

Assessment of the Beloit College Bias Incident Policy by the Foundation for Individual Rights in Education

Although Beloit is a private college and thus not legally bound by the First Amendment, it makes institutional promises that bind it morally and perhaps even contractually to protect free speech. Students reading these promises would, I think, reasonably expect that Beloit will provide them with free speech rights commensurate with those of their peers at public institutions.

For example, the “Introduction” section of the [Student Handbook](#) provides that in order to carry out its educational mission, “the college requires a community... protective of free inquiry and expression.” The “Demonstrations Policy” from the Student Handbook also states that “[s]tudents are encouraged to express their opinions and beliefs on wide ranging subjects and issues in an orderly fashion which does not disrupt the operations and essential functions of the college, endanger the safety of individuals, or destroy property.” The “Program Presentation Policy” provides the following commitment:

[f]ree inquiry and free expression are essential attributes of the community of scholars. Therefore, recognized student groups are allowed to invite and to present any speaker, performer, or dramatic or musical group of their own choosing, provided they follow regular procedures for scheduling facilities and placing the event on the calendar.

Finally, the “Anti-Hate Acts and Bias Incident Policy” itself even recognizes the college’s commitment to free speech, stating: “Providing clear means by which suspected hate acts and bias incidents can be reported aligns with Beloit College’s commitment to freedom of thought and expression as central to our academic freedom and to our teaching and learning mission.”

However, it does seem that the Anti-Hate Acts and Bias Incident Policy can be used to at least investigate speech that would be protected under First Amendment standards. I’ve excerpted the key language below, with my emphasis added in italics and my comments in brackets:

I. Definitions

A. Hate Crimes

Beloit College will report to the police, and cooperate with them in investigating, any act constituting a hate crime, as defined by Wisconsin statute. Those who commit hate crimes will also be subject to discipline by the college in accordance with the anti-hate acts policy outlined below. **[Hate crimes as legally defined are obviously not protected speech so this section is fine.]**

B. Hate Acts

At Beloit College a hate act involves (1) violence, threat of violence, actions that are likely to incite violence, or other acts violating college policy that are (2) directed at persons or groups who are marginalized because of their race, color, religion, sexual orientation, ability status, ethnicity/national origin, physical characteristics, sex, gender, gender identity, gender expression, and/or any other legally protected classification, and (3) have the purpose or reasonably foreseeable effect of harassing, dehumanizing, or intimidating those persons or groups.

Examples of hate acts include but are not limited to physical assault, harassment, stalking, cyber stalking, vandalism, or other damage to property. **[This section also looks fine, since violence, threats of violence, incitement to violence, and other violations of college policy are likely not protected speech.]**

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C. Bias Incidents

A bias incident is a verbal, written, or physical act of intolerance or prejudice that does not involve violence or other conduct violating college policy, but which threatens, intimidates, or *marginalizes* **[threats and intimidation wouldn’t be protected speech, but speech that marginalizes others could be protected speech under First Amendment standards]** individuals or groups because of their actual or perceived race, color, religion, sexual orientation, ability status, ethnicity/national origin, physical characteristics, sex, gender, gender identity, gender expression, and/or any other legally protected classification and *lacks a reasonable relationship to an educational, political, and/or artistic end.* **[It looks**

like this clause was meant to make sure they're not including protected speech, but this carve-out is entirely subjective and is unhelpful. Speech subjectively determined to be lacking a reasonable relationship to an educational, political, and/or artistic end by one college administrator may still be protected under First Amendment standards.]

Examples of bias incidents include but are not limited to *homophobic or sexist jokes, racist epithets, religious slurs, offensive graffiti, or demeaning remarks on social media.* **[These examples of speech make the policy overbroad by First Amendment standards. It's possible for these examples to be a part of speech that rises to the level of unprotected speech like harassment, but, standing alone, these examples are typically protected.]** Bias incidents may or may not be intended to cause harm. Responses to bias incidents may include *educational opportunities* **[this is vague and concerning]** for the individuals and groups involved, as well as for members of the campus community as a whole when reporting patterns suggest broader issues that move beyond the immediate incident. This policy therefore seeks to enhance understanding, provide a forum for expression of multiple viewpoints, mediate conflict, and pursue restoration. Reports will only be referred to a disciplinary body if the behavior violates other college policies. **[It's good that reports are only referred to a disciplinary body when the incident violates laws or college policy, but being subject to investigation and "educational opportunities" could still chill speech that is protected under First Amendment standards.]**

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Neither the hate and bias lead responders nor any response team they convene are disciplinary bodies. **[Again, it's good that they are establishing the bias response team as non-punitive, but their investigations could still chill speech.]**

As I've discussed in my comments above, this policy's definition of bias incident is overbroad and could be used to investigate speech that is protected under First Amendment standards. The policy claims that incidents will be handed off to disciplinary bodies if they are in fact punishable, but an investigation and whatever "educational opportunities" follow may be sufficiently burdensome to chill protected speech.

A better bias incident policy could tweak the bias incident definition to remove the "marginalizes" clause (or change "marginalizes" to "harasses" as legally defined, which would not be protected speech) and remove the overbroad examples list. A better policy could also just change the response to bias incidents, so that bias incidents are recorded for statistical purposes and to screen for acts that actually constitute hate acts or crimes, rather than a response that investigates the bias incident and requires a "educational opportunities."

For more examples of bias incident policies that do not endanger free speech, [this article on FIRE's website](#) discusses the bias incident reporting policy in place at the University of Wisconsin - Madison, which earns a "green light" from FIRE. The UW Madison policy clarifies that the policy will not be used to take disciplinary action, and explains that it is instead in place for reporting and statistical purposes only. The bias incident reporting policies at [the University of Florida](#) and [the University of Virginia](#) similarly earn green light ratings from FIRE and likewise sufficiently clarify that students will not be investigated or punished for their constitutionally protected speech.