

MEMORANDUM

To: James McKibbin, President, Pitt Libertarians
From: Samantha Harris, Director of Speech Code Research, FIRE
Re: Speech Codes at Pitt
Date: March 15, 2012

Pitt maintains three documents that FIRE considers to be “yellow light” policies—policies that could too easily be abused to punish protected expression. What follows is an analysis of those policies and suggestions for how they could be revised to best protect Pitt students’ First Amendment rights and thus secure a “green light” rating for Pitt.

1. [*The Pitt Promise: A Commitment to Civility*](#)

This policy requires students to accept an “obligation” to live by certain “common values,” and “to behave in ways that contribute to a civil campus environment.” While the stated values-- civility, support for diversity, etc.-- may sound uncontroversial, a public university such as Pitt cannot, consistent with the First Amendment, require students to adopt a particular set of beliefs as a co

The guidelines then state that “[t]his is ‘hostile environment’ sexual harassment.” This is a clear misstatement of harassment law, and one that has a potentially chilling effect on campus speech. To constitute unprotected sexual harassment in the educational context, the U.S. Supreme Court held (in *Davis v. Monroe County Board of Education*) that the conduct in question must be so severe, pervasive, and objectively offensive that it effectively denies the victim access to an educational opportunity or benefit. (This is known as the *Davis* standard). While a sexually explicit discussion might be part of a pattern of conduct that would ultimately rise to the level of harassment, it is dramatically misleading to state that one isolated discussion constitutes harassment. This example should be revised to make clear that only conduct which rises to the level of constitutionally unprotected harassment – i.e., conduct that meets the *Davis* standard-- can be prohibited in the educational context.

3. [Computer Access and Use Policy](#)

This policy prohibits the use of electronic media “to display, design, copy, store, draw, print, or publish obscene language or graphics.” While true obscenity (in the sense of highly sexually graphic material that serves no artistic, etc. purpose) is not constitutionally protected, the term “obscene lan