

A Student Guide to Freedom of Expression at The College of New Jersey

I. Introduction

This guide was created to assist students at The College of New Jersey while navigating policies and issues around freedom of expression, staging events, and engaging in meaningful dialogue while preserving the rights of others. It is important to note that this guide does not supercede or replace any existing policies on this campus and students should take care to review any referenced policies in their entirety.

II. What is TCNJ's Policy on Students' Freedom of Expression?

The College's current policy, [Student Rights and Freedoms](#)¹ (the "SRF Policy") was originally established in 1967, and recently revised in 2014. This policy statement was endorsed by the Committee on Student and Campus Community (CSCC) and approved by the Board of Trustees after completing the required review through the College governance system. The SRF policy lists the essential provisions for student freedom to learn at the College. It is not a restatement of other policies, but does make reference to College policy when appropriate and addresses freedom of access to higher education, freedom of association, freedom of inquiry and expression, and disciplinary standards and procedures, among other issues.

The section of Freedom of Inquiry and Expression in the SRF Policy states:

1. *Students and student organizations are free to examine and to discuss all questions of interest to them, and to express opinions publicly and privately. They are free to express support for causes on campus by orderly means as set forth in the ["Use of Campus Property Policy"](#). Students and student organizations should make clear that their public expressions represent the viewpoint or expression of those individuals or organizations and not necessarily those of the College.*

III. May the College Place Limits on Student Expression?

The short answer is "yes", but the longer and more complete answer is "it depends". The College recognizes and supports the exercise of free expression and has issued the [Use of Campus Property](#) policy to assist both college and non-college users in how to utilize campus property for the purposes of

¹ <http://policies.tcnj.edu/policies/digest.php?docId=9162>

expression such as protests, vigils, rallies, and other forms of expression. There are locations outlined in the policy that do not require prior approval for student use, but also some locations that must be reserved prior to an event. Regardless of the location, the policy also outlines parameters for the time, place and manner of the expression to preserve important interests such as safety and ability to deliver an education without disruption.

As stated in the SRF Policy, [s]tudents and student organizations are encouraged to invite and to hear guest speakers of their choosing, provided however, that some guest speakers or programs may require College regulation of the time, place, or manner of the event to ensure that the scheduling of facilities is orderly, that there is adequate preparation and security for the event, and that the event will not disrupt the normal operations of the College as outlined in the "[Use of Campus Property Policy](#)". Any requirements imposed by the College for the safe and appropriate execution of a program will be neutral in regards to content or viewpoint of the program.

The College will not restrict a student and/or student organization's ability to hold an event or host a speaker based on the topic. Any restrictions would be based upon time, place, and manner and only if necessary to preserve a College interest such as safety or delivering education without disruption.

Unprotected Expression.

The Supreme Court has determined that some speech has no value under the First Amendment and constitutes "utterances [that] are not essential part of any exposition of ideas [and] of ...slight social value as a step to truth."² Categories of speech excluded from protection include defamation³, invasion of privacy⁴, fraudulent misrepresentation⁵, obscenity⁶, advocacy of imminent lawless behavior⁷, copyright

² *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

³ Defamation is the injuring of a person's character, fame or reputation by the communication to a third party of false and malicious statements. Defamatory statements may be written or oral.

⁴ Invasion of privacy is the accurate disclosure of highly personal facts in which the public has no legitimate interest.

⁵ Fraudulent misrepresentation is an intentional false statement as to a material fact which another party relies upon to his or her detriment.

⁶ Expression that is deemed to be obscene is not protected expression. Obscenity is a concept that the Supreme Court itself has struggled to define over time. The definition of obscenity requires that each element of a three part test be met:

- 1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interests;
- 2) Whether the work or expression depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and
- 3) Whether the work or expression taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15 (1973).

⁷ The line between protected advocacy and illegal incitement of criminal acts is drawn by the "clear and present danger" test. This test requires that two conditions be met before speech advocating the use of force or crime be proscribed: 1) the advocacy is directed to inciting or producing imminent lawless action; and 2) the advocacy is "likely to incite or produce such action".

Brandenburg v. Ohio, 395 U.S. 444 (1969).

and/or trademark infringement, and “fighting words”⁸. Unprotected speech may also be regulated by College policy and unprotected speech may be a violation of expectations under the [Student Conduct Code](#).

Some examples of unprotected speech are prohibited by campus policy:

- Documents, leaflets, brochures, and the like that are illegal may not be distributed. Illegal materials would include materials that are obscene or defamatory or that infringe copyright or advocate unlawful conduct.⁹ Distribution of written materials must comply with the College’s [posting approval process](#).¹⁰

Example: A student group passes out a leaflet of a faculty member’s head superimposed on an obscene image to protest a controversial editorial the faculty member submitted to the local newspaper.

- Defamation: Oral or written publication of a false statement of fact that exposes the person about whom it is made to hatred, contempt, or ridicule; subjects that person to loss of the good will and confidence of others; or so harms that person’s reputation as to deter others from associating with that person. This does not include the good faith documentation of a possible policy violation or good faith journalistic reporting in the absence of negligence or recklessness.¹¹

Example: A candidate for student government publishes a series of social media posts falsely accusing their opponent of having taken money from a student group fundraiser for personal use.

Time, Place, and Manner Restrictions.

The College, as a state agency, is generally limited in its ability to control the content of protected speech. However, speech is subject to reasonable time, place, and manner restrictions. Such restrictions are content and viewpoint neutral, narrowly tailored, and allow for reasonable alternative channels of communication.

Some examples of time, place, and manner restrictions included in the Use of Campus Property policy include the general restrictions¹² outlined below as well as possible time and manner restrictions outlined later in the policy under section V.:

- All fire, safety, sanitation and any other applicable special regulations are to be obeyed.

⁸ “Fighting words” are words which are likely to make the person to whom they are addressed commit an immediate act of violence either against the speaker or against someone else.

⁹ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

¹⁰ <https://studentactivities.tcnj.edu/forms/tcnj-posting-policy/>

¹¹ Student Conduct Code. <http://policies.tcnj.edu/policies/digest.php?docId=9563>

¹² Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

- The use [of property] must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the College, or to College buildings or facilities, or to College activities or events.
- The use [of property] must not create safety hazards or pose unreasonable safety or security risks to the user or others.
- The use [of property] must not interfere with educational activities inside or outside any College building or otherwise prevent the College from fulfilling its mission and achieving its primary purpose of providing an education to its students.
- The use [of property] must not unduly infringe on the rights of College students, employees, or invitees.
- The use [of property] must be in accordance with any other applicable College policies and regulations, ordinances, policies, and laws of Ewing Township, Mercer County, the State of New Jersey, and the United States.
- Students may only obtain permits for and/or reserve campus property for uses in which the student is directly involved and which serve the legitimate mission and interest of the student, consistent with the mission of the College and [the [Use of Campus Property Policy](#)].

Example: A student group gathers at the Pennington Road entrance to the College (a public use area) to share their support for a presidential candidate, but some of the students gather in the street and block the flow of traffic on Metzger Drive. The College may take reasonable steps to remove the students from the street, including moving the entire gathering to another public use space on campus.

Restrictions supported by governmental interests.

Some governmental/state interests that courts have recognized as sufficient to justify restrictions on protected expression include the College's interest in:

- Providing a forum for expression and diverse opinions;
- Providing for the safety of its students;
- Preventing substantial disruption of the educational process;
- Protecting the rights of students and others;
- Preserving the use of facilities for their normal and intended uses;
- And preventing commercial exploitation of students.

These interests are dependent on a case by case analysis of circumstances to determine whether the governmental interest exists and justifies restrictions on protected expression.

Example: A student group is utilizing a bullhorn to chant support of a political candidate during a time when classes are held or exams are being administered nearby, disrupting the educational process. The College may restrict the use of the bullhorn or move the gathering to a public use space further away from an academic building.

IV. What May the College Do about Behavior that is Racist, Sexist, or Offensive to a Particular Group?

There is an important distinction between “expression” or “speech” and “behavior” or “conduct”. Offensive speech may be protected under the First Amendment. Discriminatory or abusive conduct is not.

The College may be limited in its ability to regulate speech that our community members may feel is offensive or incongruent with our mission or commitment to diversity and inclusion. Although this may seem like an affront to our commitment to inclusion, this right is also what preserves the ability of students to exercise civil discourse, freely exchange competing views, and ultimately gain knowledge, understanding, perspective, and self-identity, regardless of viewpoint. U.S. Supreme Court Justice Black wrote that “freedoms of speech, press, petition, and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”¹³ These freedoms are to be afforded to all students regardless of viewpoint.

Discriminatory, harassing, or abusive conduct is not protected by the First Amendment and is prohibited by the College. It is important to note that some conduct includes verbal, or written expression as an element of the action or behavior. Regardless of whether expression is protected, it will be evaluated within the totality of the circumstances to determine whether it is an element of conduct that is prohibited by College policy. Some examples of conduct prohibited by the [Student Conduct Code](#)¹⁴, [Title IX Policy](#)¹⁵, and [The College of New Jersey Policy Prohibiting Discrimination in the Workplace/Educational Environment](#)¹⁶ are below:

- Sexual Harassment
- Obscene or Indecent Behavior
- Physical Sexual Misconduct
- Bullying, Intimidation, and Harassment
- Invasion of Privacy including Sexual Exploitation
- Stalking
- Physical Abuse including any action or statement that imminently threatens significant harm to the health or safety of any person or group.
- Hazing
- Retaliation
- Discriminatory practices or communications

¹³ Pavela, *Racism and American Values*, Synthesis, January, 1989. Citing *Communist Party v. SACB*, 367 U.S. 1 (1961).

¹⁴ Student Conduct Code <http://policies.tcnj.edu/policies/digest.php?docId=9563>

¹⁵ Title IX Policy <http://policies.tcnj.edu/policies/digest.php?docId=9564>

¹⁶ The College of New Jersey Policy Prohibiting Discrimination in the Workplace/Educational Environment <http://policies.tcnj.edu/policies/digest.php?docId=9122>

In addition, it is important to note that through the student conduct process, if a student is found to have engaged in abusive or harassing conduct directed at a person or group *because of* membership in a protected category that student may be assigned an enhanced sanction.

Example: If a student makes a post on social media stating “Marriage should only be between a man and a woman - gay marriage is against the bible”, this is protected speech. However, if a student posts on social media “John Smith and all other gay men will go to Hell and I will send him there!” this may constitute conduct that is a violation of the Student Conduct Code if the statement is found to imminently threaten significant harm or creates a hostile environment for the student that impedes on their ability to engage in their education.

V. How May I Use Campus Facilities for Purposes of Speech and Assembly?

1. Determine the location of your event:

Public Use Areas

Students may utilize public use areas for purposes of constitutionally protected free speech, peaceable assembly, or expression without obtaining formal permission from the College¹⁷. For purposes of safety and security, however, a student must provide identification when requested to do so by a College official. Public use areas have been designated by the College to include Alumni Grove, the quad behind Green Hall, and an area at the Pennington Road entrance to the College.¹⁸ Please note that the time and manner restrictions exist as outlined below.

Time Restrictions¹⁹: Use of each designated Public Use Area is subject to time restrictions (i.e., duration and acceptable hours) established by the College for the orderly conduct of the operation of the College.

Manner Restrictions²⁰:

- Noise levels must comply with ordinances in both [Ewing Township Code § 240-1](#) and [N.J.A.C. 7:29](#).²¹ The College may establish further reasonable noise-related restrictions. In no event will noise be permitted at a level that disrupts or disturbs the normal use of classrooms, offices or laboratories or any previously scheduled College event or activity or the orderly conduct of the operation of the College.

¹⁷ Note, however, that an organization may be precluded from the use of a public use area if another organization has received prior approval for the use of that space.

¹⁸ See the Real Property Use Map at <https://ethics.pages.tcnj.edu/files/2016/09/Use-of-Campus-Property-Map-06-06-16-1.pdf>

¹⁹ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

²⁰ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

²¹ Township Ordinance <http://ecode360.com/9390418>; New Jersey Law on Noise Control http://www.nj.gov/dep/rules/rules/njac7_29.pdf

- Students may use amplification devices only with written permission.
- Students may distribute, without registration or advance approval, written materials that are not illegal (illegal materials would include materials that are obscene or defamatory or that infringe copyright) on the condition that such materials are designed for informational and not for commercial purposes and that promptly upon exiting the public use area students remove any discarded or excess material from campus property. Distribution of written materials must comply with the [posting approval process](#).²²

Example: Students not affiliated with a student organization wanting to protest the results of the presidential election gather on the quad behind Green Hall (Quimby's Prairie) without reserving the space through Book-It. Please note that the College may still regulate on time, place, and manner such as: making sure the protest is held during acceptable hours such as TCNJ's normal operating hours and containing the noise level, so that it does not disturb classrooms or offices normal operations.

Limited Use Areas

A number of campus property areas have College-prescribed purposes and may be used from time to time by students or student organizations. These areas must be scheduled through existing College scheduling processes²³, and may also require applying for a permit as outlined in the [Use of Campus Property Policy](#).²⁴ A number of factors such as recognized student organization status, fee schedules, scheduling priority, availability, etc. may be considered when scheduling these areas. Limited use areas have been designated by the College to include the areas designated as such on the [Real Property map](#)²⁵ Please note that the time and manner restrictions exist as outlined below.

Time Restrictions²⁶: Use of each designated limited use area is subject to time restrictions (i.e. duration and acceptable hours) and the College may impose additional time restrictions on a specific event.

Manner Restrictions²⁷:

- Noise levels must comply with ordinances in both [Ewing Township Code § 240-1](#) and [N.J.A.C. 7:29](#).²⁸ The College may establish further reasonable noise-related restrictions. In no event will noise be permitted at a level that disrupts or disturbs the normal use of classrooms, offices or

²² Posting Approval Process <https://studentactivities.tcnj.edu/forms/tcnj-posting-policy/>

²³ "Book It" <https://bookit.tcnj.edu/VirtualEms44/>

²⁴ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

²⁵ See the Real Property Use Map at <https://ethics.pages.tcnj.edu/files/2016/09/Use-of-Campus-Property-Map-06-06-16-1.pdf>

²⁶ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

²⁷ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

²⁸ [Township Ordinance http://ecode360.com/9390418](#); [New Jersey Law on Noise Control http://www.nj.gov/dep/rules/rules/njac7_29.pdf](#)

laboratories or any previously scheduled College event or activity or the orderly conduct of the operation of the College.

- Sound amplification guidelines are established by the College.
- Students may distribute, without registration or advance approval, written materials that are not illegal (illegal materials would include materials that are obscene or defamatory or that infringe copyright) on the condition that such materials are designed for informational and not for commercial purposes and that promptly upon exiting the limited use area students remove any discarded or excess material from campus property. Distribution of written materials must comply with the [posting approval process](#).²⁹

Example: A student organization wants to move an event previously planned for Alumni Grove to the inside of Mayo Concert Hall due to predicted inclement weather. The student group should reference the [Use of Campus Property Policy](#) and submit a limited area use request form to see if any permits may be required.

Non-Public Areas

Do not use these for your event. All other areas of campus not designated as Public Use Areas or Limited Use Areas on the [Real Property Map](#)³⁰ are designated as non-public areas. These areas include, but are not limited to, all administrative offices, maintenance facilities, residences, and other areas intended primarily to support ongoing college operations.

Example: A student staging a sit-in or protest in the office or hallway of any academic, administrative or residence hall building would be prohibited since these locations are used to support the operation of the College. Use of a Public Use Area or reserving a Limited Use Area through [“Book It”](#)³¹ would be permissible.

2. Determine whether you need a permit:

If a designated limited use area as outlined on the [Real Property Map](#)³², then you must complete and submit a [Limited Use Area Request Form](#)³³ to:

The Office of the Vice President for Administration

²⁹ Posting Approval Process <https://studentactivities.tcnj.edu/forms/tcnj-posting-policy/>

³⁰ See the Real Property Use Map at <https://ethics.pages.tcnj.edu/files/2016/09/Use-of-Campus-Property-Map-06-06-16-1.pdf>

³¹ “Book It” <https://bookit.tcnj.edu/VirtualEms44/>

³² See the Real Property Use Map at <https://ethics.pages.tcnj.edu/files/2016/09/Use-of-Campus-Property-Map-06-06-16-1.pdf>

³³ <https://ethics.pages.tcnj.edu/files/2016/09/LIMITED-USE-AREA-REQUEST-FORM-revised-1.pdf>

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The administrator will determine whether equipment, license, rental, service, use or other fees will be required for use and may require insurance, indemnification agreements, or security deposits as a condition for approval of application.

No event for which the administrator requires a permit will be allowed to take place without a fully executed, written agreement signed by the student that establishes the time, place, purpose, and all other necessary items pertaining to the event and has been approved by the administrator.

Be sure you reference the [Use of Campus Property Policy](#)³⁴ and the permit process in its entirety if using a limited use area for your event.

3. Consider who may attend.

Note that you may have some individuals attend your event that may have a viewpoint that is in opposition to the one held by you as an individual or your student organization. You should consider the following:

- This is what it is all about. When you determine that an issue is important enough to you that you want to exercise your freedom of expression, you should not be surprised that there may be individuals that feel just as passionately about the counter viewpoint. The viewpoint and expression of these individuals will be protected by the same laws and College policies.
- Should you have concerns for safety as you are planning the event you should contact the Office of the Dean of Students at 609-771-2780 or contact Jordan Draper, the Dean of Students at draperj@tcnj.edu. You may also contact Campus Police Services at 609-771-2345 or tcnjpd@tcnj.edu email to discuss whether college personnel, campus police, or outside security should be present at the event. Should you have concerns for imminent safety in the course of your event, call Campus Police Services immediately at 609-771-2345 or 911.
- If at any time College personnel or Campus Police Services determine there is a possible safety issue, one of the groups may be moved to a different public use area on campus. Campus Police Services also reserves the right to remove individuals from campus for behavior causing a safety risk to the community.

³⁴ Use of Campus Property Policy <http://policies.tcnj.edu/policies/digest.php?docId=9565>

4. Plan your event.

- Just as any event you or your student organization plans and executes, protests or demonstrations are a direct reflection of you and your group. You should have a clear understanding and commitment from your group regarding expectations for messaging and behavior.
- Determine how to share your message. Will you have public speakers? Create pamphlets or fliers? Utilize signs? Share stories, songs, poems, chants?
- Have a clear goal for your event. Is your goal to raise awareness about an issue? Ask for institutional action? What is your plan after the event? Consider involving your student organization advisor or the Dean of Students for assistance if needed to articulate or set goals for the event.
- Be prepared for any intended or unintended social consequences of your actions. Putting yourself or your organization “out there” on how you feel about an issue is an exciting and anxious exercise! You are taking a stand and inviting others to take a stand as well – either with you or perhaps opposing you. Students do not have the luxury of avoiding social implications should others not agree with your viewpoints.

5. Have an amazing event!