

At the pre-meeting on October 26, several questions were asked about the University's ability to protect students from hateful speech and to respond to it when it occurs. These questions are addressed below.

- What can we do as a state institution of higher learning to prevent situations such as the posting of hateful flyers from happening again?

CSU policies prohibit all forms of discrimination, including harassment, on the basis of protected class status. Conduct is harassment if it is unwelcome and rises to the level of depriving a person of "educational access, opportunities and rights."

Whether conduct rises to the level of harassment can only be determined on a case-by-case basis, taking into account factors such as:

- Whether it is directed towards a particular person or group of people;
- How severe it is and how pervasive it is;
- The relationship between the person engaging in the conduct and the person to whom the conduct is directed; and
- Whether the conduct occurs in a public space or in a classroom / residence hall / workplace.

In addition to prohibiting discrimination and harassment, University policy and state law prohibit threats directed toward an individual.

- How do you define a hostile environment? When does an act lead to a hostile environment? Where is the line?

"Hostile environment" is a term used to describe unwelcome conduct, directed towards an individual based on that person's protected class status, when the conduct deprives that person of educational access, opportunities and rights. Whether conduct creates a hostile environment must be analyzed on a case-by-case basis. It is very difficult to say in the abstract where the line is. Factors to be considered are described above.

- How far can CSU go to create an inclusive campus?

We may have to tolerate hateful speech if it does not constitute harassment or a threat, but we also have a right to speak out against it. We can condemn hate in the strongest terms, educate our campus around issues of diversity and inclusion, and use our resources to support all members of our community.

- How are we framing this issue with everything that is going on nationally?

It is clear that CSU is not the only campus dealing with hateful speech in a variety of forms. The national conversation can provide information about particular campaigns or the meaning of particular slogans or posters, as well as provide context for assessing the threat posed by particular speakers or demonstrations.

- Is the flyer considered hate speech because it is telling students to commit suicide?

“Hate speech” is not a term that the U.S. Supreme Court uses to describe speech that is not protected by the First Amendment. Rather, the Supreme Court has said that harassment, as described above, is not protected, nor is incitement to violence. Generally speaking, advocating violence, by itself, is not enough to constitute “incitement.” It becomes incitement only when it is directed toward “imminent” (immediate) violence or other lawless action, and it is likely to produce such imminent violence or lawless action.

- Do we need public boards? Can we take them down?

If we open our bulletin boards to the general public, then we must allow all forms of protected speech to be posted. However, we are not required to maintain such boards.

- Can we “red flag” a particular speaker from coming to campus because they will incite violence?

We are not required to allow the incitement of violence. However, a determination that someone will incite violence would have to be based on specific threats, not speculation about what could happen.

- Can we refuse to invite a speaker to campus?

We are required to allow student groups and academic departments to use our facilities, and to rent facilities to members of the public, so long as the use is in accordance with our rules and procedures. However, we are never required to invite a speaker to campus and the CSU administration would not invite a speaker whose message ran counter to our values of inclusiveness.

- Can we charge a controversial speaker a fee to speak on campus?

We must rent our facilities to the public in accordance with our rules and procedures. We would charge a controversial speaker the same rates as any other member of the public, and that speaker would be required to adhere to the same rules.

- Who pays for security when a controversial speaker comes to campus? Can we charge the speaker?

The U.S. Supreme Court has said that we cannot assess a fee based on the costs of securing a speaker, because to do so would unfairly burden controversial speech. As a result, the University, along with its law enforcement partners, would bear the cost of any necessary security.