



April 30, 2024

SUBJECT: Abuse of the Guidelines on Open Expression

This year, we have seen university administrations across the country revise and violate their own policies in order to repress nonviolent protest against the war in Gaza. We write because we believe that our university administration is currently attempting to do just that.

What are the Guidelines on Open Expression?

Penn's [Guidelines on Open Expression](#) are foundational to all other university policies: they take precedence over all other policies in case of conflict (I.D), and they apply to everyone, including trustees and members of advisory boards (II.A.3). Importantly, they define demonstrations (II.B), and while they are far from perfect, they provide significant protections to members of the university who participate in demonstrations.

No Legitimate Enforcement Mechanism: VPUL and the Committee on Open Expression

The [Vice Provost for University Life \(VPUL\)](#)—part of the central administration—has the exclusive power to decide when the guidelines have been violated (see the [Interpretative Guidelines \(Section III\) Adopted by the 2022-2023 Committee on Open Expression](#)) and to enforce the Guidelines (Section V). The [Committee on Open Expression](#), a committee of the [University Council](#) with appointed faculty, staff, and student representation, is merely an advisory body to VPUL. It can offer its own interpretation of the Guidelines, advise in real time on whether it considers actions on campus to have violated the Guidelines, and offer interpretations after the fact for future consideration, but VPUL is not bound to respect its advice.

In recent cases of peaceful protest at Penn, VPUL's unilateral power to interpret and enforce the Guidelines has allowed the central administration itself to violate the Guidelines with impunity. For instance, during the spring 2022 Fossil Free Penn encampment, VPUL reported students for a disciplinary meeting. Students and their faculty advisors were able to demonstrate at that meeting that the encampment had not violated the Guidelines, but that the University administration, including VPUL itself, appeared to have committed numerous violations of the Guidelines in its treatment of the students. That meeting resulted in no charges against the students—an affirmation of the students' and advisors' arguments—but there was also no accountability for the administration.

The unilateral power of VPUL to interpret and enforce the Guidelines is indicative of the general problem of university governance that we have seen this year. By design, faculty, staff, and students do not have real power to make and enforce university policies to protect our rights to academic freedom—students' freedom in learning and faculty members' freedom in research,

teaching, and intramural and extramural speech. Our structural disenfranchisement is the fundamental reason that a small number of donors, lobbying organizations, alumni, and politicians have proven so capable of pressuring administrators this year and instrumentalizing them in a campaign to undermine academic freedom and destabilize the university.

This Week's Abuses of the Guidelines on Open Expression

Sunday, April 28

According to the *Daily Pennsylvanian*, on Sunday evening, the Committee on Open Expression distributed threatening and misleading documents to students on behalf of the university administration: members of the committee gave students in the encampment copies of a document stating "Penn community members must provide identification when asked by University officials," and that "[p]rompt compliance" would be a "mitigating factor in any disciplinary proceedings." As we understand it, these notices were not written by the Committee but by the university administration. According to the DP, these notices and follow-up conversations were the reason that students believed that they were being threatened with arrest and sent out distressed requests for support, drawing scores of faculty, staff, and students from across the university to defend their peaceful protest from anticipated police repression.

It was wholly inappropriate for the Committee on Open Expression to distribute threats on behalf of the administration.

Moreover, we reject the substance of the document distributed on Sunday as a misrepresentation of the [Guidelines on Open Expression](#), which do not authorize administrators to demand that students at the encampment show IDs.

Part V.B.4 of the Guidelines establish that in the case of demonstrations that do not violate the Guidelines—and this demonstration does not—participants have a right to privacy and their presence shall not be reported. There is no provision here for requesting IDs: "Any observer or Committee representative who attends a meeting, event or demonstration shall respect the privacy of those involved. If there has been no violation of these Guidelines, other University regulations, or applicable laws, an observer, committee representative, or public safety employee who attends a meeting, event or demonstration shall not report on the presence of any person at such meeting, event or demonstration."

And Part I.D of the Guidelines states that in cases of conflict, the Guidelines on Open Expression take precedence over all other university policies. There is no other ID policy that could apply here over and above this one.

Sunday's unjustified threats recall the university's grievous violations of the Guidelines on Open Expression during the spring of 2022, when administrators violated the rights of students in the Fossil Free Penn encampment. One of those violations was surveilling the identities of students in a demonstration that did not violate the Guidelines by demanding their IDs and videotaping them.

In 2022, the Committee on Open Expression appeared not to have been consulted. Shockingly on Sunday, the Committee, under the direct, on-site supervision of chair Lisa Bellini, actively participated in the same violations of students' rights.

As a result, on Sunday night and Monday, students participating in nonviolent protest in compliance with the Guidelines on Open Expression were preparing to be arrested because they believed that the university was going to ask to see their IDs—something the Guidelines do not provide for—and because the administration, through COE, told them that if they did not comply—as we believe is their right under the Guidelines—they would be judged to have violated a non-existent rule and subject to discipline.

The Committee on Open Expression thus contributed to a dangerous and counterproductive escalation.

Monday, April 29

On Monday, faculty communicated the objections above to the Committee on Open Expression and the central administration. They asked the Committee to retract the threats it issued on Sunday night and refrain from delivering any future threats on behalf of the administration.

Rather than heed these calls, the Committee on Open Expression on Monday issued new [“anticipatory guidance”](#) authorizing the administration to do a number of things that the Guidelines on Open Expression do not themselves authorize, including requesting IDs at a demonstration that does not violate the Guidelines, and punishing undefined acts of harassment and intimidation.

The Committee sanctions these administrative actions on specious grounds. It authorizes ID checks as safety measures, despite the fact that the encampment is a nonviolent protest threatening no one's safety. It claims that VPUL can be expected to check IDs without violating the right to privacy guaranteed in part V.B.4 of the Guidelines: supposedly, the Committee claims, VPUL would not record the identities of students who show their IDs and would not use knowledge of their identities for disciplinary purposes. Given that the university administration has relentlessly targeted students all year for nonviolent assembly and speech against the war in Gaza, and has repeatedly abused the disciplinary process to silence them for the substantive content of their speech—a violation of the Guidelines (I.B)—we have no reason to believe that VPUL would exercise restraint as the Committee claims.

As for the Committee's advisory opinion that in the context of demonstrations, “the University commits to protecting all members of the Penn community from harassment, [and] intimidation,” words must be read in context. Since the fall, the university administration has repeatedly issued public condemnations of students and faculty members who have spoken against the war in Gaza, dangerously conflating their criticism of Israeli government policy with antisemitism. And in their April 26 statement demanding that the encampment disband, Interim President Larry Jameson, Provost John Jackson, and Executive Vice President Craig Carnaroli

claimed to be responding to “reports of harassing and intimidating conduct.” The administration’s pattern of describing anti-war speech as hateful, harassing, and intimidating capitulates to the claims of small groups of counter-protesters who have themselves been accused of harassing members of the encampment but who have never been the subject of public condemnation by administrators. Indeed, throughout this academic year, the university administration has failed to respond adequately to the targeted harassment of individual faculty, staff, and students who have been doxxed and threatened with personal violence for speaking against the war in Gaza. In this context, we read the Committee’s comments about harassment and intimidation as echoing the administration’s biased characterization of anti-war speech, and as a concession to counterprotesters who simply disagree with the political views expressed by participants in the encampment and would like to silence them.

It is important to understand that this “anticipatory guidance” is not an amendment to the Guidelines on Open Expression (IV.B.2) or a rule (IV.B.1): it is non-binding advice to VPUL. It is an example of the Committee on Open Expression, a toothless advisory body, providing window dressing for the central administration’s attempts to skirt and violate the Guidelines on Open Expression.

Tuesday, April 30

While COE’s “anticipatory guidance” is, as far as we understand, merely hortatory, the university administration today lost no time in acting as if the Guidelines had been amended. According to students, VPUL representatives entered the encampment, demanded to see IDs, and took photos of those who asked questions and did not comply. Under the Guidelines (V.C), VPUL is only authorized to take these steps in cases of demonstrations that violate the Guidelines, which the encampment does not. Further, even if the demonstration were in violation and VPUL were authorized to take such steps, the Guidelines require VPUL to warn the individual that a picture will be taken if ID is not presented; if such a warning were not given (and we are told it was not), the photograph cannot be used as evidence in disciplinary proceedings (See Section V.C.1.b).

VPUL then reported students to the Center for Community Standards and Accountability (CSA) for reportedly violating the Guidelines on Open Expression by refusing to show IDs. We repeat: their refusal was not a violation of the Guidelines in this circumstance, and any photos taken without warning are inadmissible as evidence in CSA proceedings.

According to the DP, Associate Vice Provost for University Life Tamara Greenfield King has gone on to demand that students take down signs in the encampment, claiming that the signs violate unnamed university policies. And according to students, administrators have threatened to clear the encampment on Wednesday.

We are witnessing an Orwellian situation. VPUL—a body of the central administration with unilateral power to interpret and enforce Guidelines that are supposed to protect the right to protest—is attempting to shut down a nonviolent protest that is in compliance with the Guidelines. It is doing so by fabricating nonexistent rules and claiming that they are part of the Guidelines on Open Expression—and who can tell them otherwise? It is

then finding cover for its fabrications in statements and actions of the Committee on Open Expression, which, while formally powerless, appears to have abdicated any responsibility to act as an independent advisory body. On the basis of fabricated infractions of non-existent rules, VPUL is then reporting students for disciplinary meetings—an abuse of the disciplinary system designed not to respond to real infractions but to silence speech that the university administration does not want to hear.

It is essential to note that VPUL's actions themselves appear to be violations of the Guidelines on Open Expression, which prohibit the University from restricting assembly or demonstration on the basis of the substance or nature of the views expressed (I.B). As our past statements have made clear, this year, the university administration has established a pattern of silencing, threatening, and punishing speech critical of the war in Gaza and of the state of Israel. That is what is happening here.

Fabricating Rules and Fabricating a Crisis

Those of us who have spent time on College Green this week know that the encampment is an example of nonviolent protest. Whatever our views of the war in Gaza and the antiwar movement in the United States, the encampment complies with the Guidelines on Open Expression so far as we have seen, and it embodies a form of protest that is utterly familiar and ordinary on college campuses: students are sleeping in tents, hanging banners, hosting talks and teach-ins, creating art, reading, studying, and chanting. Classes, meetings, research, and education on our campus are proceeding; and in fact, the encampment is hosting educational events that have been in desperately short supply this year, as donor pressure and administrative repression have undermined the ability of faculty, staff, and students to organize events on the history, culture, and politics of Israel and Palestine.

It is the university administration, with the lamentable assistance of the Committee on Open Expression, that is creating a crisis. Its fabrications, misrepresentations, and threats—all aggressive attempts to manufacture rule violations where none seem to exist, apparently in order to legitimate a crackdown or intimidate protesters into leaving—are acts of escalation that are creating fear on our campus. They may be preludes to police action; they may be forms of incitement; they are certainly acts of intimidation. They are intolerable responses to a nonviolent student demonstration.

A Positive Program

In the immediate term, the administration must end its attempts to shut down the encampment on specious grounds.

In the longer term, the AAUP-Penn Executive Committee has proposed and continues to maintain that our university needs an entirely new system for enforcing the Guidelines on Open Expression—one that is legitimate and effective. It is a proven recipe for abuse for VPUL to have exclusive power to interpret and enforce the Guidelines, with the Committee on Open

Expression as a toothless advisor in the best case and an instrument of legitimation in the worst. **The power to interpret and enforce the Guidelines on Open Expression must be taken away from VPUL and transferred to a new elected body consisting of faculty (tenure-track and non-tenure-track), staff, and students, all elected at large. The Committee on Open Expression should be disbanded, as VPUL would no longer require its service, and faculty, staff, and students would have direct decision-making power.**

This should be the beginning of a thorough redesign of university governance to provide faculty of all ranks, staff, grad workers, and students with real democratic power to write and enforce university policies.

—AAUP-Penn Executive Committee