



Prohibition of Symbols of Hate and Intimidation in Campus Facilities

PRESENTED BY Gene Ferrick, Chair

REVIEW DATES SEC – February 20, 2018 | SENATE – March 8, 2018

VOTING METHOD For information only

**RELEVANT
POLICY/DOCUMENT** Not applicable

**NECESSARY
APPROVALS** Not applicable

ISSUE

In August 2017, the Department of Intercollegiate Athletics adopted changes to its Fan Code of Conduct and its list of items and behaviors prohibited at sporting events. The revised list includes items that “display, depict or represent recognizable symbols and/or words, including nooses and swastikas, that incite, intimidate, or threaten members of the University of Maryland community.” In October 2017, the Senate Executive Committee (SEC) charged the Campus Affairs Committee with considering whether a similar prohibition should be extended to all campus facilities. In addition to reviewing existing University policies and those of peer institutions, the committee was asked to consult with a range of campus stakeholders, consider how to define “symbols and objects of hate and intimidation,” and recommend changes to University policy, as appropriate.

RECOMMENDATIONS

The Campus Affairs Committee was asked to consider whether symbols and objects of hate and intimidation should be banned from all campus facilities. After extensive deliberation of the legal framework, the committee unanimously decided not to recommend such a prohibition.

The committee does, however, endorse the Joint President/Senate Inclusion & Respect Task Force’s initial findings and the preliminary recommendations it presented at the February 7, 2018, Senate meeting. The central question asked in the Campus Affairs Committee’s charge represents one possible approach to making the University a more inclusive place to learn and work. While the committee could not support that approach, it does acknowledge that there are other actions that should be considered. The University’s principles are embodied in a variety of policies, guiding documents, and practices, and the committee is encouraged that the Task Force is considering a comprehensive course of action. The committee endorses the idea of a balanced approach that distinguishes between speech and conduct, which upholds important principles of free expression while working to minimize actions motivated by hate and bias.

COMMITTEE WORK

The committee consulted with a range of offices and administrators, and reviewed student, faculty, and staff feedback gathered at forums hosted by the Joint President/Senate Inclusion & Respect Task Force. It consulted the Office of General Counsel on the legal framework that would shape any

potential policy, and reviewed data on incidents involving symbols or objects of hate and intimidation provided by the University of Maryland Police Department and the Office of Civil Rights & Sexual Misconduct. In addition to reviewing existing University policies, the committee examined Big 10 and other peer institutions to determine if any of them prohibit particular symbols or objects.

The committee found that the changes to the Fan Code of Conduct were intended to foster a positive atmosphere and a spirit of sportsmanship at athletic events. Certain items are prohibited in order to help create a family friendly environment. Much as signs are prohibited because they can block the view of other spectators, the prohibition of symbols and objects that incite, intimidate, or threaten is intended to eliminate the disruption they may cause.

In considering whether the University should ban certain symbols and objects in all campus facilities, the committee carefully reviewed speech protections established by the First Amendment to the US Constitution and subsequent judicial rulings. The display of symbols and objects has long been considered a protected and important form of expression, and restrictions on such expression by public entities are presumptively unconstitutional. The types of speech exempted from these protections are few, and are established by judicial precedent; courts have held that, in and of itself, the display of an offensive symbol or object is not a form of expression that can be prohibited. While restrictions on the time, place, and manner of expression are permissible under certain circumstances, a blanket ban on a particular form of expression based on its content would likely not be defensible.

Through its consideration of feedback from members of the campus community, the committee found that incidents involving symbols and objects of hate and intimidation have a negative impact on the campus climate. While that impact is most intense for those directly encountering hateful symbols, it is not limited to them, and for some on campus each incident reinforces fears that UMD is not a welcoming or even safe environment. The committee identified areas where the University could improve its handling of these incidents by increasing transparency and by better articulating and defending its core principles and values. The committee is encouraged that the Joint President/Senate Inclusion & Respect Task Force is considering a comprehensive course of action to address these issues.

ALTERNATIVES

Not applicable.

RISKS

There are no associated risks.

FINANCIAL IMPLICATIONS

There are no financial implications.



Prohibition of Symbols of Hate and Intimidation in Campus Facilities

2017-2018 Committee Members

Gene Ferrick (Chair)
Ayanna Baccus (Faculty)
Mariah Bauer (Ex-Officio Provost's Rep)
Lori Ebihara (Ex-Officio Coaches Council Rep)
Lee Friedman (Faculty)
Beth Javier-Wong (Ex-Officio VP University Relations Rep)
Luke Jensen (Ex-Officio Chief Diversity Officer Rep)
Anne Martens (Ex-Officio VP Administration and Finance Rep)
Gerald Miller (Faculty)
HuyenTran Nguyen (Staff)

Jeffrey Pickering (Faculty)
Alan Pracht (Undergraduate Student)
AJ Pruitt (Ex-Officio SGA Rep)
Miriam Sharp (Staff)
Nedelina Tchangalova (Faculty)
Jamie Welch (Ex-Officio GSG Rep)
Amy Wickner (Graduate Student)
Lance Yonkos (Faculty)
John Zacker (Ex-Officio VP Student Affairs Rep)

Date of Submission

February 2018

BACKGROUND

In August 2017, the Department of Intercollegiate Athletics (Athletics) adopted changes to its Fan Code of Conduct and its list of items and behaviors prohibited at sporting events. The revised list includes items that “display, depict or represent recognizable symbols and/or words, including nooses and swastikas, that incite, intimidate, or threaten members of the University of Maryland community.” In October 2017, the Senate Executive Committee (SEC) charged the Campus Affairs Committee with considering whether a similar prohibition should be extended to all campus facilities. In addition to reviewing existing University policies and those of peer institutions, the committee was asked to consult with a range of campus stakeholders, consider how to define “symbols and objects of hate and intimidation,” and recommend changes to University policy, as appropriate (Appendix 1).

CURRENT PRACTICE

No other campus policy establishes a blanket prohibition of specific symbols or objects based on their effect on members of the University community. To date, Athletics has not encountered any incidents involving the expanded list of prohibited items. Certain actions that intimidate or threaten members of the University community, including actions that could involve symbols or objects, are addressed in the University's Non-Discrimination Policy & Procedures, which establishes procedures for investigating and referring cases of discrimination.

COMMITTEE FINDINGS

At an initial meeting to discuss the charge, the committee decided to begin by consulting with several key stakeholders to better understand current practice and the motivation behind the Fan Code of Conduct revisions. The committee spoke with the Chair of the Athletics Council, the Chief of Police, the Director of the Office of Civil Rights & Sexual Misconduct (OCRSM), and a

representative of the Office of General Counsel. It reviewed existing policies, including the University of Maryland Non-Discrimination Policy & Procedures and the University System of Maryland (USM) Policy on Acts of Violence & Extremism, and considered the response protocols used by the Department of Resident Life when there are incidents involving symbols of hate and intimidation in residence halls. The committee reviewed data on verified reports involving symbols or objects of hate and intimidation provided by the University of Maryland Police Department and the OCRSM. It also investigated policies at Big 10 and other peer institutions. In addition to consulting with the co-chairs and members of the Joint President/Senate Inclusion & Respect Task Force, committee members attended forums where students, faculty, and staff discussed the campus climate and the pain caused by hateful words and actions. The committee also consulted with the Office of Staff Relations and the Faculty Ombuds Officer. Its findings are addressed thematically below.

Policies, Practices, and Recent Incidents

The committee reviewed relevant University policies, several of which inform how incidents involving symbols and objects of hate and intimidation are addressed.

- The revisions to the Fan Code of Conduct adopted by Athletics were in part a response to Big 10 initiatives designed to foster a positive atmosphere and a spirit of sportsmanship at athletic events. Certain items are prohibited at such events to help create “safe, comfortable, and enjoyable experience for fans of all ages (including and especially children), student-athletes, coaches and officials.” Much as signs are prohibited because they can block the view of other spectators, the prohibition of symbols and objects that incite, intimidate, or threaten is intended to eliminate the disruption they may cause.
- The University’s Non-Discrimination Policy & Procedures establish mechanisms to respond to incidents involving symbols or objects of hate and intimidation. The Office of Civil Rights & Sexual Misconduct (OCRSM) receives reports involving hate-bias or discrimination from individuals, from the Office of Student Conduct, and from the University of Maryland Police Department (UMPD). OCRSM documents these incidents and determines whether there are sufficient grounds to investigate. Such investigations can lead to no further action or to referrals to other campus bodies, such as the Office of Student Conduct, Staff Relations, or the Office of Faculty Affairs. The committee reviewed relevant cases reported or referred to OCRSM over the past two years.

The Non-Discrimination Policy & Procedures prohibit threatening “verbal, physical, written, graphic, or electronic” conduct, as well as “epithets, slurs, or negative stereotyping, jokes, or nicknames.” These prohibitions are not directly related to the content of the speech or symbols per se, but rather actions that create a discriminatory environment. Typically, these actions must be pervasive or recurring; a single incident is not ordinarily sufficient to constitute harassment or discrimination under the policy, and every investigation OCRSM undertakes involves a careful consideration of the specific circumstances surrounding the behavior being reported.

- The USM Policy on Acts of Violence & Extremism prohibits acts of destruction and violence that are motivated by hate and that infringe on the rights of others, and establishes sanctions (suspension, expulsion, or termination) for those who violate the policy. The committee determined that its provisions are addressed, and in greater detail, by other University policies.

- In late November 2017, the University released a new Hate-Bias Incident Response Protocol that describes how reports will be addressed and provides an overview of the resources available to those who have experienced or witnessed hate-bias incidents.
- The committee also reviewed the Department of Resident Life's protocols for responding to incidents involving symbols or objects of hate and intimidation in residence halls. Those protocols are robust and intended to quickly address the immediate impact on the individual(s) involved, as well as the broader impact on the residential community. They involve notifying UMPD, which quickly investigates so the offensive material can be removed as quickly as possible. Communication with students is also timely and transparent, and involves sharing the range of resources available to affected students.

Legal Framework

When reviewing the impact that symbols and objects of hate and intimidation have had on the campus community, the committee considered feedback from students, faculty, and staff, and reviewed media reports published in various local and national outlets. It is clear that symbols of hate can cause pain and undermine the atmosphere of inclusion and respect that is so central to the University's mission.

In considering whether the University should ban certain symbols and objects in all campus facilities, the committee carefully reviewed speech protections established by the First Amendment to the US Constitution and subsequent judicial rulings. The display of symbols and objects has long been considered a protected and important form of expression, and restrictions on such expression by public entities are presumptively unconstitutional. The types of speech exempted from these protections are few, and are established by judicial precedent; courts have held that, in and of itself, the display of an offensive symbol or object is not a form of expression that can be prohibited. While restrictions on the time, place, and manner of expression are permissible under certain circumstances, a blanket ban on a particular form of expression based on its content would likely not be defensible.

UMPD has investigated and charged individuals in cases involving symbols or objects of hate and intimidation, using the Maryland State Police protocols to determine whether a hate crime or a hate bias incident has occurred. When UMPD investigates incidents involving hate symbols, for example, they consider whether a crime has been committed and whether it was motivated by hate or bias. In the case of a swastika carved into a bathroom stall door, it is the vandalism that provides the grounds for charges. However, under Maryland law, enhanced penalties may be imposed for crimes motivated by animosity against members of a protected class, but animosity itself is not a crime.

Peer Institutions

The committee reviewed data gathered by the Joint President/Senate Inclusion & Respect Task Force regarding policies at Big 10 and peer institutions; none have policies that prohibit certain symbols or objects from being displayed on their campuses.

Feedback from UMD Students, Faculty, and Staff

In the course of its work, the committee reviewed feedback from students, faculty, and staff that provided insights into the campus climate. This feedback includes comments shared at several forums and feedback sessions hosted by the Joint President/Senate Inclusion & Respect Task Force, as well as media reports. It is clear that incidents involving the objects and symbols addressed in the committee's charge have negatively affected the campus climate, particularly for

minority members of our community. While the impact is most intense for those directly encountering hateful symbols, it is not limited to them, and for some on campus each incident reinforces fears that UMD is not a welcoming or even safe environment. The committee has not assessed how widespread such sentiments are (though the Office of Diversity & Inclusion is currently conducting a UMD Campus Climate Survey). However, the fact that any members of our campus community do not feel welcome or safe is something the University should take seriously.

Concerns over the campus climate seem in part to be fueled by the nature of the University's response to incidents involving hateful symbols or hate-bias incidents more broadly. Some perceive these incidents are too often unreported, and see the University as reluctant to share information for fear of damaging its reputation. Through its consultations with various offices, the committee learned that the University exercises discretion when determining how much detail is appropriate to share with the general public. In some cases, for example, releasing details about an anonymous incident may extend the reach of hateful propaganda and ensure it receives a wider audience, inadvertently aiding the outreach efforts of hate groups. However, there is clearly a desire for greater transparency and a clear and consistent strategy for acknowledging, tracking, and reporting incidents involving hate and discrimination. The committee also found that some feel the University's responses to incidents involving hateful speech represent missed opportunities to care for victimized populations and articulate the institution's values. Particularly in incidents where the University's scope of action is constrained by the legal framework discussed above, a tendency to cite the First Amendment may be seen as justifying inaction.

RECOMMENDATIONS

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The committee does, however, endorse the Joint President/Senate Inclusion & Respect Task Force's initial findings and the preliminary recommendations it presented at the February 7, 2018, Senate meeting. The central question asked in the Campus Affairs Committee's charge represents one possible approach to making the University a more inclusive place to learn and work. While the committee could not support that approach, it does acknowledge that there are other actions that should be considered. The University's principles are embodied in a variety of policies, guiding documents, and practices, and the committee is encouraged that the Task Force is considering a comprehensive course of action. The committee endorses the idea of a balanced approach that distinguishes between speech and conduct, which upholds important principles of free expression while working to minimize actions motivated by hate and bias.

APPENDICES

Appendix 1 — Senate Executive Committee Charge on the Prohibition of Symbols of Hate and Intimidation in Campus Facilities (Senate Document #17-18-11)



Prohibition of Symbols of Hate and Intimidation in Campus Facilities
(Senate Document #17-18-11)
Campus Affairs Committee | Chair: Gene Ferrick

The Senate Executive Committee (SEC) and Senate Chair Falvey request that the Campus Affairs Committee consider whether symbols and objects of hate and intimidation should be prohibited in campus facilities.

Specifically, we ask that you:

1. Review the [University of Maryland Non-Discrimination Policy & Procedures \(VI-1.00\[B\]\)](#).
2. Review the [USM Policy on Acts of Violence & Extremism \(VI-1.10\)](#).
3. Review the [Department of Athletics' policies on prohibited items and behavior in athletic facilities](#).
4. Review similar policies restricting symbols and objects of hate and intimidation at Big Ten and other peer institutions.
5. Review existing UMD data on cases involving symbols and/or objects of hate and intimidation.
6. Consult with the Chair of the Athletics Council.
7. Consult with the Joint President/Senate Inclusion & Respect Task Force.
8. Consult with the University's Title IX Officer.
9. Consult with the University's Chief Diversity Officer.
10. Consult with a representative of the University of Maryland Police Department.
11. Collect feedback on the impact that symbols and objects of hate and intimidation have on the educational and workplace environment from students, faculty, and staff.
12. Consider whether symbols and objects of hate and intimidation should be banned from all campus facilities.
13. Consider how best to define symbols and objects of hate and intimidation in University policies.
14. Consider whether a prohibition against symbols and objects of hate and intimidation should include exceptions for legitimate educational, performance, or practical uses.

15. Consult with the University's Office of General Counsel on any proposed recommendations.
16. If appropriate, recommend whether University policies should be revised and submit recommended revisions for Senate consideration.

We ask that you submit a report to the Senate Office no later than **March 30, 2018**. If you have questions or need assistance, please contact Reka Montfort in the Senate Office (reka@umd.edu or 301.405.5804).