

# ANONYMOUS SPEECH AND DISGUIISING IDENTITY

## INTRODUCTION

The purpose of this guidance is to explain the concept of “anonymous speech” in the context of CSU’s Interim Time, Place and Manner Policy. The University has a special obligation to protect free inquiry and free expression. All persons may exercise their constitutionally protected rights, including the right to engage in speech while remaining anonymous. However, all persons on University Property or in attendance at a University Activity assume an obligation to conduct themselves in a manner compatible with the University’s responsibilities as an educational institution. This means that all persons are responsible for complying with applicable University policies, including CSU’s systemwide Interim Time, Place and Manner Policy.

### **What does CSU’s Interim Time, Place and Manner Policy say relating to disguising identity?**

CSU’s time place and manner policy states as follows at Section VIII.F.:

#### **Refusal to Disclose Identification When Violating University Policy or Applicable Laws**

Wearing masks or face coverings is permissible for all persons who are complying with University policies and applicable laws. No person, while on University Property, may conceal their identity or refuse to provide their identification for the purpose of evading or escaping discovery, recognition, or identification in the commission of violation of applicable University policy or local, state, or federal laws, including acts of unlawful intimidation or harassment of any person or group. Under these circumstances, an authorized University official operating in an official capacity may request identification. The failure to provide identification under these circumstances to an authorized University official operating in an official capacity is itself a violation of this Policy and may also be a criminal violation if the person is engaged in criminal conduct. It may also result in immediate removal from University Property, and appropriate discipline for Students and Employees. Intimidation in this context means true threats, incitement to violence, and actual violence. Harassment in this context is as defined in CSU’s Nondiscrimination Policy. CSU will not contact, detain, question, request identification, discipline or arrest an individual on the basis of any Protected Status as defined in the CSU Nondiscrimination Policy, suspected immigration status or to discover the Protected Status or immigration status of any individual. This Policy will not be used for any purpose connected with immigration status or enforcement.

The reference to “intimidating” and “harassing” in this context means true threats, incitement to violence, actual violence, and severe or pervasive harassment. It does not include every statement which may offend or annoy others, including protected hate speech.

## DEFINITION OF “ANONYMOUS SPEECH”

Anonymous speech is expressive activity by one who has not disclosed their identity. The right to speak anonymously is protected, and the reason is to ensure that peaceful, lawful speech is not deterred because of fear that identification could lead to reprisal. This fear could result in less speech, and that could lead to issues of public importance not being discussed and debated.

## ILLUSTRATIVE EXAMPLES

### *Example 1*

A city enacts an ordinance that states that no handbill can be distributed in any place in any circumstance anywhere in the city unless the handbill includes the name and address of anyone who wrote, printed, or distributed the handbill. A person who feels very strongly about an issue distributes a handbill discussing the issue, but he includes not his real name and address but a fictitious name and address. Because the name and address were fictitious, he is cited and prosecuted for having committed a misdemeanor.

### *Example 2*

A group of students wants to protest about an issue of deep importance to them. They do not “preregister” or give their names to anyone, and they hold up their posters and chant slogans in an area of their campus that is designated as “public.” Their protest is at first not fully compliant with the time, place and manner requirements of their university, but when asked to do so by university representatives they adjust what they are doing and proceed in a manner that is fully compliant with all requirements. The entire time they are protesting they are wearing masks, and at no time are they asked to identify themselves by any university representative. The reason that the students decided to wear masks included that they sought to protest anonymously, in order to prevent being “doxxed” by those who disagreed with their views.

## HOW TO RESPOND TO ANONYMOUS SPEECH

In the first example above, the United States Supreme Court determined that the city’s regulation was far too broad and was unconstitutional. In the second example, the students were asked to change what they were doing only for the purpose of complying with the time, place and manner requirements, and since they did comply, they were not asked by University representatives to provide identification and their speech went forward, with all the speakers wearing masks. Because the students complied with the time, place and manner regulations when asked to do so, their protest activity occurred without them having to identify themselves.

There are many lawful reasons why people may want to engage in speech activities anonymously, whether in writing or through in-person activities while wearing a mask or face covering. The popularity of websites and social media which allow people to use a pseudonym to post their messages demonstrates this phenomenon.

The University will balance restrictions upon handing out flyers or posting flyers which are anonymous with its operational needs. For example, the University may allow speakers to hand out flyers with no identification on them but may restrict posting of flyers in particular locations to certain groups (employee groups, student groups, etc.). If a posting area is only for employees, it is reasonable to have a content- and viewpoint-neutral process to confirm that the postings are from a person who legitimately belongs to that group.

Apart from written or electronic speech, some people wish to engage in demonstrations or other speech activities while covering their faces and their identities. There are many reasons why people may lawfully cover their faces with masks or head or face coverings, including medical and religious reasons, as well as the desire to disguise their identity. For peaceful in-person demonstrations and speech activities, the University should **not** request the identification of speakers who are complying with University time, place and manner regulations and the law.

## **HOW TO RESPOND TO ANONYMOUS SPEECH WHEN THE TPM POLICY IS BEING VIOLATED OR WHEN CRIMINAL CONDUCT IS OCCURRING**

For those who are violating the time, place and manner policy but not engaging in criminal conduct or posing a threat to safety, designated University representatives should clearly explain to the person or persons engaged in such violations exactly how (specifically) they are violating the requirements. If the speakers persist in violating the requirements after several warnings and explanations, the University reserves the right to request that they provide their identification to the designated University representative.

If Disruptive<sup>1</sup> acts that harm the orderly operation of the campus are occurring (e.g., blocking students and staff from accessing educational activities and workspaces, using amplified sound that is interfering with and disrupting classes or other university events, etc.), then those violating the policy should be warned and should stop violating the time, place and manner requirements. If they refuse, they can be asked to provide their identification.

The reason for requesting identification is to determine the appropriate next steps that the University will take to stop the person's violation of the time, place and manner requirements, and/or disruption, and to enforce appropriate consequences.

If a criminal act is occurring (e.g., vandalism and property damage, unlawful occupation of a building or facility, imminent threats of violence or actual violence, etc.) or there is a threat to safety, campus police will respond to address the criminal conduct and will engage with offenders to provide appropriate warnings and obtain their identities.

It has been asked whether the campus police will request identification of speakers in reference to their immigration status. There is no connection between the CSU's Interim Time, Place and Manner policy and immigration status. Enforcement actions related to immigration are taken by federal agencies external to the CSU. CSU will not contact, detain, question or arrest an individual solely on the basis of immigration status or to discover the immigration status, and CSU will not undertake joint efforts with federal immigration enforcement authorities to investigate, detain or arrest individuals for violation of federal immigration law.

Refusal to comply with directives by the University and/or law enforcement will result in appropriate consequences depending on the nature of the violation. In most instances, if the individual refuses to provide identification after directed to do so, they may be required to leave campus pursuant to applicable withdrawal of consent statutes. In the case of criminal conduct, individuals may be detained, arrested and charged as appropriate.

## **CONCLUSION**

In sum, the CSU will respect the right to anonymous speech, but also must balance that right against CSU's need to preserve university activities and require speakers to be fully compliant with the applicable time, place and manner regulations. The University's response will be reasonable and commensurate with the level of violation that is occurring.

The CSU's goal is not to impede speech activities, but to encourage them, including by allowing anonymous speech. However, to protect the orderly operation of university activities and the rights of all students and employees to fully access educational and employment opportunities, the campus cannot permit its time, place and manner restrictions to be violated.

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<sup>1</sup> As defined in the Guidance on Disruption to University Activities.