). Today's students are concerned not only with the right to freedom of

expression for groups who may be protesting but also with students' ability to express unpopular opinions in or outside of the classroom (Eagan et al., 2015).

In a society that prides itself on political correctness yet also upholds the importance of "values," these values are generally subjective and defined differently by different subsets of individuals. It is thus more important than ever to ensure that students can interact in a free and unfettered environment at colleges and universities. By allowing students to dissent and express themselves freely, administrators encourage students to break out of their coddled worlds and begin to understand that there are different ways of thinking and living than those they experienced in the environments in which they were raised.

In fact, students today expect to have the experience of engaging in various forms of campus protest when they attend college (Eagan et al., 2015). According to a study of U.S. college freshmen conducted by the Higher Education Research Institute at the University of California, Los Angeles:

> The vast majority (96.9%) of first-time, full-time students who entered college in the fall of 2015 spent their senior year of high school witnessing (and perhaps even participating in) increased activism among high school and college students. Initially in response to officer-involved shootings of Black men in places like Ferguson, MO, Charleston, SC, and Baltimore, MD, these protests have grown to bring needed attention and dialog to issues of racism and bigotry in the U.S., among other issues. Many of the protests and outcries on college campuses and in communities have occurred in response to local incidents of bias and discrimination and in solidarity with broader, national movements (e.g., Black Lives Matter). (Eagan et al., 2015, p. 7)

A great deal of emphasis is placed on the college experience that students receive, recognizing that learning takes place both in and out of the classroom. This emphasis is often encouraged and promoted by society through movies, books, and the national media. This causes administrators to study and examine best practices, as well as high-impact practices, to best serve college student populations (Dickey, 2016).

The first criterion in a CDA requires the identification of a social problem related to discourse (Fan, 2019). The social problem identified in this study is the engagement of growing and developing students, as well as external community members, in freedom of expression activities. There is a differentiation in the rhetoric of freedom of expression policies and statements at public colleges and universities that assist in providing rules and guidelines that surround freedom of expression on the university campus. The identification of this social problem meets the first criterion of a CDA under Chouliaraki and Fairclough's (1999) framework (Fan, 2019).

Purpose of the Study

If students are arriving at college with the expectation of engaging in campus activism, various forms of student activism at public and private institutions will inevitably result. Due to this fact, as well as the legal system's shaping of education policy through its decisions on a variety of court cases, many colleges and universities have crafted guidelines surrounding activism, free speech, and the freedom to assemble on college and university campuses (Bird et al., 2006). The purpose of this study is to examine the rhetoric of freedom of expression policies at public colleges and universities in the U.S.

Research Questions

The research questions guiding this study are:

- Does the rhetoric of freedom of expression policies indicate that some public colleges and universities have policies that are more restrictive than others? If so, how do these policies differ, and in what ways are they restrictive?
- Is there language in freedom of expression policies demonstrating that public colleges and universities are proactive in preparing for their students' freedom of expression?
- In what ways do these policies conform to standards, laws, and policies established by the U.S. government? In what ways do they not conform?

Significance of the Study

There is an array of reasons why this study is significant and relevant. This study will assist higher education administrators in framing a conversation surrounding freedom of expression policies at their respective higher education institutions. To date, there has been no similar comparative study that examines the rhetoric of higher education policies surrounding freedom of expression.

Additionally, the findings of this study will help practitioners and scholars identify best practices for freedom of expression policies on college campuses, which may significantly enhance the student experience. This study may also assist public colleges and universities in identifying areas of deficiency in their current policies. Lastly, the study will examine the support campuses provide in encouraging freedom of expression for students and community members, whether on or off campus grounds.

The research questions guiding this study seek to identify the differences between freedom of expression policies on various college campuses, understand the rhetoric of these

policies, and examine how the courts and the government have influenced free speech in higher education settings. Comparing and contrasting various policies will help illuminate the different ways public colleges and universities interpret their students' rights to freedom of expression on campus. It will also identify which practices, if any, colleges and universities have in place to prepare their students to effectively exercise their right to free speech.

Personal Statement

As a higher education professional who works with college students and has a vested interest in their college experience, I selected this topic due to its relevance to and importance for the student experience. I have been fascinated by the topic of freedom of expression for several years, dating back to my undergraduate college years when I engaged in campus protests. My fascination with freedom of expression expanded when I worked as an Assistant Dean at Purdue University. While employed at Purdue University, I observed campus preachers enter the main quad and shout obscenities at students as they walked by the engineering fountain that sits at the heart of Purdue University's campus. I found this type of engagement to be dangerous and troubling as I understand that students are still growing and developing. As a researcher, I believe that it is critical to study topics we are passionate about, and I am passionate about freedom of expression on college campuses. I hold the value that policy is necessary but should not inhibit the student experience, which is critical for students' growth and development. I believe that to grow and change, we must be challenged to reaffirm our ideals.

Due to the events of 2020, specifically, the COVID-19 pandemic and the civil unrest pertaining to racial injustice in the United States, freedom of expression is more important than ever. It is my view that we are at a critical time, not only related to social movements but also in relation to protecting U.S. democracy and U.S. citizens. Freedom of expression, especially

among our youth, acts as a check and balance on government and might be the last frontier before totalitarianism overtakes democracy. Without freedom of expression, the events surrounding the deaths of Black citizens such as George Floyd, Ahmaud Arbery, and Breonna Taylor at the hands of the police or white supremacists may have gone unchallenged. The events of 2020 are likely to greatly influence this research as policy shifts at public colleges and universities may occur, and university administrations may be challenged to address behavior steeped in racism and discriminatory bias.

The events of 2020 may also pose some challenges to students attempting to engage in freedom of expression activities. Due to the COVID-19 pandemic, many universities have gone virtual, require facial coverings, and restrict large gatherings. While these actions are being taken to prevent the spread of the infection, these restrictions may hinder students attempting to protest. At the same time, the virtual environment may provide an additional forum for students to protest and protect their free speech and ideas.

Summary

This study is organized into six chapters. Chapter 1 introduces the topic of freedom of expression policy at public colleges and universities, delineates the statement of the problem, presents the research questions, and gives an overview of the significance of the study. Chapter 2 presents a literature review of related scholarly work, as well as related lawsuits decided by the U.S. Supreme Court that have shaped higher education institutional policy through the establishment of case law. Chapter 3 outlines the methodology used in this study, including a description of the critical discourse analysis research design, research questions, institutional policies to be studied, bias, delimitations, and the limitations of the study. Chapters 4 and 5 present the findings of this study and address each of the qualitative research questions. Chapter

6 presents a summary of the study and discusses the study's results, limitations, and implications, as well as offers recommendations for future research.

CHAPTER 2

LITERATURE REVIEW

The second criterion in a CDA under Chouliaraki and Fairclough's (1999) framework is to determine the challenges in addressing the problem by analyzing the relationship between the discourse and the other components of the social practice (Fan, 2019). In addition to undertaking a thorough analysis of the discourse itself, this is how the difficulties in dealing with the problem are determined. The challenges in this study were determined by researching and reviewing literature pertaining to freedom of expression on the university campus, thus meeting the second criterion under Chouliaraki and Fairclough's (1999) framework (Fan, 2019).

In the 1960s and 1970s, the U.S. saw a swelling of protest movements in response to concerns regarding civil rights and other social issues, including the Vietnam War, the Central Intelligence Agency (CIA), imperialism, and other issues related to U.S. foreign policy (Broadhurst & Martin, 2014). The purpose of this chapter is to review the central issues related to freedom of expression in the higher education setting. To provide a foundation and purposeful context for this study, this chapter seeks to illuminate the background, tone, and tenor of the history of freedom of expression in higher education. In addition, the chapter will explain why it is essential for colleges and universities to establish policies on freedom of expression.

Historical Overview

The history of student unrest in the United States dates back to the 19th century (Sorey & Gregory, 2010). Most protests on university and college campuses at that time were nonviolent. Students gathered, demonstrated, and protested in a variety of recognized forms, exercising their freedom to assemble, march, boycott, and rally.

During the civil rights movement of the 1960s, there was a period of resurgence of student activism (Lieberman, 2004). There was often a great deal of sharing of ideas and coordination of actions between student activists on different campuses across the country. To provide a base of support for student activists across the country, a group called the Student Nonviolent Coordinating Committee (SNCC) was formed at Shaw University in North Carolina in April of 1960. It should also be noted that students from various public and private campuses across the U.S. were volunteering in Mississippi during the Civil Rights Movement. This demonstrated that student activism was present on campuses across the country and that the students intentionally broadened their influence by connecting with student activists in other parts of the country.

Free speech and bias response pertaining to the First Amendment continue to be prevalent issues on college and university campuses today. Miller et al. (2017) studied the impact of bias response on college and university campuses, examining faculty and administrators' response to bias and how they balance that response with a commitment to free speech and diversity. The researchers conducted phone interviews with 21 individuals at 19 different institutions. Each semi-structured interview lasted between 45 and 90 minutes. The researchers found that participants (a) balance free speech protections with other interests, (b) recognize the nuances of free speech protections, and (c) respond to free speech concerns with "educational

moments." Participants discussed the need to protect First Amendment rights on campus and create an inclusive environment by evaluating both pieces, as these areas are sometimes in conflict. Participants who worked at private institutions asserted that their universities have the ability to regulate speech effectively, more so than administrators at public institutions do.

At post-secondary institutions, there are many different ideas and many different ways individuals choose to express them. Due to the increasingly challenging and antagonistic political climate, there is an urgent need for citizens to be more accepting of each other and each other's ideas, particularly in institutions of higher education (Combs, 2018). Concerns regarding the prevalence of low-value speech and hate speech are ever-present in the higher education environment:

> The mere fact a speech is offensive does not warrant its restriction. If a particular speech could be restricted for the mere fact that it was seen as offensive, the government (or in this instance, public universities) would be acting as a censor, which is strictly limited by the First Amendment. The Constitution does not allow the government to decide which types of generally protected speech are offensive enough to require protection. (Combs, 2018, p. 171)

While it is clear that the right to free speech is present at postsecondary institutions, it is equally clear that the right to free speech is not absolute (Combs, 2018). In a 1969 U.S. Supreme Court decision, *Clemson University Vietnam Moratorium Committee. v. Clemson University*, the Court permitted postsecondary institutions to restrict speech to protect themselves from violence.

The First Amendment to the Constitution affords basic freedom of expression rights to all people in the U.S. The First Amendment states:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

No limitations are placed on the First Amendment or to whom it applies; however, the Court's 1969 decision was based on the principle that everyone has the right to safety, and freedom of expression should not interfere with that right (Combs, 2018).

In recent years there has been a resurgence in freedom of expression activity on college and university campuses. This trend has continued from the campus activists engaged in the Civil Rights Movement in the 1960s to contemporary student activism in support of Black Lives Matter and the #MeToo movement. College and university administrators should expect this to continue as students become more socially aware and active in advocating for themselves and for broader social change.

Legal Issues

Several court cases have challenged both public and private secondary schools and colleges and universities regarding the rights they afforded to students specifically in regard to freedom of expression. These cases have helped shape education policy by establishing case law. This issue clearly continues to be relevant today, as there are still many court cases that focus on freedom of expression on college and university campuses, such as *Uzuegbunam v. Preczewski* (2021) and *McAdams v. Marquette University* (2018). The case law that results from these decisions, which are most often issued by the U.S. Supreme Court, has assisted higher education administrators in shaping policies on activism and freedom of expression on college and university campuses.

The roles of administrators and faculty in supporting freedom of expression on campus are critical, as these roles can shape the experiences that students, visitors, and other campus stakeholders have with the institution (Bird et al., 2006). The First Amendment has impacted public colleges and universities in an array of different and interesting ways throughout the history of higher education, which is why it is critical for higher education administrators, even those outside of student conduct offices, to be aware of their institution's policies. The U.S. Supreme Court has consistently ruled that students have the right to free speech on college campuses and should not be penalized for self-expression.

Given the historical purview surrounding U.S. Supreme Court decisions, there is a clear trend toward litigation and decision. In the 1950s and 1960s, many court cases related to freedom of expression, brought forward primarily by students, set the tone for free speech legislation. The landmark U.S. Supreme Court case *Dixon v. Alabama State Board of Education* (1961) set the stage for decades to come in establishing the Court's view that students have the right to engage in campus protests as protected speech. It was *Dixon v. Alabama* that led universities away from the doctrine of *in loco parentis* and made the case that students should be guaranteed due process rights as adults with constitutional protections (Gregory & Bennett, 2014).

Dixon v. Alabama (1961) concerned the expulsion of six students by Alabama State College for participating in a Civil Rights protest. The premise of this case was that St. John Dixon and five other students from Alabama State College were protesting at a courthouse lunchroom that was designated for "Whites only." Alabama State College, which was a public college, had a policy prohibiting students from engaging in any type of protest or activism either on or off campus.

After Dixon and the other students were arrested at Alabama State College, they were subsequently expelled (permanent dismissal) without reason or due process (*Dixon v. Alabama,* 1961). The plaintiffs sued because they were not afforded any type of due process. There was no hearing regarding the expulsions, simply a letter. The plaintiffs were not allowed to present information or witnesses, nor were they notified as to the reason for the expulsion.

In a landmark decision that is still looked to as case law today, the Supreme Court sided with the plaintiffs. One reason the Supreme Court decided in their favor was that the students were not given due process and were expelled without a hearing (Gregory & Bennett, 2014). Additionally, and more importantly, the Supreme Court determined that the university could not make a policy forbidding students to express themselves (Kaplin, W. A., & Lee, B. A, 2014).

While the Supreme Court's *Dixon v. Alabama* decision was important for many reasons and played a large role in shaping higher education policy, its most significant outcome was that it effectively ended the higher education doctrine of *in loco parentis*. According to Kaplin and Lee (2014):

> The court in this case rejected the notion that education in state schools is a "privilege" to be dispensed on whatever conditions the state in its sole discretion deems advisable; it also implicitly rejected the *in loco parentis* concept, under which the law had bestowed on schools all the powers over students that parents had over minor children. (p. 839)

Essentially, the Supreme Court's ruling in *Dixon v. Alabama* meant that for the first time, students were formally recognized by the Supreme Court as adults, and public colleges and universities were required to provide each student with due process rights. Because public colleges and universities were no longer acting *in loco parentis*, students attending these institutions became entitled to all the rights and freedoms guaranteed to all individuals living in

the U.S., whether on and off campus. This includes the right to free speech as described by the First Amendment to the U.S. Constitution (Kaplin, W. A., & Lee, B. A, 2014).

The effects of *Dixon v. Alabama* continued to be felt throughout the 1960s and even have a reverberating impact today. *Dixon v. Alabama* and other similar lawsuits led to the creation of the *General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education* (1968) (as cited by Gregory & Bennett, 2014). The *General Order* was a document drawn up by a group of judges in the U.S. District Court for the Western District of Missouri in response to higher education's failure to protect students' constitutionally guaranteed rights. In the *General Order*, due process rights and First Amendment rights for students at public institutions are clarified for cases that come before the Missouri court. Granted, public colleges and universities can define public and private forums to restrict the freedom of expression of both students and faculty. However, the *General Order* provided support for students and faculty to express themselves at public colleges and universities without fear of reprisal (Bird et al., 2006).

This document has served as a model for colleges and universities since its creation in 1968. The *General Order* established that courts in Missouri should not interfere with education without understanding the nature of education and identified the preponderance standard as the appropriate standard for colleges and universities to use. The document also required separation between student conduct at a university and the criminal justice system.

The *General Order* stated that universities have the authority to address student behavior both on and off campus. This gives colleges and universities permission to address student behavior at all times, as students represent the university at all times until they either graduate or sever their relationship with the institution. Importantly, the *General Order* formally established

that attending postsecondary institutions is voluntary; thus, students are subject to the policies of the university, which may be higher than the standards of behavior expected of the general population.

Also, under the *General Order*, colleges and universities are required to grant equal admission and not discriminate on the basis of gender or race. Specifically, this is the application of the 14th Amendment to the U.S. Constitution. The *General Order* stated that when addressing egregious misconduct that may result in a suspension or expulsion, colleges and universities are required to provide the student with common due process rights such as the right to remain silent, the right to present witnesses, and the right to an advisor of their choice. Moreover, the *General Order* established that colleges and universities were required to establish conduct systems to address student behavior. Prior to the *General Order*, deans, as well as faculty, often addressed student behavior as part of their *in loco parentis* responsibilities (Dannells, 1997). Today, many freedom of expression policies are found within student conduct policies (Bird et al., 2006).

Dixon v. Alabama (1961) was a critical case because it also laid the framework for the Supreme Court's decision in the landmark case *Tinker v. Des Moines* (1969) (as cited in Kaplin & Lee, 2014). *Tinker* reinforced students' right to freedom of expression and set a precedent that has been followed in many U.S. Supreme Court cases since (Amsden, 2011). The facts surrounding *Tinker* are straightforward. Mary Beth Tinker and a small group of students at a secondary school in Des Moines, Iowa, wore black armbands to protest the Vietnam War. As a result, the students were sent home from school and told by the administration that they could not return until they agreed to stop wearing the armbands (*Tinker v. Des Moines*, 1969). The school dress code did not prohibit armbands or any other form of clothing worn in protest of any

other war. Ultimately, the school district suspended the students until they were willing to return to school without the armbands (Amsden, 2011).

With assistance from the American Civil Liberties Union (ACLU), the students and their families sued the Des Moines Independent Community School District for violating the students' civil rights. In a 7-2 decision, the Supreme Court sided with the plaintiffs and held that the students did not forfeit their right to free speech by being on school property, as the school was public property. *Tinker v. Des Moines* is considered a milestone in freedom of expression cases and is consistently cited in rulings related to other free speech cases (Kaplin, W. A., & Lee, B. A, 2014).

One reason *Tinker* is considered a critical case is that it was predicated solely on the issue of students' right to protest, without other underlying issues. The Supreme Court also held that wearing armbands in protest did not constitute a material and substantial interruption to the operation of the school. According to Kaplin and Lee (2014):

> The U.S. Supreme Court ruled that the protest was a nondisruptive exercise of free speech and could not be punished by suspension from school. The Court made clear that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students" and that students "are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the State" (393 U.S. at 511). (p. 1198)

The *Tinker* case is still considered a landmark Supreme Court case that continues to influence the way student protest is viewed (Kaplin, W. A., & Lee, B. A, 2014). *Tinker* also remains an important case for other reasons:

> In the *Tinker* case, the Court also made clear that the First Amendment protects more than just words; it also protects certain "symbolic acts" that are performed "for the purpose of expressing certain views." The Court has elucidated this concept of "symbolic speech" or "expressive conduct" in a number of subsequent cases; see, for example, *Virginia v. Black,* 538 U.S. 343, 358 (2003) (cross burning is symbolic speech); *Texas v. Johnson,* 491 U.S. 397, 404 (1989) (burning the American flag is symbolic speech). (Kaplin & Lee, 2014, p. 1198)

Notably, the Supreme Court in *Tinker* upheld the previous reversal of *in loco parentis* made in *Dixon v. Alabama*. In addition, the Supreme Court's ruling indicated that secondary school students have the same right as adults to nonviolent, nonrestricted freedom of expression on public property (Kaplin, W. A., & Lee, B. A, 2014). *Tinker* is also important because it established the material and substantial disruption standard that is still used by the courts today to evaluate free speech cases. Similar language is often used by colleges and universities in their codes of conduct and freedom of expression policies to establish the boundaries of student behavior (Bird et al., 2006).

Dixon v. Alabama (1961) and *Tinker v. Des Moines* (1969) are critical U.S. Supreme Court decisions that have greatly influenced higher education policy on freedom of expression. These cases are still looked to today as standards for establishing students' right to free speech at public higher education institutions. These cases ultimately changed the way students asserted their right to freedom of expression and peaceful protest and thow public colleges and universities across the country viewed students' rights.

Public Forums

Over time, public colleges and universities have expressed concerns regarding student protest activities that occur in public forums. Such concern became prevalent in the 1970s, and public forums were defined in what has become known as the "public forum doctrine" in *Perry Education Association v. Perry Local Educators' Association* (1983) (as cited in Kaplin & Lee, 2014). This case centered around the rights of a teacher's union to exclusive use of a school system's interoffice mailing system. While the decision itself lacks critical importance to the freedom of expression movement, the Supreme Court's establishment and definition of the concept of public forums have been critically important for future litigation and have shaped policies pertaining to the use of space and freedom of expression at public colleges and universities.

The Supreme Court decision established three types of forums: a traditional public forum, a designated or limited public forum, and a nonpublic forum. For all three types, public colleges and universities are permitted to establish regulations regarding time, place, and manner. However, they may not restrict speech in these forums based on content.

The public forum doctrine was challenged multiple times during the 1980s, and the Supreme Court upheld it each time. Kaplin & Lee (2014) stated:

> The free speech protections for students are at their peak when the speech takes place in a "public forum"—that is, an area of the campus that is, traditionally or by official policy, available to students, the entire campus community, or the general public for expressive activities. Since the early 1980s, the public forum concept has become increasingly important in student freedom of expression cases. (p. 1199)

The concept of the public forum is crucial to students' ability to engage in freedom of expression while on a public college or university campus.

It should be noted that freedom of expression is an issue that is not limited to students; faculty members often struggle with issues related to freedom of expression as well. This is demonstrated in *McAdams v. Marquette University* (2018), a case decided by the Wisconsin State Supreme Court. John McAdams was a tenured faculty member who was suspended without pay from his position due to comments he made on his blog about a graduate teaching assistant's view on gay marriage (*McAdams v. Marquette University*2018). After unfavorable decisions by lower courts, McAdams took the case to the Wisconsin State Supreme Court, which found in favor of McAdams and ordered that he receive his back pay as well as that he be reinstated.

Notably, Marquette University is a private, Catholic university. However, McAdams' contract stated that as a faculty member, McAdams was expected to uphold the expectations and tenets of the American Association of University Professors, one of which is the right to academic freedom, which is considered a form of free speech. While this could be considered an issue pertinent to contract law, it is apparent that the faculty member's right to freedom of expression was a primary issue in this case. The Supreme Court has consistently held that the academic freedom accorded to faculty at public colleges and universities is protected by the First Amendment (Bird et al., 2006).

Amar and Brownstein (2017) recently examined legal challenges pertaining to faculty and the First Amendment, which is the primary legal support for academic freedom in the U.S. Amar and Brownstein analyzed court findings in their qualitative study and discussed at length how the First Amendment applies to both students and faculty in an academic environment. The authors evaluated cases pertaining to free speech at both public high schools and public colleges.

After analyzing a variety of landmark cases, Amar and Brownstein (2017) determined that students and faculty at public universities were able to engage in broad academic freedom due to the students' greater maturity level and the need to have a learning format that encourages intellectual stimulation. Essentially, Amar and Brownstein explained, the U.S. courts have determined that faculty at public and private universities need academic freedom in the classroom as well as to perform research, since, without academic freedom, students and faculty would be unable to learn and advance their knowledge base in any subject area. Amar and Brownstein emphasized the need for both faculty and students to possess academic freedom and be able to engage in freedom of expression on public college and university campuses.

At universities across the country, campuses are being invaded by individuals proselytizing and espousing low-value speech to students in hopes of bringing attention to their various causes. Their presence has created a problem on various college campuses, and on occasion, universities have gone to court to address this issue. In *Uzuegbunam v. Preczewski* (2021), Uzuegbunam was a campus preacher who identified as an evangelical Christian who was also enrolled as a student at Georgia Gwinnett College (GGC), located just outside of Atlanta, GA. Uzuegbunam was told by university officials that he was only permitted to speak about religion and distribute materials in two designated "speech zones" on campus, and even then, only after obtaining a permit (*Uzuegbunam v. Preczewski,* 2021).

After Uzuegbunam obtained a permit, he was again told to stop because he was being disruptive to campus activities, despite being in the designated free speech zones. Another student, Joseph Bradford, who shared the same beliefs as Uzuegbunam, decided not to speak. Both Uzuegbunam and Bradford sued Georgia Gwinnett College (GGC) for one dollar. GGC defended itself by stating that Uzuegbunam's speech rose to the level of "fighting words" as

defined in the Brandenburg decision (*Uzuegbunam v. Preczewski,* 2021). This argument was ineffective, and GGC changed tactics, stating that the lawsuit should not continue because there were no damages being claimed. The Supreme Court decided the lawsuit could continue, despite the lack of damages claimed.

As a result of this recent Supreme Court decision, this issue is still being litigated, and depending on the outcome, may impact the activities of campus preachers in years to come. While this case is specifically about campus preachers, its applicability is widespread to many groups. Regardless of the position one takes on this issue, it is important to research such policies, as they are the means universities have to govern their campuses as well as to set expectations for members of the campus community.

First Amendment Protections

The First Amendment provides varying levels of protection at different public and private colleges and universities (Amar & Brownstein, 2017). In reviewing the rhetoric of recent court cases pertaining to the First Amendment at colleges and universities, researchers can compare "theoretical and functional justifications for and against First Amendment protections" and address both student and faculty issues related to the First Amendment as it applies to academic freedom in higher education (Amar & Brownstein, 2017, p. 1943). Amar and Brownstein (2017) concluded that there is more protection for students at public than at private institutions. Based on the court cases they selected for their review, they also found that there is less protection for faculty at public than at private institutions.

In addition to encompassing academic freedom, the First Amendment also covers low-value or "hate" speech (Herbeck, 2018). Naturally, campus policies regarding free speech, which includes low-value speech, have an impact on the student experience. Calls for safe spaces and

trigger warnings from students, parents, and faculty alike are often heard on college campuses as students seek protection from low-value speech. Students may expect such information to be on syllabi and may even go so far as to suggest that faculty be required to state that low-value or hate speech is unacceptable in their classroom (Chemerinsky & Gillman, 2016).

Many students actively oppose public appearances by speakers with radical or controversial points of view (Herbeck, 2018). Examples of such incidents include the University of California canceling an appearance by Ann Coulter, a conservative commentator, due to safety concerns. Similarly, approximately 60 students at Middlebury College were so disruptive they effectively shut down a speech given by Charles Murray, author of the controversial book *The Bell Curve,* which draws connections between socioeconomic status, race, and intelligence.

Efforts to silence speakers perceived as being offensive have also been made by colleges and universities that institute formal policies regarding low-value speech (Herbeck, 2018). There is a difference between the actions students take to prevent speakers from appearing on campus and the actions of a university instituting a freedom of expression policy that restricts speech. Nevertheless, the motivations are essentially the same.

Helping students learn to respond to low-value speech, as well as speech and expression they disagree with, is a valuable part of their development as adults; these are challenges they will face when they begin their independent lives outside the classroom (Bird et al., 2006). Students today lack the understanding that the connection between dissenters and vulnerable groups regarding the necessity of protecting the rights they have to engage in acts of freedom of expression is critical (Chemerinsky & Gillman, 2016). While this is not low-value speech, by protecting low-value speech, society maintains the ability to protect all free speech, as it is often those in power that determine the value of particular speech content. Protecting low-value speech

does allow for discriminatory speech, or speech that may fall into the realm of "vocal violence." However, the First Amendment and freedom of expression policies on college campuses also have the great value and task of protecting the speech that students wish to engage in, which may or may not be popular with the college or university's administration (Chemerinsky & Gillman, 2017). According to Chemerinsky and Gillman:

> We found what has recently been reported by the Pew Research Center to be true: Millennials are much more supportive of censoring offensive statements about minorities. They are also much less amenable to being persuaded by countervailing arguments about the need to protect hateful speech. (2016, p. 1)

Moreover, many controversial speakers are persecuted rather than protected, as universities often attempt to censor those whose speech may not support the institution's values (Chemerinsky & Gillman, 2017). It should be noted that, at times, the university's values and the values of students may not be aligned. It is important that this does not result in censorship, as each student is an individual who will be shaped and influenced differently by different stimuli in the environment.

Policies and Special Groups

As the news media began to publicize issues pertaining to freedom of expression on college and university campuses, administrators responded by developing freedom of expression policies (Bird et al., 2006). Many of these policies sought to address student outcries regarding the desire to be protected from low-value speech:

> By the mid 1990s, more than 350 colleges or universities responded to abusive or hateful speech on their campuses by adopting rules and regulations that punish the use of derogatory names, expression that stigmatizes or victimizes individuals, or singles out a

> person, group, or class of persons based on race, religion, gender, handicap, ethnicity, national origin, or sexual orientation. (Herbeck, 2018, p. 245)

Many of these speech codes have been successfully challenged in court due to their excessively restrictive natures; essentially, they were found to be unconstitutional (Bird et al., 2006). Due to the precedents set by the U.S. Supreme Court, it is very challenging to subdue hate speech before violence erupts, and the ability of universities to respond to hate speech is greatly limited unless there is a direct threat of violence to a person or group of individuals as hate speech is protected by the first amendment (Chemerinsky & Gillman, 2017).

The U.S. Supreme Court's decision in *Brandenburg* (1969) set the standard for what counts as protected low-value speech and how the fighting words exception is defined. In regard to the concept of fighting words, the *Brandenburg* decision stated:

> The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. (*Brandenburg v. Ohio*, June 9, 1969)

As a result of these successful legal challenges, many colleges and universities have begun to revoke their freedom of expression policies to allow a great deal more free speech in public forums. The University of Chicago adopted what has become known as the Chicago Principles, which states that the University has no speech code and takes no stance on any type of speech that occurs on the University of Chicago campus:

> 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 . . . 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. (University of Chicago, 2015, p. 2)

This policy is highly responsive to today's political climate, in which universities are trying to commit to supporting students from all perspectives. This further demonstrates that ultimately, colleges and universities are currently operating as political bodies not by taking a side or a stand but simply by recognizing everyone's right to engage in free speech and protest activity. This is a direct response to the rise of student protests. It is worth noting that according to the Foundation for Individual Rights in Education (n.d.), this policy has been adopted by more than 50 public and private colleges and universities in the U.S.

This policy also may be viewed as a savvy attempt to balance power among the campus constituents who have traditionally less power. By not taking a stand, the senior administration, which is responsible for maintaining the policy, is attempting to retain power by discouraging students from forming coalitions related to overturning a freedom of expression policy. If students are all able to express themselves freely per the university policy, there is no reason to join forces in protest of the administration.

There are examples of universities and colleges that have not been successful in addressing a rise in student protests on campus through policy and university procedures. This may be due to fallacies within the policy or issues with the administrators engaged with and leading the university community. One such example is the University of Missouri at Columbia, specifically in relation to the student protests in 2015. This is likely due to the university's failure to understand its relationships and impact with campus stakeholders, as well as the general public's failure to recognize that the university is a political entity. This failure was also likely

due to the administration's inappropriate prioritization of the issues that occurred and its inability to establish trust and credibility.

Students at Missouri began to criticize the administration's lack of response to the racial climate on campus, and specifically its lack of response to incidents in which Black students were subjected to racial slurs (Trachtenberg, 2018). Protesting students formed a coalition called Concerned Student 1950, a reference to the year in which the first Black student was admitted to the University of Missouri. The students involved in Concerned Student 1950 protested at a homecoming parade on October 10, 2015. For approximately 15 minutes, students blocked University of Missouri System President Tim Wolfe's car from proceeding while the students demanded to speak with him. Wolfe refused to get out of the car, and police were called to remove the protesters. At one point, it was reported that Wolfe's car bumped a student protestor.

By refusing to get out of his car, Wolfe presented himself to the students as someone who did not care and was disinterested in their concerns. According to Bolman and Deal (2017)

> Managers spend most of their time relating to other people – in conversation and meetings, in groups and committees, over coffee or lunch, on the phone or on the net. The quality of relationships figures prominently in how satisfied and how effective they are at work. (p. 158)

Wolfe demonstrated that he was unwilling to relate to the students. Wolfe later admitted that he handled the situation poorly; however, his poor communication with the students continued until his resignation (Trachtenberg, 2018).

As a result of the way Wolfe engaged with the students, Concerned Student 1950 issued a list of demands that included Tim Wolfe's removal as system president. Other student protests followed, including hunger strikes as well as the University of Missouri football team's refusal to

participate in any athletic events (Trachtenberg, 2018). There were also inappropriate responses from faculty members to the protests, some of whom either dismissed their classes altogether or called for "muscle" to remove protestors. These responses indicated that there was no institutional plan to address student protest activity and no cohesive message being effectively communicated by the senior administration.

The faculty members' inappropriate responses indicated that they were either following the example of the system president, as they believed they were expected to, or there was a mistrust based on a lack of credibility being established by the university leadership (Kouzes & Posner, 2003). According to Kouzes and Posner (2003),

> People everywhere want to believe in their leaders. They want to have faith and confidence in them as people. People want to believe that their leaders' words can be trusted, that they have the knowledge and skill necessary to lead, and that they are personally excited and enthusiastic about the direction in which they are headed. Credibility is the foundation of leadership. (p. 16)

In November, more than a month after the first protest, the chancellor of the university resigned, as did the system president, Tim Wolfe (Trachtenberg, 2018). However, the damage had been done. Students, faculty, and staff began to leave the university. Even as recently as 2018, enrollment at the University of Missouri was still down 13% from its enrollment in August of 2015.

Obviously, particular senior administrators had a great deal of influence over what occurred at the University of Missouri, and these individuals hindered the institution's ability to produce an effective response. However, the multiple examples of poor responses to issues that occurred over more than a month demonstrate that the ineffective responses and lack of

understanding were not limited to a few senior administrators. Instead, there was a greater institutional issue in recognizing causation and community impact, as well as a lack of understanding among the senior leadership of the importance of demonstrating trust, credibility, and accountability (Birnbaum, 1992).

The senior administration also appeared to fail to recognize that events such as the shooting and riots in Ferguson were likely influencing the student coalitions (Trachtenberg, 2018). This lack of recognition demonstrated a lack of understanding of the student population and further demonstrated that the administration was disconnected from the university community. According to Bolman and Deal (2017), influential leaders spend time with their constituents and are actively involved with the people they serve.

By failing to communicate effectively with the students and failing to demonstrate support, care, or concern, the senior leadership gave the student protestors at the University of Missouri all the power in this situation. When the football team joined the protests, large financial donations, television contracts, and ticket sales became involved. Ultimately, the finances that came into play were the undoing of the University of Missouri's senior administration (Trachtenberg, 2018).

This outcome was not surprising. As in other large organizations, when a university's leaders lack trust and credibility, financial consequences can result. When a stressful event(s) occurs at an institution due largely to failures on the part of the leadership, it is only natural that the leadership may be replaced (Bolman & Deal, 2017). Ultimately, the events that occurred led to a revision of the policy pertaining to free speech at the University, allowing students to express themselves more freely in public spaces—but not before a great deal of damage was done to the University of Missouri's reputation and finances (Trachtenberg, 2018).

It is obvious from the incidents that took place at the University of Missouri, as described by Trachtenberg (2018), that the actions of university administrators greatly impact students as well as the university as a whole. In exploration of the actions of university administrators and the impact of hate speech on the university community, Garces et al. (2021) performed a qualitative study at the University of Texas at Austin on the responses of university administrators to hate speech. While Garces et al. recognized that hate speech impacts a variety of individuals with marginalized identities, this study focused on racially motivated hate speech. In total, Garces et al. interviewed 16 university administrators employed at the University of Texas at Austin during the 2018 – 2019 academic year. In addition to interviews, observational evidence was obtained. During their interviews, many administrators discussed the divisive environment on the University of Texas at Austin campus that was present after the 2016 presidential election, and noted that the election seemed to bolster non-student White supremacist groups to form a presence on campus. University administrators included in the study, particularly those who held mid-level positions, made note that incidents with White supremacist groups on campus weighed heavily on students from marginalized populations. Some university administrators expressed the knowledge that these groups being on campus had very little educational value or purpose in their presence and expressed concern about the impact such groups were having on the students, noting that the impact of hate speech on students who are from marginalized populations is greater because the students from marginalized populations are already not empowered on the University of Texas at Austin campus.

In the study performed by Garces et al. (2021), it was found that the responses of university administrators were greatly influenced by the legal environment and what the legal view was of what speech is considered to be protected. The results of the study further indicated

that the responses of university administrators undermined inclusion. University administrators were found to be consistently attempting to appeal neutral and were consistently navigating political and legal pressures to ensure neutrality was present, despite recognizing the harm hate speech was causing to marginalized students. University administrators discussed using existing methods of reporting and outreach through the Campus Climate Response Team (CCRT) to work with students who were impacted by hate speech, and discussed that efforts were centered on the impacted student, not the person or group at the cause of the incident. It was noted by Garces et al. that the CCRT was disbanded in 2020 when the University of Texas at Austin agreed to disband the CCRT as a part of a settlement in a lawsuit. The overall results of the study performed by Garces et al. indicated that repressive legalism is present, and is shaping the way university administrators respond to hate speech on the university campus, which is detrimental to students from marginalized population.

Freedom of expression watch groups have also emerged in response to some of these lawsuits and other incidents. One such example is the Foundation for Individual Rights in Education, more commonly known as FIRE. This group, primarily comprised of attorneys, reviews freedom of expression policies by giving them a red, yellow, or green light rating and shares ratings and policies on the FIRE website (Foundation for Individual Rights in Education, n.d.). The organization's primary activity is suing colleges and universities for what they perceive to be violations of individual rights. On the FIRE website, students can find critical reviews of their university's policies highlighting areas where students' rights may be at risk, as well as a place to report a concern they have regarding their college or university. The argument could be made that FIRE has significantly impacted freedom of expression on college campuses through its litigation efforts.

Another group that has been emerging on college campuses is known as Turning Point USA. Conservative students are encouraged to join or start chapters on their campuses (Turning Point USA, n.d.). This group holds a free conference in Florida annually for its student members. Once a part of this group, students are encouraged to advocate for every square inch of their campus to be utilized as a public forum for free speech.

Freedom of expression and the policies that govern it are continually evolving on public college and university campuses. Because freedom of expression policies impact all public college and university students, it is vital for administrators to be knowledgeable about the policy at their own and their peer institutions and to stay abreast of the continuing national dialogue.

Summary

This chapter presented a review of the literature pertaining to freedom of expression on public college and university campuses. The topics covered included a broad historical overview of freedom of expression on college and university campuses, relevant case law, policies, special groups, and First Amendment protections. An examination of the literature found a gap in research that demonstrates the need for a better understanding of higher education freedom of expression policies. A thorough analysis of this literature demonstrates that the issue of freedom of expression on college and university campuses is multifaceted and complex.

CHAPTER 3

RESEARCH METHODOLOGY

The purpose of this study is to examine the rhetoric of freedom of expression policies at public colleges and universities in the U.S. This chapter outlines the approach to reviewing research material and how the study was designed and structured. It discusses the approach taken to analyzing the data that was gathered and the research approach and design methods that were utilized in this study.

Design and Approach

This study is based on qualitative research methods. Creswell (2007) defined qualitative research as follows:

> Qualitative research is an approach for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures, data typically collected in the participant's setting, data analysis inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data. The final written report has a flexible structure. Those who engage in this form of inquiry support a way of looking at research that honors an inductive style, a focus on individual meaning, and the importance of reporting the complexity of a situation. (p. 4)

When doing qualitative research, it is critical to understand that the purpose of the research is for the researcher to engage in congruence with the data they have gathered so they may intermingle with the data. This will lead the researcher to interpret and generate meaning from the data. It is also critical to understand that qualitative research is often interpretive. The interpretation of qualitative research is dependent on the questions being asked by the researcher to gather the data. When performing qualitative research, researchers must be flexible, as data collection and analysis may lead them to unexpected places.

This study was designed as a critical discourse analysis (CDA) of policy rhetoric. A critical discourse analysis analyzes the relationship between language, power, and ideology (Fan, 2019). A critical discourse analysis is a modern approach to studying and analyzing language and discourses within society. This approach is generally used to analyze social problems such as law and policies, news, race, and gender issues. As freedom of expression policies fall within these categories, a CDA is the most appropriate form of qualitative research design to address the selected research questions.

CDA encompasses the following characteristics: clarity of research objectives, the generality of the research scope, the interdisciplinary nature of the research field, and the diversity of the research schools (Fan, 2019). In performing this study, I used the CDA framework proposed by Chouliaraki and Fairclough (1999) as adopted and discussed by Fan in 2019. Chouliaraki and Fairclough's CDA framework includes five steps.

The first criterion in a CDA under Chouliaraki and Fairclough’s (1999) framework was to identify a social problem related to discourse. The social problem identified in this study is the engagement of growing and developing students, as well as external community members, in freedom of expression activities. There is a differentiation in the rhetoric of freedom of

expression policies and statements at public colleges and universities that assist in providing rules and guidelines that surround freedom of expression on the university campus. The identification of this social problem meets the first criterion of a CDA under Chouliaraki and Fairclough's framework.

The second criterion in a CDA under Chouliaraki and Fairclough's (1999) framework is to determine the challenges in addressing the problem by analyzing the relationship between the discourse and the other components of the social practice. In addition to undertaking a thorough analysis of the discourse itself; this is how the difficulties in dealing with the problem are determined. The second criterion under Chouliaraki and Fairclough's framework was met in Chapter 2 through a review of the literature related to freedom of expression issues.

The third criterion under Chouliaraki and Fairclough's (1999) framework is to consider whether it is necessary to solve the problem. The third criterion was met in Chapters 4 and 5, which analyzes the policies and statements. Through analysis and questioning, a researcher may determine whether it is necessary to solve the problem (Fan, 2019). The fourth criterion under Chouliaraki and Fairclough's framework is identifying the solution to the social problem (Fan, 2019). The fourth criterion of Chouliaraki and Fairclough's framework was met in Chapter 6 by providing recommendations.

The fifth and final criterion under Chouliaraki and Fairclough's (1999) framework is to make a critical reflection (Fan, 2019). The fifth criterion under Chouliaraki and Fairclough's framework was met through the discussion of the limitations of this study and the discussion of ideas for future research. Given the topic, significance, and purpose of this study, the CDA framework is the most appropriate means of addressing the research questions.

Research Questions

The research questions explored in this study are:

- Does the rhetoric of freedom of expression policies indicate that some public colleges and universities have policies that are more restrictive than others? If so, how do these policies differ, and in what ways are they restrictive?
- Is there language in freedom of expression policies demonstrating that public colleges and universities are proactive in preparing for their students' freedom of expression?
- In what ways do these policies conform to standards, laws, and policies established by the U.S. government? In what ways do they not conform?

Institutional Policies for Analysis

This research was conducted by reviewing and analyzing freedom of expression policies at 15 public universities in the U.S. The criteria for selecting these institutions were twofold: They must be public institutions, and they must have an undergraduate population of more than 20,000 students. All are predominantly white institutions (PWI), and all are Research I institutions (R1). These criteria were used to ensure consistency among the sample population.

By attempting to maintain consistency in institutional size and population, I sought to eliminate extraneous factors that might influence the findings surrounding these policies. The policies of the following universities are examined in this study:

- Purdue University at West Lafayette
- University of Georgia
- University of Illinois at Chicago
- University of California at Berkeley
- Texas A&M University at College Station

- University of Massachusetts at Amherst
- Michigan State University
- The State University of New York at Buffalo
- University of Maryland at College Park
- University of Colorado at Boulder
- University of Missouri at Columbia
- University of Oregon
- Virginia Tech
- The University of Arizona
- University of South Carolina at Columbia

There was a purposeful and intentional effort to select a wide range of institutions with policies to study that were geographically dispersed across the U.S. The purpose of this broad examination was to evaluate whether there was any regional congruence between policies. While some policies contained elements of similar language, each policy was reviewed to ensure that they had different tenets that necessitated critical review of each policy. There was also an intentional review of each university's policy in the database provided by Freedom for Individual Rights in Education (FIRE) to ensure that the university policies reviewed in this study had a variety of ratings and a range of language issues.

Data Analysis

The qualitative data gathered were analyzed using techniques appropriate for a CDA. The policies reviewed were coded and analyzed for language and themes (Creswell, 2007). This experience provided insight into similarities and differences between policies and assisted in the

recognition of anomalies in policies. By coding the data, I was able to move through each step of the CDA.

To begin organizing my research and for ease of comparison, I used the rating system developed by the Foundation for Individual Rights in Education (n.d.) to categorize universities and their policies.While this rating system did not influence my research or unique independent thoughts, it did assist me in identifying and grouping policies together for review. Further, it aided me in better understanding which policies may have exceptionally similar or different policy language.

After I gathered and organized the policies known to FIRE from their respective university websites I began to sort them into categories. This would lead me to identifying additional policies and keywords/phrases. The categories of policies that I identified were statements on free speech, hate and bias speech policies, protest/demonstration and posting/distribution policies, civility policies and statements, and harassment/discrimination policies.

After identifying these categories, I made a chart with each university name running vertically and each policy category running horizontally. As I found policies that were relevant to my identified categories, I downloaded them, saved a copy, printed them, and began checking off each category across from the name of the respective university. This chart later became Table 1.

Using printed copies, I began coding each policy to identify key words. This is how I began to understand how policy language differed. The keywords and phrases identified through this initial coding process were freedom of expression, facilities, reservations, protest and demonstration, public forum, Title IX, First Amendment, hate speech, and bias reporting.

After completing this initial round of coding, I began to identify policy directories on each university website. I quickly learned that each university has a different way of organizing information, and extremely different organizational levels. I learned through my initial starting point of the FIRE database that I should not only search for these policies in expected places on university websites, such as offices related to diversity and inclusion but that I should also check facilities policies for information on allowed usage.

After reviewing policy directories, I began extensive searches on each university's website using my previously identified key words and phrases. Occasionally, I located a policy that would link to other policies on another web page. After a policy was identified, I downloaded it and saved it for further review. I did not stop searching for policies until I had exhausted all university websites for policies related to my search.

Upon completing my search for policies, I continued coding each policy using a paper copy. As I identified major groups of policies displaying similar rhetoric, I sorted the policies accordingly to assist me in further identifying rhetorical patterns. I printed additional hard copies of the policies of universities that had adopted the Chicago Principles and performed the same coding and category process on those policies. I was interested in comparing these not only to the policies of the other universities in the study but also to each other, as they have the common denominator of sharing the same principles and advertising adherence to the same set of values.

After each policy was categorized and coded, I evaluated my findings and formulated what would become the ultimate answers to my research questions. I noted that none of the universities in my study included information in their policies on how they would educate students about the policy. This led me to perform a similar process of researching educational components that universities provide to students regarding freedom of expression statements and

policies. I considered why education was necessary and reviewed both Kohlberg's Theory of Moral Development (1981) and Baxter Magolda's theory of self-authorship (1999). I began to journal and take notes on the applicability of Kohlberg's theory (1981) and Baxter Magolda's theory (1999, 2001) as they related to the research questions guiding this study.

Finally, I reviewed Chouliaraki and Fairclough's (1999) CDA theoretical framework to ensure that this study reflected the characteristics of a CDA, which include clarity of research objectives, the generality of the research scope, the interdisciplinary nature of the research field, and the diversity of the research schools. My research objectives are my research questions, and my research scope was to analyze freedom of expression policies and statements at various public universities. The diversity of research schools was present, as the institutions and policies I reviewed were in different places geographically and had very different policy contexts.

Next, I reviewed my material to ensure that I was able to meet each of the five criteria for a CDA under Chouliaraki and Fairclough's (1999) framework. The social problem related to discourse that I identified is the need of universities to have freedom of expression policies that support free speech that allow for the support of students, as well as meet the need for education on freedom of expression on the university campus. To meet the criterion for the second criterion in a CDA under Chouliaraki and Fairclough's framework, I identified, coded, and categorized the policies. This allowed me to identify the challenges in addressing the problem by analyzing the relationship between the discourse and the other components of the social practice, in addition to thoroughly analyzing the discourse itself.

By analyzing the policies, I considered whether it was necessary to solve the problem involving social order, the third criterion for a CDA. The analysis of these policies can be found in Chapters 4 and 5. The fourth criterion in a CDA under Chouliaraki and Fairclough's (1999)

framework was identifying a solution to the problem, which can be found in Chapter 6 and is presented in the answers to my research questions. The fifth and final criterion for a CDA is to make a critical reflection. This fifth criterion is also presented in Chapter 6, encompassed in my reflections as well as my recommendations for future research.

Summary

Chapter Three presented the methodology that was used for the CDA and identified the relevant student development theory. The research design, institutional policies being analyzed, and limitations of the study were also discussed in this chapter. The chapter further described the methodology used in the study and described how each part of this study fits Chouliaraki's and Fairclough (1999) CDA framework.

CHAPTER 4

PRIMARY POLICY ANALYSIS

Each university policy selected for this study is from a Research I institution with a student population of over 20,000. Upon review of the policies, it became clear that despite being public institutions of a similar size and academic caliber, each institution uses a different language, has different policy components, and structures their policy differently. This may occur for a variety of reasons related to values, guidance from legal counsel, and the views of the university leadership at the time the policies were implemented. Garces et al. (2021) found that university administrators' responses to hate speech were greatly influenced by their perceptions of the legal environment. Based on the findings of Garces et al., it stands to reason that the perception university administrators have of what constitutes speech protected by the First Amendment may influence the shaping of policies.

Once the policies were identified and categorized, each policy required further analysis to address the research questions:

- Does the rhetoric of freedom of expression policies indicate that some public colleges and universities have policies that are more restrictive than others? If so, how do these policies differ, and in what ways are they restrictive?

- Is there language in freedom of expression policies demonstrating that public colleges and universities are proactive in preparing for their students' freedom of expression?
- In what ways do these policies conform to standards, laws, and policies established by the U.S. government? In what ways do they not conform?

When policies are too broad or too narrow, they can be challenging to enforce. This concept applies to the universities included in this study, which seeks to examine the nature of polices related to free speech and how universities prepare for and expect students to engage in acts of freedom of expression, whether as part of a campus protest, in the classroom, or on their own personal time. In a CDA, the third criterion is to determine whether it is necessary to solve the problem, as described by Chouliaraki and Fairclough's (1999) framework. The analysis presented in Chapters 4 and 5 provides a key component to this study in comparing and contrasting the rhetoric among the various policies and satisfies the third criterion.

Table 1

Universities and Corresponding Statements and Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
Michigan State University	Yellow	Yes	Yes	No	Yes	No	Yes	Yes
Purdue University	Green	Yes	Yes	Yes	Yes	No	No	No
State University of New York at Buffalo	Yellow	No	Yes	No	Yes	Yes	Yes	No
Texas A&M University at College Station	Green	No	Yes	No	Yes	Yes	Yes	No
University of Arizona	Green	Yes	Yes	No	Yes	Yes	Yes	Yes
University of California at Berkeley	Yellow	No	Yes	Yes	Yes	Yes	Yes	Yes
University of Colorado at Boulder	Green	Yes	Yes	No	Yes	No	Yes	Yes
University of Georgia	Yellow	No	Yes	No	Yes	No	Yes	Yes
University of Illinois at Chicago	Red	No	Yes	Yes	Yes	No	Yes	Yes
University of Maryland at College Park	Green	Yes	Yes	Yes	Yes	Yes	Yes	Yes
University of Massachusetts at Amherst	Yellow	No	No	No	Yes	Yes	Yes	Yes
University of Missouri at Columbia	Yellow	Yes	Yes	Yes	Yes	Yes	Yes	Yes
University of Oregon	Yellow	No	Yes	No	Yes	Yes	Yes	No
University of South Carolina at Columbia	Yellow	No	No	No	Yes	Yes	Yes	No
Virginia Tech	Yellow	No	Yes	Yes	Yes	Yes	Yes	Yes

Table 1 displays the various university policies related to freedom of expression. This table also demonstrates that the institutional approaches to freedom of expression taken by universities that have adopted the Chicago Principles differ not only from those of other institutions, but also from each other.

An analysis of this table demonstrates that although all the institutions on the list are large, predominantly white public research universities, each one has a unique approach to the policies surrounding free speech on its campus. The only form of speech policy relevant to this study that every institution on the list possesses is an anti-harassment/discrimination policy. Because each institution has a policy on harassment, each of these universities is in compliance with federal law pertaining to Title VII of the Civil Rights Act (1964) and Title IX of the Education Amendments Act of 1972 (2018), and thus eligible for federal funding, despite the difference in the language of these policies. These are the only policies included in this study that are legally required for federal funding.

Every university in this study has some form of free speech policy and/or statement; however, these take different forms and, in many cases, have different tenets. Nevertheless, these statements and policies generally uphold the principle that free speech is encouraged and accepted on each of their campuses in various forms. The following points provide a brief overview of the findings included in this study:

- Some universities have policies and statements that are more restrictive than others. The policies and statements regarding free speech at the various

universities included in this study are generally not consistent, with a few exceptions.

- Some of the policies and/or statements at some of these universities contain language demonstrating that the university does proactively attempt to prepare students to engage in free speech.
- The policies included in this study conform to U.S. laws and regulations; however, there are areas where universities can and should make adjustments

This chapter will present a more detailed overview of the study's findings, which will be further discussed in Chapter 6.

Interestingly, while some of these universities have created additional policies that place limitations on speech pertaining to time, place, and manner, others are noticeably silent on these issues. This demonstrates that the universities in the study all take different approaches to free speech. This is not to say that one university has overall better policies than another. Instead, each university takes a different approach while attempting to address the same issue of free speech on a public Research I university campus. The next section presents a detailed review and comparison of the universities in this study pertaining to the various categories of free speech statements and policies that fully address each research question. Each policy examined in this study is included in a respective appendix.

Policy Overview

In reviewing Table 1, it is apparent that there are basic differences not only in policy language, but also in which policies a university has in place related to freedom of expression. In analyzing this table for patterns related to the regions in which the universities are located, no patterns emerged related to universities with particular policies surrounding free speech. This information is reflected in Tables 2–5. There is also no pattern of connection between policies at respective institutions.

Additionally, in reviewing the regions in which the universities are located, there was no strong commonalities between policy types based on geographical locations. The only area of note pertaining to regional policy comparisons is that no university included in this study located in the southeastern U.S. has adopted the Chicago Principles. Nor was there any evident pattern of policies among the institutions that have adopted the Chicago Principles, as shown in Table 6. These policies were compared amongst each other, as they have each adopted the same set of ideals regarding freedom of expression, and they were analyzed for language differences that shape the differences between the policies.

Table 2

Northeast and Mid-Atlantic Universities and Corresponding Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
University of Massachusetts at Amherst	Yellow	No	No	No	Yes	Yes	Yes	Yes
State University of New York at Buffalo	Yellow	No	Yes	No	Yes	Yes	Yes	No
University of Maryland at College Park	Green	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Table 3

Southeastern Universities and Corresponding Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
University of Georgia	Yellow	No	Yes	No	Yes	No	Yes	Yes
Texas A&M University at College Station	Green	No	Yes	No	Yes	Yes	Yes	No
Virginia Tech	Yellow	No	Yes	Yes	Yes	Yes	Yes	Yes
University of South Carolina at Columbia	Yellow	No	No	No	Yes	Yes	Yes	No

Table 4

Midwestern Universities and Corresponding Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
Purdue University	Green	Yes	Yes	Yes	Yes	No	No	No
University of Illinois at Chicago	Red	No	Yes	Yes	Yes	No	Yes	Yes
University of Missouri at Columbia	Yellow	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Michigan State University	Yellow	Yes	Yes	No	Yes	No	Yes	Yes

Table 5

Western Universities and Corresponding Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
University of California at Berkeley	Yellow	No	Yes	Yes	Yes	Yes	Yes	Yes
University of Colorado at Boulder	Green	Yes	Yes	No	Yes	No	Yes	Yes
University of Oregon	Yellow	No	Yes	No	Yes	Yes	Yes	No
University of Arizona	Green	Yes	Yes	No	Yes	Yes	Yes	Yes

Table 6

Chicago Principle Universities and Corresponding Policies

Institution	*FIRE Category*	*Adopted the Chicago Principles*	*Statement on Free Speech*	*Policies on Civility*	*Harassment/ Discrimination*	*Hate & Bias Speech*	*Protest/ Demonstration*	*Posting and Distribution Policies*
Purdue University	Green	Yes	Yes	Yes	Yes	No	No	No
University of Colorado at Boulder	Green	Yes	Yes	No	Yes	No	Yes	Yes
University of Maryland at College Park	Green	Yes	Yes	Yes	Yes	Yes	Yes	Yes
University of Missouri at Columbia	Yellow	Yes	Yes	Yes	Yes	Yes	Yes	Yes
University of Arizona	Green	Yes	Yes	No	Yes	No	Yes	No
Michigan State University	Yellow	Yes	Yes	No	Yes	No	Yes	Yes

Primary Policy Review

The policies reviewed and analyzed in Chapter 4 should be considered primary policies, as their purpose is to govern freedom of expression practices on their respective university campus. Secondary policies will be reviewed and analyzed in Chapter 5. These policies are considered secondary because they address a concern other than freedom of expression but still pertain to the regulation of freedom of expression on the university campus.

Statements on Free Speech

The following universities have exceptionally similar language in their statements on free speech:

- Purdue University
- University of Colorado at Boulder
- University of Maryland at College Park
- University of Missouri at Columbia
- The University of Arizona
- Michigan State University

Each of these universities is specifically drawing on the Chicago Principles for the language in its statement on free speech (University of Chicago, 2015). In addition to these universities stating that they have adopted the Chicago Principles, FIRE (n.d.) maintains a list of universities that have adopted these principles. In adopting the Chicago Principles, each institution expresses a clear commitment to free and uninhibited speech on its campus (Michigan State University, n.d.-d; Purdue University, n.d.; University of

Arizona Dean of Students Office, n.d.-b; University of Chicago, 2015, n.d.; University of Colorado, n.d.; University of Maryland, 2018b; and University of Missouri at Columbia n.d.-a). While each of these statements on free speech adheres to the Chicago Principles, each of these institutions' other policies will be examined further in other sections.

The following universities have language in their statements on free speech that is similar to the policy language of the six institutions listed above. While the language of these policies is exceptionally similar, however, these institutions have not adopted the Chicago Principles (University of Chicago, 2015), and thus should be categorized differently. The language used by the universities included in this study within the statements on free speech can be divided into two primary categories. The first grouping of universities contains statements on free speech that focus primarily on individual freedoms and the First Amendment:

- University of California at Berkeley
- Texas A&M University at College Station
- Virginia Tech

By focusing on the First Amendment, these universities are in tandem with the universities that have adopted the Chicago Principles, and are reaffirming that each person on their respective campuses will be provided their constitutionally guaranteed freedoms while on campus (Texas A&M University, n.d.-a; University of California at Berkeley, n.d.-b; Virginia Tech, n.d.-a).

Of all 15 universities in this study that have a statement on free speech, the most simple and straightforward statement belongs to Virginia Tech. Virginia Tech's statement

affirms that the institution values the freedom of expression guaranteed by the First Amendment, but expects university community members to be respectful and allow individuals the ability to learn (Virginia Tech, n.d.-a). It continues by stating that engaging in freedom of expression activity does not violate university policy unless it interferes with university functions (Virginia Tech, n.d.-a). The statement also includes a form for students who wish to report a violation of their freedom of expression rights (Virginia Tech, n.d.-a). All of the other university statements contain additional legalistic language and discuss freedom of expression on campus as an element of the university's values.

Next to its statement on free speech, Virginia Tech includes links to related policies that also address speech and expression on campus. These related policies include the Policy on Harassment, Discrimination, and Sexual Assault; University Facilities Usage and Event Approval; Sales, Solicitation, and Advertising on Campus; the Faculty Handbook; and the Hokie Student Handbook. Interestingly, there is no reference to Virginia Tech's Principles of Community statement, which pertains to campus values related to civility.

The second grouping of universities utilizes language that reflect the belief that ideas should be criticized and challenged due to the academic nature of the institution. These statements mention university values/ideals and emphasize the importance of academic freedom for faculty. The following universities have statements on free speech that reflect such language:

- University of Illinois at Chicago

- The State University of New York at Buffalo
- University of Oregon

The statements made by the University of Illinois at Chicago, The State University of New York at Buffalo, and the University of Oregon are primarily concerned with presenting challenging ideas that will foster academic and intellectual growth for the campus community, rather than freedoms and rights guaranteed by the U.S. Constitution (University of Illinois at Chicago, 2018; University at Buffalo, n.d.-c; University of Oregon, 2010).

The University of Georgia has a Freedom of Expression and Assembly Policy that contains a statement regarding free speech. This document also contains a number of other enforceable policies. This policy is significantly different from the Freedom of Expression Statements of the other universities included in this study (University of Georgia, 2020).

Two of the universities included in this study do not have a formal free speech statement: the University of Massachusetts at Amherst and the University of South Carolina at Columbia. Both universities have other types of speech policies, and a search of each university's website identified articles that allude to free speech being a value of each university. However, there is no formal statement that highlights freedom of expression as a principle of the university.

Without such a statement, the University of Massachusetts at Amherst and the University of South Carolina at Columbia cannot be viewed as rooted in the same principles as the other universities in this study, as they are not explicitly promoting free

speech as a cherished value of the institution. Both Kohlberg's theory of moral development (1981) and Baxter Magolda's theory of self-authorship (1999, 2001) support the need for institutions to explicitly state the value they place on freedom of expression, as students need to be aware of the university's values to help them understand the institution's expectations for them both in and outside of the classroom.

Purdue University makes an intentional effort to educate all of its first-year students at Orientation, which is also known as Boiler Gold Rush, on free speech and behavioral expectations related to free speech (Morey, 2016). This is in support of Purdue University's Commitment to freedom of expression statement that outlines the university's commitment to the first amendment on campus (Purdue University, n.d.). This educational session is typically led by University Legal Counsel, The Vice President of Equity and Inclusion, and the Dean of Students. During this session, students are taught what to expect in the classroom related to academic freedom, and what they may see on campus regarding individuals from the university and the community demonstrating. Student leaders put on skits to role play acceptable responses to free speech that do not violate the Student Code of Conduct or infringe on the rights of those engaging in free speech in public spaces on the Purdue University campus. By providing this type of education on free speech and behavioral expectations, Purdue University is assisting its students in growing and developing morally and ethically under Kohlberg's (1981) theory, as well as provides each student with a primer to author their own college experience under Baxter Magolda's (1999, 2001) theory of self-authorship.

Students are also directed to resources where they are able to report concerns, should they observe an incident of free speech they view as problematic (Morey, 2017). Baxter Magolda's theory of self-authorship (1999, 2001) supports this activity, as it offers students a variety of options to consider when selecting how to respond to free speech they observe on campus. Similarly, Kohlberg's theory of moral development (1981) also supports the activity because it encourages students to expand their perspectives and fosters their moral and ethical growth.

The University of Oregon is also proactive in educating its student population about free speech on campus by putting on a series of events with a focus on freedom of expression (University of Oregon, n.d.-b) In addition to this series of programs sponsored by the President's Office, the University of Oregon includes additional First Amendment information for students to review. These educational initiatives are also supported by both Baxter Magolda's theory of self-authorship and Kohlberg's theory of moral development (Baxter Magolda, 1999, 2001; see also Kohlberg, 1981).

Several universities in this study are taking passive proactive approaches to educating students on freedom of expression on their campus by building websites designed to educate. Universities engaging in this practice include the University of Georgia, Texas A&M University at College Station, University of Colorado at Boulder, University of Missouri at Columbia, University of Oregon, University of Arizona, and Michigan State University. The most comprehensive of these websites, which offer the most extensive information and resources for students, are Texas A&M University at College Station and the University of Colorado at Boulder. While a passive approach to

education on freedom of expression topics is also supported by Kohlberg's theory of moral development (1981) and Baxter Magolda's theory of self-authorship (1999, 2001), Baxter Magolda's theory of self-authorship indicates that active educational programming may be more effective than a passive approach.

Protest and Demonstration/Posting and Distribution Policies

The free speech policies examined in this study include policies pertaining to protest and demonstration as well as posting and distribution. With the exception of Purdue University, which has no policy on protests and demonstration or posting and distribution, every other university in the study has a policy on protest and demonstration. Some universities have both protesting and demonstration and posting and distribution policies. No university included in this study includes any guidelines as to what type of content the university does or does not deem acceptable as a topic of a freedom of expression act. This is appropriate and supported by the determinations of the Supreme Court's landmark decision in *Tinker v. Des Moines* (1969) regarding the requirement that public institutions be content neutral pertaining to expressive acts in which students may choose to engage (Kaplin, W. A., & Lee, B. A, 2014). By providing protest and demonstration policies, as well as posting and distribution policies, under Baxter Magolda's (1999, 2001) theory of self-authorship, universities provide the framework for students to author their own experiences pertaining to self-expression.

While Purdue University has no specific policy on protest and demonstration, its Commitment to Freedom of Expression statement discusses the issues of protests and demonstrations:

> 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. (Purdue University, n.d., para. 5)

The principles of welcoming criticism and contesting speakers and ideas from the university community without being obstructive are consistent with Purdue's acceptance and promotion of the Chicago Principles and the expectations these principles establish for members of the Purdue University community.

Five of the six universities that have adopted the Chicago Principles, and therefore have exceptionally similar advertised values pertaining to free speech, also have protest and demonstration policies. These policies will therefore be compared to each other. In reviewing the policies at Michigan State University, the University of Colorado at Boulder, the University of Maryland at College Park, the University of Missouri at Columbia, and the University of Arizona, it became apparent that the protest and demonstration policies of all these institutions had some similarities. However, this

review also highlighted that even among universities that have adopted the Chicago Principles, institutional approaches to this policy type vary.

The University of Maryland has two comprehensive policies pertaining to protest and demonstration. One policy is located on the University of Maryland Policy and Procedures for the Use of Facilities and Outdoor Spaces page, while a second policy is found in the Event & Guest Services Policy Manual called Demonstrations/Leafleting (University of Maryland, 2021). Some universities in this study have two separate policies, which are categorized as such, and these are reviewed below. The University of Maryland is the only university in this study with two separate policies in different documents that both combine a protest and demonstration policy with a posting and distribution policy, making the structure of this university's policies unique.

The primary policy that is applicable to the immediate campus community of students is found on the University of Maryland (2021) Policy and Procedures for the Use of Facilities and Outdoor Spaces web page. The overwhelming majority of this policy pertains to freedom of expression on the University of Maryland at College Park campus. This policy first states

> It is the policy of the University of Maryland, College Park ("University") that its physical facilities and outdoor spaces be used to support the University's central mission as a land grant institution and its goals of achieving excellence in teaching, research, and public service within a supportive, respectful, and inclusive environment that honors freedom of expression and complies with the First Amendment. (University of Maryland, 2021, p. 1)

This language is very much in line with the advertised Freedom of Expression statement put forth by the University of Maryland at College Park and with the Chicago Principles the University has adopted. The policy also defines the following terms as they apply to protests and demonstrations as well as posting and distribution: expressive activity, external user, fronting, host, internal user, leafletting, program, public speaking, and registered student organization.

Following the definition of terms, the policy outlines general guidelines for the use of university facilities and outdoor spaces. These guidelines note that with few exceptions, events must be hosted by a recognized member of the university community, as outdoor and indoor spaces are primarily intended for events and meant to be used by recognized members of the university community (University of Maryland, 2021). University facilities, including both indoor and outdoor space, must be used only for the stated purpose of the reservation; fees may be charged to cover various costs and insurance may be required.

The Guidelines for Expressive Activity are a part of the University of Maryland Policy and Procedures for the Use of Facilities and Outdoor Spaces, further showing that this is a primary policy related to freedom of expression at the university (University of Maryland, 2021). This section of the policy also contains restrictions on amplified sound, which is not permitted, and on the blocking of pedestrian or vehicular traffic. More importantly, the policy includes under the heading of restricted activities “Conduct which the University reasonably deems to cause disruption to campus activities” (University of Maryland, 2021, p. 3). Closing out this section of the Maryland policy is a statement that

encourages free expression by all and states that there is no restriction on the subject matter of speech (University of Maryland, 2021).

The University of Maryland's (2021) Policy and Procedures for the Use of Facilities and Outdoor Spaces also differentiates between how space may be used by internal users, who are individuals directly affiliated with the university, and external users, which are guests and other individuals who do not have a direct relationship with the university. Internal and external users have generally the same privileges when it comes to using space on the University of Maryland Campus; the primary difference is the method through which they gain access to use the campus facilities. External Users are subject to the policies in the *Guest Services Policy Manual*, which includes a Demonstrations/ Leafletting policy. For both internal and external users, the institution reserves the right to review any facility use request to prevent the disruption of its academic functions. The university also reserves the right to move an event to a more appropriate location or reschedule or cancel an event if it has concerns related to the disruption of academics and campus life (University of Maryland, 2021).

Closing out the University of Maryland Policy and Procedures for the Use of Facilities and Outdoor Spaces is Appendix A, Guidelines for Expressive Activity. This appendix starts with a rationale that offers a general statement of support for freedom of expression on campus. This rationale references the University's Statement on Free Speech Values and includes a section labeled Rules for Expressive Activity (University of Maryland, 2021). Although this section uses the term "rules," its ideology is not

restrictive in nature. Instead, it is aligned with the Chicago Principles and designed to promote and allow free speech on the University of Maryland at College Park Campus.

This appendix also includes rules regarding leafletting and chalking. Internal users may use any outdoor space that is not otherwise restricted to leaflet without advance approval. Internal users may also chalk messages on horizontal flat sidewalks intended for pedestrian use (University of Maryland, 2021). External users may only leaflet in in designated areas, and the policy is silent on chalking. This portion of the policy is restrictive to external users.

This appendix also includes separate sets of rules regarding scheduled and unscheduled expressive activity by internal and external users. This includes restrictions on reservable indoor and outdoor spaces (University of Maryland, 2021). Students, who are internal users, may use McKeldin Mall, Hornbake Plaza, Stamp Student Union (South East Plaza), and Nyumburu Amphitheatre for registered expressive activity. External users may use designated sidewalk space outside the southeast entrance to Stamp Student Union and designated space in Hornbake Plaza for registered expressive activity (University of Maryland, 2021). This portion of the policy is differentially restrictive, as not everyone is afforded the same privileges pertaining to the use of campus space.

Finally, there is a section of this appendix labeled Rules for Unscheduled Expressive Activity by University Students, Staff, or Faculty. This section of the policy contains rules that pertain to spontaneous group acts of freedom of expression on campus. The policy defines these acts as groups of 10 or more individuals engaging in expressive activity together without advanced registration (University of Maryland, 2021). The

policy states that unplanned group free speech activity by internal users may take place in the areas designated for internal users as long as it does not interfere with groups that hold previous reservations. It further states that internal users may not circumvent the reservation process by claiming an activity was unplanned, and identifies criteria the university may use to evaluate whether an unplanned activity is truly spontaneous, such as whether there is professional printing, security, or media contacted in advance of the activity.

Portions of this policy are restrictive and make it challenging for individuals to gather freely in public spaces and express themselves in the manner of their choosing. One example of the restrictive nature of the policy is the prohibition on amplified sound. Another example is requiring groups to reserve outdoor space, even space that may be considered a public forum, and restricting who can use which space based on their relationship with the university (University of Maryland, 2021).

The University of Maryland Policy and Procedures for the Use of Facilities and Outdoor Spaces is aligned with both the Chicago Principles and the University's own Statement on Free Speech. The statement also demonstrates a recognition of and compliance with the Supreme Court's landmark decision in *Perry Education Association v. Perry Local Educators' Association* (1983) (as cited in Kaplin & Lee, 2014).

The Demonstrations/Leafletting policy in the *Event & Guest Services Policy Manual* (University of Maryland, 2018a) serves as a secondary policy for the University, primarily targeted at non-student employees and guests. First and foremost, this policy states that the individual rights of community members to demonstrate and pass out

materials are supported, as long as they are not disruptive. This statement is very much in line with the Statement on Free Speech and the Chicago Principles. However, immediately following this statement, the policy notes that with the exceptions described in section II of VI-4.10(A) of the University of Maryland Procedures for Use of Physical Facilities, individuals who are not immediately linked to the University of Maryland community may only participate upon the invitation of a community member. These restrictions are further described throughout the body of this policy.

While there are clearly restrictions placed on individuals who are external to the University of Maryland at College Park, a great deal of the language in this policy echoes both the language in the Statement of Freedom of Expression at the University and the Chicago Principles (University of Chicago, 2015). This demonstrates that while parts of the policy are restrictive, it is not wholly restrictive of free speech activities, and the policy is generally compliant with freedoms guaranteed by the First Amendment. Both of these policies are contained in Appendix B.

The University of Maryland is the only university in this study to place a policy pertaining to protest and demonstration in the *Event & Guest Services Policy Manual* (University of Maryland, 2018a). However, there are other universities that combine a protest and demonstration policy with posting and distribution policies. Among the institutions in this study, the University of Maryland has the most comprehensive policy pertaining to protest and demonstration and posting and distribution. The policies vary greatly at the other universities that have adopted the Chicago Principles, and none are as expansive as the policy at the University of Maryland at College Park.

The University of Colorado at Boulder takes a similar approach as the University of Maryland, locating its protest and demonstration and posting and distribution policies in the Campus Use of University Facilities Procedures. However, while some tenets of the policy are the same, there are also many differences. The policy defines many relevant terms but generally does not differentiate between university-affiliated individuals and community members external to the university, with a couple of exceptions (University of Colorado Boulder, 2017). While all individuals are required to reserve space, only those without a direct affiliation with the university are charged a fee. Groups and individuals will be charged a fee if the group is collecting money at the event for any reason. There are restrictions regarding amplified sound, but it is permitted under certain circumstances.

The policy at the University of Colorado Boulder (2017) includes a section called Outdoor Spaces for Expression and Advertising at the University of Colorado at Boulder, similar to the University of Maryland's (2021) University Facilities section. The purpose of this section is to provide regulations related to individuals engaging in freedom of expression activities. This section also includes a description of the public forums in which spontaneous freedom of expression may take place, and outlines the parameters for using that space. Most importantly, the section closes by stating that nothing limits a student's expressive rights in other accessible outdoor spaces, which are considered public forums under Colorado law, as long as the freedom of expression activities taking place comply with the procedures described in this policy (University of Colorado Boulder, 2017). This statement further demonstrates that this policy supports the Chicago

Principles the University of Colorado at Boulder has adopted and is not restrictive to any party.

The University of Missouri at Columbia's protest and demonstration policy is similar to those of the University of Maryland at College Park and the University of Colorado at Boulder. In its opening statement, the policy lists "Demonstrations, protests, rallies, vigils, assemblies, and other free speech activities" as examples of events and activities that are covered by this policy (University of Missouri, 2019, para 4). Also similar to the University of Maryland at College Park and the University of Colorado at Boulder, the policies for protest and demonstration as well as posting and distribution are located in the *Business Policy and Procedure Online Manual* under the heading Use of Facilities (University of Missouri, 2019).

Concerning the language in this policy, the University of Missouri at Columbia again takes a very similar approach to the University of Maryland at College Park and the University of Colorado at Boulder. The policy begins by addressing unscheduled expressive events and activities (University of Missouri, 2019). This section includes a statement affirming the University of Missouri at Columbia's commitment to freedom of expression.

One way the Missouri policy differs from the protest and demonstration policies at the University of Maryland at College Park and the University of Colorado at Boulder is in its statements surrounding unscheduled expressive events. The policy begins with a statement that university employees and students may engage in unscheduled expressive events and offers the services of a university official to assist groups who wish to hold an

unscheduled protest or demonstration if there is another previously scheduled activity in the space they wish to use (University of Missouri, 2019). The policy also identifies the areas of campus that are available for scheduled and unscheduled use. To further assist those looking to use space on campus, the University of Missouri policy includes a chart listing various offices, the spaces they manage, and their contact information.

The University of Missouri at Columbia's Use of Facilities policy also outlines prohibited behavior, incorporating the same language used to describe behavior in the University of Maryland's policy as well as some additional language (University of Missouri, 2019). This additional language includes the barring of demonstrations, protests, rallies, vigils, and assemblies in several specific locations that are considered private spaces and not public forums. The University of Missouri also does not allow camping.

While the University of Missouri at Columbia's policy, like those of the University of Maryland at College Park and the University of Colorado at Boulder, allows unscheduled freedom of expression activities, Missouri also encourages those who wish to use space for any reason to reserve it in advance (University of Missouri, 2019). This is a deviation from the language used in the previous policies reviewed.

The University of Arizona's protest and demonstration policy is incorporated into its Campus Use Policy (University of Arizona, 2020). It is labeled as an interim policy, and as the only interim policy identified at any of the universities in this study, this status makes this policy unique. It also includes revision history and a note that the present policy was instituted on January 20, 2012 and last revised in February, 2020.

While the policy is called "Campus Use," it is clear from the content that this policy is designed to address protests and demonstrations on the University of Arizona campus. The Campus Use policy begins by describing the purpose and summarizing the contents of the policy, noting that the grounds are to be used to provide higher education and are not for free public use (University of Arizona, 2020). The policy then describes the University of Arizona as an institution dedicated to freedom of expression for all internal and external community members, noting that the policy's purpose is to respect the right of freedom of expression within designated public forums, although the university will regulate time, place, and manner. Universities are permitted to regulate time, place, and manner as described in the Public Forum Doctrine established by the landmark Supreme Court case *Perry Education Association v. Perry Local Educators' Association* (1983) (as cited in Kaplin & Lee, 2014).

This approach is very similar to the approach taken by the University of Maryland at College Park pertaining to the recognition that the campus grounds are for higher education, and not for the general public to access at will. The two universities accomplish this differently. The University of Maryland at College Park provides more limited access to space for individuals external to the university and requires them to follow additional guidelines (University of Maryland, 2021). The University of Arizona simply includes a statement that the grounds are primarily for higher education, and not for general public access, but does not institute additional guidelines for external users (University of Arizona, 2020).

Similar to the policies at the University of Maryland at College Park and the University of Colorado at Boulder, the University of Arizona policy also defines common terms, most of which echo the language in the policies previously discussed. Among the universities in this study that have adopted the Chicago Principles, the University of Arizona is the only one that defines a designated public forum and a limited public forum (University of Arizona, 2020). This demonstrates some recognition of the *Perry Education Association v. Perry Local Educators' Association* (1983) decision (as cited in Kaplin & Lee, 2014). The policy goes on to identify the designated public forums and limited public forums on campus. Similar language was included in the policies at the University of Maryland at College Park and the University of Colorado at Boulder.

The University of Arizona's Campus Use policy also incorporates a posting and distribution policy, meaning the two policies are combined and not separate, similar to those at the University of Maryland at College Park, the University of Missouri at Columbia, and the University of Colorado at Boulder. The posting and distribution policy is very simplistic. It allows for petitions, distribution of information, and placards and picketing in public forums as long as these activities are not disruptive, do not block entrances or exits, and do not violate university fire codes. The policy does not permit these activities in non-public forums or in limited public forums. Signs may be posted outside on kiosks that are designed to serve as public forums, but permission, in the form of an individual building policy or from a building manager, is required to post signs inside a building (University of Arizona, 2020).

Pertaining to outdoor public forums, similar to the University of Missouri at Columbia, camping is not permitted anywhere on the University of Arizona campus (University of Arizona, 2020). However, sound amplification is permitted during specific times. On Mondays through Thursdays while classes are in session, with the exception of the hour between 12 p.m. and 1 p.m. no amplified sound is permitted, even after 7 p.m. when classes have ceased, though there are exceptions for authorized university events. When amplified sound is permitted, it cannot exceed 85 dB. Individuals have the option of ordering public address systems and other sound equipment through facilities management or providing their own equipment.

While sound amplification is permitted at the University of Colorado at Boulder and the University of Missouri at Columbia, it is greatly restricted by the stringent guidelines these institutions impose. Among the universities in this study that have adopted the Chicago Principles and have a protest and demonstration policy, the University of Arizona is the most permissive regarding sound amplification. It has the only policy among this group of universities that allows amplified sound after 5 p.m. on weeknights, though it is silent regarding amplified sound on Fridays, Saturdays, and Sundays. The University of Arizona is also the only university among this group that offers guidelines for the permitted decibel level.

Michigan State University does not have a stand-alone policy on protest and demonstration, but instead has several different policies that are categorized under Protests and Demonstrations. The Michigan State University policy called Facilities Planning & Space Management – Policies and Procedures was reviewed, but did not

contain any information related to freedom of expression activities (Michigan State University, n.d.-b). Protest and demonstration policies are contained within the *Business Policy and Procedures Online Manual* under the Use of Facilities chapter. Michigan State University also has a policy on posting and distribution aptly called the Distribution of Literature policy. The Board of Trustees manages all policies related to protest and demonstration.

One such policy at Michigan State University pertaining to protest and demonstration is called Speakers on Campus (Michigan State University, 2001a.). This policy states that the free exchange of ideas is encouraged and requires that speakers must be sponsored by a recognized student organization, that any other types of public meetings must be scheduled via the university's reservation system, and that speakers may not encourage those in the audience to engage in illegal behavior. The policy places the onus on student organizations to inform any speaker or group they sponsor of the policies and to ensure their compliance.

Michigan State University also has a policy on protest and demonstration called Disorderly Assemblages or Conduct (Michigan State University, n.d.-a). This policy regulates gatherings of students or community members engaged in free speech activity by listing prohibited behaviors. Each statement in this policy begins with *No Person*. This is exceptionally different from the approach taken by the other universities in the study. While its tenets are the same as those of the University of Maryland at College Park, there is no affirmative statement anywhere in the policy that Michigan State University encourages and supports freedom of expression.

Additionally, Michigan State University has a policy called Student Disorderly Conduct. It begins by stating, “Michigan State University students shall not engage in disorderly conduct at or in connection with a riot” and provides several relevant definitions (Michigan State University, 2001b, para 1). In these definitions, a riot is defined as five or more people who together engage in violent or otherwise disorderly behavior, defined as threatening or destroying property, theft, endangering the welfare of others, or interfering with police and/or safety personnel (Michigan State University, 2001b). There is also a description of the policy’s application and enforcement. At the bottom of the policy it states, “This Policy shall not be interpreted to restrict or limit any student’s First Amendment rights to freedom of speech or assembly” (Michigan State University, 2001b, para 11).

Michigan State University also has a policy called Signs and Structures that contains language governing the authorization and display of signs. This policy also identifies prohibited rather than permitted behaviors, with each statement again starting with *No person*. This policy does note that university regulations have dedicated specific locations on campus to permit constitutionally protected expression. The university also reserves the right to implement rules pertaining to time, place, and manner (Michigan State University, n.d.-d). This statement does explicitly encourage freedom of expression, despite the university’s restricting of signs on campus to designated public forums.

The Michigan State University policy does not address several themes that are common in other institutions’ policies. Its policies do not offer definitions, nor do they designate public forums or free speech zones. There is no information on whether

amplified sound is permitted and no discussion of who may or may not use campus space. The absence of information on these topics supports the conclusion that the policy is derivative from the other policies being reviewed. Michigan State University should be considered an outlier among the universities in this study that have adopted the Chicago Principles pertaining to their policies on protest and demonstration. However, there is nothing to suggest that Michigan State University is not in compliance with federal regulations concerning freedom of expression.

The Distribution of Literature policy at Michigan State University contains all the expected elements, including definitions of appropriate terms and general guidelines stating that publications and literature may be distributed in public forums outdoors and in public hallways inside buildings (Michigan State University, n.d.-c). The policy also contains tenets that are not present in other policies. For example, Michigan State University encourages freedom of expression by reaffirming that "Students and student groups shall have maximum freedom to express opinions and communicate ideas by preparing and distributing independent student publications" (Michigan State University, n.d.-c, para. 3).

The policy states that the university will not forbid advertising by independent student publications, and while it offers to provide "advice and counsel," it also guarantees the student press freedom to publish what they wish (Michigan State University, n.d.-c, para 5). Similarly, the policy guarantees that the institution will not withdraw financial support for a student publication as a means of censorship, as this would undermine the free speech tenets of the university (Michigan State University,

n.d.-c). It also states that all regulations pertaining to publications are equally applicable to all publications at the university. There is no other policy included in this study that touches on the subject of formal student publications or addresses censorship issues.

The University of Illinois at Chicago's policy on protest and demonstration and posting and distribution contains very similar elements to many other university policies included in this study. This stand-alone policy, called the Open Expressions Policy and Procedures, includes guidelines regarding protest and demonstration as well as posting and distribution. As is common among the policies reviewed in this study, the policy opens with a statement supporting free expression on campus, followed by expectations for individual conduct when engaging in freedom of expression activities (University of Illinois at Chicago, 2018).

The University of Illinois at Chicago, like the University of Maryland, limits guests' participation in freedom of expression activities, as individuals external to the university may only engage in acts of freedom of expression on campus if they are sponsored by a person or group directly affiliated with the university. That person or group is accountable for any inappropriate actions taken by the external individual while they engage in freedom of expression on campus (University of Illinois at Chicago, 2018). These statements indicate that access to space at the University of Illinois at Chicago is available primarily to individuals who are internal to and members of the university community, such as students, faculty, and staff, and that accountability for the behavior of guests rests with the person or persons responsible for their presence.

This policy also expresses the expectation that members of the University of Illinois at Chicago community will be knowledgeable about the policy, a statement that is not present in other policies (University of Illinois at Chicago, 2018). There is no information available regarding efforts on the part of the university to proactively teach its students about this policy or to prepare them to engage in freedom of expression activities in accordance with the university's behavioral guidelines. Baxter Magolda's theory of self-authorship (1999, 2001) supports the notion that the university is responsible for educating students about policies that they are expected to understand and abide.

This policy also includes multiple definitions that are commonly found within other policies. While necessary, there is nothing unique or different about these definitions. Individuals wishing to engage in freedom of expression activity on the University of Illinois at Chicago campus are expected to abide by the General Conduct Guidelines that are included in the Open Expressions Policy and Procedures (University of Illinois at Chicago, 2018). There is nothing unique about this language; these expectations echo those of other universities included in this study.

This policy also states that protesters cannot interfere with open expression activities. The policy continues by explaining that the intention of the policy is not to repress or forbid regular emotions that humans experience during difficult discussions on controversial topics (University of Illinois at Chicago, 2018). The policy states that it does not restrict different forms of protests such as heckling, picketing, and marching. While not required by the policy, it states that the university may require a 50-foot

separation between parties with opposing points of view. This is the only policy in this study that includes this specific type of language.

The University of Illinois at Chicago allows distribution from bins and tables, and the only content it restricts is material that violates student disciplinary policies or is designed to encourage breaking the law (University of Illinois at Chicago, 2018). Posting is also allowed on designated bulletin boards and kiosks. Similar to other universities in this study, these bulletin boards and kiosks serve as public forums. Individuals must obtain written permission to post materials in other locations.

One unique element of the posting and distribution policy at the University of Illinois at Chicago is that it requires postings to include the name of the sponsoring organization as well as an expiration date (University of Illinois at Chicago, 2018). This requirement makes the policy restrictive, as it permits only registered student organizations and university departments to post materials. This language prohibits individual students from putting up their own posting or posting on behalf of a community group.

The University of Illinois policy outlines a process for planned protests and freedom of expression events. This outline includes concerns related to security as well as the University's process for doing a security assessment. However, this policy is silent on unplanned group protests and acts of freedom of expression, whereas the other policies reviewed in this study each include some reference to unscheduled spontaneous protests and demonstrations.

Another unique function of this policy is that it outlines a structure for a response to a demonstration labeled Demonstration Response Roles (University of Illinois at Chicago, 2018). While it is possible that other universities included in this study have response plans in place internally, the University of Illinois at Chicago is the only university included in this study to include an outline in a policy document. This portion of the policy includes the actions that various administrators, university police, and demonstrators are supposed to take before, during and after a demonstration.

Texas A&M University at College Station has a policy pertaining to protest and demonstration called the Texas A&M Rules on Freedom of Expression, but is has no policy regarding posting and distribution (Texas A&M University, 2015). This policy is inclusive and unrestrictive, as it does not differentiate the distribution of privileges to individuals who are internal vs. external to the university. The Texas A&M Rules on Freedom of Expression, like the overwhelming majority of other policies, begins with a statement of support for freedom of expression. It then defines the terms traditional public forum, designated public forum, limited public forum, and non-public forum and provides examples of each where appropriate (Texas A&M, 2015).

Another unique feature of this policy is its discussion of campus locations that are subject to different rules due to their distinct nature, such as the Bush Library, the nuclear reactors, and the utility buildings. Each of these sites may have a distance requirement, crowd placement restrictions, and other security concerns that may change based on changing situations, such as terror alerts. The policy states that security needs, terror alerts, and various local and national events may influence the availability of different

locations. Information about requirements will be shared when a reservation is made, as information may differ based on the aforementioned items (Texas A&M, 2015). Individuals interested in using space in any of the listed areas should consider that there may be additional restrictions on these spaces. While this places a restriction on some campus locations, it does not mean the policy is restrictive, simply that these are special service areas for which different criteria and concerns may apply.

This policy goes on to provide a list of reservable spaces for planned freedom of expression group activities, using language common to most of the policies included in this study. Texas A&M University at College Station requires space reservations to be made a minimum of five business days in advance for planned activities that are advertised in advance and anticipate attendance of more than 25 people (Texas A&M, 2015). This policy closes by reiterating the Guidelines for Expression and stating that all individuals are expected to comply with state and federal laws.

The University of Georgia has separate policies for protest and demonstration and posting and distribution. The Freedom of Expression and Assembly Policy addresses protests and demonstrations on campus, and the Advertising and Publicity Policy addresses posting and distribution. These policies are housed in separate locations.

The Freedom of Expression and Assembly Policy at the University of Georgia contains many of the same tenets as other policies analyzed in this study. These include a statement supporting the First Amendment, definitions of terms, the purpose of the policy, areas designated for unscheduled freedom of expression activities, a reservation process for planned freedom of expression activities, rules pertaining to expressive

activity by students and guests/invited speakers, and a discussion of forbidden activities such as camping and chalking.

Within the University of Georgia's Freedom of Expression and Assembly Policy there is a section titled Expressive Activity in Designated Forums which has a unique feature regarding the timing of expressive activities. The policy restricts freedom of expression activity primarily to the hours of 8 a.m. to 9 p.m. Monday through Friday as long as a designated public forum is available (University of Georgia, 2020). The policy states that members of the University community are not required to make a reservation for space in designated forums for the purpose of engaging in acts of freedom of expression. Individuals and groups wishing to engage in acts of freedom of expression are encouraged to notify the Associate Dean of Students to obtain a reservation, as there may be scheduling conflicts. If a group of 10 or more students wishes to engage in an activity in a designated forum after 9 p.m., they are required to notify the campus police. Non-affiliated guests/speakers must have a reservation and may engage in freedom of expression activities Monday through Friday from 8 a.m. to 9 p.m. While this provision does restrict activity, it does not make the policy in and of itself restrictive, due to the large number of hours during which individuals may engage in protests and demonstrations in designated public forums.

Following the Expressive Activity in the Designated Forums section of the Freedom of Expression and Assembly Policy at the University of Georgia is a section aptly called Spontaneous Expressive Activity. This section of the policy reads that community members may engage in spontaneous freedom of expression acts without

obtaining a reservation if the activity takes place in outdoor public forums and involves fewer than 10 people and adheres to the time, place, and manner regulations described within the policy (University of Georgia, 2020). The policy goes on to further state that if the spontaneous freedom of expression activity involves more than 10 people, the activity may continue if notice is provided to the university. Under the policy, during normal business hours, notice should be provided to the Associate Dean of Students. After normal business hours or on weekends, notice of the spontaneous freedom of expression activity must be provided to the University of Georgia Police Department, specifically to the Shift Commander.

Another unique feature of the University of Georgia's policy is its specific prohibition on the use of open flame (University of Georgia, 2020), an issue not addressed by any other policy in this study. The University of Georgia's policy also addresses content neutrality in protesting. It states that when processing a reservation request or when the university administration becomes aware of spontaneous freedom of expression activities that are in compliance with this policy, the university will remain neutral and not consider the viewpoint being expressed. No other policy analyzed in this study contain similar statements on content neutrality in regard to freedom of expression activity. Additionally, no other university requires a group engaging in freedom of expression activities to notify the police department under any circumstances, regardless of whether or not the freedom of expression activity was planned or spontaneous. Finally, it should be noted that chalking is forbidden at the University of Georgia. This is highly

unusual, as every other policy reviewed in this study allows the use of water-soluble chalk on campus.

The Advertising and Publicity policy at the University of Georgia also has unique elements. This policy addresses postings but not distribution. It is also clearly meant to address advertising of any type across campus and does not specifically focus on freedom of expression activities. The policy begins by addressing the issue of different parties within the university using University trademarks. It also provides very specific numbers of items that may be posted and indicates where they may be displayed. This policy states that posters hung in Memorial Hall or the Tate Student Center must be approved by the information desk and will be posted by employees only. Employees will also remove any unauthorized posters.

At the University of Georgia, individuals or groups must at times request permission from departments to use indoor bulletin boards, and must check that outdoor bulletin boards are not reserved for specific groups before posting. All items posted in a residence hall must be posted to a bulletin board. Any posting that does not follow these guidelines will be removed. Student organizations that violate these policies may be subject to fines.

The policy at the University of Georgia goes on to provide a list of locations where individuals cannot place postings, and to again remind readers of the policy that no chalking is permitted. This is the only policy being analyzed that includes this type of language. This policy is by far the most restrictive policy reviewed pertaining to posting and distribution, due to the number of limits and rules placed on posting.

The University of California at Berkeley has a policy pertaining to both protest and demonstration and posting and distribution called Berkeley Campus Regulations Implementing University Policies. Although the policy is not specific to protests and demonstrations, it nevertheless contains many of the same tenets as other institutions' more specific policies. In addition, this policy includes elements that are not discussed in other policies. Specifically, this policy states that "security, performance, and/or liability bonds may be required" when hosting some events (University of California at Berkeley, 2019, para 55). Climbing trees or property is prohibited, as is indecent exposure (University of California at Berkeley, 2018).

The policy also instructs employees to separate personal political activity from their campus role when using university facilities, a prohibition no other university in the study included in its policy. This statement comes into conflict with the academic freedom accorded to faculty members. The University of California's policy also states that in designated locations, only individuals and groups directly affiliated with the university may maintain a table, chairs, or display materials (University of California at Berkeley, 2019). This policy contains a number of restrictions and other elements that do not exist at other institutions. However, it also includes a number of common tenets that exist at all the institutions in this study.

The University of Massachusetts and the State University of New York at Buffalo both have a *Picketing Code* with language similar to the language used in all other protest and demonstration policies reviewed in this study (University at Buffalo, 2020; University of Massachusetts Amherst Dean of Students Office, 2005). There is nothing

particularly unusual about either of these policies, other than the reference to picketing. The University of Massachusetts also has a document titled Implementation Procedures for Regulations for the Use of University Property that articulates its protest and demonstration policies. These policies apply to the campus as a whole, not just to one set of individuals internal or external to the university. The document also contains the institution's posting and distribution policy (University of Massachusetts, 2019).

The Implementation Procedures for Regulations for the Use of University Property policy at the University of Massachusetts contains many of the same elements as other policies in this study. These include definitions of common terms, rules pertaining to the use of university property indoors and outdoors, university reservations procedures for planned indoor events and free speech activities, and the approved use of amplified sound outside of class hours (University of Massachusetts, 2019). The policy does not identify designated forum spaces or address camping or unplanned/ spontaneous freedom of expression activities.

The University of Massachusetts policy has one unique element, called Limitation or Denial of Use of University Property. This section of the document outlines a number of reasons why a program may be denied a reservation. While the other policies in this study generally include information pertaining to time, place, and manner, this policy is proactive in identifying specific items to consider. The policy states:

> Approval of the time, place and manner of an activity, program, or event by the Student Activities Office or other appropriate University Unit may require a change in location, schedule or security plans. In some cases, the request may be

> denied altogether. Further standards for restriction, modification or denial of a request are outlined below. (University of Massachusetts, 2019, para. 8)

There is no description of what constitutes appropriate security plans, time, or places to hold events. An appeals process is available if an event is denied a reservation (University of Massachusetts, 2019).

The portion of the policy that addresses distribution and posting at the University of Massachusetts Amherst contains tenets that are extremely similar to those articulated by multiple other universities. It uses very similar language to the policy of the University of Illinois at Chicago as well as the universities that accept the Chicago Principles, with the exception of Michigan State University, since the language in that policy deviates significantly from that of any other policy in this study.

The aptly named Freedom of Expression and Access to campus policy at the University of South Carolina is not unlike any of the other policies included in this study. The policy explains that free speech is supported at the university, but that the university does not consider threats, fighting words, defamation, harassment, or obscenity (University of South Carolina, 2021). This policy outlines rules pertaining to posting materials, which are generally allowed in public forums under this policy. The University of South Carolina at Columbia charges fees to external users of space, and requires a reservation. There are no fees charged to internal users. The policy also states that internal users may not make reservations for external users to avoid paying the fee. This is a unique aspect of the policy, as no other policy provides this specific stipulation. This

policy uses simple language and is easy to understand. There are very few elements of this policy that are particularly unique.

Lastly, there are facilities policies at both Virginia Tech and the University of Oregon, however they provide very little direct information pertaining to freedom of expression activity in the form of protests and demonstrations or postings and distributions. Instead, these institutions have multiple facilities policies related to event registration, none of which reference free speech or unplanned protests (University of Oregon, n,d,-a; Virginia Tech, 2017). There are also no formal university guidelines on postings available for review. The University of Oregon does have a Free Speech and Demonstrations Guideline document that outlines demonstrations may not interfere with scheduled university speakers, and places limitations on sound amplification as well as chalking, but that also provides an exceptionally limited amount of information (University of Oregon, 2018).

As referenced in Chapter 2, *Dixon v. Alabama* (1961) established that universities may not regulate whether a student can participate in a protest or demonstration off campus, or in which types of protests and demonstrations students may participate. As a result of this decision, protest and demonstration policies may only pertain to campus grounds. In addition, Supreme Court ruling in *Perry Education Association v. Perry Local Educators' Association* (1983) (as cited in Kaplin & Lee, 2014) created the Public Forum Doctrine. All university policies related to protest and demonstration that were reviewed in this study are in compliance with these Supreme Court decisions.

Hate and Bias Speech

Among the policies this study examined pertaining to freedom of expression are policies that fall under the category of hate and bias speech. The following universities have hate and bias speech policies:

- University of California at Berkeley
- Texas A&M University at College Station
- University of Massachusetts at Amherst
- State University of New York at Buffalo
- University of Maryland at College Park
- University of Missouri at Columbia
- University of Oregon
- Virginia Tech
- University of South Carolina at Columbia
- The University of Arizona

Of the universities in this study that have adopted the Chicago Principles, the University of Arizona, the University of Maryland at College Park, and the University of Missouri at Columbia have policies on hate and bias speech. Purdue University, the University of Colorado at Boulder, and Michigan State University do not have policies that address hate and bias speech. Policies on bias and hate speech are generally not consistent with the Chicago Principles or with the Statement on Free Speech that each of these universities has adopted.

Policies or statements that regulate hate and bias speech separate this type of speech from the category of free and protected speech. While such a policy may embody a university's stated values, it is not consistent with the First Amendment. Under the First Amendment, as deplorable as some hate and bias speech may be, it is still considered protected free speech.

Many of the universities included in this study have hate and bias speech policies that have exceptionally similar components. Despite their similarities, however, significant differences in languages do exist, and two categories of hate and bias speech policies emerged. The first category encompassed universities that tie their hate and bias speech policy to the university's harassment policy. These include:

- University of South Carolina at Columbia
- The University of Arizona
- Texas A&M University at College Station
- Virginia Tech
- State University of New York at Buffalo

The second category encompassed universities with hate and bias speech policies that were not tied to the university's harassment policy. They included:

- University of Maryland at College Park
- University of Missouri at Columbia
- University of California at Berkeley
- University of Massachusetts at Amherst
- University of Oregon

In addition to the significant difference in the way the policies pertain to whether or not they are tied to the university harassment policy, there are other differences in the hate and bias policies that must be analyzed. Specifically, it is important to understand the differences in how universities are responding to hate and bias incidents, as well as the structures they do or do not have in place.

The University of Maryland at College Park has a policy referred to as the Bias Incident Response Protocol, and the University of Missouri at Columbia has a Bias Hotline. These universities each have a reporting process for bias-related incidents on their website to encourage reporting (University of Missouri Inclusion, Diversity & Equity, n.d.; University of Maryland Office of Diversity and Inclusion, n.d.). The University of Maryland at College Park uses a form for reporting, while the University of Missouri at Columbia has a university system-wide hotline to call as well as a reporting form. Each university's policy includes the definition of a bias incident. The University of Maryland at College Park defines a bias incident as follows:

> Generally, bias incidents are acts characterized by some expression of bias against a particular group, or towards an individual because of their membership (or perceived membership) in that group. Bias incidents may range from acts considered to be offensive actions that cause harm. (University of Maryland Office of Diversity and Inclusion, n.d., para. 2)

The University of Missouri at Columbia's definition is exceptionally similar to Maryland's, as each definition includes language indicating that a bias incident may or may not cause harm.

The University of Maryland at College Park's policy goes on to describe the term hate crime as follows:

> A hate crime is a criminal act (against person or property) that is motivated, in whole or in part, by the offender's hate or bias towards a particular individual or group because of membership in that group (as defined by law). Bias incidents are sometimes considered to be hate crimes, but not always. (University of Maryland Office of Diversity and Inclusion, n.d., para. 3)

The University of Missouri at Columbia's website does not define hate crimes. Given that the University of Maryland and the University of Missouri at Columbia have both adopted the Chicago Principles, neither institution has a policy on freedom of expression, and both have a statement proclaiming they value free speech. Their hate and bias speech policies do not align with their advertised values.

Despite their similarities, these policies also deviate from each other in certain ways. The University of Maryland at College Park indicates they will provide support for the person making the report, contact with the individual who was reported and attempt to engage in a conflict resolution process with that person, and ask the university leadership to address any systemic issues that become apparent (University of Maryland Office of Diversity and Inclusion, n.d.). This policy does not mention any type of student conduct or disciplinary proceeding. The University of Missouri at Columbia states that all reports that are submitted are anonymous unless the student intentionally identifies themselves in the report. This policy places the onus on the student to follow up on the report and does not specify how the behavior will be addressed.

The University of Arizona's hate and bias policy utilizes many of these same elements. The University of Arizona's Bias Education & Support Team (BEST) addresses and responds to hate and bias incidents on campus (University of Arizona Dean of Students Office, n.d.-a). According to the university website, this policy is tied to the university's harassment policy. The website for BEST offers a clear description of the functions of this resource, utilizing straightforward, uncomplicated language that is easy to read and understand. The website also discusses the services BEST is able to provide, including care and support for impacted individuals; opportunities to engage in activities and dialogue that promote education, understanding, and healing; and tracking of incidents for the purpose of maintaining an inclusive environment while preserving the confidentiality of reporting parties (University of Arizona Dean of Students Office, n.d.).

BEST is also tied to the university's discrimination and harassment policy. As the BEST website states:

> Based on the information provided in the BEST report, if there is a reasonable basis to suspect that potential discrimination, harassment, or retaliation in violation of the university's Nondiscrimination and Anti-harassment Policy has occurred, the information will be sent to the appropriate UA office. These offices have procedures to provide due process and address free speech concerns. (University of Arizona Dean of Students Office, n.d.-a, para 2)

The university is clearly articulating that BEST will review all reported incidents and send the information forward where appropriate. This explanation of the process sets reasonable expectations for students and other community members regarding the

harassment policy. The BEST website also articulates what the group cannot do, which also helps to manage the expectations of students and other community members regarding BEST. BEST does not restrict free speech or impede academic freedom. The group does not conduct investigations, issue disciplinary sanctions, or require members of our campus community to participate in any BEST activity (University of Arizona Dean of Students Office, n.d.-a).

While BEST is housed in the Dean of Students Office, its members represent multiple campus offices, comprising a campus-wide effort to address hate and bias. This is the only policy that specifically spells out that BEST does not restrict free speech, investigate incidents, issue sanctions, or force participation, making this policy unique. This policy/statement regarding hate and bias response is very clear, and the Frequently Asked Questions section of the BEST website allows those who wish to report an incident to know up front what to expect (University of Arizona Dean of Students Office, n.d.).

The University of Oregon's Bias Education and Response Team (BERT) website provides more limited information. The stated purpose of this team is to provide support for students and educational programming (University of Oregon Division of Equity and Inclusion, n.d.). There is also a form available on the website for individuals to make a report. This policy is by far the briefest available in this topic area.

The University of California at Berkeley's approach to hate and bias speech policies has generally the same tenets as the policy at the University of Missouri at Columbia. The University of California at Berkeley offers a system wide reporting form.

Reports may be made anonymously or by name, and the form promises confidentiality in the reporting process (University of California, n.d.). The onus is also placed on the student to follow up with the appropriate university official within two weeks of making the report. In fact, the University of California at Berkeley and the University of Missouri at Columbia use the same provider, a company called EthicsPoint, for their confidential reports.

Interestingly, the University of South Carolina at Columbia does not have a statement on free speech, although it does have a policy that attempts to address bias and hate speech (University of South Carolina Office of Diversity, Equity and Inclusion, n.d.). The policy states:

> A bias incident is a non-criminal act that is motivated in whole, or in part, by a victim's actual or perceived sex, race, ethnicity, religion, gender, gender identity or disability. This type of incident may be directed toward an individual or group. Bias and hate incidents contribute to creating an unsafe or unwelcoming environment. Not all bias incidents are considered discrimination or harassment under the University of South Carolina's Non-Discrimination Policy. (University of South Carolina Office of Diversity, Equity and Inclusion, n.d., para 3)

The University of South Carolina's policy directly ties incidents of hate and bias speech to its harassment policy (University of South Carolina Office of Diversity, Equity and Inclusion, n.d.). Through these policies, the University of South Carolina at Columbia is attempting to convey to its students the university's expectations related to engaging in free speech on campus. In addition, the institution's Office of Diversity, Equity and

Inclusion has a web page with information regarding how students can report a hateful act.

Texas A&M University takes an extremely similar approach to the University of South Carolina. Texas A&M defines hate/bias related events and has a statement on harassment and discrimination on its website, tying hate and bias incidents to the harassment and discrimination policy just as the University of South Carolina does (Texas A&M University, n.d.-b). Texas A&M has a reporting option that allows students to choose whether or not to provide their name and contact information. The directions for this form read:

> Individuals may use the online report form to report hate/bias incidents. You have the option to fill in your contact information or submit the report anonymously. Reports submitted anonymously or with limited information may limit our ability to follow up on an incident. Once a report is submitted online, a copy is emailed to a team for appropriate review and necessary action. NOTE: Confidentiality cannot be guaranteed for reports submitted through this site. State law determines confidentiality. (Texas A&M University, n.d.-b, para. 2)

Through this statement, Texas A&M is informing the reporter that they will follow up to the extent that they can and that depending on the content of the report, confidentiality cannot be guaranteed. The statement conveys to the campus community that the institution wishes to provide appropriate support and is compliant with the state laws of Texas (Texas A&M University, n.d.-b). The website includes information on the importance of filing a report and its relevance to the university mission, as well as

information on how to prevent hate crimes and hate/bias incidents. It asserts that, “Hate is not an Aggie value. Addressing it is everyone’s responsibility” (Texas A&M University, n.d.-b, para 1).

Virginia Tech takes a similar approach as Texas A&M and the University of South Carolina in articulating its hate and bias policy. Its website includes a link to the institution’s Bias Incident Reporting Form. The top of the form provides the University’s definition of harassment, thus tying hate and bias incidents to the university harassment policy (Virginia Tech, n.d.-b). The website also lists in plain language questions individuals should consider when making a report. These include questions about whether the incident violates university policy, whether it was bias-motivated, whether it violates the values and expectations of university community members, whether the incident is a hate crime, and whether there are legal consequences.

Virginia Tech’s website also provides examples of bias-related incidents, such as incidents that contradict the Principles of Community; jokes that demean a particular group of people; or events such as a ‘date’ or ‘slave’ auction, performing a skit in which participants use blackface or other ethnic group makeup or props, hosting a culturally themed party, assuming characteristics of a minority group for advertising, and posting flyers that contain demeaning language or images (Virginia Tech, n.d.-b). Linking this information to the university’s harassment policy, however, may mislead students who have experienced an incident to conclude that the incident alone constitutes harassment. They may consequently expect Virginia Tech to apply its harassment policy to address

the incident, when this may not be possible depending on specific circumstances of the incident (Virginia Tech, 2021).

There are also definitions of bias incidents on Virginia Tech's website. One way this policy differs from policies at other universities in this study is that it is housed in and managed by the Dean of Students Office (Virginia Tech, n.d.-b). The policies at other universities in this study are managed through Diversity, Equity and Inclusion offices. The only other policy managed solely by a student life office is the policy at the State University of New York at Buffalo (University at Buffalo, n.d.-b). It must be noted that the BEST program at the University of Arizona is a team composed of multiple individuals across campus departments and divisions, which does differentiate BEST at the University of Arizona from the policies being managed solely by the Dean of Students Office at Virginia Tech and the Dean of Students Office at the State University of New York at Buffalo (University at Buffalo, n.d.-b; University of Arizona, Dean of Students Office, n.d.-a).

The University of Massachusetts at Amherst also has a bias incident report process. This university's definition of a bias incident on its website is similar to the definitions of bias given by the other universities in this study. One difference between this policy and the other policies in this study is that students are encouraged to contact the campus police if they see a bias-related incident (University of Massachusetts Amherst Office of Equity and Inclusion, n.d.). The University of Massachusetts website also includes a list of bias incidents that have been reported. It provides a reporting form called a Climate Incident Report Form, as well as a phone number students may call to

make a report. After submitting a form, a representative from the Office of Equity and Inclusion will respond to the student via e-mail (University of Massachusetts Amherst Office of Equity and Inclusion, n.d.).

The hate and bias policy at the State University of New York at Buffalo contains elements that are similar to many of the other policies that were analyzed. The university provides guidelines for reporting bias issues, although it refers to them as "acts of intolerance" in its definition, which connects to the university's harassment and discrimination policy (University at Buffalo, n.d.-b). The policy states:

> An act of intolerance is any attempt to injure, harm or harass a person because of race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status or ex-offender status.
>
> (University at Buffalo, n.d.-b, para. 3)

Students are encouraged to report all concerns related to bias and are directed to contact university police if an incident results in a physical confrontation or injury. Students can report an incident by contacting the Office of Student Life. The guidelines explain that after a report is made, a team of university administrators will respond. The guidelines also provide examples of the types of bias incidents that may take place, offer information on which department individuals should contact along with appropriate contact information, and indicate the timeline for follow-up the reporter should expect.

CHAPTER 5

SECONDARY POLICY ANALYSIS

The policies reviewed in this chapter are relevant to freedom of expression on the university campuses. However, they serve additional purposes apart from the governance of freedom of expression, and should therefore be considered secondary policies. While these policies and statements may be considered secondary, they are nonetheless as important as the primary policies and statements. While these policies and statements have additional purposes outside of freedom of expression, they are very often utilized to address freedom of expression issues on university campuses.

Civility

Policies and statements on civility on the university campus are another means through which universities address the issue of freedom of expression. While these policies discuss free speech issues, many also address a range of student behavior that goes beyond free speech, encompassing students who engage in other forms of disruptive behavior. Some of these policies are regulatory and enforceable, while others are simply statements of value. Six of the 15 universities in this study have a civility policy or statement. These include Purdue University, University of Illinois at Chicago, University

of California at Berkeley, University of Maryland at College Park, University of Missouri at Columbia and Virginia Tech.

It is important to note that there is a difference between a policy and a statement. A policy can be enforced, whereas a statement is merely a declaration of the university's values and/or a commitment to an idea. While statements pertaining to values and ideals are important, they cannot be enforced as a matter of policy. The other eight universities in the study may have the concept of civility woven throughout other policies, but they do not have specific policies designed to address civility.

Only three of the six universities that have adopted the Chicago Principles have civility policies or statements: Purdue University, University of Maryland at College Park, and University of Missouri at Columbia. Given that each of these schools has adopted the Chicago Principles and has a Statement on Free Speech, they will be reviewed and compared against each other in addition to the other three universities with civility policies.

Purdue University's civility policy is included in the Student Code of Conduct in the Student Bill of Rights under Article 4 (Purdue University, 1997). The policy states that Purdue University recognizes freedom of expression rights on campus and that freedom of thought and expression are a valuable part of education, but that free expression should not interfere with the academic process and should not rise to the level of harassment (Purdue University Policy Office, 2021). Essentially, with this policy, Purdue University is stating that it strongly encourages students to engage in dissent and express their perspectives, but to do so in a way that is respectful to all members of the

community. Additionally, by leaving the language somewhat open and aligning with the university's Statement on Free Speech, Purdue is likely able to interpret its civility policy broadly. Because Purdue's policy on civility is incorporated into its student code of conduct, it is enforceable.

Similarly, the University of Missouri's Student Code of Conduct also contains a policy on civility (University of Missouri, 2020a). The language of this policy is not as complex as that of Purdue's policy and does not directly address freedom of expression and the university's embrace of the First Amendment; however, it serves the same purpose. With its clear, brief language, the policy at the University Missouri is more concise than the policy at Purdue. The civility policies at both Purdue University and the University of Missouri incorporate tenets of their respective university's policies on harassment, which are discussed in their own section of this study.

The University of Maryland at College Park and Virginia Tech each have a statement that addresses civility on campus. However, these stand-alone statements are not contained within a policy and are not enforceable as policy. Rather, they are statements of principle adopted by the university. Neither of these institutions have a policy on civility in their respective student codes of conduct.

The University of Maryland's statement is referred to as the UMD Principles of Ethical and Responsible Conduct, and Virginia Tech's statement is called the Principles of Community. These statements share many of the same elements. The primary goal of both statements is to advocate embracing the diversity of people and ideas on their respective campuses (University of Maryland Division of Administration, n.d.; Virginia

Tech Inclusive VT, n.d.). However, because these are not policies, they cannot be enforced, similar to the statements on freedom of speech.

In addition to the Principles of Community, Virginia Tech has a program called The Civility Project (Virginia Tech Civility, n.d.). This program is designed to proactively educate students on civility. The project's mission is stated as follows:

> The #CivilityVT initiative (or Civility Project at Virginia Tech) is exploring ways in which facilitated dialogue among individuals that hold strong opposing positions can foster mutual understanding, increase empathy, and ultimately support healthier deliberations as communities seek to make decisions around important policy questions. We are particularly focused on the use of active listening techniques to facilitate civil discourse.
>
> (Virginia Tech Civility, n.d., para. 2)

Included in this initiative is a web-based program called Civil Discourse 101. This program is unique to Virginia Tech and is funded by a grant as well as several departments at Virginia Tech (Virginia Tech Civility, n.d.). The notion of The Civility Project at Virginia Tech is supported by Kohlberg's theory of moral development and Baxter Magolda's theory of self-authorship (Baxter Magolda, 1999, 2001; see also Kohlberg, 1981). By providing this programing, Virginia Tech recognizes that not all students are in the same place developmentally and provides them with the guidance and means to develop and appreciate their own college experiences.

The University of California at Berkeley has a statement on civility but does not have an enforceable policy (University of California at Berkeley Division of Student

Affairs, n.d.-a). This statement, which is simply called Respect and Civility in the Campus Community, encourages appropriate and "dignified" action between members of the campus community (University of California at Berkeley Division of Student Affairs, n.d.-a, para 1). It states that a high degree of civility and respect is expected, particularly in relation to diversity, and references the student code of conduct as establishing expectations for student behavior (University of California at Berkeley Division of Student Affairs, n.d.-a). It is not unlike the statements issued by Virginia Tech and the University of Maryland at College Park, both of which are quite a bit lengthier.

The statements at the University of Maryland at College Park, Virginia Tech, and the University of California at Berkeley each pertain to university values. These universities are stating that their institution values diversity of all types and expects university community members to treat one another with respect. Each of these statements references the institution's stance on diversity and inclusion, including the diversity of ideas, emphasizing that they value all people and ideas. The statements encourage individuals to share ideas freely, while also establishing expectations for appropriate behavior when interacting with others on campus.

Some universities in this study that have policies or statements on civility integrate them into broader policies that govern the expectations of living in the campus residence halls. The University of Maryland at College Park and the University of Illinois at Chicago each have statements or policies regarding civility in the residence halls. The policies at these two institutions are exceptionally similar. They cover general expectations regarding community living, and reference each university's harassment

policy to remind students that this policy applies regardless of whether they are attending classes or living in one of the residence halls. As these policies are applicable only to students living on campus and not to the general campus community, they cannot be compared to the other universities' policies.

Harassment

University harassment policies often incorporate the topic of free speech on campus, as there is often great concern over whether some of the communication engaged in by students and/or faculty falls under free speech or is a violation of the harassment policy. In fact, the harassment policies at all 15 of the universities in this study incorporate statements about free speech.

The only policy common to all the universities in this study is a policy on harassment. To receive federal funding, the U.S. Department of Education requires all accredited universities to have a policy addressing Title IX and harassment (Education Amendments Act of 1972, 2018). Each university is also required to provide Title IX training to every employee and student to be in compliance with federal regulations. All of the universities in this study are compliant and meeting the federal training and education requirement.

While universities are required to provide this education to their students to meet federal guidelines, these educational programs are also supported theoretically by Kohlberg's theory of moral development (Kohlberg, 1981). Students are in different places in relation to moral development, and the educational component of these programs is necessary to further that moral development by instructing students in the

appropriate ways to interact with their peers. Baxter Magolda's theory of self-authorship (1999, 2001) also applies here, as this educational program provides students with guidelines for interacting with each other in ways that are within the law and allow them to identify and define their own experience. Federal regulations also require each institution to have a designated Title IX Coordinator who is listed in their policy Title IX (Education Amendments Act of 1972, 2018). Each university included in this study is fully compliant in this area as well.

As the harassment policies are typically very similar, if not identical, to Title IX (Education Amendments Act of 1972, 2018) policies, Title IX policies will be examined, as they may contain additional language pertaining to gender-based harassment and discrimination. While each institution has a policy, the policies differ greatly from university to university. There is no correlation between policies and regions. The only policies that show a true correlation are those of Purdue University, the University of Colorado at Boulder, the University of Maryland at College Park, the University of Arizona, Michigan State University, and the University of Missouri at Columbia, because these six universities have each adopted the Chicago Principles. These universities therefore address free speech and academic freedom within their harassment policies in accordance with the Chicago Principles (Michigan State University, 2021a; Purdue University, 2020; University of Arizona Office of Institutional Equity, n.d.; University of Colorado Boulder Office of Institutional Equity and Compliance, n.d.; University of Maryland Office of Civil Rights and Sexual Misconduct, n.d.; and University of Missouri

System, 2020b). However, at times this stance can be at odds with complaints and concerns about harassment from students and faculty on campus.

While there is a correlation in theme among 14 of the universities included in this study in that they each reference Title IX in the sexual harassment policies, the University of Oregon deviates from the theme and does not reference Title IX, nor does it include all of the tenets in the other policies (University of Oregon, n.d.-b). This deviation is important because it shows an intentional move by the university away from using the legal, government-issued language in Title IX of the Civil Rights Act. This shows that the harassment policy at the University of Oregon does not conform and is an outlier among the policies.

The differences between the harassment policies at Purdue University, the University of Colorado at Boulder, the University of Maryland at College Park, and the University of Arizona and the harassment policy at the University of Missouri at Columbia is are within the respective definitions of sexual harassment. Purdue University, the University of Colorado at Boulder, the University of Maryland at College Park, and the University of Arizona each utilize specific language in their definitions related to Title IX and spelled out by the Title IX regulations.

Michigan State University has its own sexual harassment policy and also lists the Title IX sexual harassment policy. Michigan State University is the only university in this study to have a redundant harassment policy. This redundancy may cause a great deal of confusion and may lead to the frequent misinterpretation of the policies. However, the inclusion of this specific language directly tying the policy to Title IX demonstrates that

Michigan State University is compliant with governmental policy. As a result of choosing to use institutional language in addition to Title IX language, Michigan State University has potentially created a policy that is more limiting than the other universities included in this study.

Title IX is referenced in every policy among the universities included in this study that adopted the Chicago Principles. Of the remaining universities included in this study that have not adopted the Chicago Principles, the University of Oregon is the only university which does not reference Title IX anywhere in the policy document. This is unusual, as Title IX is part of the Civil Rights Act and all colleges and universities that receive any form of federal funding, including financial aid for students, must comply with this Act (Education Amendments Act of 1972, 2018).

Among the other universities in this study, the following institutions also include exceptionally similar common language and reference Title IX in their harassment policies; these policies are also exceptionally similar to the harassment policies of the universities in this study who have adopted the Chicago Principles:

- University of Georgia
- University of Illinois at Chicago
- Texas A&M University at College Station
- University of Massachusetts at Amherst
- State University of New York at Buffalo
- Virginia Tech
- University of South Carolina at Columbia

Each of these policies references Title IX, and have nearly the same definition of sexual harassment (Texas A&M University, n.d.-d; University at Buffalo, n.d.-a; University of Georgia Equal Opportunity Office, n.d.; University of Illinois at Chicago, n.d.; University of Massachusetts at Amherst Equal Opportunity Office, 2021; University of South Carolina Equal Opportunities Programs, 2020; and Virginia Tech, 2021).

The University of California at Berkeley's harassment policy contains additional language that the other universities included in this study do not contain in their policies. The University of California at Berkeley does not reference Title IX within its policy; however, it does contain a reference to an issue the institution had with the Department of Education regarding implementing recent changes immediately before the policy language starts. While the policy itself does not directly reference Title IX, it does touch on each of the tenets of the language commonly used within Title IX policies. Moreover, it goes a step further to state that "consideration is given to the totality of the circumstances in which the conduct occurred" (University of California at Berkeley Office for the Prevention of Harassment & Discrimination, n.d., p. 5). This is a significant deviation from the language of the harassment policies put forth by the other universities in this study.

The University of California at Berkeley's approach to its sexual harassment policy is unique, leading to the same concerns regarding the language in the policy being too restrictive. However, the foreword included in the University of California at Berkeley's policy proclaims that this policy is more expansive and covers more than the prescriptive Title IX language and attempts to expand the types of incidents and impact

of incidents through the language included in the policy concerning the totality of the circumstances surrounding the incident (University of California at Berkeley Office for the Prevention of Harassment & Discrimination, n.d.).

The University of South Carolina at Columbia has a comprehensive sexual harassment policy that includes the same tenets as the other policies included in this study (University of South Carolina Equal Opportunity Programs, 2020). Some unique aspects of the sexual harassment policy at the University of South Carolina is the included language pertaining to verbal and non-verbal contact. It also contains many terms and phrases, like sexual exploitation, indecent exposure, invasion of sexual privacy, and physical contact. Other universities included in this study placed these terms in other portions of their harassment policies. The most unique element of the sexual harassment policy at the University of South Carolina at Columbia is the inclusion of specific university programming surrounding sexual harassment. Mandatory educational programming for students and staff is required by Title IX, and while other universities have references to programming on their websites, and each university is performing the expected programming, the University of South Carolina is the only university included in this study to provide specific university wide programming information in the university's sexual harassment policy.

CHAPTER 6

DISCUSSION, LIMITATIONS, AND RECOMMENDATIONS

Discussion

In this chapter, the fourth CDA criterion, as described by Chouliaraki and Fairclough (1999) of defining the solution to the problem, is presented through a discussion of the results of the study and responses to the research questions. By examining the rhetoric of freedom of expression policies, this study found that these policies vary greatly across various universities, with some policies a great deal more or less restrictive than others. There is a certain rhythm to policy rhetoric. If policy rhetoric were music, each university policy would be singing its own tune in harmony with other policies at that particular university. This analogy is descriptive for this study, demonstrating how policies work together at each institution to support the university stakeholders.

While each policy examined conforms to U.S. laws and regulations, there was truly a striking range of restrictive and non-restrictive language in multiple policies. At one end of the spectrum, Purdue University had the least restrictive policies, all of which clearly supported freedom of expression. Purdue's policies do not limit freedom of expression activity on campus and actively support free speech. No restrictive language

was found in any of the Purdue policies analyzed. The use of outdoor public forum space for any purpose and without a reservation is freely available to students, faculty, and community members. Public forum space inside is also available, with or without a reservation. Allowing this type of free, unrestricted speech by all creates a welcoming environment for freedom of expression (Bird et al., 2006).

In this study, only one of the universities included language in their policies that could be considered proactive in educating their students about freedom of expression or the university's expectations regarding interactions, the University of South Carolina at Columbia. While this may be considered significant as this was the only place that educational language was included as a part of the policy, the educational component is a part of a federal requirement for universities to be in compliance with Title IX in which each university included in this study is in compliance.

Instead, a few universities offered supplemental education that was not a part of a policy and several built websites that addressed freedom of expression on their campuses. The absence of educational initiatives demonstrates a lack of commitment to creating an educational environment in which students are encouraged to comply with university behavioral expectations related to freedom of expression. Kohlberg's theory of moral development (1981) demonstrates that students are not fully developed socially and morally when they enter college. Baxter Magolda's theory of self-authorship (1999, 2001) demonstrates that while college students are writing their own stories, they need some shaping and guidance in their development.

I recommend that universities take a proactive approach to educating students on topics such as freedom of expression and civil discourse to ensure that they are developing into caring, ethical human beings who can express themselves appropriately and abide by the behavioral expectations of their university and society as a whole. Perhaps a policy is not the most appropriate place to incorporate proactive education, as policies may be challenging to change as the desire and need for different types of educational programming shifts (Birnbaum, 1992). However, an educational program could be included in the information surrounding the policy. Several of the universities in this study, such as Texas A&M University at College Station and the University of Colorado at Boulder, have begun to do this by providing information about the First Amendment websites these institutions have developed.

Only one university included in its policy a plan for responding to issues that may arise when groups of students engage in freedom of expression activities, which was the University of Illinois at Chicago. I found this surprising, as each of these institutions has undoubtedly had a protest or demonstration on its campus at some point in time. A 2015 study found that the majority of first-year students surveyed expected to engage in some type of freedom of expression activity while in college (Eagan et al., 2015). Given this expectation, I recommend that universities develop plans to respond to freedom of expression activity that does not stifle the speech, but rather provides a supportive educational environment. An effective response plan may help universities avoid incidents in which the environment can become unsafe and may also help to prevent unnecessary or unflattering publicity surrounding a student protest or demonstration (Bird

et al., 2006). Under Baxter Magolda's (1999, 2001) theory of self-authorship, by providing students with guidelines on what is supposed to occur at a demonstration, the university is providing them with the space to author their own experience within those guidelines.

Purdue University, the University of Oregon, and Virginia Tech are the three universities this study identified as taking proactive steps to educate their students about community expectations for freedom of expression and instruct them on how to interact with others espousing beliefs the students disagree with. Both Purdue University and the University of Oregon have programs that educate students specifically on freedom of expression. Virginia Tech's program educates students on civil discourse and interacting with others who have different perspectives. All three of these programs are voluntary.

I recommend that other universities follow these examples and begin providing programming and hosting speakers that focus on freedom of expression on campus. These activities should become a consistent part of campus programming and should be led by both administrators and students. Focus groups should be offered for students and faculty to determine which types of programming the university culture best supports.

This type of activity is already beginning to occur at both public and private universities across the country. One example of this type of programming is the Day of Dialogue at DePauw University (DePauw University, n.d.). DePauw University's website explains that the Day of Dialogue

> is an annual campus-wide event for faculty, staff and students to examine their individual role in building a shared community. On this day, we expand the

> classroom to the entire campus by coming together and considering concepts and narratives that are often not explored as an entire campus community with a goal of creating a more inclusive campus for all members of the DePauw community. (DePauw University, n.d., para. 1)

Universities that implement this type of programming demonstrate that they are actively working towards addressing civility issues related to diversity and inclusion on their respective campuses. It should be noted that attendance at these programs should not be required, as it is considered unconstitutional for public universities to require students to adhere to a particular set of beliefs, and it should be clear on any publicity about these programs that participation is voluntary (FIRE, 2021). The concept of freedom of conscious is considered applicable to these types of programs by the group FIRE (2021), as individuals have the right to maintain their own set of beliefs and values independent from a public higher education institution. FIRE has brought this issue forward at both public and private universities such as the University of Delaware and DePauw University. If engaging in such activity is included in a class or as a university-wide program, students who choose not to participate can be provided with an alternative assignment.

Hate and bias policies were an area of research where it was notable that the universities included in this study had an array of ways in which they responded to incidents reported by students. Purdue University is on one end of the spectrum as Purdue University does not have any university-wide information available on hate and bias reporting. The University of Arizona is on the other end of the spectrum, whereas

the University of Arizona has a well-built bias response team with university-wide representation. The website clearly defines the purpose of BEST and explains what they can and cannot accomplish to provide individuals making a report an accurate idea of what they can expect (The University of Arizona Dean of Students Office, n.d.-a). As a part of BEST, the University of Arizona provides follow-up support to the reporting students and offers the voluntary opportunity to the person reported to engage in restorative dialogue.

To support students, universities should have some type of follow-up available for students to ensure that the growth and development are being supported and encouraged. This support should include the voluntary opportunity to meet with an administrator as well as the voluntary opportunity to engage in restorative dialogue pertaining to the incident. Kohlberg's (1981) theory of moral development supports this notion as students grow and develop morally at different rates and need support to work through different incidents that occur, regardless of whether they are the cause of the incident or the person who has experienced harm as a result of the incident. Baxter Magolda's (1999, 2001) theory of self-authorship also supports this recommendation as students also need this type of support to further their growth and development in determining how they are going to respond and handle challenging situations in the future.

Limitations

This section of Chapter 6 meets the fifth and final CDA criterion described by Chouliaraki and Fairclough (1999) through its discussion of the limitations of the study and ideas for future research (Fan, 2019). As in all research, there are a number of

limitations of this study that must be identified and discussed. These limitations are identified in this section and further discussed through the recommendations for future research discussed thereafter.

One limitation of this study is that it does not directly address or seek to understand the student experience. This is something that can only be ascertained through interviews with students or administrators or through the direct observation of campus activities over a period of time. Each student is in a different stage of moral development and is carving out their experience and writing their own story, so each student's experience is unique (Baxter Magolda, 1999, 2001; see also Kohlberg, 1981).

A second limitation of this study is that it only addresses policies at predominantly white large public research institutions. There are numerous other colleges and universities in the U.S., and these policies may well vary by institutional type. With this limitation, it is important to note that the student population in this study is not representative of the student population at all colleges and universities. Not all students qualify or desire to attend a large public research institution, and there may be socioeconomic factors that limit attendance. Additionally, there are likely to be more diverse populations of students at other types of institutions, and this may influence some of the policies included in this study.

A third limitation of the study is that it does not consider the historical context of the policies under review. Policies may change over time, and to understand these changes, previous policies must be examined. This study does not examine the reasoning or discussions that led to the current version of these policies or consider whether

particular incidents or events led to changes in the policies. These limitations are important to understand, as they have assisted in generating the ideas for future research discussed in the section below.

Recommendations

The Chicago Principles

While there are differences among the policies surrounding freedom of expression at the universities included in this study that adopted the Chicago Principles, the general tenets of each policy are similar and follow the guidelines laid out by the Chicago Principles. The one university that has adopted the Chicago Principles that I initially anticipated would show some deviation from these principles is the University of Missouri at Columbia. As mentioned in Chapter 2, the University of Missouri at Columbia experienced some severe issues related to free speech in the fall of 2015 and made some policy changes as a result. This fact was reaffirmed in the frequently asked questions section of the Commitment to Free Expression Statement on the university's website.

I anticipated that the University of Missouri at Columbia would deviate from the Chicago Principles due to the university's desire to place limits on low-value speech following the incidents that occurred in the fall of 2015. The University of Missouri at Columbia and the University of Maryland at College Park were the only two universities included in the study that adopted the Chicago Principles and had a policy on hate and bias speech. Creating a policy that addresses hate and biased speech does not follow the Chicago Principles. While my presumption was in some ways accurate, a number of

other universities that had adopted the Chicago Principles also had policies that did not follow those principles in their purest form or that were simply policy outliers.

Universities whose Statements on Free Speech contained the same elements did not necessarily have the same or even similar elements in their various other policies. Moreover, some universities that have not adopted the Chicago Principles have policies similar to those of institutions that have adopted the Chicago Principles. Therefore, one recommendation for future research is to review the Statements on Freedom of Expression at a sample of universities that have all adopted the Chicago Principles to see if they have the same or similar tenets found in the statements of universities included in this study. Administrators at those universities could be interviewed to address the following questions:

- Why did the university adopt the Chicago Principles? Were there specific events or incidents that led to this decision?
- Who was involved in the process of deciding to adopt the Chicago Principles?
- What was the process for adopting the Chicago Principles? How did its adoption change your campus policy and approach to responding to incidents on campus?

Additionally, a study similar to this one could be performed in which all participating institutions have adopted the Chicago Principles. This study has shown that there are outliers, even among universities that have declared they are following the same set of principles.

Statements on Freedom of Expression

Six of the universities included in this study have adopted the Chicago Principles: Purdue University, University of Colorado at Boulder, University of Maryland at College Park, University of Missouri at Columbia, The University of Arizona, and Michigan State University. The statements on free speech at these institutions are very similar and contain all the same components, most likely because they have each followed the Chicago Principles as an exact guideline in publishing their Statements on Free Speech.

As noted previously, of the 15 colleges and universities selected for this study, only two, the University of Massachusetts at Amherst and the University of South Carolina at Columbia, had no formal statement declaring their position on freedom of expression. Neither institution has taken the step to proclaim free speech formally as a value.

One limitation of this study is that it does not examine why these two institutions have no formal statement on freedom of expression. If an institution has no clear statement on freedom of expression, any other policies that reference the subject are inevitably weak and unclear. I recommend that both universities create formal statements outlining their institution's position regarding free speech. This will allow them to articulate the meanings of various policies and give students a clear understanding of university values and of what they can expect from their institution. By establishing a policy, the universities will also encourage students to engage in freedom of expression activities that represent their beliefs, even if they differ from the beliefs held by the senior

administration, and demonstrate that there are few limits to reasonable speech on a public university campus (Amsden, 2011).

While gathering various Statements on Freedom of Expression, I noticed that in addition to the general statements, some universities also issue statements regarding freedom of expression on campus specifically for faculty; the University of Maryland at College Park is one such example. At public universities, it is widely understood that faculty have academic freedom that covers multiple forms of free expression, as discussed by the American Association of University Professors (AAUP) in the *1940 Statement of Principles on Academic Freedom and Tenure* (AAUP, 2020). Even at some private universities, faculty have the ability to exercise academic freedom if the university upholds the standards set by the AAUP (*McAdams v. Marquette University,* 2018). This raises the question, why is such a statement necessary? Future researchers may want to examine these statements and their applicability to the university as a whole.

Protest and Demonstration/Posting and Distribution Policies

The protest and demonstration and posting and distribution policies were some of the most challenging to navigate, as many of them were exceptionally complex and contained a great deal of ancillary and irrelevant information. After reviewing and comparing the policies, it was obvious that some universities see these activities as issues on their campus and some do not. The only university in this study that had no policy in this category was Purdue University. While this may seem strange, given the simplistic language of Purdue's other policies and the fact that Purdue has adopted the Chicago

Principles, the lack of policy in this area does fit for this university. By not having a policy, Purdue University is not restricting freedom of expression in any way.

In the future, it may be advisable for Purdue to consider adopting a very open policy that still falls within the university's philosophy on freedom of expression. While public forums are available to the public, institutions have some purview over the parameters related to use of campus space (Kaplin, W. A., & Lee, B. A, 2014). Additionally, due to students' varying levels of moral and ethical development, as explained in Kohlberg's theory of moral development (1981) and Baxter Magolda's theory of self-authorship (1999, 2001), guidelines for freedom of expression activity are a necessity for students to engage in so they may grow and develop, shaping their own way.

Baxter Magolda's theory of self-authorship (1999, 2001) also supports this notion, as students need some guidance as they live their college experiences and grow into who they are going to become. As described in the Public Forum Doctrine in *Perry Education Association v. Perry Local Educators' Association* (1983) (as cited in Kaplin & Lee, 2014), universities are entitled to establish parameters regarding time, place, and manner in the use of public spaces. In doing so, universities provide an appropriate educational environment for students and ensure the maintenance of university grounds primarily for student and academic use, rather than the use of the general public.

Purdue University at one time had policies in place regarding protest and demonstration/posting and distribution (*Student Protest Materials*, 1967-1984). Purdue adopted the Chicago Principles in 2015, so it can be presumed that policies in these and

potentially other categories were in place before 2015 (Purdue University, 2015). An additional research idea regarding Purdue University and the other universities that have adopted the Chicago Principles is to evaluate the impact that moving to the Chicago Principles has had on the campus climate and culture.

The most restrictive policy by far regarding protest and demonstration/posting and distribution policies is at the University of Georgia. This policy has a number of components that are far too prescriptive. The first problematic element of the policy is the requirement that groups of 10 or more students engaging in freedom of expression activities must notify the police if they will be using a public forum after 9 p.m.

This part of the policy is problematic for many reasons. Many students, particularly students of color, feel uncomfortable contacting the police. This alone makes utilizing public space at night intimidating for students and makes the space inaccessible, limiting speech. Additionally, these outdoor public forums are accessible 24 hours a day on the UGA campus and are regularly used for other types of programming in the evening hours, many times after 9 p.m. Why, then, must students express their right to engage in freedom of expression disperse when the areas are still open, particularly when the same areas are used by students regularly at all hours? Such a restrictive policy may unreasonably limit speech.

According to Kaplin and Lee (2014), it is acceptable within the Public Forum Doctrine established in *Perry Education Association v. Perry Local Educators' Association* (1983) for universities to have some regulations regarding the times public forums are used. However, it is not reasonable to restrict freedom of expression in a

public forum that is regularly accessible and regularly used after hours. I recommend that the University of Georgia eliminate this portion of the policy and allow students as well as members of the community to engage in freedom of expression activities at times of their choosing in public forums without being required to notify the police.

The second exceptionally problematic element at the University of Georgia is in the posting and distribution policy. Student groups wishing to engage in freedom of expression should not be required to have their signs approved before they can be posted in areas that are considered public forums by their nature, such as the Tate Student Center, as mentioned in the policy. This requirement allows the opinions of the building manager to influence which programs can be advertised, thus limiting students' free speech. Moreover, by prohibiting students from posting their own material, the staff member assigned to post materials can influence the dissemination of information by choosing a favorable or less favorable placement. Should a university employee responsible for approving or hanging the sign disagree with the messaging, dislike the style, or feel the posting does not uphold university values, they may choose not to hang the posting or place it in an area that is not easily viewed.

These concerns lead to potential issues in the area of content editing, which is extremely problematic (Amsden, 2011). In addition to its implications for freedom of expression in educational settings, *Tinker v. Des Moines* (1969) also addressed content editing. The Supreme Court ruled in this case that as long as the speech was not disruptive, the Des Moines school district could not restrict its students' speech protesting the Vietnam War, as students were permitted to protest other wars (Kaplin, W. A., & Lee,

B. A, 2014). For these reasons, this policy is exceptionally restrictive, as posters that students wish to hang may be considered "expressive speech" as defined by *Tinker v. Des Moines* (1969). I recommend that the University of Georgia designate several bulletin boards to be used as public forums within spaces regularly used by students, where posted material does not have to be approved and can be posted by students themselves.

As one limitation of this study is that it does not seek to understand the student experience, an additional idea for future research is to investigate students' experiences of engaging in freedom of expression activities at universities where policies are restrictive. This could be done by interviewing students on campuses identified as having restrictive policies. Interviews could also be conducted with individuals charged with approving materials to understand what criteria may be used to reject a posting.

Adjustments should be made to the protest and demonstration policy at the University of Maryland at College Park as well. The University of Maryland at College Park has two separate policies on protest and demonstration, one for those affiliated with the university and another for those external to it. A single policy should articulate the rules that apply to protest and demonstration for both internal and external individuals. This does not mean the university should not apply different privileges to these groups, but that this information should be encompassed in one policy. Having two policies can create unnecessary confusion.

Maryland's policy also contains language surrounding unplanned expressive activity. This portion of the policy states that the university recognizes that there may be incidents that result in public concern, and it does not wish to prevent members of the

university community from engaging in acts of freedom of expression pertaining to these events. The policy then states that unscheduled freedom of expression activity may be held in public forums identified in the policy but university members may not sidestep the policies related to reservations by claiming an activity was unplanned.

Following these statements is a discussion of how the university will investigate unplanned activity to determine whether it was actually unplanned. To determine whether unplanned expressive activity was in fact planned, university officials may use criteria such as whether a sound amplification system was used, whether there was professional printing, and whether media was contacted or security was alerted before the "unscheduled" freedom of expression activity. Regardless of whether the event is spontaneous, if it is in a public forum, per *Perry Education Association v. Perry Local Educators' Association* (1983), individuals have the right to use public forum space for freedom of expression. Additionally, this portion of the policy does not take into consideration that students and faculty may fear opposition from administrators and may be concerned about having the space intentionally reserved for other use to prevent them from exercising their right to freedom of expression in a public forum.

Events may also happen locally or nationally that cause a protest or demonstration to come together quickly; this may occur outside the university's timeline for a reservation while still providing a small window for planning the activity. This policy also does not take into account that students may have ready access to professional printing and amplified sound without a great deal of planning and can contact media very

quickly, shortly before a spontaneous protest begins. For these reasons, I recommend that the University of Maryland at College Park revise this portion of the policy.

Because this study did not directly examine the student experience, future researchers may wish to study the student experience during unplanned expressive activities, as well as the university's response to such expressive activity. A future study might seek to determine whether a university reacted the same way each time in response to unplanned expressive activity. If a university does not react the same way each time, researchers may want to explore the factors that caused the university to act differently on different occasions.

The University of Illinois at Chicago's policy on protests and demonstrations also has some problematic elements. The policy states that all community members are expected to know and abide by the policy. At a public secondary institution, where students are not required to enroll, the policies apply to all whether or not the individuals know them or agree to accept them (Bird et al., 2006). Given that enrollment at a secondary institution is voluntary, it is up to the students and other stakeholders to educate themselves on the policies.

Baxter Magolda's theory of self-authorship (1999, 2001) explains that students are responsible for writing their own stories but often need some forms of structured guidance to write those stories within, as they are still growing and developing into the adults they will become. Under Baxter Magolda's theory of self-authorship, universities should be taking proactive steps to educate students so they can effectively write their own stories and become fully developed adults; also falls under this theory. If we do not

convey to our students what the expectations are, how can we expect them to learn effectively and to write their own stories at our colleges and universities?

Stating that all community members are responsible for knowing and following the policy emphasizes the policy's importance but raises the question of what, if anything, the University of Illinois at Chicago is doing to educate its stakeholders about these important rules and expectations. Unfortunately, based on the information available on its website, the University of Illinois at Chicago is not taking any steps to educate its stakeholders proactively about this policy. Kohlberg's theory of moral development (1981) also explains that students are not fully morally developed, and many of them are in different places regarding moral development. Considering each of these student development theories, we must educate students on any policies we expect them to understand and adhere to. I recommend that the University of Illinois at Chicago take the step of proactively educating and informing its stakeholders of this policy, either through active or passive programming or via online modules.

Hate and Bias Speech

A number of the universities in this study had excellent policies or statements on hate and bias speech. However, other parts of these policies must be addressed, as they may cause issues related to compliance with federal law as well as failing to provide necessary student support. While it is controversial and often unpleasant to consider, many scholars make effective arguments regarding the necessity of protecting low-value speech, as the value of speech is typically defined by those in power (Herbeck, 2018).

I recommend that universities that do not currently have a statement or policy on hate and bias speech should create one. Individuals and groups frequently take advantage of public forums on college campuses nationwide to proselytize or to spread particular political agendas. Adding a policy will demonstrate to students that the institution supports them and cares about diverse student populations. Kohlberg's theory of moral development (1981) also supports adding a statement. Given that we know our students have not completed their moral development, according to Kohlberg's theory, students may struggle to be comfortable ignoring the points of view of some of these proselytizers and understanding why free speech is allowed on a public university campus.

Universities should, at the very least, have a reporting form and a process in place to follow up with students who have been impacted by something they observe or by speech that has been directed at them personally. Under Baxter Magolda's theory of self-authorship (1999, 2001), this follow-up can help students determine how they can best move forward from the incident. Universities should not have a policy designed to enforce a student conduct regulation pertaining to hate speech as this is still constitutionally protected speech as long as it does not rise to the level of harassment under respective university policies (Bird et al., 2006). Instead, these forms can be used to recognize incidents for which students need support so that universities can provide the appropriate response and identify incidents that have occurred that have surpassed being considered hate speech. As a practitioner, in my experience, incidents that contain elements of hate and bias that would be appropriate to adjudicate under a student code of conduct may contain violence, exceptional disruption to the campus community, property

damage, or may rise to the level of meeting the standards described under the respective university's harassment policy.

Regarding the policies at Virginia Tech and the State University of New York at Buffalo, I recommend that the management of these policies be moved to the offices that address diversity, equity and inclusion, as those offices also maintain the harassment policy. By doing this, students can avoid having to repeat the details of what occurred multiple times to multiple people, as they will be working directly with the office that can address the issue. This also allows individuals with expertise in harassment to determine whether there is enough information to warrant an investigation pertaining to the alleged harassment.

With regard to Virginia Tech, students should not be asked to consider whether or not the incident violates a policy. This may discourage the reporting of incidents, as students may talk themselves out of reporting if they are unsure whether the incident meets the criteria. Instead, this should be the administrator's role. If students choose not to report hate and bias incidents, university administrators will have an inaccurate picture of the campus climate related to diversity and inclusion. Additionally, under Kohlberg's theory of moral development (1981), some students have not developed morally and ethically to the point of being able to make the distinction between a violation of a university policy and protected low-value speech.

While reviewing these policies, it became apparent that none of the universities are proactively educating their students pertaining to hate and bias on their campus. Kohlberg's theory of moral development (1981) and Baxter Magolda's theory of self-

authorship (1999, 2001) both support the need to proactively educate students. Students should be informed that hate and bias incidents are occurring; however, according to Kohlberg's theory of moral development, depending on where they are in their process of moral development they may not fully understand the impact of hateful and biased behavior on their peers (Baxter Magolda, 1999, 2001; see also Kohlberg, 1981). All students should be informed of ways they can respond when they witness such behavior. When we choose not to educate our students to speak out, hate and bias behaviors are given silent approval to continue.

The limitations of this study suggest several additional recommendations for future research. Researchers might examine the types of hate and bias incidents that occur at predominantly white institutions and how universities address them. An impactful qualitative study might interview students of color at a predominantly white institution to explore how hate and bias incidents have influenced their college experience. This study did not discuss or delve into the realm of racism on the predominantly white university campus, but it may be fruitful to conduct the same research study at institutions that are not predominantly white and analyze and compare the data.

Civility

It was clear from reviewing these policies, particularly the statements on freedom of expression and the policies on bias and hate speech, that statements on civility may not be necessary and may even be redundant in many cases. I recommend that universities consider addressing civility in a manner similar to Purdue University and the University of Missouri at Columbia, which incorporates this language as an expectation in the

student code of conduct. Universities could also take the educational approach to civility and teach students about civil discourse, as Virginia Tech is doing. A second or third statement reiterating what has already been spelled out in a Statement on Freedom of Expression or a hate and bias speech statement or policy is redundant, and the concept of civility is implicit in the aforementioned statements. These notions are supported by multiple student development theories, particularly Kohlberg's Theory of moral development and Baxter Magolda's theory on self-authorship (Baxter Magolda, 1999, 2001; see also Kohlberg, 1981).

Harassment

Each of the harassment policies analyzed in this study was fully in compliance with governmental regulations. However, to further demonstrate compliance, universities that do not include the Title IX prescriptive language in their policy should consider a revision to include this language (Education Amendments Act of 1972, 2018). Ultimately, the Title IX language fully addresses the required elements of sexual harassment policies at universities (Gregory & Bennett, 2014).

Michigan State University should also remove its own language from the policy and replace it with the Title IX language, as redundancy in policies can create issues when a different language is used. The University of California at Berkeley includes a prologue to the policy stating its institutional disagreement with the 2018 Title IX regulations and asserting that the University's own policy encompasses more gender-based discrimination issues (University of California at Berkeley Office for the Prevention of Harassment & Discrimination, n.d.). Given that Title IX regulations

change, as different political administrations come into power, this statement is unnecessary and will likely need to be removed in the future when it is no longer applicable.

Upon reviewing the various policies, I noted that several went through multiple revisions over the course of time. I also noticed that some, such as the policy at the University of Missouri at Columbia, were likely established or changed as the result of a specific incident or movement that occurred on campus. It is a limitation of this study that it does not consider the historical context of either these policies or Title IX. Additional research could be done on policy history and federal Title IX policy requirement changes and how they align. Interviews could be conducted with university administrators to better understand the contexts in which these changes occurred.

Recommendations for Future Research

This study suggests a variety of avenues for future research. Further research should be done on how universities, in practice, are implementing these policies; how often these policies are reviewed; and who participates in that review process. Baxter Magolda's theory on self-authorship (1999, 2001) supports engaging multiple members of the campus community, particularly students, in this process, as students should have some guided determination pertaining to their college experience.

As discussed in Chapter 2, the Black Lives Matter movement, as well as the Time's Up movement, have been at the forefront of discussions at universities and among the general U.S. public. The Black Lives Matter movement has had a direct impact on the policies surrounding freedom of expression at the University of Missouri at Columbia

(Trachtenberg, 2018). A limitation of this study is that it does not examine the impact of recent social movements on university policies. Thus, one opportunity for further research is to examine how these movements have impacted universities. Have universities tightened up their policies, or have they adopted the Chicago Principles to allow for free speech of all types?

The policies in this study may be considered primary policies governing the topic of freedom of expression on the university campus. Policies were selected due to their relevance to freedom of expression on the university campus. However, there would be value in exploring ancillary policies in future research that this study did not explore. One area of particular interest is to examine how Residence Life policies influence their respective communities, how these policies are enforced, and how the policies differ from other primary university-wide policies. Another area of research pertaining to housing and residence life is the training of housing and residence life staff members and how the training at one institution compares to that of other residence life departments or even other departments at the same university.

An additional recommendation for future research is to study the individuals' exterior to the university, particularly those who proselytize, and their impact on the campus. The present study does not focus on these individuals or explore their impact on the campus community. Numerous individuals and special interest groups come to university campuses to proselytize. These individuals may include religious followers—more commonly known as campus preachers—as well as pro-life groups, Jehovah’s witnesses, and others. Some of the language they use may be considered dangerous or

fighting words and may incite violence accidentally or on purpose (*Brandenburg v. Ohio*, 1969). Garces et al. (2021) discuss the impact of this behavior on our students from marginalized populations and how the responses of university administrators contribute to the detrimental impact on these students. The study performed by Garces et al. supports the notion that studying these groups and individuals may provide more information on how policies can be better developed to provide a better, safer campus community for everyone while maintaining the values of freedom of expression.

Both Kohlberg's theory of moral development (1981) and Baxter Magolda's theory of self-authorship (1999, 2001) suggest that students may be greatly impacted by these individuals. They further suggest that students need a space to process what they have seen in order to learn and grow and that it is the role of university faculty, staff, and administrators to aid and guide that growth and development. Garces et al. (2021) also suggested that this type of uninhibited freedom of expression from parties with agendas could have a detrimental impact on the growth and development of students.

As the study I have conducted does not consider the impact of actions or policies, future studies may investigate the impact of these individuals on the student population on various types of campuses and examine how policies address campus guests who wish to engage in this type of freedom of expression. A study could also explore how protest demonstration policies evolved and whether these external individuals or groups had any influence on the development of these policies. Finally, researchers could examine whether students and faculty support these individuals or groups being on campus and

how university officials address faculty and student concerns pertaining to these individuals or groups.

Conclusion

This study has been an extraordinary undertaking that has resulted in discovering some answers while also raising many more questions. This study offers universities the opportunities to improve compliance and facilitate a better student experience, which is the ultimate purpose of this research. This study provides a foundation for further policy research on the application of the first amendment on university campuses, with the opportunity to grow and expand as time progresses.

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APPENDIX A: FREEDOM OF EXPRESSION STATEMENTS

Purdue University:

https://www.purdue.edu/purdue/about/free-speech.php

University of Georgia:

https://freedomofexpression.uga.edu/policy/

University of Illinois at Chicago:

https://dos.uic.edu/wpcontent/uploads/sites/262/2020/01/UIC-Open-Expressions-12.19.19.pdf

Texas A&M University at College Station:

https://firstamendment.tamu.edu/first-amendment-on-campus/

University of Colorado at Boulder:

https://www.colorado.edu/studentaffairs/expression

Michigan State University:

https://trustees.msu.edu/about/statement-free-speech.html

University of Missouri at Columbia:

https://freespeech.missouri.edu/commitment-to-free-expression/

University of Oregon:

https://policies.uoregon.edu/policy/by/1/01-administration-and-governance/freedom-inquiry-and-free-speech

Virginia Tech:

https://policies.vt.edu/speechoncampus.html

University of Arizona:

https://deanofstudents.arizona.edu/student-rights-responsibilities/first-amendment

University of Buffalo:

https://www.buffalo.edu/news/key-issues/free-expression.html

APPENDIX B: HATE AND BIAS POLICIES

University of Buffalo:

https://www.buffalo.edu/studentlife/who-we-are/departments/conduct/reporting-bias-related-confrontations-and-incidents.html

University of California at Berkeley:

https://ucsystems.ethicspointvp.com/custom/ucs_ccc/default.asp

Texas A&M University at College Station:

https://stophate.tamu.edu

University of Arizona:

https://deanofstudents.arizona.edu/BEST

University of Massachusetts at Amherst:

https://www.umass.edu/diversity/fight-hate/bias-incident-report

University of Missouri at Columbia:

https://diversity.missouri.edu/our-work/bias-hotline/

University of Oregon:

https://inclusion.uoregon.edu/bias-response-team

University of South Carolina at Columbia:

https://sc.edu/about/offices_and_divisions/diversity_equity_and_inclusion/report_an_incident/index.php

Virginia Tech:

https://dos.vt.edu/express_a_concern/bias-related-incident.html

APPENDIX C: PROTEST AND DEMONSTRATION POLICIES

University of Maryland at College Park:

https://policies.umd.edu/assets/section-vi/VI-410A.pdf

https://stamp.umd.edu/events/event_guest_services/policies

University of Colorado at Boulder:

https://www.colorado.edu/policies/campus-use-university-facilities

University of Missouri at Columbia:

https://bppm.missouri.edu/policy/use-of-facilities/

https://freespeech.missouri.edu/principles/

University of Arizona:

https://policy.arizona.edu/ethics-and-conduct/campus-use-policy-interim

Michigan State University:

https://opb.msu.edu/functions/facilities/index.html

http://splife.studentlife.msu.edu/regulations/selected/distribution-of-literature

https://trustees.msu.edu/bylaws-ordinances-policies/ordinances/ordinance-28.00.html

https://trustees.msu.edu/bylaws-ordinances-policies/policies/06-09-01.html

https://trustees.msu.edu/bylaws-ordinances-policies/policies/06-11-01.html

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15.00.html

University of Illinois at Chicago:

https://dos.uic.edu/wp-content/uploads/sites/262/2020/01/UIC-Open-Expressions-12.19.19.pdf

Texas A&M University at College Station:

https://student-rules.tamu.edu/append11/

University of California at Berkeley:

https://sa.berkeley.edu/uga/regs

University of Georgia:

https://freedomofexpression.uga.edu/policy/

University of Massachusetts at Amherst:

https://www.umass.edu/dean_students/campus-policies/picketing-code

https://www.umass.edu/af/sites/default/files/Procedures%20for%20Regulations%20for%20Use%20of%20University%20Property.pdf

University of Oregon:

https://policies.uoregon.edu/vol-4-finance-administration-infrastructure/ch-7-property-facilities-planning-sustainability-0

University of South Carolina at Columbia:

http://www.sc.edu/policies/ppm/univ600.pdf

Virginia Tech:

https://policies.vt.edu/assets/5000.pdf

University of Buffalo:

https://www.buffalo.edu/vpsl/policies/picketing-and-assembling-policy.html

APPENDIX D: CIVILITY POLICIES

Purdue University:

https://catalog.purdue.edu/content.php?catoid=7&navoid=2852#purdue-university-bill-of-student-rights

University of Missouri at Columbia:

https://www.umsystem.edu/ums/rules/collected_rules/programs/ch200/200.010_standard_of_conduct

University of Maryland at College Park:

https://adminvp.umd.edu/ethical-and-responsible-conduct

Virginia Tech:

https://civility.vt.edu

https://www.inclusive.vt.edu/Programs/vtpoc0.html

University of California at Berkeley:

https://sa.berkeley.edu/uga/respect

APPENDIX E: HARASSMENT POLICIES

Michigan State University:

https://civilrights.msu.edu/policies/relationship-violence-and-sexual-misconduct-and-title-ix-policy.html

Purdue University:

https://www.purdue.edu/policies/ethics/iiic4.html

University of Colorado at Boulder:

https://www.colorado.edu/oiec/policies/sexual-misconduct-intimate-partner-violence-stalking

University of Illinois at Chicago:

https://sexualmisconduct.uic.edu/policy/

University of Arizona:

https://equity.arizona.edu/policies-procedures

University of Massachusetts at Amherst:

https://www.umass.edu/equalopportunity/title-ix-policy-and-grievance-procedures

University at Buffalo:

https://www.buffalo.edu/administrative-services/policy1/ub-policy-lib/discrimination-harassment.html#title_5

Virginia Tech:

https://policies.vt.edu/1025.pdf

University of South Carolina at Columbia:

https://www.sc.edu/about/offices_and_divisions/equal_opportunities_programs/policies/index.php

University of California at Berkeley:

https://ophd.berkeley.edu/policies-and-procedures/policy-and-procedures-students

University of Maryland at College Park:

https://ocrsm.umd.edu/sexual-misconduct

Texas A&M University at College Station:

https://Title IX.tamu.edu

University of Georgia:

https://eoo.uga.edu/policies-resources/title-ix-sex-discrimination-harassment/

University of Missouri at Columbia:

https://www.umsystem.edu/ums/rules/collected_rules/equal_employment_educational_opportunity/ch600/600.020-sexual-harassment-under-title-ix-matters-involving-conduct

University of Oregon:

https://policies.uoregon.edu/vol-5-human-resources/ch-11-human-resources-other