

Virginia Tech Board of Visitors Meeting

Retreat Agenda

Sunday, August 21, 2022

9:30 a.m. – 5:30 p.m.

**Hampton Roads Agricultural Research and Extension Center
(1444 Diamond Springs Road, Virginia Beach, VA 23455)**

Orientation

Session I – Freedom of Speech/Academic Freedom

Presentation/Tour of the Hampton Roads Agricultural Research and Extension Center

Session II – Access and Affordability

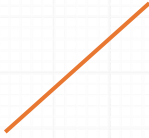
Session III – The Landscape for Intercollegiate Athletics and Implications for Virginia Tech



Board Basics

KAY HEIDBREder
UNIVERSITY LEGAL COUNSEL





Legal Framework for Public Institutions

- Article VII of the Virginia Constitution
- Enabling legislation (Va. Code § 23.1-2600 et seq.)
- Title 23.1 of the Code of Virginia
 - Statutorily assigned powers and duties
 - Coordination by State Council of Higher Education (SCHEV)
- Restructuring Act/ Management Agreement



External Regulation

■ Federal Government

- U.S. DOE laws and regulations (Title IX, Clery, FERPA)
- Financial Aid Participation Agreement
- Grants Administrations (NSF, NEA)

■ Accreditation by SACSCOC



Board Directives

The Board exercises its authority through collective action:

- Majority vote
- Open Session- Freedom of Information Act requirement
- Quorum Present



Freedom of Information Act

Government in the Sunshine



Board Meetings

FOIA Requirements:

- All meetings open to the public
- 3 members discussing institutional business constitutes a meeting
- Do not hit reply all on emails
- 3 day public notice must be provided
- Minutes must be taken
- Closed sessions allowed under very limited circumstances
- Public streaming of official meeting of full board



Board Records

- Default is that all records created by Board members in the transaction of public business are accessible under FOIA.
- Application of exemptions determined at the institutional level
 - Virginia Tech has a statutorily required FOIA officer
- Members are not required to create records, but once created, records must be maintained according to the Public Records Act
- Caution smartphone, texts, meeting notes, etc. are board records



Conflict of Interests Act

- Prevent accrual of personal financial interest of \$ 5,000 or more
 - Members are prohibited from contracting with Virginia Tech
- Avoid appearance of impropriety
- Opportunity for opinion from Ethics Advisory Council or Attorney General



Conflict of Interests Act

Compliance Requirements

- Training to be completed within 2 months of assuming office and every 2 years thereafter
- Filing of disclosure forms upon assuming office and every February 1 thereafter



Attorney-Client Relationship

- The primary role is to advise the Board and University President on legal issues and the management of legal risk
- Reports provided under privilege in conjunction with regular meetings



BOV Retreat

AUGUST 21, 2022



A photograph of a student in a maroon hoodie and glasses working at a wooden table in a workshop. The table is cluttered with various materials, including cardboard boxes, rolls of paper, and tools. In the background, another student is visible, and the setting appears to be a modern, well-lit educational facility. A white rectangular box with a thin red border is centered over the image, containing the word "Welcome" in a dark red, serif font.

Welcome



Orientation

Rector Long

A photograph of a university campus at dusk. The sky is a mix of deep blue and orange, with scattered clouds. In the foreground, there are large, vibrant red flower beds. A paved walkway leads from the flowers towards a large, multi-story brick building on the left. To the right, another brick building is visible, with a white van parked in front of it. A central white text box with a thin black border is overlaid on the image, containing the title and speaker information.

Board Basics

Kay Heidbreder,
University Counsel

A photograph of a university campus at dusk. In the background, a large, multi-story brick building with arched windows is visible. A white van is parked on a paved area to the right. The foreground is dominated by a large, vibrant bed of red flowers. The sky is a mix of deep blue and orange, suggesting sunset or sunrise. A white text box with a thin red border is centered over the image, containing the title and speaker information.

Session I:
Freedom of Speech and
Academic Freedom

President Sands



Framing Our Conversation

┌
SCENARIO 1:
The Heckler





Discussion Questions

- What are the most important facts of the scenario?
- What should Virginia Tech's stance be?
- How should this situation be handled?



Scenario 1 Debrief

┌
SCENARIO 2:
Neo-Nazi





Discussion Questions

- What are the most important facts of the scenario?
- What should Virginia Tech's stance be?
- How should this situation be handled?

BALLROOM

Scenario 2 Debrief





How Do We Move Forward?

Provost Clarke
President Sands
Rector Long

BREAK

1940 Statement of Principles on Academic Freedom and Tenure

with 1970 Interpretive Comments

In 1915 the Committee on Academic Freedom and Academic Tenure of the American Association of University Professors formulated a statement of principles on academic freedom and academic tenure known as the 1915 *Declaration of Principles*, which was officially endorsed by the Association at its Second Annual Meeting held in Washington, D.C., December 31, 1915, and January 1, 1916.

In 1925 the American Council on Education called a conference of representatives of a number of its constituent members, among them the American Association of University Professors, for the purpose of formulating a shorter statement of principles on academic freedom and tenure. The statement formulated at this conference, known as the 1925 *Conference Statement on Academic Freedom and Tenure*, was endorsed by the Association of American Colleges (now the Association of American Colleges and Universities) in 1925 and by the American Association of University Professors in 1926.

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed on a restatement of the principles that had been set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*. This restatement is known to the profession as the 1940 *Statement of Principles on Academic Freedom and Tenure*.

Following extensive discussions on the 1940 *Statement of Principles on Academic Freedom and Tenure* with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the 1940 *Statement* from the experience gained in implementing and applying it for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration *Interpretive Comments* that are included below as footnotes to the 1940 *Statement*.¹ These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-Sixth Annual Meeting as Association policy.

1. The Introduction to the Interpretive Comments notes: In the thirty years since their promulgation, the principles of the 1940 "Statement of Principles on Academic Freedom and Tenure" have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.² The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.³

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession

Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 "Statement," to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 "Statement" is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 "Statement"; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 US 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

2. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

3. First 1970 comment: The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the "Statement on Professional Ethics" adopted in 1966 as Association policy (AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 145–46).

attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.⁴ Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.⁵
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.⁶

4. Second 1970 comment: The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

5. Third 1970 comment: Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 "Statement," and we do not now endorse such a departure.

6. Fourth 1970 comment: This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 "Statement" immediately following its endorsement:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be

Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,⁷ the

accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 "Statement" should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances," *Policy Documents and Reports*, 31, which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the "Statement on Professional Ethics," *Policy Documents and Reports*, 146, also addresses the nature of the "special obligations" of the teacher:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

7. Fifth 1970 comment: The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. [For a discussion of this question, see the "Report of the Special Committee on Academic

probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.⁸ Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.⁹

Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (September 1966): 280–82.]

8. Sixth 1970 comment: In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the "Statement" furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. [For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *Policy Documents and Reports*, 167–68.]

9. Seventh 1970 comment: The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 "Statement" with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the "Standards for Notice of Nonreappointment," endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964) (*Policy Documents and Reports*, 99). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.¹⁰
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.¹¹

2. *Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.*

3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the "Statement on Recruitment and Resignation of Faculty Members," *Policy Documents and Reports*, 153–54, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

10. Eighth 1970 comment: The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the "Recommended Institutional Regulations on Academic Freedom and Tenure," *Policy Documents and Reports*, 79–90, prepared by the American Association of University Professors.

11. Ninth 1970 comment: A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the "Statement on Procedural Standards in Faculty Dismissal Proceedings," *Policy Documents and Reports*, 91–93, jointly approved by the

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Endorsers

Note: Groups that changed names subsequent to endorsing the statement are listed under their current names.

Association of American Colleges and Universities	1941
American Association of University Professors	1941
American Library Association (adapted for librarians)	1946
Association of American Law Schools	1946
American Political Science Association	1947
American Association for Higher Education and Accreditation	1950
American Association of Colleges for Teacher Education	1950
Eastern Psychological Association	1950
Southern Society for Philosophy and Psychology	1953
American Psychological Association	1961
American Historical Association	1961
Modern Language Association	1962
American Economic Association	1962
Agricultural and Applied Economic Association	1962
Midwest Sociological Society	1963
Organization of American Historians	1963
Society for Classical Studies	1963
American Council of Learned Societies	1963
American Sociological Association	1963

American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 "Statement" is silent.

The "Statement on Procedural Standards in Faculty Dismissal Proceedings" provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

Southern Historical Association	1963	American Speech-Language-Hearing Association.....	1968
American Studies Association.....	1963	Association of Social and Behavioral Scientists	1968
Association of American Geographers	1963	College English Association.....	1968
Southern Economic Association	1963	National College Physical Education Association for Men.....	1969
Classical Association of the Middle West and South	1964	American Real Estate and Urban Economics Association.....	1969
Southwestern Social Science Association	1964	Council for Philosophical Studies	1969
Archaeological Institute of America	1964	History of Education Society.....	1969
Southern Management Association.....	1964	American Musicological Society.....	1969
American Theatre Association (now dissolved)	1964	American Association of Teachers of Spanish and Portuguese.....	1969
South Central Modern Language Association.....	1964	Texas Community College Teachers Association.....	1970
Southwestern Philosophical Society	1964	College Art Association of America.....	1970
Council of Independent Colleges.....	1965	Society of Professors of Education	1970
Mathematical Association of America.....	1965	American Anthropological Association.....	1970
Arizona-Nevada Academy of Science	1965	Association of Theological Schools	1970
American Risk and Insurance Association	1965	Association of Schools of Journalism and Mass Communication	1971
Academy of Management	1965	Academy of Legal Studies in Business.....	1971
American Catholic Historical Association.....	1966	Americans for the Arts	1972
American Catholic Philosophical Association	1966	New York State Mathematics Association of Two-Year Colleges.....	1972
Association for Education in Journalism and Mass Communication	1966	College Language Association.....	1973
Western History Association	1966	Pennsylvania Historical Association.....	1973
Mountain-Plains Philosophical Conference	1966	American Philosophical Association.....	1974
Society of American Archivists	1966	American Classical League	1974
Southeastern Psychological Association.....	1966	American Comparative Literature Association.....	1974
Southern States Communication Association.....	1966	Rocky Mountain Modern Language Association.....	1974
American Mathematical Society.....	1967	Society of Architectural Historians.....	1975
Association for Slavic, East European, and Eurasian Studies.....	1967	American Statistical Association.....	1975
College Theology Society	1967	American Folklore Society	1975
Council on Social Work Education.....	1967	Association for Asian Studies.....	1975
American Association of Colleges of Pharmacy	1967	Linguistic Society of America	1975
American Academy of Religion	1967	African Studies Association	1975
Association for the Sociology of Religion	1967	American Institute of Biological Sciences	1975
American Society of Journalism School Administrators (now merged with the Association of Schools of Journalism and Mass Communication).....	1967	North American Conference on British Studies.....	1975
John Dewey Society	1967	Sixteenth-Century Society and Conference	1975
South Atlantic Modern Language Association.....	1967	Texas Association of College Teachers	1976
American Finance Association	1967	Association for Jewish Studies	1976
Association for Social Economics	1967	Association for Spanish and Portuguese Historical Studies	1976
Phi Beta Kappa Society	1968	Western States Communication Association.....	1976
Society of Christian Ethics	1968	Texas Association of Colleges for Teacher Education.....	1977
American Association of Teachers of French	1968	Metaphysical Society of America.....	1977
Eastern Finance Association	1968	American Chemical Society	1977
American Association for Chinese Studies	1968	Texas Library Association.....	1977
American Society of Plant Biologists.....	1968	American Society for Legal History	1977
University Film and Video Association	1968	Iowa Higher Education Association	1977
American Dialect Society	1968	American Physical Therapy Association	1979

North Central Sociological Association.....	1980	Council of Teachers of Southeast	
Dante Society of America.....	1980	Asian Languages.....	1994
Association for Communication		American Association of Teachers of Arabic...	1994
Administration.....	1981	American Association of Teachers of	
National Communication Association.....	1981	Japanese.....	1994
American Association of Physics Teachers.....	1982	Academic Senate for California	
Middle East Studies Association.....	1982	Community Colleges.....	1996
National Education Association.....	1985	National Council for the Social Studies.....	1996
American Institute of Chemists.....	1985	Council of Academic Programs in	
American Association of Teachers		Communication Sciences and Disorders	1996
of German.....	1985	Association for Women in Mathematics.....	1997
American Association of Teachers of Italian...	1985	Philosophy of Time Society.....	1998
American Association for Applied		World Communication Association.....	1999
Linguistics.....	1986	The Historical Society.....	1999
American Association for Cancer Education...	1986	Association for Theatre in Higher Education..	1999
American Society of Church History.....	1986	National Association for Ethnic Studies.....	1999
Oral History Association.....	1987	Association of Ancient Historians.....	1999
Society for French Historical Studies.....	1987	American Culture Association.....	1999
History of Science Society.....	1987	American Conference for Irish Studies.....	1999
American Association of Pharmaceutical		Society for Philosophy in the	
Scientists.....	1988	Contemporary World.....	1999
American Association for Clinical		Eastern Communication Association.....	1999
Chemistry.....	1988	Association for Canadian Studies	
Council for Chemical Research.....	1988	in the United States.....	1999
Association for the Study of Higher		American Association for the History of	
Education.....	1988	Medicine.....	2000
American Psychological Association.....	1989	Missouri Association of Faculty Senates.....	2000
Association for Psychological Science.....	1989	Association for Symbolic Logic.....	2000
University and College Labor Education		American Society of Criminology.....	2001
Association.....	1989	American Jewish Historical Society.....	2001
Society for Neuroscience.....	1989	New England Historical Association.....	2001
Renaissance Society of America.....	1989	Society for the Scientific Study of Religion	2001
Society of Biblical Literature.....	1989	Society for German-American Studies.....	2001
National Science Teachers Association.....	1989	Society for Historians of the Gilded Age	
Medieval Academy of America.....	1990	and Progressive Era.....	2001
American Society of Agronomy.....	1990	Eastern Sociological Society.....	2001
Crop Science Society of America.....	1990	Chinese Historians in the United States.....	2001
Soil Science Society of America.....	1990	Community College Humanities	
International Society of Protistologists.....	1990	Association.....	2002
Society for Ethnomusicology.....	1990	Immigration and Ethnic History Society.....	2002
American Association of Physicists		Society for Early Modern Catholic Studies.....	2002
in Medicine.....	1990	Academic Senate of the California State	
Animal Behavior Society.....	1990	University.....	2004
Illinois Community College Faculty		Agricultural History Society.....	2004
Association.....	1990	National Council for Accreditation	
American Society for Theatre Research.....	1990	of Teacher Education.....	2005
National Council of Teachers of English.....	1991	American Council on the Teaching	
Latin American Studies Association.....	1992	of Foreign Languages.....	2005
Society for Cinema and Media Studies.....	1992	Society for the Study of Social Biology.....	2005
American Society for Eighteenth-Century		Society for the Study of Social Problems.....	2005
Studies.....	1992	Association of Black Sociologists.....	2005
Council of Colleges of Arts and Sciences.....	1992	Dictionary Society of North America.....	2005
American Society for Aesthetics.....	1992	Society for Buddhist-Christian Studies.....	2005
Association for the Advancement		Society for Armenian Studies.....	2006
of Baltic Studies.....	1994	Society for the Advancement of	
American Council of Teachers of Russian.....	1994	Scandinavian Study.....	2006

American Physiological Society	2006	Chinese Language Teachers Association	2014
National Women's Studies Association	2006	Coordinating Council for Women	
National Coalition for History	2006	in History.....	2014
Society for Military History	2006	Ecological Society of America	2014
Society for Industrial and Applied		Institute for American Religious and	
Mathematics	2006	Philosophical Thought	2014
Association for Research on Ethnicity and		Italian American Studies Association.....	2014
Nationalism in the Americas	2006	Midwestern Psychological Association.....	2014
Society of Dance History Scholars.....	2006	Modern Greek Studies Association.....	2014
Association of Literary Scholars, Critics,		National Association of Professors	
and Writers	2006	of Hebrew.....	2014
National Council on Public History	2006	National Council of Less Commonly	
College Forum of the National Council of		Taught Languages	2014
Teachers of English.....	2006	Population Association of America	2014
Society for Music Theory	2006	Society for Italian Historical Studies.....	2014
Society for Historians of American		Society for Psychophysiological Research.....	2014
Foreign Relations.....	2006	Society for Romanian Studies.....	2014
Law and Society Association	2006	Society for Textual Scholarship.....	2014
Society for Applied Anthropology.....	2006	Society for the History of Children and	
American Society of Plant Taxonomists.....	2006	Youth.....	2014
Society for the History of Technology	2006	Society for the Psychological Study	
German Studies Association.....	2006	of Social Issues.....	2014
Association of College and Research		Society for the Study of the Multi-Ethnic	
Libraries	2007	Literature of the United States.....	2014
Czechoslovak Studies Association.....	2007	Society of Civil War Historians	2014
American Educational Studies Association.....	2007	Society of Mathematical Psychology.....	2014
Southeastern Women's Studies Association ..	2009	Sociologists for Women in Society	2014
American Academy for Jewish Research.....	2014	Urban History Association	2014
American Association for Ukrainian		World History Association	2014
Studies.....	2014	American Educational Research	
American Association of Italian Studies	2014	Association.....	2014
American Theatre and Drama Society	2014	Labor and Working-Class History	
Central European History Society	2014	Association.....	2014
Central States Communication Association....	2014	Paleontological Society	2014



Bipartisan Policy Center

Campus Free Expression: A New Roadmap

**ACADEMIC LEADERS TASK FORCE ON
CAMPUS FREE EXPRESSION**

November 2021

ACADEMIC LEADERS TASK FORCE ON CAMPUS FREE EXPRESSION

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Executive in Residence, Middlebury College
Former Governor of Vermont

Chris Gregoire (Co-Chair)

CEO, Challenge Seattle
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ACKNOWLEDGEMENTS

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DISCLAIMER

This report is the product of BPC's Academic Leaders Task Force on Campus Free Expression. The findings and recommendations expressed herein are those solely of the task force, though no member may be satisfied with every individual recommendation in the report. The contents of this report do not necessarily represent the views or opinions of the Bipartisan Policy Center's founders or its board of directors, nor the views or opinions of any organization associated with individual members of the task force.

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Letter From the Co-Chairs

America is suffering a crisis of confidence in many of its leading institutions. Among the important institutions whose trust among the public has sharply fallen in recent years is higher education. How did this happen to one of our previously most esteemed institutions?

We believe a major cause is the erosion of a campus culture of free expression and open inquiry.

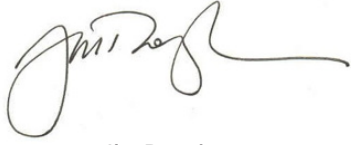
Beyond the well-publicized scenes of speakers “shouted down” and a few instances of serious violence, recent surveys have found that the overall campus climate of open exchange of ideas has eroded. Many students and even faculty self-censor, while controversies over faculty research and extramural statements have created uncertainty about the boundaries of academic freedom.

Moreover, the decline in confidence in higher education institutions has taken on a partisan edge, mirroring the wider polarization of America. We cannot afford for higher education to become another scene of deep partisan division. As a country, we must be better at robustly and respectfully debating difficult issues across the political spectrum, and college campuses have an essential role in achieving this civic goal.

That’s why we asked the Bipartisan Policy Center to convene the Academic Leaders Task Force on Campus Free Expression, which we have co-chaired. Members of the task force each have distinguished records of leadership on free expression, and include civic leaders, a recent college graduate, as well as presidents and academic leaders who serve or have served at public and private colleges, land-grant universities, secular and religious colleges, Hispanic-Serving Institutions, Historically Black Colleges and Universities, research institutions, liberal arts colleges, and a faith-based liberal arts college with an emphasis on service professions.

Over the last year, the task force has discussed why attempts to foster a free expression culture have become increasingly difficult, as well as what has worked to establish a culture of open inquiry, frank discussion, and viewpoint diversity. We met virtually every few weeks to deliberate about trends on our nation’s campuses; discuss articles, surveys, and reports on free expression issues; and to hear from a panel of students. We have outlined the most difficult challenges and laid out specific recommendations for college presidents and senior leadership teams, trustees, faculty, athletic directors and coaches, and student affairs staff.

We believe that these recommendations, especially when pursued as a campuswide strategy, can do much to strengthen free expression and open inquiry, bolster confidence in our nation's colleges and universities, and prepare Generation Z as citizens and civic leaders.



Jim Douglas
Co-chair



Chris Gregoire
Co-chair

Executive Summary

Two core principles of higher education—academic freedom and free expression—are undergoing a period of great stress. There is overwhelming survey research and other evidence that the intellectual climate on many college and university campuses is being constrained. Faculty are deterred from exploring certain subjects and expressing candid opinions even off campus; students are self-censoring; outside speakers are disinvited and events are being canceled. Social media has become a megaphone that amplifies campus controversies, increasing their intensity and visibility, compressing time frames for a leadership response, and leading to investigation and sanctioning of faculty and students. The traditional understanding of free speech as a liberalizing force is itself being called into question.

The chilling of campus speech is having effects beyond the borders of the campus. Rather than alleviating the political polarization in our nation today, the inhibition of campus speech is degrading the civic mission of higher education, which is to maintain our pluralistic democracy by preparing students for civic participation as independent thinkers who can tolerate contrary viewpoints and work constructively with those with whom they have principled disagreements.

Because the pursuit of knowledge proceeds in many modes, we refer to free expression, not free speech. Speech may be the preeminent mode of inquiry on a college campus, whether it proceeds in the language of mathematics or the language of literary analysis. However, visual art, theatrical performance, nonverbal protest, and much more are also important modes of expression.

To be successful in upholding their institutional mission amid today's changing social, civic, and political landscape, college leaders need a new roadmap for campus free expression.

The Bipartisan Policy Center convened our task force to explore the factors that have made free expression so fraught and to make recommendations about how to foster a campus culture of robust intellectual exchange, open inquiry, and free expression.

As a task force, we believe each campus needs an approach that fits its unique history, mission, and community. An approach that suits a public flagship university will not

fit a small, denominational campus. Even as principles of academic freedom and free expression apply across campuses, in this period of stress on these principles, each college must examine and affirm these principles through its own processes. That is why, as a task force, we do not endorse specific statements, policies, curricula, or programming, although we are providing a

resource guide of programs and approaches, including those used with success by task force members and other campuses. Our common recommendations are for elements of a free expression strategy, as well as processes for developing and implementing a strategy, in the context of shared governance.

We believe that college leaders must take on four challenges directly:

- First, colleges and universities must address the perceived tension that pits academic freedom and freedom of expression against diversity, equity, and inclusion in creating a respectful learning environment for all. While not ignoring that there may be expression that is hurtful, we believe profoundly that free expression is an essential means to an inclusive campus in addition to being essential to higher education's academic and civic missions.
- Second, colleges and universities should take steps to encourage more viewpoint diversity on campus. Exposing students to a wide range of perspectives and methods of confronting issues is essential for both a well-rounded education and as preparation for the rigors of citizenship in a diverse society.
- Third, colleges and universities should adopt strong policies for the protection of free expression for students and faculty, to forestall hasty or ad hoc responses to controversial expression, and to defend the expression of unorthodox and controversial views.
- Fourth, colleges and universities should elevate the skills and dispositions necessary to academic and civic discourse as a deliberate aim of the collegiate experience. Formal protections for free expression are necessary but insufficient to create a culture of free expression, open

We believe this moment in the history of American higher education resembles previous moments when social and political flux presented new challenges to upholding a free expression culture. In the early 20th century, the role of the faculty changed as academic fields grew more professionalized. While these developments were positive, the rapid transformation left faculty exposed to threat of dismissal or other sanctions for their research and public statements. In response, the American Association of University Professors was founded and published its *1915 Declaration of Principles on Academic Freedom and Academic Tenure* (revisited in the *1940 Statement of Principles on Academic Freedom and Tenure*, following another period of tremendous stress for the country and for higher education). The tumultuous Civil Rights and Vietnam War era prompted reconsideration of the rights of student protestors, the role of the university, and academic freedom; results of this reconsideration include the *1967 University of Chicago Report on the University's Role in Social and Political Action*, the *1970 Interpretive Comments on the 1940 Statement of Principles on Academic Freedom and Tenure*, and the *1974 Report of the Committee on Freedom of Expression at Yale*. Ours is a similarly powerful moment of political and social change and of new trends in higher education. Looking back on the successes of these previous efforts to find new ways to uphold free expression values, we are confident that colleges can renew their approach to fostering free expression and open inquiry.¹

inquiry, and respectful, productive debate on campus and in our country. We have a national civic skills deficit, which colleges and universities have an essential role in remedying. Matriculating students typically need coaching and instruction in these skills and habits of mind, and our aim should be to graduate students who raise the bar for national discourse.

In the next pages, we highlight some of the changes in our social, civic, and political landscape and on campus that prompted the need for a renewed approach to upholding academic freedom, free expression, and open inquiry. We then present our roadmap for engaging all members of the campus community, with recommendations for college presidents and senior leadership teams, trustees, faculty, athletic directors and coaches, and student affairs staff to rejuvenate a culture of free expression.

Free Expression: A Changing Landscape

As a task force, we wrestled with the question of why free expression has become so fraught in recent years. The task force focused on several changes in the social, civic, and political landscape and on campus that led to the need for a new roadmap on campus free expression.

We noted three trends that colleges and universities cannot directly affect but that have impact on the culture for free expression and open inquiry:

Changing patterns of adolescent experience.

At a time when campuses are more diverse than ever, many Generation Z students are less prepared for conversation across differences than students of earlier generations. Today's adolescents are growing up in increasingly homogeneous neighborhoods, where they may know few whose viewpoints, news sources, socioeconomic status, and race differ from their own.² At the same time, parents of Generation Z students have actively curated their children's social, academic, and extracurricular experiences, willing to intervene when their children's interactions become contentious or challenging.³

Social media.

Social media has an enormous impact on today's climate for open exchange. As one task force member observed, today's students inhabit a physical campus and a virtual campus—and campus leaders must be attuned to both. Social media silos people into think-alike bubbles, rewards hyperbole and outrage, and does not support nuanced academic reasoning.

For Generation Z, social media is where ideas get discussed, even on residential campuses: 58% of undergraduates report that social and political ideas are mostly discussed through social media, rather than face-to-face.⁵ Social media undermines the integrity of classroom experiences, as students wonder whether their classroom comments may be shared on social media.⁶ Comparing the experiences of college-bound Generation Z students with those of their Generation X parents, Generation Z spent an hour less per day on face-to-face socializing in high school, meaning that

“We were in an era when rational dialogue and debate had been abandoned for the high of in-your-face confrontation, with social media as an accelerant.”⁴

—Walter Kimbrough

they are much less practiced in conversation and social interactions—even friendly social interactions—than matriculating students of a generation ago.⁷

Affective polarization.

As a country, we are riven by affective polarization and divisive stereotypes about our political opposites.⁸ Too often, today’s conservatives and liberals think that those with different political viewpoints are bad people with the wrong values. This polarization is one of our most urgent national problems, and the polarization off campus makes its way onto campus. A survey of undergraduates at a flagship university found, as is likely true on campuses nationwide, that conservative and liberal students hold divisive stereotypes about each other.⁹ And—in a finding that worried the task force—a recent survey suggested that higher education may worsen polarization by increasing the so-called “perception gap,” the tendency to overestimate how many of one’s political opposites hold extreme views.¹⁰

As a result of these trends, matriculating students are insufficiently equipped to navigate the give-and-take in conversation and disagreement that ultimately sustains dialogue and connection. This portends a breakdown in our community.

While colleges and universities cannot directly affect the above three trends, there are other campus trends that may be addressed more directly:

Doubts that free expression and diversity, equity, and inclusion are compatible commitments.

Within a university community, respectful disagreement is not a rupture in the community, but a sign that the community is carrying out its core purposes. Universities are where criticisms of and challenges to our most fundamental social, civic, and political institutions and norms should be proposed and debated. Universities must welcome—indeed, encourage—dissent rather than conformity. The conversations and disputes we encounter in a university should unsettle our most basic presuppositions.

Free expression has become more controversial in recent years. Its central importance to a free society is no longer taken as self-evident. Some observers worry that robust protections for free expression are incompatible with our collective commitments to diversity, equity, and inclusion. Some argue that free expression is a tool of oppression, or that it may inflict psychological and physiological harm.¹¹ Faced with a perceived trade-off between free expression and inclusion, many assign a higher value to inclusion than free expression.

The doubts that commitments to diversity and inclusion are compatible with free expression are common on campus: 49% of undergraduates say free speech rights conflict with diversity and inclusion occasionally, and 27% say they do so frequently.¹² There are reasons to credit this view: Members of

historically underrepresented groups often report that they do not feel fully accepted or included in the campus community, and that they feel an additional burden of having to raise or respond to issues or campus incidents that make them feel marginalized. Scholarly and classroom discussion of the issues of race, sex, gender, class, poverty, and immigration policy, even if they are conducted with decorum and held to high academic standards, can raise ideas that will be uncomfortable and challenging to the inclusive character of the campus community.

As a task force, we believe that free expression is an essential means to an inclusive campus. It is through discourse that we are able to examine, discuss, and ultimately understand others' experiences, viewpoints, and opinions. While profound disagreements and differences may remain, through respectful, serious conversations the campus can become an inclusive community of learners and knowledge-seekers.¹³ There are no simple answers or strategies addressing the perceived tension that pits academic freedom and freedom of expression against diversity, equity, and inclusion. Campuses will need to take some risks, to learn from trial and error, and engage the community actively. In our roadmap, we offer some strategies that we believe will be effective.

Decreasing campus viewpoint diversity.

While campuses have become more diverse in many ways, they have become increasingly ideologically conformist. Universities have always been left-leaning; as forums for critique of our most fundamental social, civic, and political institutions and norms, it would be surprising if universities had a predominately conservative ethos.¹⁵ However, a climate of conformity compromises the civic mission of higher education.

To prepare students for civic life in our pluralistic democracy among conservatives, liberals, and moderates—each of whom represent at least a quarter of the American populace¹⁶—campuses should create opportunities for students to learn about and converse with those from across the political spectrum.

"A commitment to free expression must be built on a foundation of inclusion and equity. Diversity is a necessary condition for the coexistence of different ideas and perspectives, and inclusion is a necessary condition for every member of our community to feel welcomed, affirmed, and respected. In the context of freedom of expression, equity means that we develop, sustain, and uphold a clear set of community values, standards, and expectations, such that a commitment to freedom of expression, and to diversity, equity and inclusion, extends to and is lived by, all members of the community—students, faculty, staff, and board members. In a community marked by true inclusion and equity, even fierce debates about a range of differences of opinions and perspectives are not experienced as personal attacks on one's very humanity and sense of well-being and belonging."¹⁴

—Lori S. White

A censorious minority.

Surveys of undergraduates find that a significant minority are willing to shut down speech: In a national survey of undergraduates, 13% said that it is always or sometimes acceptable to use “violence to stop a speech, protest, or rally”; 39% said it is always or sometimes acceptable to engage in “shouting down speakers or trying to prevent them from talking.”¹⁷ Surveys of faculty in fields such as philosophy and political science as well as other surveys document that a significant minority of faculty admit to a willingness to discriminate against their political opposites in hiring, symposia invitations, grant decisions, and paper reviews, and that the faculty and departmental culture may stifle open debate.¹⁸ Shout-downs of campus speakers, calls to dismiss faculty for controversial research or extramural expression, and social-media frenzies over controversial expression by students or faculty, while driven by a campus minority, curb open inquiry and academic discourse for all.

To prevent a vocal and censorious minority from disrupting everyone else’s opportunity to benefit fully from their collegiate experience—and for the country to benefit from robust institutions of higher education that advance the frontiers of knowledge and prepare the next generation for citizenship—it is necessary to defend academic and expressive freedoms vigorously when they are threatened on campus.

Widespread self-censorship.

One national survey found 63% of students agreed that “the climate on my campus prevents some people from saying things they believe because others might find them offensive,” noting that the percentage of students with that perception has risen in recent years.¹⁹ The survey at a flagship university mentioned above also found students across the political spectrum self-censor, and a substantial percentage report doing so on multiple occasions in a single course.²⁰ Faculty also self-censor in the classroom, in their choice of research topics, and around their faculty colleagues.²¹

To address self-censorship and the stifling of classroom and quad debate, colleges must deliberately assist students in developing skills for spirited, productive academic discourse in an atmosphere of humility, grace, patience, and mutual respect.

* * *

These are the background factors in the social, civic, and political landscape and on campus that make a new free expression roadmap necessary. While the core principles of academic freedom and free expression are unchanged, these factors require campus leaders to find new pathways to uphold these principles today. We now turn to our roadmap, including a leadership strategy for a deliberate, iterative approach to free expression that engages all members of the campus community, from students to faculty, student affairs staff, athletic directors and coaches, trustees, and the presidential leadership team.

Free Expression: The Roadmap

A robust campus free expression culture begins with the active and high-profile involvement of the president, as well as top administrators and trustees. When the president and senior administration speak about free expression and model respectful engagement with a wide range of viewpoints, it empowers others in the community to do the same.

Leadership on academic freedom and free expression is not confined to presidents and other top university leaders, but depends on creating an institutional environment where the virtues of intellectual clarity and rigor, empathy, respect, and humility are continually fostered in the activities and life of the university.²² Trust among the community is essential; within any university community, controversial expression will provoke strong and divergent responses among stakeholders, testing the community but also creating new opportunities to affirm its commitment to free expression and open inquiry.

A successful roadmap on free expression honors the campus' norms of shared governance. Each element of the campus community has an essential role in fostering a free expression culture, including the president and administrative leadership team, trustees, faculty, staff, students, alumni, and donors.

Since 2015, many campuses have adopted a free expression statement. On our task force, some thought that these statements were valuable for signaling the centrality of free expression to the collegiate mission and creating a philosophic or campus culture framework for the development of campus strategies, policies, programs, and curricula; others thought that having free expression strategies, policies, programs, and curricula were sufficient. Our task force often came back to “disagree with the argument, not the person” as a principle that could serve as a summary statement of our deliberations about what was essential to a free expression culture. Two task force members, Wallace Loh and Ronald Crutcher, had roles in statements written to suit their campus' community: The University of Maryland took the approach of adopting a Statement on University Values along with a Statement of Free Speech Values; the University of Richmond adopted a Statement on Free Expression that includes an explicit statement of its right to express an opinion about ideas and beliefs expressed on campus. These statements were adopted after multistage processes that included forums and meetings, so that students, faculty, staff, and administrators could have input on the statements. This had the benefit of creating a sense that these statements belong to the campus community rather than being adopted from an external or generic model. These statements are included in Appendix I.

The Presidential Leadership Team

The objective of the leadership team should be to build confidence in a fair, consistent, and principled approach to free expression. The work of the leadership team cannot be passive, or rest exclusively upon policy statements, resolutions, or guidelines. The effort should begin with the team articulating an explicit and campus-specific strategy on free expression that addresses the perceived tension between diversity, equity, inclusion, and free expression.

Leaders must make a case that it is possible to achieve a campus culture in which free expression *helps* the cause of diversity, equity, and inclusion by building student resiliency and understanding of the range of perspectives, opinions, and experiences of others; by creating opportunities for discussion about issues where students believe academic freedom, free expression, diversity, equity, and inclusion are in tension; and by fostering a sense of inclusion in an academic community of learning and inquiry.

Addressing the perceived tension between diversity, equity, inclusion, and free expression is an essential rhetorical and strategic task for campus leaders.

Make use of case studies and tabletop exercises.

A successful free expression strategy includes the articulation of principles; envisions what a robust culture of open inquiry and free expression would be like in a particular campus community; and identifies priority areas for strengthening or clarifying policies, programs, and curricula. One way of developing a strategy is through discussion of case studies of free expression controversies on other campuses and hypothetical scenarios in the form of tabletop exercises. In Appendix II of this report, we have included a sample of tabletop exercises.

Case studies and tabletop exercises help to identify—prior to conflict or crisis—the various reputational, fiscal, and community pressures that may be faced when controversial expression must be defended, institutional resources that are available or that must be developed, and how to assign responsibility for developing programs, policies, and curricula that foster a respectful free expression culture for all. These exercises can help the leadership team to articulate the campus' commitment to free expression and academic freedom principles with messages that resonate with its unique community, and to develop a decision-making process that will be seen as fair even by those who dissent from its outcome. Task force members said that speaking about how their college or university had demonstrated its commitment to free

expression in the Civil Rights era or had hosted controversial speakers in decades past helped create a sense of an enduring institutional tradition.

Tabletop exercises should be included as regular aspects of leadership retreats and discussions, to refresh returning members, involve those new to the leadership team, and analyze how the campus strategy has functioned in practice. A successful free expression strategy is iterative, reviewing what has worked and what policies, programs, and curricula may be improved, clarified, or added. Once a leadership team has developed its free expression strategy, it is essential to support that approach with an appropriate allocation in the budget for implementation and campus programming.

Spend leadership capital to model free expression, viewpoint diversity, and inclusion.

We believe that presidents and the leadership teams should speak about free expression and open inquiry, not only on occasions such as the convocation address but also in their regular interactions by modeling how to engage with different viewpoints. They should not shy away from preemptively discussing topics and issues that often provoke campus controversies.

Presidents and their leadership teams should consider taking responsibility for identifying gaps in the range of viewpoints heard on campus and taking steps to fill them. This requires being willing to make a judgment about what worthwhile viewpoints are insufficiently represented on campus. Some task force members have filled viewpoint gaps through speaker series directed by the office of the president, and by participating and hosting symposia, panels, and other events that bring divergent viewpoints into conversation. Hearing from those who hold divergent viewpoints on the same stage or hearing a guest speaker whose views are academically credible but outside the mainstream of that campus presents students and the community with models of respectful disagreement too seldom seen in today's civic discourse.

The president and other senior campus leaders should convene or attend gatherings of campus groups that include

Task force members have used the office of the president to host speaker series to bring diverse viewpoints to campus: Ronald Crutcher at the University of Richmond hosted the Sharp Viewpoint Series, pairing political and thought leaders with different views, as well as Spider Talks, with interviews of faculty about their research; Walter Kimbrough at Dillard University hosts Brain Food with intellectuals, activists, and artists; Linda Livingstone at Baylor University hosts the Baylor Conversation Series with speakers who explore timely topics within the context of a Christian community; and John Nunes at Concordia College-New York hosts Books & Coffee for conversations with authors. At DePauw University, the Ubben Lecture Series brings diverse leaders from around the world to deliver lectures, open to the public, on contemporary issues.²³

campus Republicans, Democrats, and other political clubs; campus religious and interfaith groups; and other clubs with divergent viewpoints. Additionally, the office of the president and the administration may budget to support campus institutes, schools, departments, and faculty to convene events that address contemporary social and political issues and bring representatives of important viewpoints to campus.

One important component of addressing self-censorship and bolstering success in the university's civic mission is increasing diversity among its faculty and scholars, including viewpoint diversity and diversity of groups historically underrepresented on the faculty. Faculty are hired for their disciplinary expertise, teaching, and other potential contributions to the campus academic experience, not their political

A few words on the First Amendment. When many people think about protecting free expression, they think of the First Amendment. The First Amendment indeed protects essential freedoms of expression in our society from government interference.

However, as a task force, our focus has been on values, the collegiate mission, and campus ethos, not the law. In the public square, the First Amendment rightly protects expression that is vile, hateful, deliberately provocative, poorly argued, and even patently untrue. When we choose to join a campus community—whether by accepting an offer to matriculate as a student, or an offer to be a faculty member, staff, administrator, or trustee—we choose to join a community of teaching, learning, and scholarship. As members of campus communities, we should choose to speak and to act in ways that inform, that question, that meet disciplinary standards of evidence, that are truthful or offered in pursuit of the truth, and that affirm the opportunities of others in the community to do the same. The content of the First Amendment includes limited guidance for these value-laden choices about how to speak and act.

However, for two reasons, the First Amendment is essential to campus free expression considerations. Most obviously, the First Amendment is legally binding on public higher education institutions (and on private institutions in California). As we have seen in recent years when provocateurs have used the First Amendment to access public campuses, it can be used as a cudgel to require accommodation of expression that seeks to give the imprimatur of a campus setting to ideas that in fact undermine the campus ethos. Public institutions must be ready when the First Amendment requires them to accommodate such expression.

Additionally, the First Amendment is important because among the purposes of higher education is preparing graduates to enter a public square where it will be the operative standard. We need to cultivate the inner strength and intellectual clarity in our students to be ready to make thoughtful contributions to our civic affairs and to counter ideas with which they disagree and even which they find deeply offensive.

orientation. However, on campuses where the viewpoint is predominately liberal, or on campuses where the viewpoint is predominately conservative, steps must be taken to enhance viewpoint diversity.²⁴

Be ready to act with confidence, clarity, and due speed when the inevitable campus free expression controversy occurs.

Controversy is inevitable in an intellectual community at the forefront of new scholarship and that encourages intellectually lively classrooms. On social media, controversial expression is often filtered through a narrow ideological prism and can go viral, attracting regional and even national media and compressing the time frame for deciding on a leadership response. A persistent trait of campus speech incidents that generate national headlines is that administrators and faculty are reacting to sudden controversies, often leading to hasty or ad hoc decisions; these headline-generating events have an outsized impact on shaping unfavorable public impressions of a particular campus and of higher education more generally. But while controversy is inevitable, crisis is not.

The key is preparation. The leadership team can be ready, as much as possible, with a clear, consistent, and fair response. The prior use of case studies and tabletop exercises can help avoid hasty and reactive decision-making; such exercises can help to identify what institutional response (if any) is required, which stakeholder groups should be involved, what decision points must be reached, and who should hold authority to make those decisions. Decisions at these key moments send important messages about the university's commitments to free expression and dissent; however, reacting with unreflective appeals to free speech rights can be seen as dismissing the valid concerns of minoritized groups on campus.

If there is an institutional response, it must include a communications strategy that ensures a consistent message, acknowledges stakeholders, identifies a spokesperson, and assures that the spokesperson has the backing of the institution. In the case of controversial speech or expression by a student or faculty, it may be necessary both explicitly to affirm the university's commitment to the freedom to express even highly controversial views and to use the university's

Engage the campus community when controversy occurs. When a private racist and sexist email message sent by a student was made public, University of Maryland President Wallace Loh took to social media to address campus community concerns. The email message was protected by the First Amendment but was deeply hurtful to many. President Loh announced and held a live Twitter chat, in which he discussed the requirement to protect expression while acknowledging and addressing the consequences of hateful speech.²⁵

own free expression rights to affirm its commitment to values, procedures, or community members, if those have been impugned.

There should also be clear guidelines about what kinds of circumstances would be sufficient to trigger a formal investigation of expression by a member of the campus community, and policies for such investigations, including what due process rights students and faculty are entitled to receive, a standard timeline for review and decision, and the potential outcomes of investigations. This timeline for review and decision should be short, barring extraordinary circumstances. Protracted and murky investigations can seem like punishments in themselves.

Allowing a controversial event or speech does not imply that the institution endorses the speaker's views.

When the University of Richmond Law School's Federalist Society invited transgender movement critic Ryan T. Anderson to speak on campus, there were complaints from some students and faculty and calls to disinvite the speaker. The law school dean issued a statement that the university upholds principles of robust discussion and that it does not require student groups to vet speakers with the administration, and President Ronald Crutcher insisted that the school would not cancel the event, although he found the speaker's views offensive. Anderson's speech was met with protesters; during the event, a faculty member offered a rebuttal to Anderson's remarks.²⁸

Guest speakers have been at the center of several free expression controversies. Task force members distinguished between controversial speakers, whose views had been sanctioned by peer review, service in public office, or are otherwise of academic merit, and extremist speakers, who deny the fundamental equality of all. In general, guest speakers serve the campus community by bringing the opportunity to discuss and debate; controversial and academically credible speakers may serve this purpose especially well. A thorough major events policy, readily available to students, faculty, and staff, that includes accommodation for protest and counter-events can forestall the use of the heckler's veto.²⁶ On comparatively rare occasions, public colleges and universities have been obliged, in some cases after legal action or with short notice, to host extremist speakers who assert that members of some groups are inherently inferior to others; these are cases of being forced to host speech that does not meet the standards of academic discourse and violates the fundamental assumption of the campus

community that there must be no arbitrary barriers, such as race, religion, or sex, to participation in the community of knowledge-seekers. In these situations, college leaders must find ways to honor their First Amendment obligations while affirming the equality of all members of the campus community.²⁷

Take a data-driven approach to campus culture.

Institutional campus climate surveys of students, staff, and faculty provide useful snapshots of the campus culture on a wide range of concerns and topics. Such surveys must have a sound methodology; focus groups to delve into preliminary survey findings are important. It is also important to roll out the survey to the campus community in ways that build trust and ultimately empower campus leadership to respond to the results in meaningful ways for the campus culture. A campus climate survey should include questions on culture for free expression and viewpoint diversity, including questions about how comfortable it is to express a view that others might find objectionable in class and in other campus settings; to what degree concerns about comments being shared by peers on social media discourage expression; and how diverse the range of viewpoints on campus is.²⁹

Consider the range of social and political issues within which to take an institutional position.

The leadership team must consider the range of issues on which the university will take an institutional position. Private universities have greater freedom than public universities to take an explicit position on social and political issues. If a policy or legislative proposal directly affects the operation of the university, in town-gown matters or at the state or federal level, it is clearly appropriate for a university to take a position. But beyond such issues, university practices vary.

Some colleges and universities uphold institutional neutrality, declining to comment on issues that do not have immediate campus impact, prioritizing the role of the university as a neutral forum for debate and the risks to chilling the fullest range of expression on those issues by faculty, students, and staff who may feel uncomfortable putting themselves at odds with their school.³⁰ Other colleges and universities hold that the school should be a neutral forum on most issues, but on select, important social and political issues, should speak with an institutional voice.³¹ Every denominational university, by definition, upholds its creedal texts, values, and commitments on which it is adamantly not neutral; yet, denominational institutions strive for ethical reflection, ongoing interpretation, and theological engagement relative to their particular confession of faith; contemporary social and political issues are occasions for such reflection.

On our task force, members hold varying opinions about the range of issues appropriate for an institutional position. While universities will reach different conclusions, we think it is important for university leaders to anticipate what would fall within the range appropriate for their school. University forums, speakers, panels, and campus events that bring multiple viewpoints on contentious issues demonstrate seriousness of purpose in

the university's civic mission and alertness to contemporary social and political concerns even without the university taking an official stance.

Offer regional and national thought leadership on free expression.

We believe that it is important for presidents and their leadership teams to support each other on free expression issues. For example, college leaders might consider a statement on the threats to academic freedom and free expression from legislative or executive action on curricular matters or matters of open inquiry and scholarship. Likewise, college leaders might offer public or private support for presidents and other leaders of campuses who are confronting a controversy for defending the academic freedom of a faculty member or the expressive rights of students.

Presidents should offer leadership on free expression not only on their campuses but also regionally and nationally. Controversies over free expression have contributed to an erosion in public trust in colleges and universities.³² While this erosion of trust may be based on a distorted picture of what actually happens on campuses, it undermines willingness to support higher education institutions and reduces confidence in academic expertise. As a task force, we believe that it is vitally important for colleges and universities not only to do more, but to be seen doing so by the citizenry, elected officials, donors, parents, and alumni. Leaders should seek opportunities to speak about the importance of free expression for their academic mission and our civic health. They should talk specifically about their strategies to support free expression and open exchange.

Task force members also spoke to the value of their firsthand experiences working with local school systems to strengthen the skills of respectful conversation and open inquiry among primary and secondary students, and with regional business leaders who seek to create respectful workplaces, and who increasingly see the ability to work with a diversity of colleagues and clients as an essential workplace-readiness skill.

Trustees

While trustees often regard their role primarily in fiduciary and organizational terms, with considerable variation between public and private colleges, they can also play an important role in securing the collegiate values of free expression, academic freedom, and a respectful campus culture for students, faculty, and staff. Trustees should consider issuing their own public resolutions affirming the college's free expression policies. When controversies occur, trustees can play an essential role in supporting the leadership team as they defend the freedom of a community member to engage in unorthodox and controversial expression. Trustees may also consider it part of their oversight role to pay attention to campus climate. One way to do so may be through supporting well-designed campus climate surveys, including the climate for intellectual diversity and free expression. Boards should consider orientation programs for incoming trustees that include background and philosophical discussion of free expression and academic freedom and tabletop exercises.

Trustees can provide essential support for leadership teams during free expression crises.

When white supremacist David Duke qualified to participate in the 2016 debate among candidates for a Louisiana U.S. Senate seat to be held on the campus of Dillard University, an HBCU, Dillard President Walter Kimbrough was pressured to refuse to host the debate. The school's board of trustees backed his decision to host the debate as planned. While the event was controversial, the campus leadership was united in its approach to free expression.³³

Faculty

While the president and the leadership team set the tone for the entire campus, the faculty is also intimately involved in free expression and academic freedom policy. As scholars, faculty depend on academic freedom to advance new theories and arguments. As classroom teachers, faculty serve as the most important guides and models of respectful discourse, empathy, and intellectual humility, as well as being responsible for setting curricula and learning objectives for students. As department members, faculty make hiring and promotion recommendations that cumulatively shape the ideological and demographic diversity of the faculty. The faculty are the daily face of university policy on campus.

Faculty teach skills of academic discourse so that students learn to have conversations with others whose starting premises are very different, agree on what counts as germane evidence for a claim, and respectfully hear out and find common ground with others, even if important disagreements remain. These skills of academic discourse are very closely related to the skills of civic discourse that are so important in a pluralistic liberal democracy, and it is the faculty who are most charged with preparing graduates for engaged, thoughtful citizenship as independent thinkers.

Beyond the classroom, the shared governance role of the faculty requires that they be free to speak about campus matters. Beyond the campus, faculty are equal to all other citizens, and free to engage in extramural statements and activities. At a time when many higher education institutions increasingly rely on contingent faculty, it is important for colleges and universities to respect the academic and expressive freedoms of all faculty.

There are several affirmative steps campuses can take to enhance and protect the free expression of faculty. Above all, barring clear violations of standards in the faculty handbook, faculty should be assured that they have the support of administrators and campus leadership.

Support academic freedom in the classroom.

Contrary to a common trope that faculty use the classroom to promote their own ideology, students report that their professors are “open-minded and encouraging of participation from students across the political spectrum.”³⁴ However, several recent trends among students have contributed to a climate of self-censorship and chilled discourse. The task force heard that, too often, faculty—especially untenured and contingent faculty—refrained from assigning topics and texts, or raising certain ideas in class discussion, for fear of upsetting some students, even when they thought the omitted material

would enrich the class. These faculty concerns are justified by increasingly frequent investigations and sanctions for classroom speech or assignments.³⁵ Of course, students should speak up in class or during faculty's office hours when they think a professor has said or done something offensive—and to speak with another college office when they feel uncomfortable speaking to the professor. However, faculty members should enjoy the support of their department chairs, deans, and senior administrators to exercise their academic freedom in managing their classes. A student concern can often be addressed fully with a substantive conversation rather than a formal complaint.

Faculty are also worried about the impact of self-censorship and social media on their classrooms. Today, most students carry a video recording device in their pocket capable of creating clips that can be used to embarrass a professor or a student.³⁶ This undermines trust and the sense that the classroom is a special, semiprivate space where—even if students or the professor discuss what they heard in class later with others—while the class is meeting, the conversation is limited to those in the room. Faculty may consider adding statements on their syllabi about the importance of respectful disagreement, giving others' views a hearing, and acceptable use of social media with regard to classroom discussions.³⁷ Faculty leading seminars and classes small enough for discussion may set aside time at the beginning of the semester to discuss and establish agreed-upon class norms.³⁸

Creating a respectful learning environment for students requires artful management of the classroom and pedagogical skills that are refined with long classroom experience. Some of these skills can be conveyed to new faculty members. Campus institutes on teaching and learning or seminars at the schoolwide or department level can support faculty in developing additional ways to teach material, develop syllabi, and structure classroom experiences that encourage all students to be confident that their questions, views, and perspectives will enjoy a fair hearing in a respectful environment.

Build free expression and viewpoint diversity into the curriculum.

Faculty set curricula and departmental learning outcomes that can help build a classroom and department culture supportive of open inquiry. Department learning outcomes, especially for first- and second-year students, should build the skills of robust academic debate and analyzing multiple perspectives.³⁹ They should include being able to outline and defend multiple viewpoints within the discipline and, especially for humanities and social science subjects, major lines of argument and critique from conservative and liberal perspectives, among others.

In addition to setting curricula and learning objectives, departments may offer team-taught courses pairing faculty of different viewpoints or

“Not only are we polarized but people in the various bubbles only interact with people in those bubbles and, worse than that, they’ve vilified people in the other bubbles. But I see that as a tremendous opportunity for us in higher education to do what I think was one of the things we have been called on to do, and that is to educate our future citizens to be effective and engaged participants in the democratic society.”⁴¹

—Ronald A. Crutcher

disciplines, who model how to debate in a civil and productive fashion.⁴⁰ In these days of tight budgets, it may be a stretch for many campuses to pay two faculty for a single course. One budget-conscious alternative is to invite faculty with different viewpoints to team-teach a few class meetings within a course.

We also noted the significant role general education plays in equipping graduates with broad knowledge to contextualize current issues and the confidence to participate as citizens in civic and policy debates. Faculty members whose university service includes reviewing or revising general education programs and requirements have an essential role in shaping the education that will prepare students to engage thoughtfully in civic affairs. With that in view, the task force was mindful of the importance of general education encompassing—as much as possible—history, fine arts, humanities, and the social sciences, as well as mathematics and physical science courses that deepen students’ appreciation for the scientific method.

Teach methodology and epistemology early in departmental curricula.

The task force heard evidence that students often prioritize knowledge that comes from identity and firsthand (or “lived”) experience. While these are important sources of insight, we heard that students’ tendency to elevate such perspectives over knowledge developed on other bases can have a deleterious impact on classroom discourse, particularly when it comes to some of the most fraught topics of our time, such as race, class, sex, and gender—topics that are aspects of nearly every social science and humanities course.

Because of the priority placed on experience and identity, students sometimes ask student peers from historically underrepresented groups to speak as a representative of that group, as though identity should determine how someone participates and what he or she says in academic discourse. On other occasions, students may self-censor because they fear being seen as improperly speaking beyond their own experience or identity.⁴² On yet other occasions, students are called out by peers for speaking beyond their experience or identity.

Faculty cannot accomplish their classroom purposes of creating a community of equal knowledge-seekers if students do not see themselves and each other as being qualified to venture an academic opinion and to participate in every class and quad conversation. Therefore, we recommend epistemological and methodological discussions in first-year forums and that they be built into departmental learning objectives for early courses in majors to teach how to present academic opinions based on disciplinary standards of evidence, so that students are neither unfairly burdened with expectations to speak nor excluded because of their experience and identity.

Graduate faculty must prepare graduate students on issues of free expression.

While most free expression programs focus on undergraduates, it is important to pay attention to graduate students.⁴³ Graduate students are fledgling researchers and first-time teaching assistants and instructors learning how to manage classrooms, draft syllabi and class plans, and elicit student views in class; they are new to the tension of being obliged to refrain from expressing their own opinions when in front of a class as a teaching assistant while being called to make the best case for their views in their graduate seminars and research. Directors of graduate studies and graduate deans should make preparation on academic freedom and free expression an explicit component of the graduate student experience, including in seminars on professional and career development.

Support faculty-led centers and institutes.

Another successful strategy for broadening the academic offerings in ways that support an open campus culture is found in the variety of faculty-led academic centers and institutes on disciplinary subjects as well as topics including constitutionalism, leadership and statesmanship, and ethics. These centers and institutes are platforms for inviting visiting faculty and post-doctoral students to campus for periods of time, and for hosting guest speakers. Through their centers and institutes, many faculty mentor students and offer extracurricular and co-curricular opportunities to engage with academic topics as well as social and political issues. These opportunities introduce students to a yet wider range of views, and model respectful discussion of ideas and viewpoints outside the formal setting of the classroom.

Campus free expression and academic freedom policies and philosophy should be a part of new faculty orientation.

Orientation for new faculty is an opportunity to introduce new members of the faculty to the university's approach to fostering a free expression culture and to inform them about its free expression and academic freedom policies and programs. A panel of faculty who represent a range of political viewpoints can describe the campus approach and

commitment to viewpoint diversity. Free expression and academic freedom policies should also be available in the faculty handbook.

Defend academic freedom in scholarship and extramural statements.

One effect of increasing ideological conformity on campus is the pressure that faculty in some disciplines face to avoid certain politically sensitive research agendas. Recent years have seen the retraction of controversial journal articles.⁴⁴ Social media has raised the profile of faculty speech while simultaneously blurring the boundaries between speech as a faculty member and extramural speech.

Faculty peers and the faculty senate can support academic freedom by having specific strategies in place to defend controversial research and statements within the bounds of academic standards and, in the case of extracurricular statements made as citizens, First Amendment freedoms.

Athletic Directors and Coaches

College athletes and coaching staff with major Division I sports programs present a unique challenge for campus free expression, and the recent U.S. Supreme Court *NCAA v. Alston* decision and potential changes to regulation of athletes' use of their name, image, and likeness are likely to spur major changes in the college sports landscape in the coming years. Because of the attention that sports teams and their top-performing student athletes can draw, individuals or teams that make statements on social or political issues can garner prominent attention, often leading to pressure from alumni, trustees, and the media. Scholarship athletes in particular are vulnerable to pressures to self-censor. College athletes should not be expected to surrender or abridge their rights of expression. We recommend that athletic directors and team coaches be brought into the process of campus leadership planning around free expression policy, and coaches should affirm the rights of the athletes under their supervision to enjoy their free expression rights in the same manner as all other students.

Student Affairs

Student affairs leaders and staff are often those to whom students turn first about free expression issues. They are well-situated to support matriculating students, many of whom are entering a much more demographically diverse community than any they have been part of—for many, the most diverse of which they will ever be part—and who are entering a community where it is possible to try out almost any idea. For students, this should be both exhilarating and exhausting. Student affairs staff can support students during the entrance to their academic community and throughout their college years by emphasizing the skills and dispositions to navigate conversations across difference and disagreement. Because of student affairs staff’s role in supporting a campus free expression culture, discussion of the campus’ free expression policies, programs, and curricula, along with tabletop exercises, should be part of their orientation and ongoing professional education.

Campus free expression should be a focus of first-year orientation and at subsequent touchpoints during the first year (and beyond).

First-year orientation is a not-to-be-missed opportunity to signal the importance universities place on free expression and open inquiry, and the skills and dispositions that support it. As orientation models, task force members recommend the First Amendment Watch at New York University campus speech modules and the Free Speech Project at Georgetown University orientation modules.⁴⁵

While orientation can signal the central place of free expression and open inquiry to students’ academic experience, it takes extended focus throughout the first year in common reading and first-year experience programs to build skills for conversation that will be essential to students’ collegiate experience and preparation for civic life.⁴⁶ Students need strategies that will serve them well when they encounter ideas that they find surprising or offensive, including simple verbal strategies such as “help me understand why you see it that way.” They need to develop empathy to listen to others even when opposed to their ideas; respectfulness and commitment to disagree with others’ arguments without impugning them as individuals; humility to give up a long-held position if it does not stand up to scrutiny; perseverance when it is difficult to see the next step in the argument or project; courage to make an argument when they know others will disagree; and, in practical matters, willingness to compromise and work constructively with those with whom one has principled disagreement.

Task force members recommend the OpenMind platform, the Heterodox Academy *All Minus One* booklet, and the Better Arguments Project approach to build these skills and habits of mind.⁴⁷ Since many students doubt that free expression is compatible with diversity, equity, and inclusion, first-year programming can teach about the ways in which free expression has advanced the interests of underrepresented and minoritized communities, from the Women’s Suffrage and Civil Rights Movements to the #MeToo and racial justice movements of recent years.

Let students know their rights to express opinions and protest are supported and provide guidelines for that expression.

Students and other members of the campus community should be encouraged to participate in expressive activities and protest as part of their collegiate experience and as preparation for engaged citizenship in the public square. Students should be provided with detailed guidance about what expressive activities will not disrupt the educational and research activities of the campus, so student handbooks should include clear, easy-to-reference guidelines for protest and counter-protest, inviting speakers, planning events, tabling, distributing literature, chalking, and sit-ins (or “camping”). Guidelines should be detailed: For example, literature may be posted on certain bulletin boards and handed out but not left unattended; that amplified sound is not allowed or must not exceed a certain level; and placards may be held up during a speech if they do not exceed a specified size. There should also be guidance

Attending to student mental health supports a free expression culture.

An additional complicating factor in fostering a free expression culture is the mental health of the student body. For the nation as a whole, the spectrum of mental health issues is expanding, with better diagnostic screens and treatment options. This changing scene presents special challenges for higher education, as an increasing number of students suffer from loneliness, anxiety, depression, and other mental health stressors. For many, the isolation during the COVID-19 pandemic has aggravated their symptoms, and these effects may linger after the pandemic ends.

Mental health issues can undermine students’ ability to put forward their own line of thinking confidently and to dispute ideas with which they disagree or find offensive. Students sometimes report that they feel anxious or unsafe because of expression they encounter on campus. As educators, our responsibility is not to make ideas safe for students, but to prepare students so they feel safe to confront ideas with which they disagree. It is important to address student mental health concerns and to assure students that they can develop the resiliency to confront and dispute ideas that they find wrong, or even heinous. Many colleges and universities have substantially expanded their mental health counseling resources in recent years, and there may be a need for many colleges to integrate the leadership of campus counseling services with the leadership teams overseeing free expression policy.

about respecting others' expression; for example, not using the heckler's veto or vandalizing others' literature, posters, and chalking.⁴⁸

Encourage students to exercise and respect associational and religious freedoms in clubs, student organizations, student government, and other campus groups.

Student clubs and organizations have been a source of controversy on account of exclusive qualifications that some clubs require for membership (e.g., denominational religious affiliation or sexual orientation). Disagreements about all-comers policies—whether a student group may limit its membership or leadership roles to those with certain characteristics, or exclude those with certain characteristics—have led to legal action and court cases.

Student affairs leaders have a key role in fostering a free expression culture. DePauw University was notified in fall 2021 by Campus Ministry USA, a group that practices what it terms “confrontational evangelism,” that a preacher from the group planned a campus visit. Visits by preachers from this group had led to disruptive confrontations in the past at DePauw and other campuses. In advance of the visit, the vice president of student affairs sent a note to students, reminding them that even uninvited speakers have a right to speak on public streets running through campus. The student government organized a protest that included T-shirts and buttons with the message “share love, not hate” and free tacos and ice cream. Student Affairs staff, the Demonstration Response Team, and other staff worked with student leaders to ensure that this was an occasion to affirm campus commitments to free expression, diversity, and inclusion.

Aside from legal restrictions such as Title IX and other civil rights laws, we believe colleges and universities should allow maximum latitude for students to enjoy the fellowship of those who share a faith, identity, or social and political ideas. When students associate with like-minded peers, they create a space that bolsters their resilience for the intellectual rough-and-tumble of the classroom and the quad, where their ideas and creeds may be questioned, and where they will study, work, and play alongside those whose experiences and identities may be very different from their own. Student affairs staff should work with student governments, which, on many campuses, have a role in conferring formal recognition and oversight of student groups, in educating student government and organization leaders about how to respect the expressive freedoms of student organizations.

Make students and student leaders partners in free expression programming.

Leaders of student organizations, such as BridgeUSA chapters, are important partners for student affairs staff in leading discussions and events for their student peers about free expression and open exchange. Students themselves must be engaged in fostering a robust free expression campus culture.

Conclusion

The emphasis on practical recommendations in this report should not lull us into underestimating the challenges of maintaining academic freedom and free expression, or what is at stake if we fail to do so. Today, academic freedom and free expression are under stress, undermining colleges' and universities' ability to fulfill their academic and civic missions, which in turn is eroding public trust in higher education institutions.

We are confident that this may be a period of renewal of academic freedom and free expression. We offer these core conclusions and recommendations:

1. College leaders should use leadership capital to support a culture of free expression, including by publicly affirming that disagreement and viewpoint diversity are healthy in an academic and civic community.
2. Every college's approach to fostering a free expression culture should be tailored to its unique history, mission, and community.
3. At a time when some doubt that commitments to free expression are compatible with commitments to diversity, equity, and inclusion, leaders should make the case that freedom of expression is ultimately a liberalizing and inclusive force. At the same time, university leaders must remember that students need to feel fully included in the campus community before they feel safe to confront ideas with which they disagree. A free expression culture depends on trust and a respectful learning environment for all.
4. Since presidents and their leadership teams, trustees, faculty, athletics leaders, staff, and students all contribute to a free expression culture, we recommend that universities develop programming for all these elements of the campus community.
5. Controversies about free expression are inevitable, and it is essential to be ready with a decision-making process for a clear, consistent, and fair response, and to defend expression of unorthodox and controversial views. The use of tabletop exercises can prepare college leaders, staff, and faculty for controversies.
6. Formal protections for controversial expression are necessary, but insufficient, for open inquiry and free expression. Robust intellectual exchange is ultimately a matter of culture, and depends on the virtues of intellectual clarity, rigor, empathy, respect, and humility, and on widespread community trust.
7. In addition to their academic mission, colleges and universities have a civic mission to prepare graduates to be independent thinkers, engage in respectful and productive discourse, find practical compromise with those with whom they have principled disagreements, and maintain the institutions of our pluralistic democracy.

Appendix I: Statements on Campus Free Expression

The University of Maryland and the University of Richmond in recent years adopted free expression statements. They are two of the more than 80 colleges and universities that have adopted freedom of expression statements, beginning with the University of Chicago's adoption of the Chicago Principles in 2015.⁴⁹

The University of Maryland's Statement on University Values and Statement of Free Speech Values were adopted in 2018 after approval of the university's president and the University Senate. These statements were among the recommendations of the President/Senate Inclusion and Respect Task Force, which was co-chaired by the senior associate vice president of student affairs and a dean. In the course of its work, the President/Senate Inclusion and Respect Task Force held three public forums, invited comment through an online form, and consulted with numerous campus constituencies and broadly with faculty, staff, students, and administrators.⁵⁰

The University of Richmond's Statement on Free Expression was adopted by its board of trustees in 2020.⁵¹ The president appointed a University Task Force on Free Expression, following a 2019 campus speaker series on free expression and conversation across difference. The task force drafted a statement, which was presented for comment at forums for faculty, staff, and students; comments could also be submitted through an online form. In light of those comments, the task force revised its draft. The statement was then adopted by the board of trustees.

These statements, and the task forces and deliberative processes that led to their adoption, are offered as examples for those whose campuses are considering the adoption of a free expression statement.

University of Maryland Statements on University Values and Free Speech Values

Statement on University Values

Values Statement

The University of Maryland (UMD) is a community of individuals living and working together to support and advance the educational and research mission of the institution. We aspire to become a community that is: United, Respectful, Secure and Safe, Inclusive, Accountable, and Empowered and Open to Growth.

United

We are diverse but have much in common. Members of the UMD community foster a sense of belonging based on acceptance and a unity of purpose.

We strive toward overlapping goals, sharing resources, and spending some of the most significant and productive times of our lives together in a common space. To that extent we depend on one another and are our best selves when we support one another. Accordingly, our actions are guided not only by what is good for self but also by what is good for all.

Respectful

Members of the UMD community interact with others in ways that promote feelings of respect. All members of the UMD community are valued equally and deserving of respect without regard to their status, their educational attainment or their social position. We reject denigration of any member through words or actions and resist stereotyping of members that undermines personal dignity through slurs, slights, insults or other acts that disparage individuals or groups.

Secure and Safe

Members of the UMD community refrain from injustice, violence, harassment, intimidation, and aggression. We do all that is possible to protect and defend members of the UMD community from anyone who would harm them physically or psychologically. We promote individual agency and responsibility in contributing to personal safety, avoidance of harm and staving off the effects of insults, slander, intimidation, or symbolic intimidation of violence.

Inclusive

The UMD community strives to achieve the highest levels of excellence in our work and our studies that accrue through inclusive practices. We recognize that as a thriving and striving community, the success of our institution and our members is dependent on how well we value, include, and engage all members. This belief must be actively and consistently embedded in every aspect and practice of the UMD community.

Accountable

All members of the UMD community are equally responsible and committed to uphold the University's values to the best of their ability, as well as hold the rest of the UMD community to those responsibilities. We must be transparent in our mistakes, and learn to reflect and continue to strive toward inclusive excellence.

Empowered and Open to Growth

Members of the UMD community embrace learning as essential for bettering ourselves as individuals and as a community. We encourage and assist one another to become our best selves.

Statement on Free Speech Values

The primary purpose of a university is to discover and disseminate knowledge through teaching, research, and service. To fulfill these functions, a free exchange of ideas is necessary not only within its walls but with the world beyond. The history of intellectual discovery and growth clearly demonstrates the need for freedom; the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable. Whenever someone is deprived of the right to state unmentionable views, others are necessarily deprived of the right to listen to and evaluate those views. Few institutions in our society have this same central purpose. It follows that a university must protect and guarantee intellectual and academic freedom. To do so it must promote an environment in which any and all ideas are presented. Through open exchange, vigorous debate, and rational discernment, the campus community can evaluate ideas.

Every member of the campus community has an obligation to support the right of free expression at the university, and to refrain from actions that reduce intellectual discussion. No member shall prevent such expression, which is protected under the constitutions of the United States and the State of Maryland.

The University does not have a speech code. History shows that marginalized communities have successfully promoted their interests because of the right to express their views. In fact, marginalized communities have been silenced by speech codes and other regulations against "offensive" speech.

In addition to the obligation to promote and protect free expression, individuals assume further responsibilities as members of the university. The campus expects each individual community member to consider the harm that may result from the use of slurs or disparaging epithets intended to malign, for example, another's race, ethnicity, national origin, religion, sex, gender identity, sexual orientation, political affiliation, or physical or mental disability. While legal protections for free expression may sometimes supersede the values of civility and mutual respect, members of the university community should weigh these values carefully in exercising their fundamental right to free expression.

The University values and embraces the ideals of freedom of inquiry, freedom of thought and freedom of expression, all of which must be sustained in a community of scholars. While these freedoms protect controversial ideas and differing views, and sometimes offensive and hurtful words and symbols, they do not protect conduct that violates criminal law or university policy.

University of Richmond

Statement on Free Expression

Institutional Mission

The University of Richmond is committed to the production and dissemination of knowledge through open inquiry and “the promotion of a vibrant intellectual community that encourages thoughtful disagreement and the vigorous exchange of ideas.”^a The University believes that “respectful engagement with a broad diversity of perspectives and experiences [is] essential to intellectual growth,”^b and that members of the University community can build understanding and empathy by engaging with different points of view. The University’s commitment to fostering a diverse, inclusive community demands an equally strong commitment to freedom of expression. The ability to speak freely, debate vigorously, and engage deeply with differing viewpoints is essential to the University’s mission of advancing knowledge and preparing students to flourish in a complex world. Freedom of expression enables the University community—students, faculty, and staff—to express their deeply held convictions, opinions, ideas, and matters of conscience and engage in vigorous debate, criticism, and counter-speech.

Rights of Free Expression

The University promotes and protects the freedom of expression for all members of its community. At the University of Richmond, speech may not be suppressed, nor speakers disinvited, simply because the ideas put forth are thought by some or even by most members of the University community to be unwelcome or deeply offensive. The University recognizes that on occasion some members of the community may strongly disagree with the speech of others, or may view the expression of certain ideas as harmful. On these occasions, it is for the members of the University community to respond by openly and vigorously contesting the ideas that they oppose, not by seeking to suppress speech. The broad protection of freedom of expression is particularly necessary for speakers and messages that challenge authority or the status quo, which frequently have been the target of censorship efforts.

^a The University of Richmond’s Code of Organizational Ethics and Integrity, p.2 (Values of the University; Pursuit of Knowledge).⁵²

^b The University of Richmond’s Code of Organizational Ethics and Integrity, p.2 (Values of the University; Inclusivity and Equity).⁵³

Limits of Free Expression

Freedom of expression at the University of Richmond is not without limits. The University may restrict expression that incites imminent lawless action, falsely defames a specific individual, or which targets a specific individual or individuals with threats or harassment. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt classes, operations, or university-sponsored events. But these narrow exceptions must never be used in a manner that is inconsistent with the University's foundational commitment to a completely free and open discussion of ideas.

Rights of Non-Disruptive Protest

Freedom of expression necessarily includes the freedom to engage in non-disruptive counter-speech or protest. Members of the University community are free to contest ideas expressed on campus and to criticize speakers who have been invited to present their views. In so protesting, however, members of this community may not obstruct or otherwise interfere with the freedom of others to invite speakers or engage in their own permitted acts of expression. The University of Richmond is committed not only to promoting the lively and fearless freedom of debate and deliberation, but also to protecting that freedom when others attempt to restrict it. It is an essential part of the University's educational mission to educate members of the University community about these fundamental principles, and to foster the community's ability to engage in debate and deliberation in an effective and responsible manner.

Rights of the University

Although committed to the principles of academic freedom and freedom of expression, the University itself need not remain neutral in regard to ideas or beliefs expressed on campus. The University enjoys its own freedom to respond or communicate the institution's values and principles.

Appendix II: Tabletop Exercises

College campuses are places where the most fundamental questions are asked and the most long-standing and settled opinions may be challenged. It is inevitable and desirable that there be profound disagreement among community members. However, controversial expression can erupt into crisis, disrupting the research, teaching, and civic activities of a campus community.

Tabletop exercises—discussions of hypothetical dilemmas and controversies—are invaluable opportunities for leadership teams, trustees, faculty, and staff to prepare for inevitable free expression controversies. Such exercises allow teams to anticipate issues that may present themselves, to weigh alternative responses and key decision points, to identify responsible offices and stakeholders, and to formulate messages. The use of tabletop exercises can help to create a decision-making process that, when an actual controversy arises, will be seen as fair even by those who disagree with the outcome. Tabletop exercises also allow leaders to identify pathways and programs to better prepare the campus community for controversial expression.

Tabletop exercises may be included as components of annual retreats and standing meetings; orientation programs for administrators, trustees, staff, and faculty; and meetings focused on free expression.

Below, we offer a sample of such exercises. We offer these scenarios without questions or suggested responses to leave your conversations as open-ended and wide-ranging as possible.

Student writes blog post that offends.

A sophomore, writing on her own blog unaffiliated with the university, writes, “sex and gender are biological facts, not choices; you cannot change from being a man to a woman or vice versa.” Other students see the blog post and start circulating screenshots of the post, which the student then takes down. The Student Government Association (SGA) discusses the blog post at its next meeting, attended by over 100 students, and by a vote of 17 to 3 passes a resolution condemning the post as transphobic and hateful. The student newspaper reports on the blog post and the SGA vote.

The story is picked up on social media, some calling this an instance of “cancel culture” and others condemning the student and her views, saying the university should do more to discipline her.

Meanwhile, a transgender student who shares a discussion section in a course with the blog post author asks the professor to move the author to another discussion section, saying it is not possible to feel safe in a room with a transphobic student.

Student capstone project sparks controversy.

For his senior capstone project, a theater arts major proposes directing Joshua Schmidt’s *Adding Machine: A Musical*, an award-winning adaptation of the Elmer Rice 1923 play of the same name. The play and musical are critical of capitalism and racism, and portray characters who make racist comments. The student’s proposal is approved by his advisor. The student recruits students to perform, and the musical goes into production; the performance is scheduled, with a panel to follow immediately after the performance with student actors, the student director, and a professor from the English department about the musical and its content. The musical and panel are advertised on campus with a warning: “This musical portrays racism and white supremacy.”

A week before the performance, the dean of student affairs contacts the senior’s advisor, asking about the content of the musical, as some students have reported discomfort with “a racist musical being allowed on campus.” The advisor outlines the plan for a panel discussion after the play and invites the dean to attend a rehearsal later that day, which he does. At the end of the rehearsal, the dean states that he is concerned about the potential impact of the play on students from marginalized communities and will deliberate with others on the leadership team.

Overnight, the student newspaper publishes an article titled, “Racist Musical is Senior’s Capstone.” The article is widely shared on social media with calls for the performance to be canceled and criticism of the student’s advisor for approving the capstone project.

Student athletes and assistant coach take a knee.

At a homecoming football game, the stadium stands are full, with alumni, students, faculty, staff, town residents, as well as several trustees. During the national anthem, several players lock arms and take a knee. They are joined by an assistant coach. As they do, some in the audience hiss and boo.

Even as the game is underway, the university starts to receive angry phone calls and email messages from alumni and others, including a message from a local major donor addressed to the school's president, calling the protesting players unpatriotic and demanding that the players be disciplined. On social media, images of the players and assistant coach start trending, with some posts decrying the protest and others praising it. The state senator whose district includes the university tweets, "Students and coach disrespect the flag while taxpayers foot the bill for their education and salary—disgraceful."

Social media posts indicate students are planning to gather and kneel in the main quad the next afternoon. A trustee in attendance at the game receives email messages from classmates, including one who has given a major gift and has the capacity to give another, asking whether the university will discipline the players and assistant coach.

First-year student hangs flag in dorm room to objections of suitemate.

During move-in, a matriculating student hangs an Israeli flag in her room while a suitemate looks on. The suitemate seeks out the resident advisor who is overseeing the move-in and complains that an Israeli flag is a symbol of Zionism and racism, and requests that the RA tell the student to remove the flag. The RA asks the student who has hung the flag about it. The student says it is a symbol of her Jewish faith, and that she plans to keep the flag displayed despite being aware that others are talking about it. The RA tells the student who complained that the suitemate may choose what to display in her own room.

The complaining student goes to the Office of Residential Life and demands that the student with the Israeli flag be moved to another suite. The Office of Residential Life handbook includes guidance that "residence halls are homes for students, and students should choose decorations that support an inclusive residential community for all." Meanwhile, the student who hung the flag has spoken to her parents, and her parents call to complain that their daughter is being made to feel unwelcome.

Faculty member reads racial epithet aloud in class.

A faculty member in a political science course assigned the Rev. Martin Luther King Jr.'s *Letter from Birmingham Jail*. During the class meeting, the professor reads parts of the letter aloud, including a section that includes a racial epithet. A student immediately objects, and other students join in supporting the student's objections. The professor defends himself, saying that the epithet was in Dr. King's writing, not his own word choice. The professor tries to resume the discussion, but several students say the conversation cannot continue until the professor apologizes, which he refuses to do, repeating that the epithet is not his own. When some students reply that the discussion cannot continue without an apology, the professor resolves the situation by ending the class meeting 15 minutes early. The next scheduled class meeting is two days hence.

Later that day, several students from the class, including the student who made the initial objection, visit the dean's office. They demand that if the professor does not apologize, he must be replaced for the remainder of the semester.

Meanwhile, students start sharing social media posts about the incident, and the Office of University Communications receives a call from a local television station, asking for comment.

Faculty member declines to write a letter of recommendation.

A faculty member is approached by a student at the end of a class meeting to ask if the professor would write a letter of recommendation for a summer internship. The student has been an active participant in class discussions and has performed well on assignments and tests. The professor readily agrees and asks the student to send information about how to submit the letter.

When the professor receives an email message from the student with the information, the professor sees that the student is applying for an internship with a pro-life organization. The professor responds that she would gladly write a letter of recommendation for an internship with another organization, but she will not support an application for an internship at an "anti-woman organization."

The student forwards the professor's email message to the department chair, alleging that she is being discriminated against. When the department chair asks the professor for her side of the story, the professor responds that her academic freedom allows her not to write a letter of recommendation to an organization she deeply opposes.

Meanwhile, the student's father contacts the dean of students, saying that their daughter is being discriminated against because of the family's Christian faith.

Alternative scenario: The student is applying for an internship at Planned Parenthood and the faculty member, after initially agreeing to write the letter, says that she is pro-life and declines to write the letter of recommendation on religious and academic freedom grounds.

Speaker invitation leads to controversy.

A faculty member in the philosophy department invites a bioethicist to address the students in her course, “Contemporary Moral Issues,” one of several invited speakers over the term. The bioethicist has published articles arguing that it is ethical for a woman to abort a fetus diagnosed with a birth defect and to practice infanticide on infants with birth defects.

Students from Disability Awareness Advocates (DAA), a registered student organization, visit the Office of Student Life and insist the invitation to the bioethicist must be rescinded, saying it creates a hostile environment for disabled students, potentially including students in the class. The students say that if the invitation is not revoked, they may need to take further steps, without being specific about what those may be. A member of DAA publishes an op-ed in the student newspaper, writing, “It shouldn’t be acceptable to invite to campus someone who would have exterminated me.”

The professor says that she understands that the bioethicist is controversial, but it is up to her to set the syllabus and invite speakers. She notes that the bioethicist has published his views in peer-reviewed academic journals.

Faculty social media post.

An untenured but full-time faculty member, who is assistant director of the university’s honors program, posted on her personal Twitter account—not affiliated with the university—the following: “My campus is open and classes being held on #Juneteenth but closed on #July4. Celebrating #WhitePrivilege and no regard for Black faculty/students/staff.”

The tweet leads to many retweets and replies, many agreeing with the professor and others calling her unpatriotic. The story is picked up by the local news, and the higher education press contacts the university for comment. A major donor writes an email message to the provost: “A professor who disrespects the Founders should not be on the staff of the school’s honors program.” A Change.org petition calling on the university to make Juneteenth a school holiday quickly garners hundreds of signatures from students as well as faculty.

Alternative scenario: The professor’s tweet does not mention the university, but states: “I will celebrate #Juneteenth but not #July4. Juneteenth = Freedom / July4 = WhitePrivilege,” but otherwise the events unfold as described.

Faculty public commentary.

A faculty member publishes an article in a general audience magazine about childhood outcomes, including high school diploma attainment, school suspensions, juvenile arrests, and teenage pregnancies. In the findings section, the author writes: “Single-parent households are correlated with adverse childhood outcomes. Therefore, public policy should aim to encourage household formation prior to pregnancy.”

On Twitter, scholars from other institutions criticize the article for promoting a traditional family structure, alleging that this promotes bias against single-parent households, and some call for the professor’s censure by his professional association. Students hear of the controversy through social media and demand that the faculty member not be allowed to teach classes on this topic.

Faculty research.

A faculty member publishes an article in a peer-reviewed journal, arguing that data suggests race-conscious admissions harm students by placing them in academic settings where they do not have the background to succeed. The article concludes: “Universities’ admissions policies must be neutral to race and ethnicity and evaluate candidates on their individual merits.”

Students read the article and lead a social media campaign criticizing the professor and the university. They argue that the faculty member is biased against minoritized students and cannot be trusted to assess them fairly. They demand that the faculty member be removed from the graduate admissions committee and that students not be required to take classes with the faculty member. However, the faculty member is a regular instructor for one of the required classes for the major.

Endnotes

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- 35 Foundation for Individual Rights in Education, *Scholars Under Fire: The Targeting of Scholars for Ideological Reasons from 2015 to Present*, 2021. Available at: <https://www.thefire.org/research/publications/miscellaneous-publications/scholars-under-fire/>; C. Schneider, “A Year of Discontent on Campus,” *The Dispatch*, February 6, 2020, found that faculty are frequent objects of bias complaints. Available at: <https://thedispatch.com/p/a-year-of-discontent-on-campus>.

- 36 Issues of students making recordings to embarrass faculty and fellow students may be even more acute as more instruction occurs online during, and likely continuing after, the COVID-19 pandemic. See E. Pettit, “A Side Effect of Remote Teaching During Covid-19? Videos That Can Be Weaponized,” *The Chronicle of Higher Education*, March 24, 2020. Available at: <https://www.chronicle.com/article/a-side-effect-of-remote-teaching-during-covid-19-videos-that-can-be-weaponized//>.
- 37 D. Mashek, “Syllabus Language to Support Viewpoint Diversity,” Heterodox Academy, January 9, 2018. Available at: <https://heterodoxacademy.org/blog/teaching-heterodoxy-syllabus-language/>; PEN America, “Tips for Nurturing a Climate of Free Expression and Inclusion,” September 25, 2019. Available at: <https://campusfreespeechguide.pen.org/resource/tips-for-nurturing-a-climate-of-free-expression-and-inclusion/>. Harvard Law School has a policy against students attributing class comments on social media, “HLS Community Principle on Non-Attribution,” n.d., accessed November 2, 2021. Available at: <https://hls.harvard.edu/dept/registrar/policies-and-forms/hls-community-principle-on-non-attribution>.
- 38 See for example, K. Landis, ed., “Establishing Discussion Rules,” in *Start Talking: A Handbook for Engaging Difficult Dialogues in Higher Education* (Anchorage: University of Alaska Anchorage and Alaska Pacific University, 2008), 12-17. Available at: https://www.uaa.alaska.edu/academics/institutional-effectiveness/departments/center-for-advancing-faculty-excellence/difficult-dialogues/_documents/Start_Talking.pdf; see also Institute for Democracy and Higher Education, *Readiness for Discussing Democracy in Supercharged Political Times*, November 2019. Available at: <https://tufts.app.box.com/v/idhe-discussing-democracy>.
- 39 Modules specifically on free expression themes may be added to courses not only for first-year students but for upper-class students. See P. Bonilla, “Faculty Network Interview: Daniel Cullen, Rhodes College,” Foundation for Individual Rights in Education, December 18, 2020. Available at: <https://www.thefire.org/faculty-network-interview-daniel-cullen-rhodes-college/>.
- 40 For example, a “University Blacklist” course team-taught at Claremont McKenna College by professor Jon Shields and Pitzer College professor Phil Zuckerman, in which they assigned controversial books by liberal and conservative authors. See “An Open Mind,” *Claremont McKenna College Magazine*, Spring 2019. Available at: <https://www.cmc.edu/magazine/spring-2019/open-mind>.
- 41 R.A. Crutcher interview with D. Lederman, “Race, Leadership, and Engaging with Contrary Viewpoints,” *The Key with Inside Higher Ed*, ep. 51, podcast, June 29, 2021. Available at: <https://www.insidehighered.com/audio/2021/06/29/ep-51-race-leadership-and-engaging-contrary-viewpoints>.
- 42 Students report being reluctant to discuss topics when they are in the position of the predominant group (for example, white students report being more reluctant to discuss race, and straight students more reluctant to discuss sexual orientation and gender). M. Stiksma, *Understanding the Campus Expression Climate: Fall 2020*, Heterodox Academy, 2021. Available at: <https://heterodoxacademy.org/wp-content/uploads/2021/03/Campus-Expression-Survey-Report-2020.pdf>.
- 43 Kaufmann, *Academic Freedom*, 166, finds, “In both North America and Britain, younger academics are more willing to endorse cancelling controversial staff, even when political

discrimination and ideology are held constant. Looking ahead to the future of academic freedom, this may be viewed as a concerning development.”

- 44 C. Flaherty, “Is Retraction the New Rebuttal?” *Inside Higher Ed*, September 19, 2017. Available at: <https://www.insidehighered.com/news/2017/09/19/controversy-over-paper-favor-colonialism-sparks-calls-retraction>.
- 45 “Campus Speech Modules,” First Amendment Watch at New York University, n.d., accessed November 2, 2021. Available at: <https://firstamendmentwatch.org/category/campus-speech-modules/>; “Orientation Modules,” Free Speech Project at Georgetown University, n.d., accessed November 2, 2021. Available at: <https://freespeechproject.georgetown.edu/free-speech-modules/>.
- 46 For an example of a first-year common reading program, see Washington University in St. Louis, *Common Reading Program for the Class of 2023*, 2019. Available at: https://issuu.com/wufirstyearcenter/docs/fyct-6328_common_reading_program_20. See also University of Washington in St. Louis, “Dialogue Across Difference - Freedom of Expression Session, Fall 2019 | Washington University,” video, September 13, 2019. Available at: <https://www.youtube.com/watch?v=1C6ysYNxIoA>. For a handbook on events with guided discussion of free expression, inclusion, and related topics, see Institute for Democracy and Higher Education, *Free Speech & Inclusion on Campus: Guide for Discussion Leaders*, v. 2, March 2018. Available at: <https://tufts.app.box.com/v/idhe-free-speech-inclusion>.
- 47 “OpenMind,” OpenMind, n.d., accessed November 2, 2021. Available at: <https://openmindplatform.org/>. J. Haidt, R.V. Reeves, and D. Cicirelli, *All Minus One: John Stuart Mill’s Ideas on Free Speech Illustrated*, 2nd ed., Heterodox Academy, 2021. Available at: <https://heterodoxacademy.org/library/all-minus-one/>. “Our Approach,” The Better Arguments Project, n.d., accessed November 2, 2021. Available at: <https://betterarguments.org/our-approach/>.
- 48 For example, consider “Texas Tech University System Regulation 07.04,” Texas Tech University System, October 4, 2019. Available at: <https://www.texastech.edu/offices/cfo/system-regulation-07.04-freedom-of-expression.pdf>. See also “Expressive Activities Student Affairs Website FAQ” and “Campus Inclusion Resource Team,” Texas Tech University, n.d., accessed November 2, 2021. Available at: <https://www.depts.ttu.edu/dos/docs/ExpressiveActivitiesFAQs.pdf> and <https://www.depts.ttu.edu/rise/campusinclusionresourceteam.php>. The University of Missouri has a multipage website including policies, principles, and frequently asked questions. See “Free Expression at Mizzou,” University of Missouri, n.d., accessed November 2, 2021. Available at: <https://freespeech.missouri.edu/>.
- 49 “Chicago Statement: University and Faculty Body Support,” Foundation for Individual Rights in Education, n.d., accessed November 2, 2021. Available at: <https://www.thefire.org/chicago-statement-university-and-faculty-body-support/>.
- 50 University of Maryland Senate, Joint President/Senate Inclusion and Respect Task Force, *Inclusion and Respect at the University of Maryland*, 2018. Available at: https://diversity.umd.edu/uploads/files/Presidential_Approval_Inclusion_Respect_17_18_03.pdf; University of Maryland, “Statement on University Values” and “Statement of Free Speech Values,” 2018. Available at: <https://policies.umd.edu/statement-university-values/> and <https://policies.umd.edu/statement-free-speech-values/>.

- 51 University of Richmond, "Statement on Free Expression," December 2020. Available at: <https://president.richmond.edu/common/pdf/statement-on-free-expression.pdf>.
- 52 University of Richmond, *Code of Organizational Ethics and Integrity*, February 16, 2012, updated September, 2018. Available at: <https://www.richmond.edu/compliance/pdfs/code-of-ethics.pdf>.
- 53 Ibid.



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IDEAS. ACTION. RESULTS.

Report of the Committee on Freedom of Expression

The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs “in light of recent events nationwide that have tested institutional commitments to free and open discourse.” The Committee’s charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”

The Committee has carefully reviewed the University’s history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University’s culture. In 1902, in his address marking the University’s decennial, President William Rainey Harper declared that “the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago” and that “this principle can neither now nor at any future time be called in question.”

Thirty years later, a student organization invited William Z. Foster, the Communist Party’s candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that “our students . . . should have freedom to discuss any problem that presents itself.” He insisted that the “cure” for ideas we oppose “lies through open discussion rather than through inhibition.” On a later occasion, Hutchins added that “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated “those virtues which from the beginning and until now have characterized our institution.” Central to the values of the University of Chicago, Levi explained, is a profound commitment to “freedom of inquiry.” This freedom, he proclaimed, “is our inheritance.”

More recently, President Hanna Holborn Gray observed that “education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom.”

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.

In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

As a corollary to the University’s commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest

speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's long-standing commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law,
Chair

Marianne Bertrand, Chris P. Dialynas Distinguished Service Professor of
Economics, Booth School of Business

Angela Olinto, Homer J. Livingston Professor, Department of Astronomy and
Astrophysics, Enrico Fermi Institute, and the College

Mark Siegler, Lindy Bergman Distinguished Service Professor of Medicine and
Surgery

David A. Strauss, Gerald Ratner Distinguished Service Professor of Law

Kenneth W. Warren, Fairfax M. Cone Distinguished Service Professor,
Department of English and the College

Amanda Woodward, William S. Gray Professor, Department of Psychology
and the College

Excerpts from the 2021-22 Faculty Handbook pertaining to Academic Freedom

2.24 Professional Responsibilities and Conduct

2.24.1 Statement of Principles of Ethical Behavior

The faculty of Virginia Tech believe that academic freedom is essential to attain our missions as scholars and teachers. We also recognize and accept the responsibilities attendant to academic freedom as fundamental to a scholarly community. We believe we must exercise our rights with due regard to the rights of others and we must meet our obligations fully as faculty members. We hold ourselves accountable to ensure that the faculty of Virginia Tech is recognized for its commitment and leadership to pursue knowledge, to promote the free expression of ideas, to teach our students, and to serve the citizens of Virginia.

Scholarship: Guided by a deep conviction of the worth and dignity of the advancement of knowledge, we recognize our primary responsibility to our disciplines is to seek and to state the truth. To this end, we devote our energies to developing and improving our scholarly competence. We accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. We practice intellectual honesty and do not compromise our freedom of inquiry. At Virginia Tech, self-plagiarism is considered unethical behavior. Self-plagiarism occurs when authors reuse substantial parts of their own published work as new without providing appropriate references to the previous work if this reuse deviates materially from standard practice in the field.

Students: We encourage the free pursuit of learning in our students and exemplify the best scholarly and ethical standards of our disciplines. We value and promote differences among students and respect students as individuals and serve as their intellectual guides and counselors. We make every reasonable effort to foster honest academic conduct and to assure that our evaluations of students reflect each student's true merit. We respect the confidential nature of the relationship between professors and students. We avoid any exploitation, harassment, or discriminatory treatment of students and acknowledge significant academic or scholarly assistance from students. We do not engage in any romantic or sexual relationships with students whom we are in a position to evaluate by virtue of our teaching, research, or administrative responsibilities.

Instruction: We strive to be fair, compassionate, and effective teachers. We prepare classes adequately, present materials fairly, and make ourselves available to students for consultation and advice. We avoid bias and we respect diverse points of view.

Colleagues: We accept our obligations that derive from common membership in the faculty of Virginia Tech. We relate to colleagues and other university personnel in a responsible, professional, and civil manner, avoiding behaviors and actions that purposefully, consistently, and unnecessarily tend to disrupt, impede, harass, or abuse them in the performance of their assigned tasks and professional duties. We do not discriminate against colleagues, nor do we engage in romantic or sexual relationships with employees whom we are in a position to supervise or evaluate. We respect and defend free inquiry by all. In the exchange of criticisms and ideas, we show respect for the opinions of others, acknowledge significant academic or scholarly assistance, and strive to be open-minded and fair in our professional judgments. We accept our share of faculty responsibilities for the governance of Virginia Tech and take due care in the discharge of those responsibilities.

University: We seek above all to be effective in our assigned responsibilities. We give paramount importance to these responsibilities in determining the amount and character of work done outside of Virginia Tech. Although we observe the Faculty Handbook, we maintain our right to criticize and seek revision of university policy.

Community: As members of the larger community, we have the same rights and obligations as other citizens. We measure the importance of these rights and obligations in light of our responsibilities to our disciplines, to our professions, to our students, and to Virginia Tech. When we speak or act as private persons, we avoid creating the impression of speaking or acting for Virginia Tech. As citizens engaged in a profession that depends upon freedom for its welfare and integrity, we have a particular obligation to promote conditions of free inquiry and of further public understanding of academic freedom.

3.4 Promotion and Tenure

NOTE: Please see [Promotion and Tenure Page](#) on Provost's Website for information on promotion and tenure expectations that go into effect in August of 2022.

The university has a tradition of upholding academic freedom. It endorses the "1940 Statement of Principles on Academic Freedom and Tenure" of the American Association of University Professors and the Association of American Colleges (*AAUP Bulletin*, September 1970, pp. 323-326).

Freedom of expression has become a hot topic nationally for higher ed, and much has been written on the topic. Following are a number of articles, reports, rankings, etc. that were provided for the Board's previous discussions in June 2021 and April 2022.

The first four links listed below are recommended for your review prior to the Board's August 2022 retreat. Following those, there is an optional list of supplementary materials should you wish to delve further into the issue.

- In 2018, the General Assembly passed legislation regarding constitutionally protected speech at institutions of higher education: [§ 23.1-401.1. Constitutionally protected speech; policies, materials, and reports; report \(virginia.gov\)](#)
- The following link on our website provides information on VT policies that address various dimensions of freedom of speech and also an online form where people can report violations: [Speech on Campus | Virginia Tech Policies \(vt.edu\)](#); we are in compliance with Virginia's requirements (you'll also find a link to **our annual report** to the legislature at the bottom of that page).
- Virginia Tech Principles of Community - <https://www.inclusive.vt.edu/Programs/vtpoc0.html>
- Wikipedia – Chicago “principles” https://en.wikipedia.org/wiki/Chicago_principles

SUPPLEMENTARY MATERIALS

- Collegiate Times Article – Nov. 4, 2020 - [Young Americans for Freedom speak about the election and the future of Virginia Tech | Lifestyles | collegiatetimes.com](#)

HETERODOX ACADEMY

- Heterodox Academy – description of mission and advisory council - <https://heterodoxacademy.org/>
- Heterodox student survey 2019 - <https://heterodoxacademy.org/wp-content/uploads/2020/07/CES-Fall-2019.pdf>
- Heterodox student survey 2020 - <https://heterodoxacademy.org/wp-content/uploads/2021/03/Campus-Expression-Survey-Report-2020.pdf>
- Heterodox 2021 Campus Expression Report: [CES Report 2022 FINAL \(heterodoxacademy.org\)](#).

KNIGHT FOUNDATION

- Knight Foundation Report 2019 – Free Expression on College Campuses - <https://knightfoundation.org/reports/free-expression-college-campuses/>


- Knight Foundation Report 2022 – College Student Views on Free Expression and Campus Speech - <https://knightfoundation.org/reports/college-student-views-on-free-expression-and-campus-speech-2022/>

FIRE – Foundation for Individual Rights in Education

- FIRE description of the mission, history, and advisors
- <https://www.thefire.org/about-us/>
- FIRE – Spotlight on Virginia Tech - <https://www.thefire.org/schools/virginia-polytechnic-institute-and-state-university/>
- FIRE 2021 rankings: <https://rankings.thefire.org/rank/school/virginia-polytechnic-institute-and-state-university>.
- FIRE article about Virginia Tech, January 20, 2022 - <https://www.thefire.org/stopping-the-speech-police-fire-files-amicus-brief-in-challenge-to-virginia-techs-bias-policy-and-other-speech-codes/>
- FIRE – list of institutions that have endorsed the Chicago Statement (or something similar)
<https://www.thefire.org/chicago-statement-university-and-faculty-body-support/>
- FIRE – adopting the Chicago Statement
<https://www.thefire.org/get-involved/student-network/take-action/adopting-the-chicago-statement/>
- FIRE – campaign in support of University of Chicago Free Speech Statement
<https://www.thefire.org/cases/fire-launches-campaign-in-support-of-university-of-chicago-free-speech-statement/>

A photograph of a campus at dusk. In the foreground, there is a large, vibrant flower bed with many small red flowers. A paved walkway leads from the flowers towards a large, multi-story brick building in the background. The sky is a mix of deep blue and orange, suggesting sunset or sunrise. A white van is parked on a road to the right of the building. The overall scene is well-lit, with some lights visible on the building and the van.

Session II: Access and Affordability

An aerial photograph of a university campus, likely the University of Vermont, showing a mix of modern and traditional buildings, green spaces, and a large mountain range in the background. The trees are in various stages of autumn color, ranging from green to bright orange and red. A white rectangular box with a thin blue border is centered over the middle of the image, containing the text.

Part of the VT Mission
President Sands



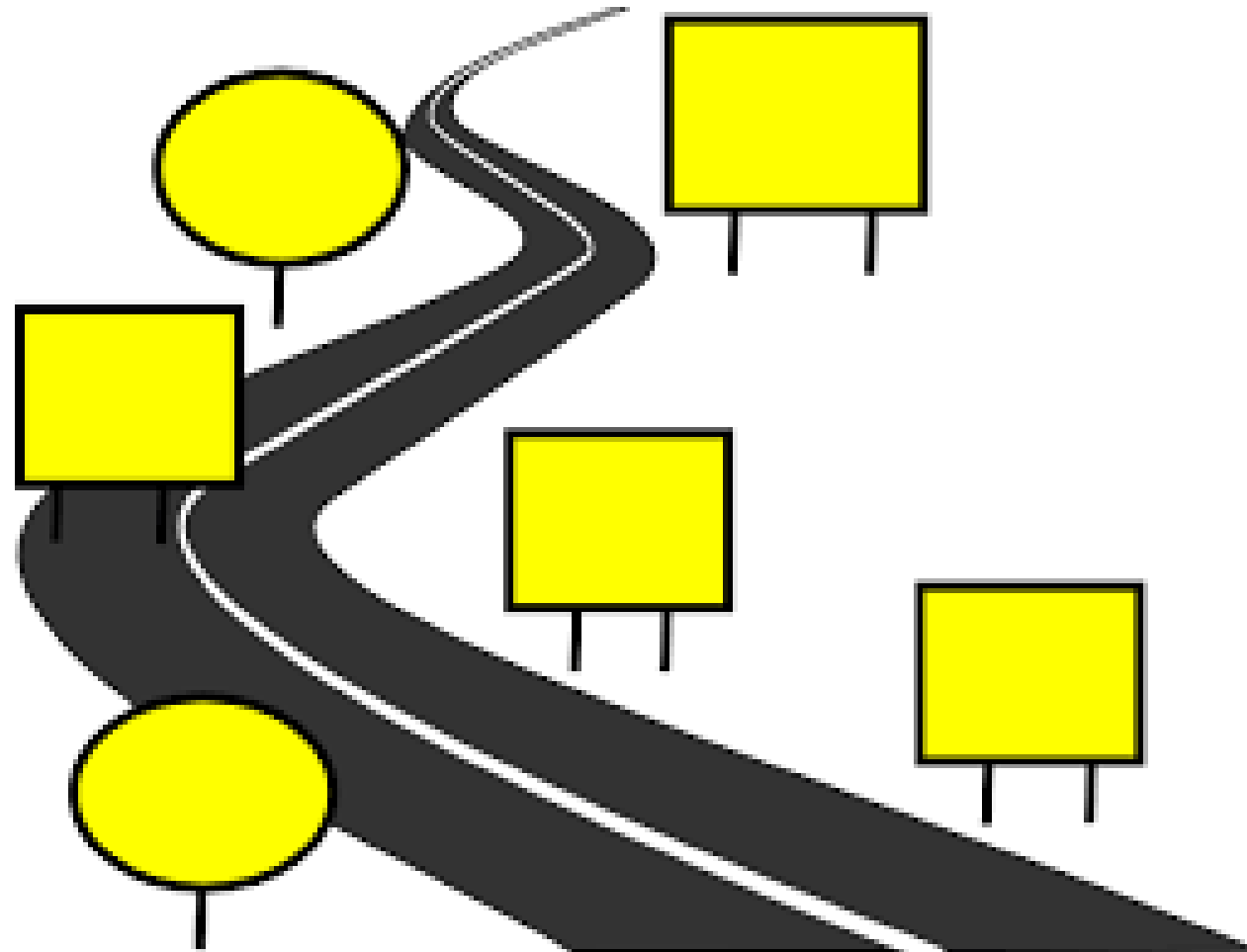
What Will We Do?

- Join the conversation
- Gather data
- Develop example goals

DO YOU KNOW?



IDEAL EXPERIENCE PATH



150
years 1872-2022



The Numbers

Luisa Havens Gerardo

Vice Provost, Enrollment Management

AN ECONOMIC IMPERATIVE

- Providing expanded access to high quality education increases a state's ability to grow and attract high-wage employers.
- There is a clear and strong correlation between the educational attainment of a state's workforce and median wages in the state.
- Workers with higher incomes contribute more through taxes over the course of their lifetimes.
- The benefits of a more educated population accrue not just to the more educated workers, but to future generations and to the broader society.



ACCESS



Nationally, undergraduate enrollment dropped 4.7 percent this spring or over 662,000 students from spring 2021.



As a result, the undergraduate student body is now 9.4 percent or nearly 1.4 million students smaller than before the pandemic.



Nationwide, FAFSA submission were down 12% compared to the prior year with the highest decline amongst high schools with high low-income and/or minority enrollment.



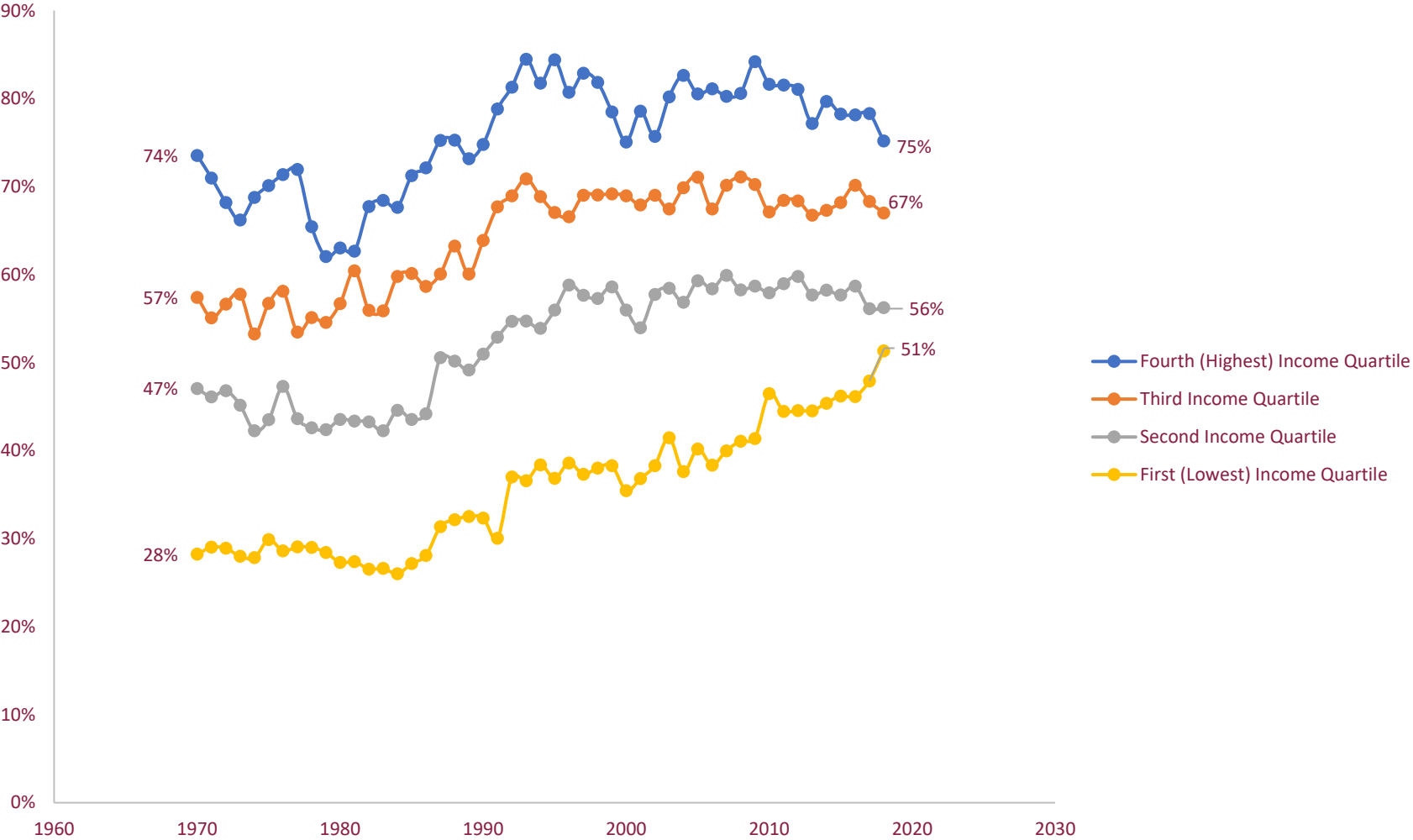
Rural schools also saw greater declines in applications than schools in urban and suburban areas.



The Common App reported the number of applicants with incomes low enough to have the fee waived, or with parents who did not attend college, were down 2% and 3% respectively.



COLLEGE ENROLLMENT RATE BY FAMILY INCOME QUARTILE FOR DEPENDENT 18-24-YEAR-OLDS



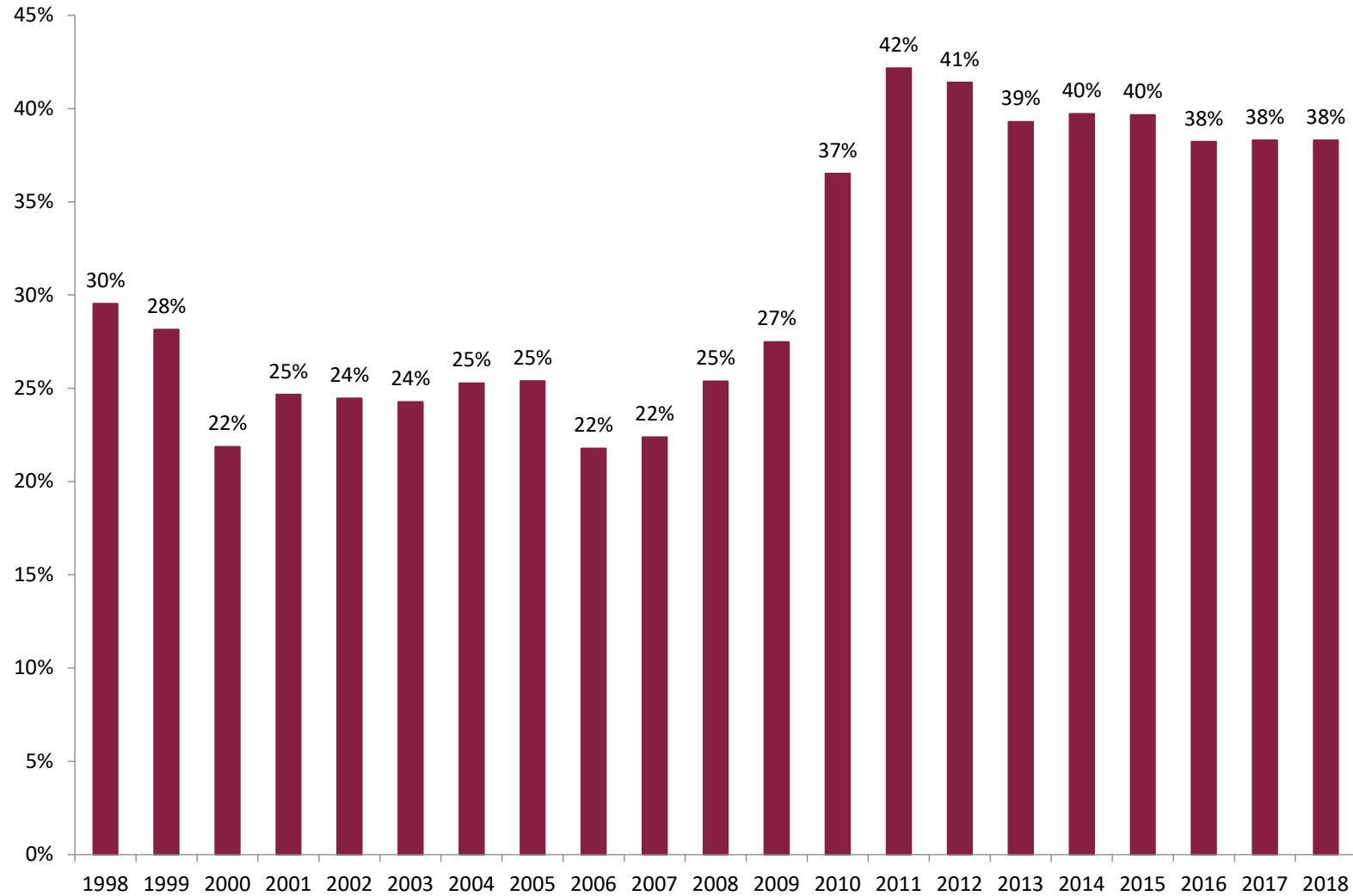
SOURCE: Calculated from October Current Population Survey File (formerly Table 14 in Census Bureau's School Enrollment Report), tabulated using the U.S. Census Bureau online data retrieval tool, DataFerrett, <https://dataferrett.census.gov/>; School Enrollment Data.



COLLEGE ENROLLMENT IN VIRGINIA, 2020

- Among students enrolled full time in Virginia postsecondary institutions 76.9% were state residents and 23.1% non-residents
- 555,755 students enrolled in Virginia colleges
- 69.0% of students enrolled in Virginia postsecondary institutions attend public schools
- Enrollment declined 3.84% between 2010 and 2020
- 56.0% of full-time students- female
- Among all Virginia residents enrolled in college, 19.8% left the state to attend college

COLLEGE ENROLLMENT RATE LOW-INCOME STUDENTS - VIRGINIA



SOURCE: Mortenson, T. (2019). *College Participation Rates for Students from Low-income Families by State and Sector: 1993 to 2018*, Washington, DC: The Pell Institute for the Study of Opportunity in Higher Education. Retrieved from www.postsecondary.org.



AFFORDABILITY



Rising college costs can make higher education seemingly unattainable for low-income students.



Low-income students are more likely to forgo higher education entirely due to perceived financial constraints.



Once enrolled in college, low-income students are more likely to leave without obtaining a degree.



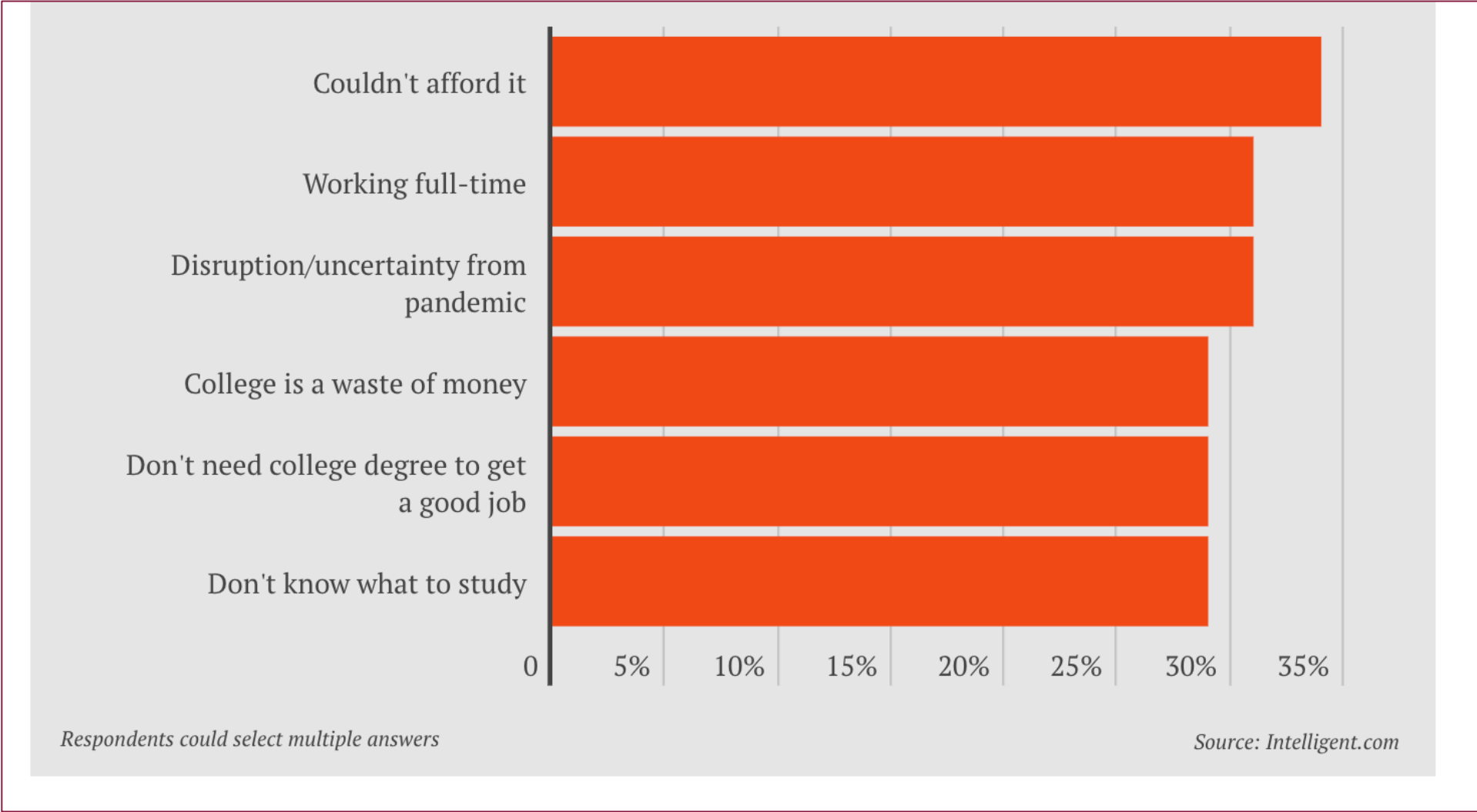
Insufficient funds to meet basic needs and the requirement to work more than part-time while in school contribute to the increased rate of attrition.



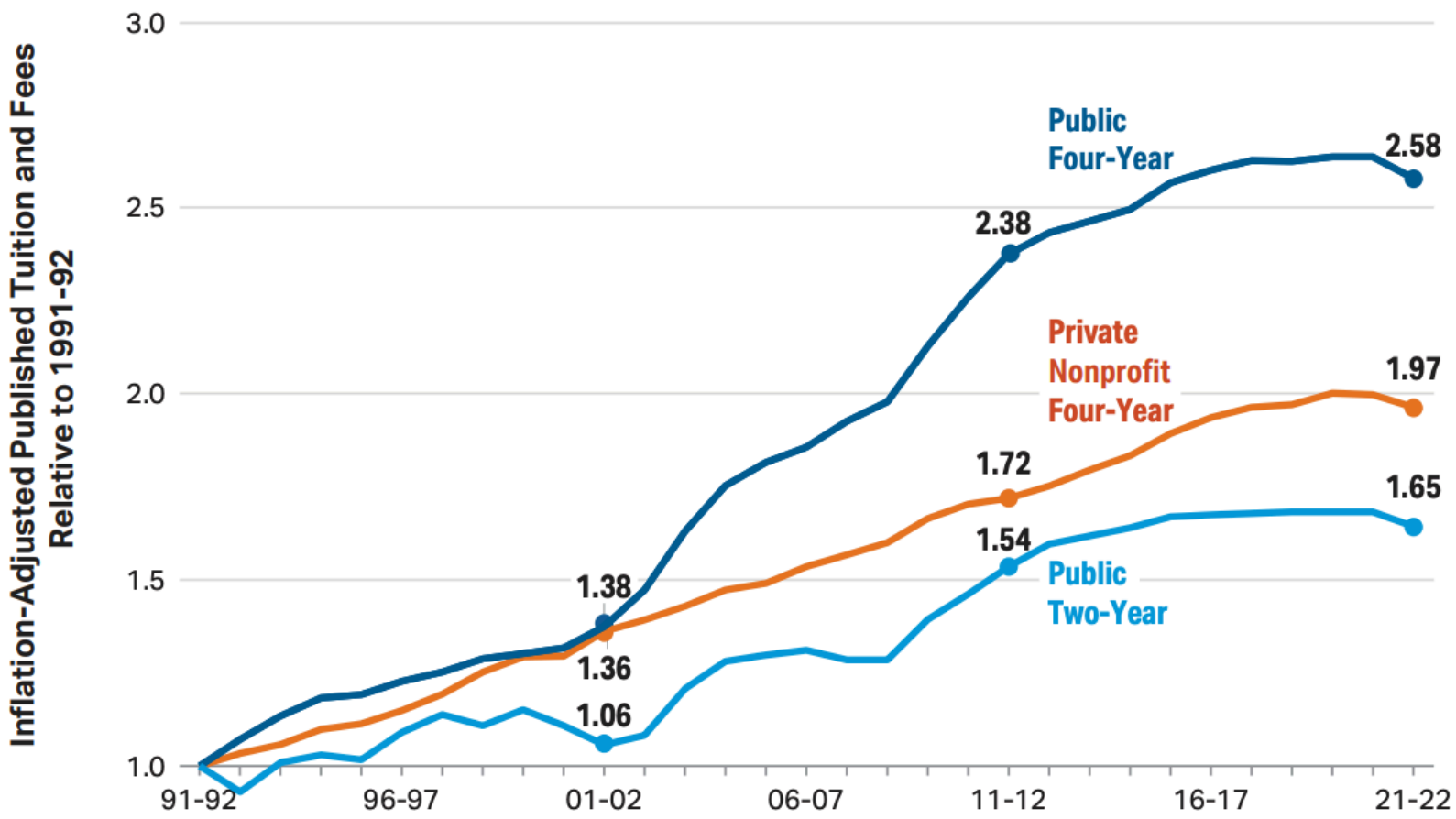
Low-income students often opt out of experiential learning opportunities (study abroad, internships, co-ops, etc.) due to the inability to forgo income to supplement their educational expenses.



REASONS WHY RECENT HIGH-SCHOOL GRADS ARE NOT ATTENDING COLLEGE (2021-22)



INFLATION-ADJUSTED PUBLISHED TUITION AND FEES 1991 TO 2021



SOURCE: College Board, Annual Survey of Colleges; NCES, IPEDS Fall Enrollment data.



AVERAGE COST OF ATTENDANCE, NET PRICE, AND UNMET NEED BY VA 4-YEAR PUBLIC INSTITUTION (2019-20)

	Average of Cost of Attendance	Average of Net Price	Average of Unmet Need
College of William and Mary	\$36,591	\$15,573	\$4,435
Virginia Military Institute	\$30,260	\$15,410	\$5,204
UVA-Wise	\$20,203	\$9,160	\$5,454
University of Virginia	\$31,505	\$17,917	\$7,390
Virginia State University	\$21,209	\$11,173	\$8,458
Virginia Tech	\$26,955	\$18,607	\$10,073
Christopher Newport University	\$29,623	\$22,333	\$10,179
Christopher Newport University	\$29,623	\$22,333	\$10,179
University of Mary Washington	\$25,104	\$18,478	\$10,262
James Madison University	\$25,580	\$19,373	\$10,436
Radford University	\$22,793	\$15,924	\$10,529
Norfolk State University	\$22,791	\$13,858	\$11,251
Longwood University	\$27,579	\$19,690	\$11,435
Old Dominion University	\$23,832	\$17,309	\$12,473
Virginia Commonwealth University	\$27,901	\$19,354	\$12,608
George Mason University	\$24,151	\$18,845	\$12,975
Overall Average	\$26,405	\$16,867	\$9,544



AVERAGE TOTAL COST, GRANT AND SCHOLARSHIP (GIFT) AID AND NET PRICE FOR FIRST-TIME, FULL-TIME, DEGREE-SEEKING UNDERGRADUATE STUDENTS PAYING IN-STATE TUITION AT VIRGINIA TECH, 2022-23 PRELIMINARY

Term	Type	Quintile	N	Avg AGI	Min AGI	Max AGI	Avg COA	Avg VT Gift Aid	Avg Net Price	Avg net price as proportion of average AGI
202209	FTIC		742				\$33,128	\$410	\$32,718	
202209	FTIC	0	669	\$29,903	\$0	\$56,107	\$33,273	\$18,871	\$14,402	48%
202209	FTIC	1	712	\$82,128	\$56,170	\$108,522	\$33,404	\$8,515	\$24,889	30%
202209	FTIC	2	720	\$133,330	\$108,762	\$159,164	\$33,307	\$2,705	\$30,602	23%
202209	FTIC	3	757	\$191,631	\$159,355	\$229,835	\$33,333	\$1,688	\$31,645	17%
202209	FTIC	4	803	\$395,648	\$229,902	\$8,029,710	\$33,174	\$1,369	\$31,804	8%
202209	Transfer		276				\$33,106	\$265	\$32,841	
202209	Transfer	0	182	\$24,020	\$0	\$56,000	\$32,527	\$12,122	\$20,405	85%
202209	Transfer	1	139	\$79,533	\$56,791	\$108,403	\$32,375	\$6,199	\$26,176	33%
202209	Transfer	2	131	\$132,130	\$108,753	\$159,176	\$32,659	\$1,566	\$31,094	24%
202209	Transfer	3	94	\$189,041	\$160,253	\$228,331	\$32,594	\$598	\$31,996	17%
202209	Transfer	4	48	\$308,954	\$229,943	\$894,044	\$32,648	\$359	\$32,289	10%

Source: VT's Office of Analytics & Institutional Effectiveness, Aug 1, 2022





Example Initiatives

- By 20XX, close the affordability gap of entering in-state low-income students by increasing the need met with gift-aid by XX% each year
- Decrease the net price for in-state students in the entering undergraduate cohort with family adjusted gross incomes of \$48k and below to \$9,500 a year by 2028.



Breakout:

- When you consider Access and Affordability, what is most important for Virginia Tech?
- How would you state this as an initiative?
- What metrics highlight our success?




Breakout Debrief

WHAT ARE YOU THINKING?

- What did you hear that surprised you?
- What did you hear that is most important?
- What unanswered questions do you still have?





Next Steps

President Sands

Supplemental slides

MAXIMUM PELL GRANT AS A PERCENTAGE OF NATIONAL AVERAGE COST OF ATTENDANCE, IN 2021 DOLLARS, 2001-02 TO 2021-22, SELECTED YEARS

	Public Four-Year		Private Nonprofit Four-Year	
	In-State Tuition and Fees	Tuition and Fees and Room and Board	Tuition and Fees	Tuition and Fees and Room and Board
2001-02	99%	42%	22%	16%
2006-07	70%	32%	18%	13%
2011-12	67%	32%	20%	15%
2016-17	60%	29%	17%	13%
2021-22	60%	29%	17%	13%

In 2021-22

Max Pell = \$6,495

Average Pell = \$4,220

Average Pell at VT = \$4,923

SOURCE: College Board, *Trends in College Pricing 2021*, Table CP-2 online. U.S. Department of Education, *Federal Pell Grant Program End-of-Year Report*, 2001-02 through 2017-18; U.S. Department of Education, Federal Student Aid Data Center, Title IV Program Volume Reports and Aid Recipients Summary; calculations by the author.



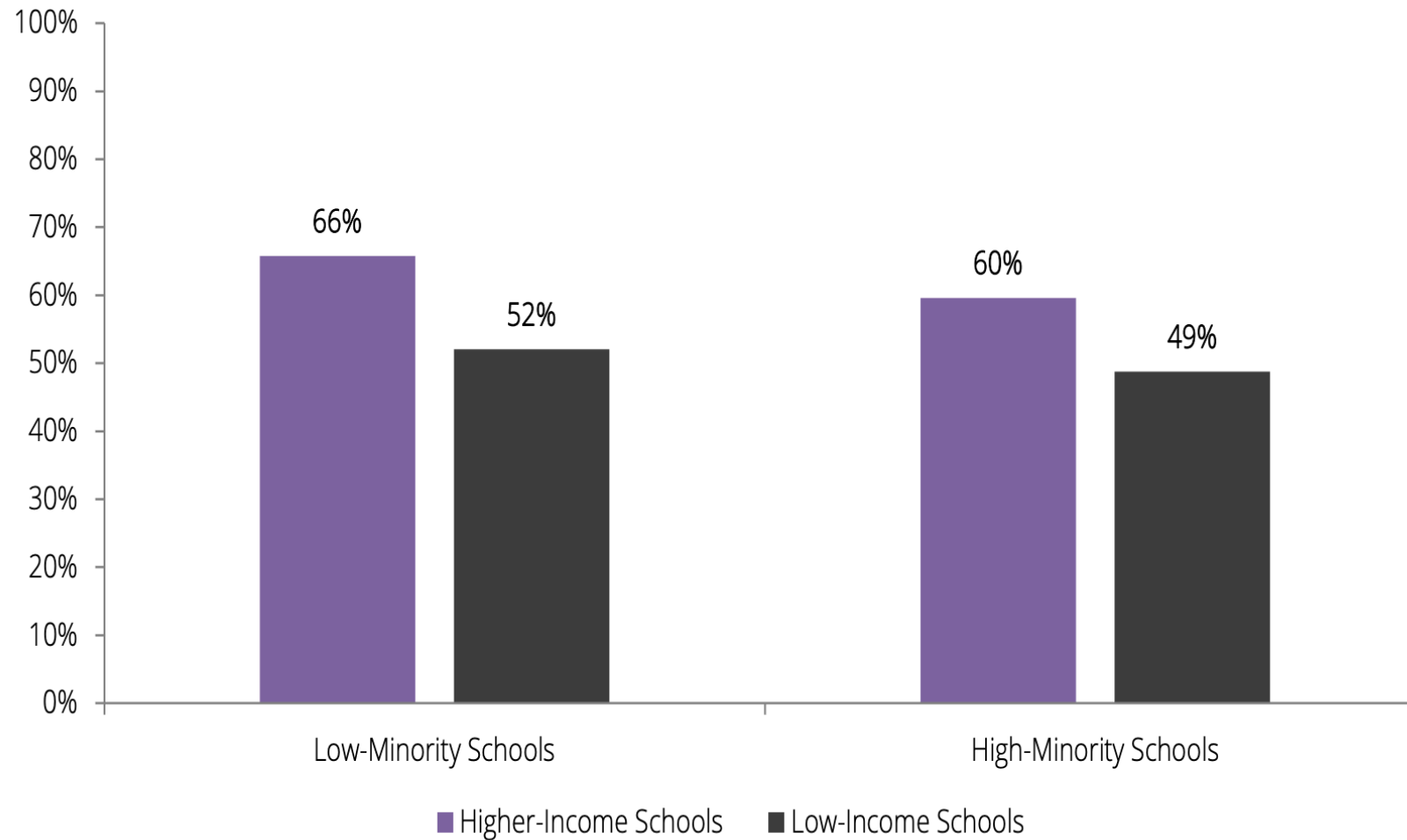
Maximum Pell grant as a percentage of national average cost of attendance, in 2021 dollars, 2001-02 to 2021-22, selected years

	Public Four-Year		Private Nonprofit Four-Year	
	In-State Tuition and Fees	Tuition and Fees and Room and Board	Tuition and Fees	Tuition and Fees and Room and Board
2001-02	99%	42%	22%	16%
2006-07	70%	32%	18%	13%
2011-12	67%	32%	20%	15%
2016-17	60% VT	29% VT	17%	13%
2021-22	60% 35%	29% 17%	17%	13%

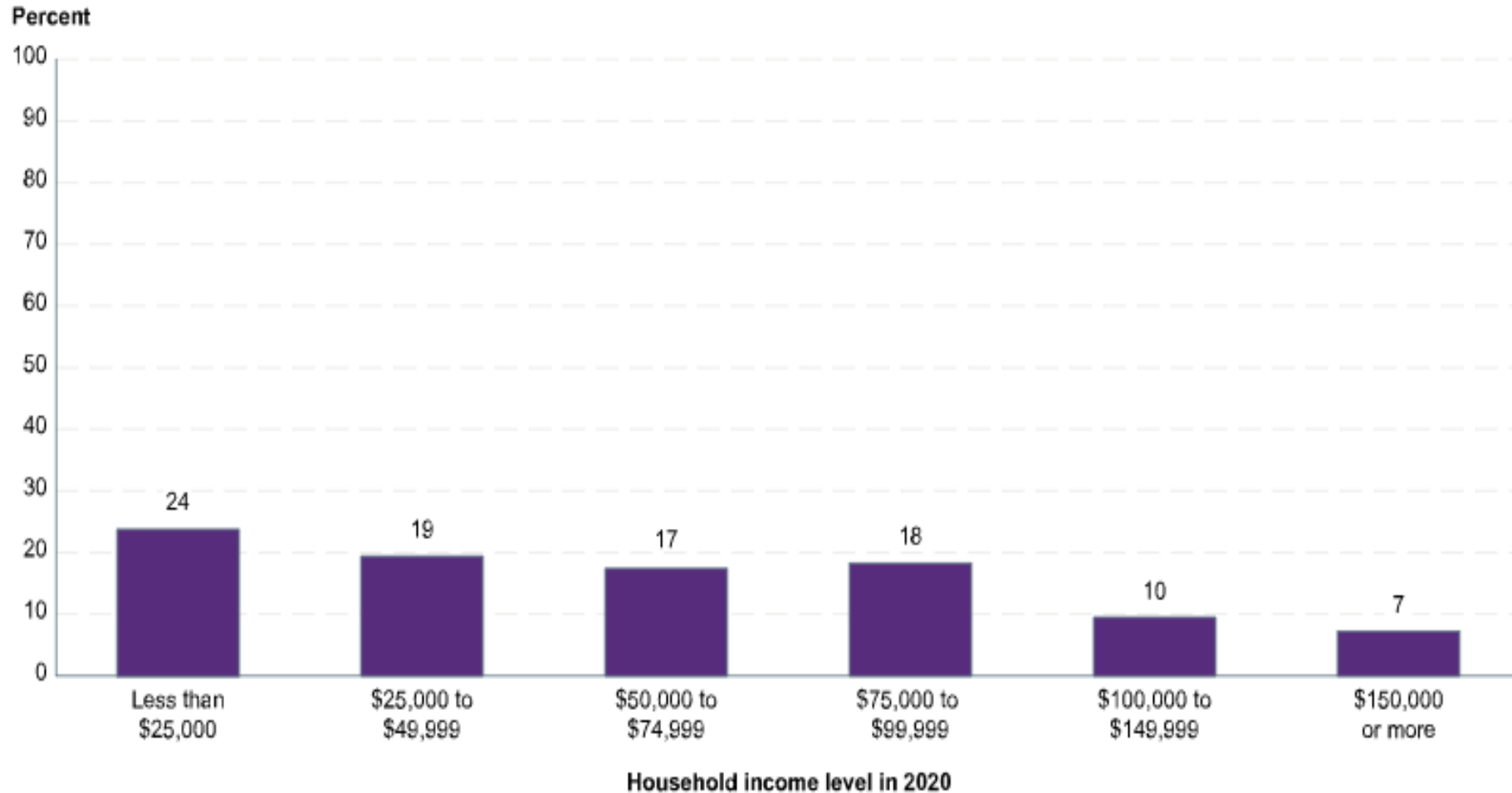
In 2021-22-- Max Pell= \$6,495 Average Pell=\$4,220 Average Pell at VT= \$4,923

SOURCE: College Board, *Trends in College Pricing 2021*, Table CP-2 online. U.S. Department of Education, *Federal Pell Grant Program End-of-Year Report*, 2001-02 through 2017-18; U.S. Department of Education, Federal Student Aid Data Center, Title IV Program Volume Reports and Aid Recipients Summary; calculations by the author.

College enrollment rates in the first Fall after high school graduation, Class of 2020, by income and minority levels



Percentage of adults 18 years and over who reported all plans to take classes in fall 2022 have been cancelled for at least one household member; by household income



SOURCE: U.S. Department of Commerce, Census Bureau, Household Pulse Survey, August 18 to August 30, 2021. See *Digest of Education Statistics 2021*, table 302.80.

Percentage of 2009 ninth-grade students who believed in 2012 that their family could afford to send them to college?

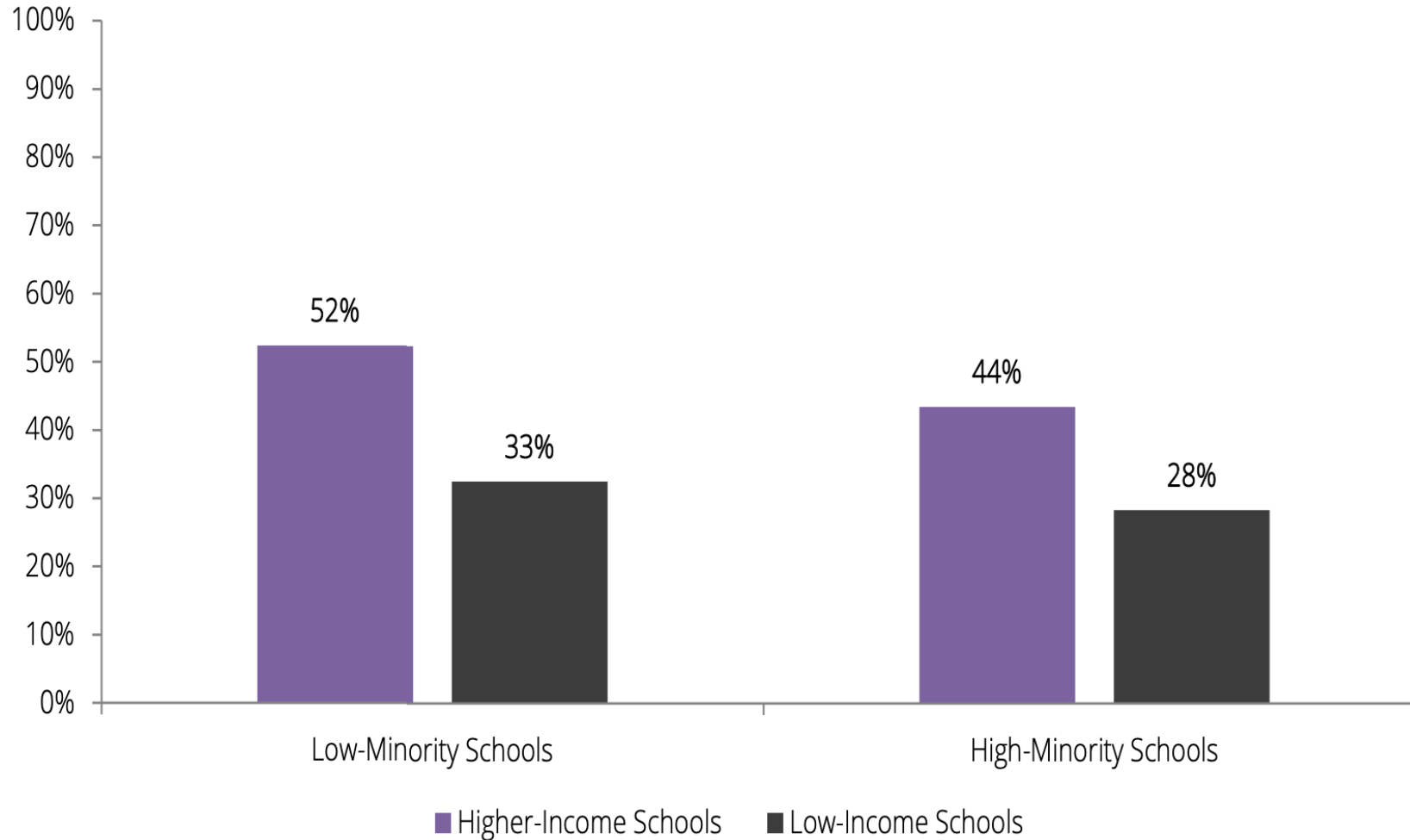
68%- YES

32%- NO

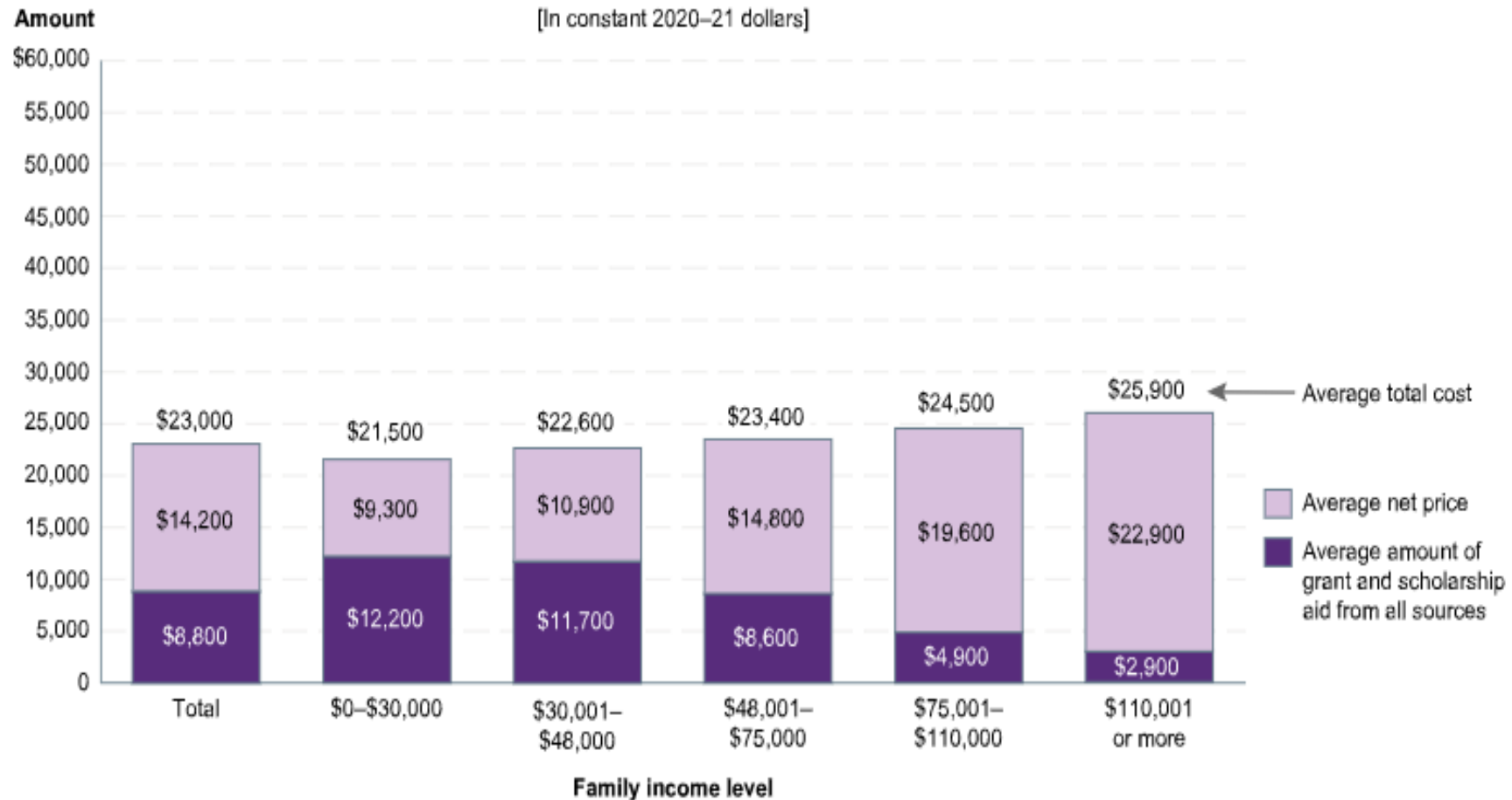
Percentage of 2009 ninth-grade students who were enrolled in college or employed in 2016, by views of college affordability in 2012

	Enrolled in college	Employed only	Not enrolled or employed
Family can afford to send student to college			
No	37.7	42.7	19.6
Yes	58.1	32.0	9.9

College Completion Rates Six Years after High School Graduation, Class of 2014, by Income and Minority Levels



Average total cost, grant and scholarship aid and net price for first-time, full-time degree-seeking undergraduate students paying in-state tuition and awarded Title IV financial aid at public 4-year institutions, by family income level-AY 2019-20



SOURCE: U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Winter 2020–21, Student Financial Aid component. See *Digest of Education Statistics 2021*, table 331.30.

Glossary of Financial Aid and Related Terms

Access:

In education, the term access typically refers to the ways in which educational institutions and policies strive to ensure that students have equal and equitable opportunities to take full advantage of their education. Increasing access generally requires schools to provide relevant services or remove any actual or potential barriers that might prevent some students from equitable participation. Source: <https://www.edglossary.org/>

Affordability:

Affordability can be defined as the ability of students/families to purchase needed/appropriate education and have sufficient resources to enjoy at least the minimum consumption of other essential goods and services. Source: <https://www.ecs.org/>

AGI (Adjusted Gross Income):

An individual's adjusted gross income is calculated by the Internal Revenue Service (IRS) through the tax-filing process. The rules for calculating AGI are set by the IRS, not the U.S. Department of Education or by educational institutions.

COA (Cost of Attendance):

The cost in dollars, for a period of enrollment (i.e. academic year= fall/spring semester). The COA for a student is an estimate of that student's educational expenses for the period of enrollment, including a budget for tuition & fees, room & board, books & supplies, transportation, and personal expenses. Determining a student's COA is the first step in establishing a student's federal student aid package. It sets the limit on the total federal student aid a student may receive. Virginia Tech utilizes an estimated COA for students based on the student level (undergraduate, graduate, etc.); college (for those with program fees); on- or off-campus; and, tuition rate (in-or out-of-state).

EFC (Expected Family Contribution):

The EFC was first used in 1972 to determine a student's eligibility for the Federal Pell Grant and, at the time, the EFC was the amount a student and their family could reasonably expect to contribute toward the student's postsecondary education costs for the academic year. The EFC is determined by the student's completion of the Free Application for Federal Student Aid (FAFSA). Since college costs have increased significantly, "expected contribution" is no longer representative of a student's true out-of-pocket contribution (including loans) but rather an "index" to assess a student's eligibility for specific federal and state financial aid programs. With the passing of the FAFSA Simplification Act as a part of the Consolidation Appropriations Act, 2020, the federal financial aid methodology for determining eligibility for federal aid is changing for the 2024-2025 academic year. As a part of that change, the EFC will be replaced with the "Student Aid Index" or SAI. It is expected that the move to the Student Aid Index will increase the Pell Grant-eligible population. In a test of almost 10,000 undergraduate FAFSA records, VT found that the Pell Grant-eligible student population increased 41% based on current guidelines for the tested population.

FAFSA (Free Application for Federal Student Aid):

The FAFSA is the free application that students and their families complete and submit to the U.S. Department of Education to be considered for federal and state financial aid. Changes to the financial aid landscape, the economy, and admission processes have greatly affected the FAFSA volume at Virginia Tech. To date, Virginia Tech has loaded over 81,400 FAFSA transactions for 50,665 unique students, and VT will continue to load FAFSAs for the 2022-2023 academic year through June 2023. Comparatively, the total number of FAFSAs received for the 2022-2023 academic year is more than double the number of total FAFSAs received at the end of the 2012-2013 academic year (25,206).

Federal Pell Grant:

A federal grant provided by the federal government to undergraduate students who demonstrate exceptional financial need and have an Expected Family Contribution below a

certain threshold established by the federal government. The Pell Grant award amount is prorated based on enrollment status and the student's EFC from the FAFSA. The amount of the Federal Pell Grant is established by Congress during the federal budget process. For the 2022-2023 academic year, the maximum Pell Grant amount is \$6,895, and the average award at VT is \$5,277.

Financial Need:

Financial Need is determined by taking the student's Cost of Attendance and subtracting the student's EFC, as determined by the FAFSA. Financial need determines a student's eligibility for "need-based" programs, including scholarships, federal grants and work-study, state aid, and federal subsidized Direct loans.

Gift Aid:

Financial Assistance that is not expected to be repaid (i.e. "free money"), such as scholarships and grants.

Net Price:

Net price is defined as the COA minus the average annual grant and scholarship aid that a student receives. All Title IV-eligible (i.e. federal student aid) institutions report a net price that is based on the full-time, first-time degree seeking undergraduate students.

Additionally, all institutions that participate in Title IV programs must have a net price calculator on its website.

Subsidized Federal Direct Loan:

The subsidized federal direct loan is a loan that students borrow in the student's name on which interest does not accrue (i.e. paid by the U.S. Department of Education) while the student is enrolled at least half-time and during the student's grace period (for the 6 months after the student is less than half-time—usually graduation). Students must have financial need, as defined by the FAFSA. Congress regulates the amount the student may borrow at an annual and lifetime level. The annual amount is determined by the student's grade level:

- Freshmen up to \$3,500;
- Sophomores up to \$4,500;
- Juniors and Seniors up to \$5,500.

The lifetime (aggregate) limit for subsidized loans is \$23,000.

Unsubsidized Federal Direct Loan:

The unsubsidized federal direct loan is a loan that students borrow in the student's name on which interest accrues beginning at the point of disbursement. Students have the option to pay the interest while they are in-school or let it accrue to the principal amount of the loan and then capitalize at the end of the student's 6-month grace period. The unsubsidized loan is not need-based; therefore, any student who files the FAFSA and is eligible for federal student aid may borrow an unsubsidized loan. As with the subsidized loan, the annual and lifetime limits are set by Congress. Students may borrow as a:

- Freshman up to \$5,500 minus what was borrowed in a subsidized loan;
- Sophomore up to \$6,500 minus the subsidized loan;
- Juniors and Seniors \$7,500 minus the subsidized loan.

Undergraduate students may borrow a lifetime limit of \$31,000 minus their lifetime subsidized loans. Note: students whose parents are denied a federal parent loan (i.e. PLUS loan) may borrow an additional \$4,000-\$5,000—dependent upon grade level—and these amounts are not counted toward the \$31,000 lifetime limit.

Underserved Students:

Students who do not receive equitable resources as other students in the academic pipeline. This designation is for students who meet the following criteria: first generation, veterans, or low income (Pell-eligible) students.

Underrepresented Students

Underrepresented Minority include students who identify in the following groups: African American or Black; Hispanic or Latin(x); Native Hawaiian or Pacific Islander; Native American

or American Indian; and, Two or more races when at least one race is from the preceding racial and ethnic categories listed.

Unmet need:

The student's Cost of Attendance, minus their Expected Family Contribution or Family Financial Responsibility (if applicable), less any need-based aid received, such as Gift Aid, Federal Work-Study, or Federal Direct Subsidized Loans.

Virginia Student Financial Assistance Programs (VSFAP):

The two state grant programs combined are known as the VSFAP. The VSFAP is comprised of the Virginia Guaranteed Assistance Program (VGAP) and the Commonwealth Award. Eligibility for state grants is currently determined by a student's remaining need (i.e. the COA- EFC – any gift aid known at the time of initial packaging). Institutions are required to award a higher amount to students in the VGAP program and must provide an increased award to students as they progress academic years (e.g. sophomores must have a higher award than freshmen, etc.). Students must only receive one VGAP award per grade level; no more than four years of VGAP; and, maintain full-time enrollment each semester, a 2.0 or better GPA, and complete 30 credit hours per academic year to continue to receive the VGAP. If the student meets eligibility via remaining need but is not eligible for the VGAP award, the student receives the Commonwealth Award. The Commonwealth Award requires that a student be at least half-time and currently has no eligibility time limit (e.g. the 4-year limit for VGAP eligibility).

Do Financial Aid Policies Promote Equality or Close Equity Gaps?

Over the past 20 years, governmental support of public four-year institutions declined by an average of about \$2,700 per full-time equivalent student, corrected for inflation.¹ At the same time, tuition and fees increased by \$4,300 per student, raising tuition costs from 21% of a median family income to 33%.² States and higher education institutions provide some relief to students in the form of grants. However, a large number of students—typically historically underserved populations, including low-income and first-generation students and students of color—find themselves facing insurmountable college costs. Some students turn to loans, which can result in large debt, while others who are financially risk averse may choose not to attend.

Examination of students' education costs and funding resources across populations is imperative for institutions to realize where barriers to access occur and to close financial equity gaps. While *equality* is fairness in the implementation of practices, policies and allocation of resources, *equity* is fairness in outcomes, achieved through differentiated practices and policies (i.e., equality is treating everyone the same and equity is ensuring everyone succeeds).

The American Association of State Colleges and Universities (AASCU) has been working closely with a group of five institutions—Austin Peay State University (Tenn.), Bowie State University (Md.), California State University-San Bernardino, Lehman College in The City University of New York, and Northwest Missouri State University—to refine and validate the institutional transformation process at the heart of its student success strategy. The effort is supported by the Bill & Melinda Gates Foundation³ and aligns with AASCU's strategic goals to assist its members in achieving equitable student outcomes across race/ethnicity, income and first-generation status.⁴

This analysis uses data reflecting 43,000 dependent students collected from the five institutions to explore inflation-adjusted cost and aid data for the first year of attendance for students entering between 2014–15 and 2018–19.⁵

This brief addresses the following questions regarding participating institutions:

- 1 How do grant awards vary across student populations?
- 2 How does the education funding gap vary across student populations?
- 3 Do grants eliminate cost barriers and close equity gaps?
- 4 How do students use loans?

The findings reveal patterns in students' costs and funding resources that, when examined in tandem with institutional policies and practices, can help colleges and universities understand what actions may result in, and sometimes perpetuate, inequities for some students.

While *equality* is fairness in the implementation of practices, policies and allocation of resources, *equity* is fairness in outcomes, achieved through differentiated practices and policies (i.e., equality is treating everyone the same and equity is ensuring everyone succeeds).

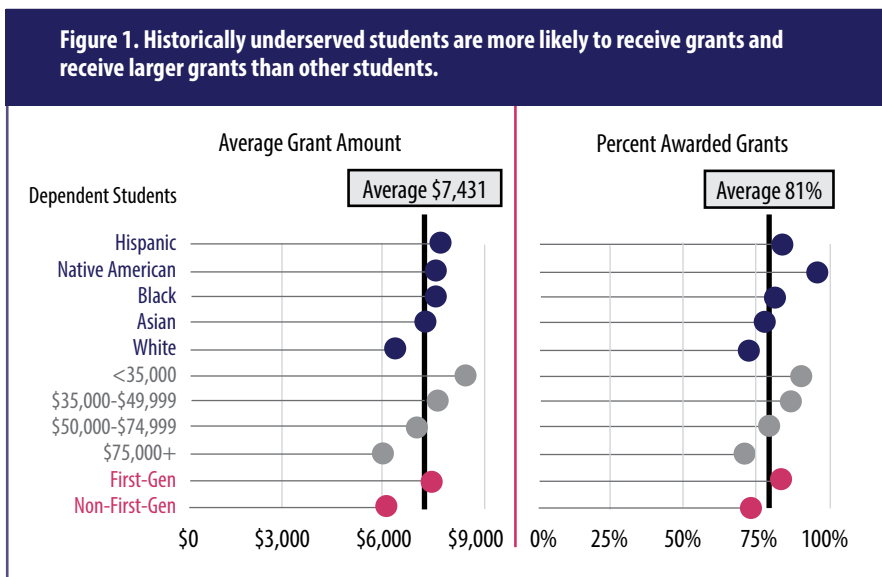
1 How Do Grant Awards Vary Across Student Populations?

Since grants do not have to be repaid, they are an important type of aid for historically underserved students. Federal and state grants are largely need-based and a function of income. While the federal grant formula is consistent across states and institutions, state grants vary due to budgets, policies and resources. Institutions award grants based on need and merit, and amounts vary considerably due to budgeting and availability of funds such as endowments. Across the five institutions, 8 in 10 students receive grants averaging \$7,431 (Figure 1); the number of recipients and amounts vary across student populations.

Income. The largest variability in grant aid is across income brackets. Although 9 in 10 students from the lowest-income families receive grants averaging \$8,600, 1 in 10 do not receive grant aid, including Pell Grants. Notably, 7 in 10 students from the highest-income families also receive grants, albeit smaller awards than their low-income counterparts and averaging just over \$6,000.

Race/ethnicity. Black, Native American and Hispanic students are more likely to receive grants than white students, and the amount awarded is higher. Nearly all, 96%, of Native Americans receive grants—the largest share by race/ethnicity—and Hispanic grant recipients receive the largest amount, averaging \$7,958.

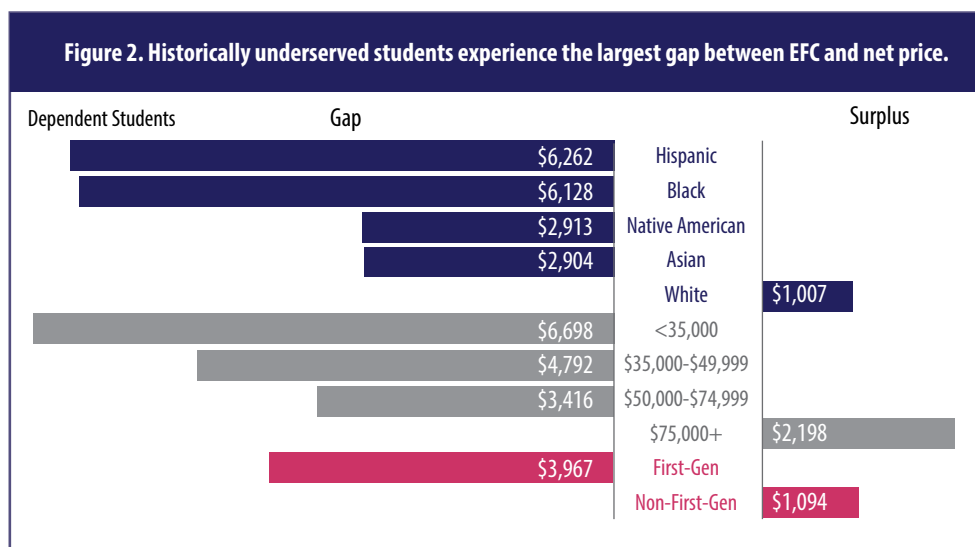
First-generation status. First-generation students are more likely than their counterparts to receive grants, 84% compared to 73%, respectively, and to receive larger grants, \$7,700 versus \$6,200, respectively.



2 How Does the Education Funding Gap Vary Across Student Populations?

Net price is a common measure of the amount of funds a student needs to pay for education. It is defined as the cost of attendance (i.e., tuition, fees, and room and board) minus all grant aid. Net price is specific to each student's financial circumstances and the institution's financial aid policies. Expected Family Contribution (EFC) is a federally defined measure of how much a student and family can pay for education based on income and assets. When a student's financial resources, or EFC, do not meet the net price, the student needs to secure additional funds to close this education funding gap, typically from loans and/or earnings from work-study or non-aid employment.⁶ Bridging a large funding gap can lead to crippling debt and/or working many hours, which can detract from studies.

Grant awards bring the average net price across the five institutions analyzed to \$11,978 (Figure 2). With an average EFC of \$9,093, the average education funding



gap is \$2,885. Students who have been historically underserved continue to experience the largest financial inequities. For example, the funding gap for Black and Hispanic students is \$6,128 and \$6,262, a significant disadvantage when compared to white students' average funding surplus of more than \$1,000. Students in the lowest-income group have the largest funding gap, \$6,698, while students in the highest-income group have a \$2,198 surplus. First-generation students experience funding gaps of \$3,967, as compared with the \$1,094 surplus of their non-first-generation peers.

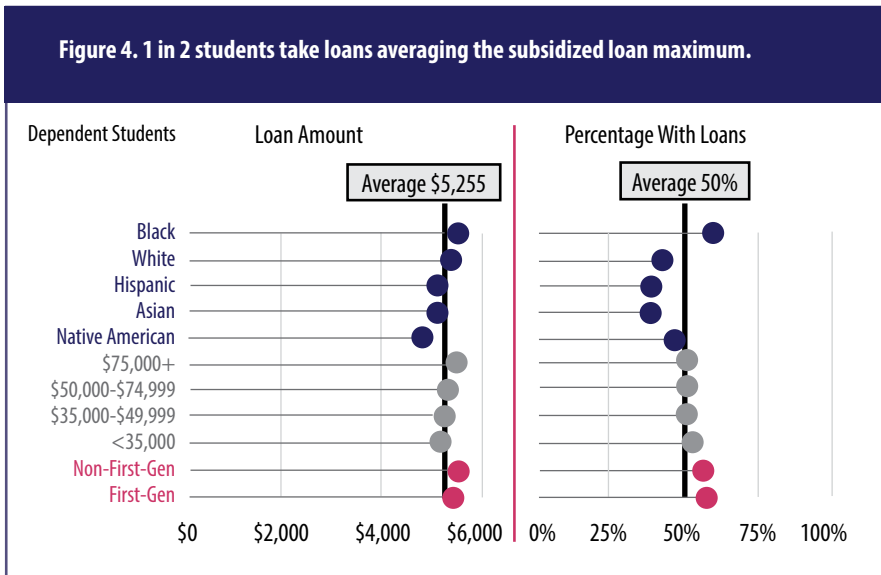
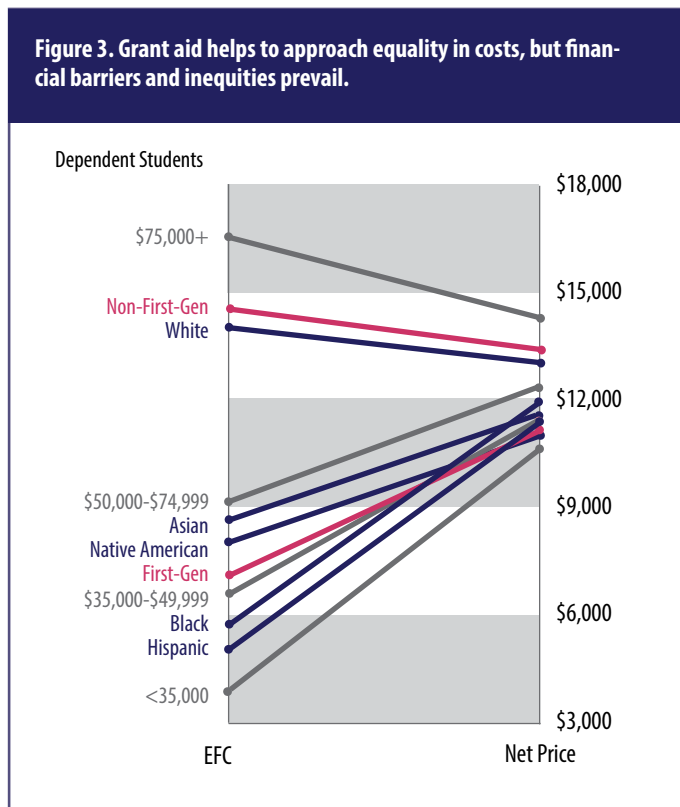
3 Do Grants Eliminate Cost Barriers and Close Equity Gaps?

Grant awards reduce education costs and appear to equalize net price across student groups (Figure 3). However, Hispanic, Black, Native American, low-income, and first-generation students begin at a greater disadvantage with the least financial resources. Although grants are awarded with more frequency and in larger amounts to these students, the amounts are not enough to close the education funding gaps experienced by these students, perpetuating the inequities that already exist. Institutions prioritizing financial equity help their students access financial resources that eliminate this funding gap without resulting in large and uneven debt across populations.

4 How Do Students Use Loans?

Students with funding gaps turn to loans to supplement their resources, but this comes with risks. "In 2019, the total amount of student debt owed surpassed \$1.5 trillion," becoming "the largest source of non-mortgage debt," stated the Aspen Institute in a February 2020 report, *Making the Case: Solving the Student Debt Crisis*. This debt causes "undue harm" to individuals' and households' financial security throughout the U.S., "with disproportionate impacts on both low- and moderate-income households and communities of color."⁷

One-half of students take student loans, averaging \$5,255 (Figure 4). Students who borrow appear to take loans near the maximum allowable for one year—\$5,500 for freshmen (including both subsidized and unsubsidized loans) and \$7,500 for juniors and seniors (where \$5,500 is the maximum subsidized loan amount). Notably, students with more resources often take loans, while some students with limited resources do not.



Race/ethnicity. The largest differences in loan usage occur across race/ethnicity. Black and Hispanic students have similarly large funding gaps but make use of loans differently. Black students take loans at much higher rates and in larger amounts than other students: 64% of Black students take loans, and these loans average \$5,572. In contrast, only 41% of Hispanic students take loans, which average slightly less at \$5,111. This is consistent with research that shows relatively large shares of some populations, including Hispanics, are debt averse due to cultural or familial perspectives.⁸ White students are less likely than average to take loans—perhaps because, on average, EFC covers net price—but when they do, the loan is slightly larger than average.

Income. Across income, loan usage is similar. Of students from the highest-income families—who, on average, have a funding surplus—51% take loans in amounts slightly above the average of \$5,518. A similar share of students from the lowest-income families—with a \$6,700 funding gap—take loans at a slightly smaller amount, \$5,096.

First-generation status. Being first in the family to attend college does not appear to result in notable variance in loan use.

Conclusion: Significance and Application

This analysis reveals patterns in students' costs and funding resources. Grant aid in its current application begins to *equalize* out-of-pocket costs across student groups, but not all students have the resources to pay the remaining gap, resulting in *inequities*. Loans are used by some to cover their funding gap, but others are debt averse.

In addition, the coronavirus pandemic is dramatically affecting and will continue to impact the U.S. economy and higher education, increasing the number of students needing more aid. At the same time, institutions face potential declining enrollments, fee discounts and reimbursements, decreasing endowment value, and state disinvestment that, all told, impact how they will provide financial aid to students in the future. Exploring patterns in student costs and funding resources while reviewing institutional policies and practices can help institutions strategize for how to support students with the greatest financial disadvantages.

Questions to Consider

Notable patterns highlighted in this analysis are listed below for institutions to consider along with targeted questions about practice and policy. Examining these will help institutions defy myths, support tough cross-campus conversations about current practices that perpetuate inequities, and design innovative approaches that broaden access to education for all students.

1 in 10 students from the lowest-income families do not receive any grants, including Pell Grants.

Do our students have access to information about financial aid? How are students made aware of available scholarships and other financial aid? Have all students applied for financial aid—particularly those from the lowest-income and historically underserved populations? If not, why?

7 in 10 students from the highest-income families receive grants.

Are our financial aid policies intended to achieve financial equity rather than cost equality? Who are the high-income students that receive large grants? Are their grants awarded within the confines of policy? Do our policies need to be reviewed to take equity into account or to emphasize it further?

The funding gap—in relation to the cost of tuition, fees, and room and board—is nearly \$7,000 for those from the lowest-income families, or 1 in 5 students.

What other financial needs are our students experiencing, such as for books and supplies; childcare; transportation; and, for those living off campus, housing or food? How can our practices or policies address these needs?

1 in 2 students take loans, and the average loan approaches the allowable maximum.

How do cumulative loan amounts compare with graduation rates across student groups? Are many students taking large loans and not completing, and, thus, becoming saddled with large debt without the advantage of a degree? Do completers face large debt upon graduation? Are students completing as quickly as possible to contain debt levels?

1 in 2 students from high-income families take loans.

Why are students who appear to have a funding surplus taking loans averaging more than the subsidized loan maximum of \$5,500 per year? What additional data can be gathered to explore the details of students' finances? How can we assist these students?

60% of students attending public four-year colleges and universities work while enrolled.⁹

To what extent do our historically underserved students mitigate their funding gap by working, which causes them to attend part time? Do policies exclude part-time students from participating in financial aid programs and possibly perpetuate financial inequities? Are students attending part time and working because they do not know about financial aid options? To what extent is our institution engaging local employers and alumni for part-time employment opportunities?

Historically underserved students are more likely to experience financial disruptions due to the effects of the COVID-19 pandemic.¹⁰

How can we gather data about student experiences and financial needs during the pandemic, especially for those from historically underserved groups? How can we offer assistance, particularly for students that begin college at a greater financial disadvantage?

Methodology and Terms

Adjustments for inflation. Income, cost and aid data were adjusted to 2018 dollars.

Computation of averages. The five institutions vary in size; as such, simple averages were computed across the institutions so that one institution does not weigh more or less than the others.

Cost of attendance. Sum of tuition and fees charges plus room and board charges. Room and board charges for students living off campus were estimated by the institution. All institutions were not able to provide data regarding books, supplies and other costs accurately and, as such, were not included in the cost of attendance computation. Lehman College is largely a commuter campus. In order to account for living costs while attending Lehman, room and board costs were imputed based on the U.S. Department of Education published room and board data.

Dependency status. Given that financial aid policies and aid computations differ for dependent and independent students, analysis was conducted separately for the two groups. The analysis herein reflects only dependent students; data for independent students can be found here: <http://bit.ly/AASCU-DB1-Independent>. About 30% of students across the five pilot cohort institutions were reported as independent.

Income. Each student's permanent address was geocoded to U.S. Census Bureau block/tract data and merged to the bureau's American Community Survey data to capture estimated median household income.

Native American. The Native American category includes students identifying as American Indian and Alaska Native.

Endnotes

- 1 The sum of federal, state and local appropriations.
- 2 ASA Research analysis of *Finance Survey*, U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), [https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=datedesc&surveyComponents=Finance%20\(F\)](https://nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=datedesc&surveyComponents=Finance%20(F)) and "Table H-5. Race and Hispanic Origin of Householder – Households by Median and Mean Income: 1967 to 2018." *Historical Income Tables: Households*, U.S. Census Bureau, <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-income-households.html>.
- 3 The findings and conclusions contained within are those of the authors and do not necessarily reflect positions or policies of the foundation.
- 4 "Strategic Directions and Goals: FY 2020–2025," American Association of State Colleges and Universities, July 9, 2020, <https://www.aascu.org/strategic-plan/StrategicDirections/>.
- 5 With the exception of Lehman College; cohorts 2014–2016 were included for Lehman College.
- 6 An average of 2% of dependent students and 1% of independent students received work-study funds.
- 7 Kiese Hansen and Tim Shaw, "Making the Case: The Student Debt Crisis," The Aspen Institute, February 2020, <https://assets.aspeninstitute.org/content/uploads/2020/03/SolvingStudentDebtCrisis.pdf?ga=2.208465872.334434592.1592500541-1418378710.1592500541>.
- 8 Research also confirms that Asian students are debt averse: Alisa F. Cunningham and Deborah A. Santiago, "Student Aversion to Borrowing: Who Borrows and Who Doesn't," Institute for Higher Education Policy and Excelencia in Education, December 2008, <https://files.eric.ed.gov/fulltext/ED503684.pdf>.
- 9 ASA Research analysis of *National Postsecondary Student Aid Study: 2016 Undergraduates*, U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, <https://nces.ed.gov/datalab/index.aspx>.
- 10 Doug Lederman, "Low-Income Students Top Presidents' COVID-19 Worry List." *Inside Higher Ed*, April 27, 2020, <https://www.insidehighered.com/news/survey/presidents-biggest-covid-19-worries-low-income-students-and-colleges-financial-strain>.



About the American Association of State Colleges and Universities

The American Association of State Colleges and Universities (AASCU) is a Washington, D.C.-based higher education association of nearly 400 public colleges, universities, and systems whose members share a learning- and teaching-centered culture, a historic commitment to underserved student populations, and a dedication to research and creativity that advances their regions' economic progress and cultural development. These are institutions Delivering America's Promise.



Prepared in Partnership With ASA Research

This AASCU Data Brief was prepared by Sue Clery, founding partner of ASA Research, in collaboration with AASCU. ASA is driven by the belief that research—particularly in the fields of higher education and workforce—is essential for expanding opportunity, improving economic mobility, and contributing to personal and social well-being. ASA is pleased to partner with AASCU in support of student success and to provide strategic data consulting and assistance to AASCU.

For questions about this Data Brief, please contact Bao Le, AASCU's director, data analytics & impact, at leb@aascu.org.

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Financial aid innovations for college affordability and mitigating student debt

Brief no. 1: The pandemic, college affordability, and student debt

The Association of Public and Land-grant Universities is undertaking a research project funded by the TIAA Institute to identify and strengthen the evidence for innovative financial aid strategies designed to improve affordability and reduce student debt for a significant number of students.

Ten institutions have been selected as Affordability Fellows to investigate best practices and possible long-term reformation of current financial aid practices. COVID-19 has exacerbated systemic and institutional impediments that underlie the equity disparities that campuses are trying to address, and higher education institutions are working in real-time to support incoming and current students. Over the next five months, this project will examine financial aid innovations in collaboration with the Fellows working to establish long-term solutions in the face of the pandemic and a changing landscape.

Abstract

As a result of the pandemic, our research project pivoted to include a review of the disparate effects of the pandemic on low-income populations and people of color. Specifically, this first brief presents a review of the literature to answer the question:

What inequities related to college affordability and student debt have been exacerbated by the pandemic?

The opportunity to incorporate lessons learned from the pandemic will help the Fellows envision structural, policy, and process changes through Targeted Universalism, a framework that places equity at the center of its analyses of structures and systems. The aim is to build more affordable universities and more sustainable financial aid systems for the most vulnerable student populations.



The stage is set for greater inequality

Amid a global pandemic and an economic downturn, American universities are facing extraordinary challenges. The rapid shift to hybrid and online instruction, increased budget constraints, and enrollment concerns are just a few of the challenges institutions are working tirelessly to manage. Students are feeling the greatest effects of these challenges, although some have been more affected than others. The pandemic has worsened long-standing inequalities—such as barriers to college affordability—that have prevented students from degree completion. In response, many land-grant institutions are urgently reflecting on their core mission to provide access to Americans of the most modest means, and have deepened investments within and across state lines to meet the unprecedented needs facing students.¹ COVID-19 has added another layer of complexity to an already complicated financial aid system, leaving low- and middle-income students, students of color, and minoritized student populations even more financially strained than before.

The aim is to build more affordable universities and more sustainable financial aid systems for the most vulnerable student populations.

Intergenerational economic mobility has declined in the United States over the past several decades, and it is now more critical than ever for institutions to acknowledge and address the link between college affordability and intergenerational wealth.^{2,3,4} It has long been known that students' standardized test scores, college decisions and outcomes—including what type of institution to enroll in and whether to finish a degree—are closely tied to their parents' socioeconomic status.^{5,6} During times of crisis, the effects of intergenerational wealth gaps are even more prevalent. Today, there is disproportionate job loss across race, income, and education, affecting a larger share of people of color, particularly Black and Latinx workers, and those with less than a college degree.^{7,8} Most recent job loss data shows that more than 12 million Americans are jobless, with families of color comprising an oversized share, at 12.1 percent for Blacks and 10.3 percent for Latinx, compared to the national unemployment rate of 7.9 percent.⁹ Research shows that students are less likely to go to college if a parent has lost their job, and newer evidence suggests that the pandemic has caused more low-income students and those from minoritized populations to leave higher education, maybe forever.¹⁰

A poll from the Education Trust and the Global Strategy Group reported that 77 percent of undergraduate students surveyed were concerned about staying enrolled and on track, with higher reported concerns from Black (84 percent) and Latinx (81 percent) students. Through May 31, 2020, this same group found a 240,000 drop in returning students with annual family incomes of less than \$25,000.¹¹ And Strada Education Network reported that as of June 10, 2020, 50 percent of Latinx and 42 percent of Black students had canceled or changed their education plans, while only 26 percent of

Nearly 250,000 fewer returning students from the lowest-income backgrounds have renewed their FAFSA for the 2020-21 cycle.

White students reported such disruptions.¹² The College Attainment Network’s (NCAN) analysis of Federal Student Aid (FSA) data on FAFSA completions found that nearly 250,000 fewer returning students from the lowest-income backgrounds have renewed their FAFSA for the 2020-21 cycle, an additional indication of students’ educational plan disruption.¹³

Research also shows that student borrowing differs across racial and ethnic lines, with Black students more likely to borrow than White students across all income levels, and Latinx students less likely to borrow than White students across all income levels.^{14, 15} Wealth gaps might account for student loan borrowing patterns and loan default rates seen among racial and ethnic groups.¹⁶ Black families tend to have lower average wealth than White and Latinx families and are less likely to leverage homeownership, property, stocks, investments, and other known proxies for wealth to pay for a college education.^{17,18} The Coronavirus Aid, Relief, and Economic Security (CARES) Act, passed by Congress and signed into law in March 2020, included some provisions to help mitigate student loan repayment by pausing federal student loan payments and setting interest rates to zero percent (these provisions have been extended through December 2020). The higher education community has requested an additional \$120 billion in federal funding for students and institutions to deal with the pandemic, in addition to a host of relief measures for students and student borrowers.



2019 vs. 2020—Financial well-being of American households

Many Latinx and Black American families have not fully recovered the wealth lost in the Great Recession of 2007-2009, and the gains they have made over the past ten years are under threat by the current pandemic. The Great Recession created the largest wealth, income, and employment gaps since the 1990s.^{19,20} The Pew Research Report calculated that Black American families had over 53 percent of their wealth stripped away, and Latinx families saw the largest drop in wealth, at 66 percent.²¹ In 2005, median household net worth was \$12,124, \$18,359, and \$33,627 for Black Americans, Latinx, and Alaskan Native and American Indian households, respectively, compared to a \$134,992 median net worth for White households.²² By the time the recession officially ended in 2009, the median household net worth for Black Americans had been reduced to \$5,677, \$6,325 for Latinx households, and \$113,149 for White households.²³ Alaskan Natives and American Indians median household net worth had increased to \$40,315 by 2010.²⁴

Over a decade since the Great Recession, Black and Latinx families still trail White families in median net worth. According to the recent *2019 Survey of Consumer Finances Report on Disparities in Wealth by Race and Ethnicity*, White families’ median net worth was \$188,200, compared to \$24,100 for Black families and \$36,100 for Latinx families.²⁵ The same report depicts the difference in homeownership among these groups.

The *Report on the Economic Well-Being of U.S. Households in 2019* highlights economic disparities in overall well-being by race and ethnicity, and includes supplemental data from April 2020, after the pandemic was declared. For many families, financial circumstances in 2020 look very different than they did in late 2019.²⁶ The report makes clear that the pandemic threatens to compound longstanding inequalities.



The need for equitable financial innovations in higher education

Clearly, the path to higher education for a significant majority of Americans remains treacherous. Unfortunately, trends suggest that Black and Latinx communities are the last to recover from economic swings and have fewer financial and employment resources to weather the pandemic.²⁷ This will have severe consequences for America's low-income, first-generation, and minoritized college-ready youth and adults whose families' financial wealth is already tenuous due to racial and economic disenfranchisement, increasing divestment in the economic security of America's middle class and low-income families, and disproportionate debt levels. And now, on top of that, the pandemic has led to unemployment or the permanent loss of jobs for millions of people.

The Student Experience in the Research University Consortium (SERU Consortium) administered a comprehensive survey between May and July 2020 about the impact of COVID-19 on students' academic and personal lives.²⁸ The report, which gathered responses from 30,000 undergraduates and 15,000 graduate and professional students, found that students of color and low-income students are experiencing significant hardship during the pandemic. Of these students, 26 percent of undergraduates reported losing wages from an off-campus job, and 18 percent lost wages from an on-campus job. In the survey, self-identified low-income and working-class students were more likely to report financial hardship, including loss of income, and unexpected technology costs and housing expenses. Consistent with research on disproportionate job loss for low-income and families of color during times of crisis, 54 percent of working-class students reported having a family member lose income during the pandemic, while 36 percent of middle class and 24 percent of upper-middle-class students reported family member loss of income due to the pandemic. Across undergraduate and graduate students who took the survey, students of color, low-income, and working-class students reported experiencing more anxiety and depression, food shortages, and housing insecurity.²⁹

The Education and Human Resources Program at the American Association for the Advancement of Science (AAAS), makes the case that attention to the inequities—unmasked in higher education and in our larger society by the pandemic—must inform how institutions develop a future-focused strategy that moves beyond the next experiment, the next grant, and the next crisis.³⁰ A federal rescue package will help in the short-term. However, now is the time for American higher education to create a fundamentally different policy architecture that will provide equitable access and opportunity for all.³¹



“The strategies are targeted, but the goal is always universal.”

Using Targeted Universalism to develop equitable financial innovations

Created by John A. Powell, Stephen Menendian, and Wendy Ake of the Othring & Belonging Institute at the University of California, Berkeley, Targeted Universalism is a framework that designs and implements policies that can achieve critical goals and bring higher education institutions closer to their collective aspirations, including student success and affordability. Targeted Universalism emphasizes goals and re-centers policy debates on outcomes, wherein all processes are directed toward service of an explicit, universal goal. Implementation strategies created via the Targeted Universalism framework are unique in that the focus is on structural changes. The framework helps institutions develop a range of implementation strategies designed to both: 1) change the structures that impede different groups and populations from attaining the universal goal, and 2) develop structures that promote the desired outcome for different populations.³²

There are two critical aspects of Targeted Universalism. First, it is important to be clear on the universal goal and to keep it at the center of the work being done. Second, the “universal” in Targeted Universalism doesn’t lie in implementation strategies or applications—it does not aim to reach all people in the same way. Indeed, the framework rejects blanket universal strategies, which are often indifferent to lived reality, wherein different groups are situated differently relative to society’s institutions and resources. Furthermore, it also rejects the claim of formal equality that would treat all people the same, as that approach ignores differences. While the universal goal may be one to which all groups aspire, some groups have more acute needs and more extreme circumstances. Groups further from obtaining the universal goal—and groups in extreme distress—should be the recipients of greater support.³³

This framework borrows the strengths and avoids the weaknesses of both targeted and universal approaches and is also categorically distinct in both conception and execution. Universal and targeted policies are often politically fraught and have proved incapable of addressing and solving the most enduring social and economic problems. For Targeted Universalism, the primary target is the institutional arrangement and structures; the targeted groups include individuals facing the same barriers, and who are similarly situated relative to systems, structures, and culture. The groups of people that benefit from a particular targeted strategy under Targeted Universalism are likely to be more diverse than a single identity group, especially for strategies that create significant structural changes. By focusing on structures and group outcomes—rather than on the groups themselves—the framework enables a comprehensive analysis that serves to improve outcomes for groups that suffer in different ways and experience different harms.³⁴

Targeted Universalism also is an opportunity to put belonging “on the ground,” in practice. In inclusion, the structure that similarly situates people is critical. In belonging, the structure is co-created by the participants, which for universities would include students, alumni, faculty, staff, administration, and community partners (local businesses, high schools, etc.).



Five steps for creating a Targeted Universalism framework³⁵

Determination of the universal goal must be the result of a deeply-considered process, with no prior assumptions. There are five steps for developing a Targeted Universalism framework:^{36,37}

1. Establish a universal goal based upon a broadly shared recognition of a societal problem and collective aspiration.
2. Assess general population performance relative to the universal goal. (Measurement)
3. Identify groups and places that are performing differently with respect to the goal. Groups should be disaggregated. (Measurement)
4. Assess and understand the structures that support or impede each group or community from achieving its universal goal. (Analytical—understanding the nature of the problem at its root)
5. Develop and implement targeted strategies for each group to reach the universal goal.

Targeted Universalism platforms are designed to realize the full potential of pursuing equity. Sometimes referred to as “Equity 2.0,” the framework embraces difference and delegitimizes inequitable status quos that treat everyone the same, with the same solutions, and the same attention. Given the current climate, with institutions facing significant challenges, prioritizing transformational structural change by utilizing a Targeted Universalism framework can be a more efficient use of limited financial resources, as it directs attention to development of strategies that promote more durable changes and provide greater relief. Further, by contributing to the benefit of all people impeded by structural barriers and/or lack of resources, Targeted Universalism policies can help higher education institutions better serve their local, state, and national constituencies.^{38,39}

In anticipating the long-term repercussions of COVID-19 and another economic downturn likely to present additional impediments for vulnerable minoritized students and their families, we are introducing Targeted Universalism as a tool for reimagining financial aid innovations under a university-generated universal goal. We will be discussing with Fellows the implications of this framework, as well as the adoption of universal goals that mitigate student debt and the structural barriers that contribute to racial wealth disparities and financial hardships for students and their families.



Conclusion

The harsh economic realities and disparities that low-income, first-generation, and students of color and their families have long contended with in the United States have been exacerbated by the pandemic. An examination of several data sets—including the U.S. Census, the Bureau of Labor Statistics, the Consumer Finance Survey, and the Federal Reserve’s Survey of Economic Wellbeing in U.S. Households—highlights the imperative for higher education leaders to become critically aware of the structural barriers to affordable education that these students encounter at their universities. Given the research provided in this brief, it is our position that transformational efforts through an equity-focused framework are required to remove impediments at the university level that exacerbate inequities. A Targeted Universalism framework can help universities implement equity-forward strategies that recognize their students’ lived realities and provide ample opportunities for an affordable education.

APLU, with support from the TIAA Institute, is developing a series of briefs in the coming months, based on qualitative research gathered from a group of Affordability Fellows based at ten universities participating in APLUs Powered by Publics Initiative. To address the lived realities of their students—specifically, their students’ positionality within deep social and economic structures—these institutions will be exploring best practices, financial aid innovations, and possible long-term reformation of current financial aid approaches. Forthcoming briefs will capture lessons learned from the distribution of CARES Act funding to Title IV students, financial innovations currently in place at Fellow institutions, and re-envisioning financial aid solutions through an equity lens focused on their most vulnerable students and those most affected by COVID-19.

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Alcione Frederick joined APLU’s Center for Public University Transformation as a Program Manager in July 2020. Prior to APLU, Alcione spent over 10 years working in student affairs supporting student-centered initiatives both nationally and internationally. She is a former Peace Corps volunteer and a teacher trainer who spent three years working in Senegal. Alcione completed her master’s degree in Anthropology at Washington State University. She also holds a bachelor’s degree in Anthropology and Psychology from Juniata College.

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Student Loan Debt by Income Level

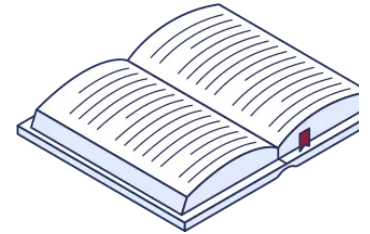
By [Melanie Hanson](#) |

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Report Highlights. Borrowers with higher degrees are more likely to owe larger student loan debt balances compared to their household income; the average indebted borrower with a professional doctorate borrows the equivalent of **211.7%** of the average income among doctorate degree holders.

- Borrowers from households in the middle-class income bracket owe on average **\$43,090** in student loan debt.
- Americans with income higher than the national average owe an estimated **65%** of the nation's outstanding student loan debt.
- Households in the lowest income quartile owe an estimated **12%** of all student loan debt.
- Loan acceptance among financially independent students increased **80%** in 15 years.



Student Loan Debt by Household Income

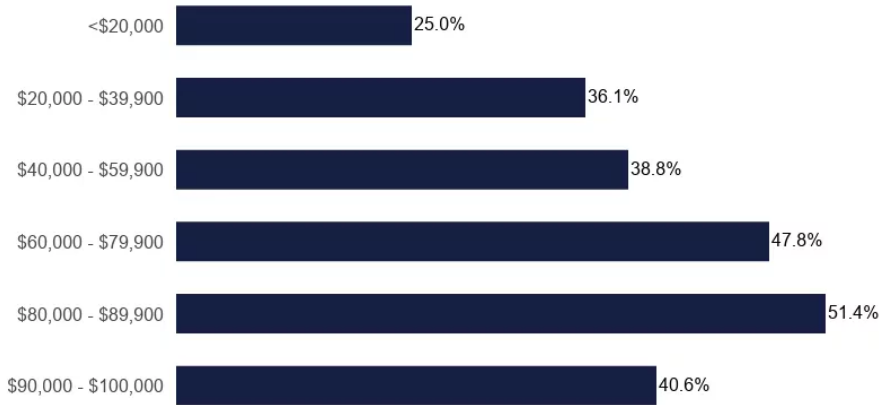
Student Debt vs Income by Education Groups

Dependent vs. Independent Students & Loans

Income vs Student Debt by Education Level

Sources

Student Loan Debt-to-Income Ratios by Annual Income Level



Education Data Initiative source: National Center for Education Data Statistics

Related reports include [Federal vs. Private Student Loans](#) | [Total Student Loan Debt](#) | [Average Student Loan Debt](#) | [Average Student Loan Payment](#) | [Student Loan Debt Statistics](#) | [Student Loan Debt by Race](#)

Income Bracket and Student Debt Comparison

Income Bracket	Annual Income	Average Student Debt
25 th Percentile	up to \$33,769	\$32,518
26 th to 50 th Percentile	\$33,770 – \$65,036	\$42,774
51 st to 75 th Percentile	\$65,037 – \$121,318	\$43,399
76 th to 90 th Percentile	\$121,317 – \$216,371	\$51,529
≥90 th Percentile	\$216,372+	\$58,408

Student Loan Debt by Household Income

The total student loan debt is \$1.75 trillion, and federal debt alone exceeds \$1.62 trillion; households in higher income brackets are more likely to hold high amounts of debt.

- Households with income in the 90th percentile held 11% of all student loan debt prior to 2020.^[1]
- Households in the highest income quartile (76th percentile and higher) owe 34% of student loan debt.
- Households with income in the 51st to 75th percentile hold 29% of student loan debt.
- 26st to 49th percentile households owe 24% of all outstanding student debt.
- The lowest income quartile (25th percentile and lower) owe 12% of all student loan debt.
- Households in the 60th percentile and higher owe 60% of all student loan debt.
- Households in the 40th percentile or lower owe 20% of student loan debt.

Income and Debt by Degree Status

Degree	Median Annual Income**	Average Borrowed†
Some College, No Degree	\$46,748	\$15,236
Associate's Degree	\$50,076	\$21,123
Bachelor's	\$69,368	\$28,708

Degree		
Master's Degree	\$81,848	\$75,333
Research Doctorate	\$99,268	\$123,695
Professional Doctorate	\$100,048	\$211,817

**Among workers aged 25 years and over; based on average weekly earnings of full-time wage and salary workers.^[2]*

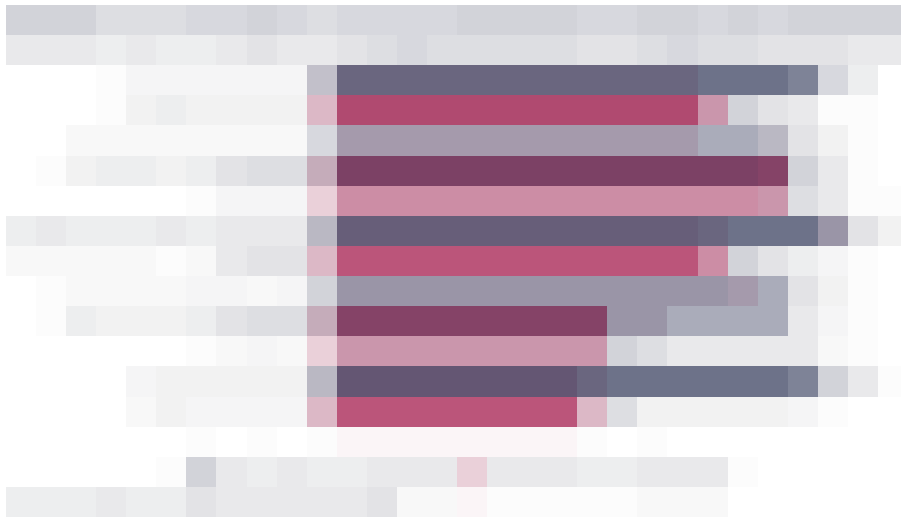
†Cumulative student loans only (no Parent PLUS); data collected between 2015 and 2018, currency inflated to 2021Q2 values to match income data collection period; amount borrowed is not equivalent to current debt.

Student Debt vs Income by Age Groups

Among the age groups, adults between the ages of 18 and 29 are the most likely to have student loan debt. Meanwhile, adults between the ages 35 and 49 years old on average owe the most student loan debt.

- 34% of adults between the ages of 18 and 29 owe student loan debt.
- 22% of adults between the ages of 30 and 44 owe student debt.
- 7% of those between the ages of 45 and 59 owe student debt.
- Finally, 1% of adults age 60 or older owe student loan debt.

- The average adult aged 24 and younger has a median annual income of \$29,712, which is roughly in the 25th percentile.
- The average student loan debt among borrowers 24 and younger is \$15,027.78 or roughly 50.6% of their annual income.
- Employees aged 25 to 34 years make an annual median income of \$48,256.
- Student borrowers aged 25 to 34 years owe an average of \$33,429.53 or roughly 69.3% of their annual income.
- Workers aged 35 to 44 make a median annual income of \$58,188.
- Employees aged 45 to 54 make a median annual income of \$58,968.
- The average student loan borrower aged 35 to 49 years owes \$43,241.38 or roughly 74% of their annual income.
- Employed adults aged 55 to 64 make a median annual income of \$58,760.
- Student loan borrowers aged 50 to 61 years owe an average \$44,781.25 or roughly 76% of their income.
- Employees aged 65 years and older make a median annual income of \$51,428.
- Borrowers aged 62 years and older owe an average of \$40,560 in student loan debt, which is roughly equivalent to 79% of their annual income.



Dependent vs. Independent Students & Loans

Dependent students are 26.3% more likely than independent students to use student loans. Part-time students borrow in roughly equal rates and dollar amounts.

- 43.2% of dependent and 34.2% of independent students use student loans.
- Among dependent students, 94.2% use federal loans and 19.0% use private loans (13.2% use both federal and private student loans).
- Financially independent students increased their acceptance of student loans 80.2% between the 1999-2000 and 2015-2016 academic years.
- Students who are dependent on their families and whose families have an annual income between \$40,000 and \$59,000 have the highest student loan acceptance rate at 48.1%.
- Part-time, independent students who use loans borrow 0.27% less funding than part-time students who are

dependent on their families for financial support.

- Among students attending postsecondary school part-time, independent students are 0.34% more likely to use student loans than dependent students.

Income vs Student Debt by State

The median annual income in the United States is \$65,712. As this amount corresponds with the middle income bracket, Americans on average hold \$43,090 in student debt.

- Mississippi is the state with the lowest median annual income at \$45,792.
- Mississippi has an average student debt of \$37,080.
- Mississippi's annual income and average student debt is closest to the lower-middle class bracket.
- Maryland is the state with the highest median annual income at \$86,738.
- Maryland has an average student debt of \$43,219.
- Maryland's annual income and average student debt is closest to the middle class bracket.












Income vs Student Debt State Table

State	Median Annual Income	Average Student Debt
Alabama	\$51,734	\$37,348
Alaska	\$75,463	\$34,431
Arizona	\$62,055	\$35,431

Arkansas	\$48,952	\$33,525
California	\$80,440	\$36,937
Colorado	\$77,127	\$37,120
Connecticut	\$78,833	\$35,448
Delaware	\$70,176	\$37,338
Washington D.C.	\$92,266	\$55,077
Florida	\$59,227	\$38,481
Georgia	\$61,980	\$41,843
Hawaii	\$83,102	\$36,575
Idaho	\$60,999	\$33,100
Illinois	\$69,187	\$38,071
Indiana	\$57,603	\$33,106
Iowa	\$61,691	\$30,848
Kansas	\$62,087	\$33,130
Kentucky	\$52,295	\$33,023
Louisiana	\$51,073	\$34,683
Maine	\$58,924	\$33,352
Maryland	\$86,738	\$43,219
Massachusetts	\$85,843	\$34,549
Michigan	\$59,584	\$36,295
Minnesota	\$74,593	\$33,822
Mississippi	\$45,792	\$37,080
Missouri	\$57,409	\$35,706
Montana	\$57,153	\$33,953

Nebraska	\$63,229	\$32,138
Nevada	\$63,276	\$33,863
New Hampshire	\$77,933	\$34,353
New Jersey	\$85,751	\$35,730
New Mexico	\$51,945	\$34,237
New York	\$72,108	\$38,107
North Carolina	\$57,341	\$37,861
North Dakota	\$64,577	\$29,446
Ohio	\$58,642	\$34,923
Oklahoma	\$54,449	\$31,832
Oregon	\$67,058	\$37,251
Pennsylvania	\$63,463	\$35,804
Rhode Island	\$71,169	\$32,212
South Carolina	\$56,227	\$38,662
South Dakota	\$59,533	\$31,858
Tennessee	\$56,071	\$36,549
Texas	\$64,034	\$33,123
Utah	\$75,780	\$32,781
Vermont	\$63,001	\$38,411
Virginia	\$76,456	\$39,472
Washington	\$78,687	\$35,521
West Virginia	\$48,850	\$32,272
Wisconsin	\$64,168	\$32,272
Wyoming	\$65,003	\$30,246

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The Next 5 Years in ICA

Intro: A Transformational Paradigm Shift

The Next 5 years: What can we expect?

1. Legal Impacts have been, and will Continue to be Significant
 - a. Lawsuits vs. NCAA – Legal Fees and Settlements
 - b. 9th Circuit Court of California
 - c. Supreme Court
 - d. Congress and Politics
 - e. COA, NIL, Academic Incentives, Transfer Portal and More
 - f. Collectives, Third Parties, Agents and LLC's
 - g. Unions and Collective Bargaining? Students Employees? Revenue Sharing?
 - h. Legalized Gambling

2. A New NCAA Constitution will Exist – Too Little too Late?
 - a. Legal Components Incorporated
 - b. Streamline and Simplify; De-Regulate
 - c. Transfers – Free Agency?
 - d. Who's in Charge? Little faith in NCAA Enforcement
 - e. Break Away or Re-stratification of Division 1? Football?
 - f. Reactionary vs Proactive

3. Financial Pressures will be Amplified

- a. Mandated by Forces out of our Control
- b. Lawsuits and Damages
- c. Covid
- d. Conference Realignment is a Result of \$ and Championship Access/F.O.M.O
- e. Scholarship Costs - “Indirect Settlements”
 - i. Tuition Increase; Lack of State Funding
 - ii. Cost of Attendance
 - iii. Academic Incentives
 - iv. \$11M to \$20M in a Decade
- f. Peer Conferences data – One Line Item/TV/ “The Gap”
- g. Football 95%. 365/24/7
- h. Gender Equity – Title IX
- i. Facilities vs. NIL Model
- j. Top 5; Top 35

4. Some Anticipated Impacts on our Campus

- a. Strain on University Systems: Transfers
(admissions/registrar/financial aid/grad school)
- b. Third parties/Agents/Tax – Education and Monitoring
- c. Tampering
- d. NIL position(s) – FTE’s
- e. Mental Health
- f. Gambling
- g. Fan Behavior
- h. Financial Pressures – Cost to Win; Cost to Lose
- i. Pressure to Win; Compete successfully in “Tier 1”

5. How can we help ourselves? Minimize “The Gap”

- a. State Government/BOV/Scholarships
- b. ACC and ACCN – TV Contracts; Grant of Rights, New Revenue Streams
- c. Capital Campaign
- d. Campus - Our “Pit Stop” was Successful; What’s Next?
- e. Apex/COB/Computer Science/Data Analytics
- f. Be Prepared for Potential “break away” or New Models of Governance and Conferences
- g. Hiring and Retention – Our People are our Greatest Assets
- h. Win

6. Student-Athlete Success and the Student-Athlete experience

- a. Support System
- b. Academic Success
- c. “Something Good is (still) in the Sauce”
- d. C – Suites
- e. GI Bill and ICA Scholarships
- f. Someone’s Sons and Daughters
- g. Attractive to; Prepared for the Work Force

7. Continued Value to VT and Southwest Virginia

- a. Economic Impact
- b. Recruiting Students and Staff; Student Life
- c. Marketing Vehicle – 500k+ to Campus Annually
- d. 38%
- e. Fundraising/Alumni/Board Momentum
- f. Gallop Survey

8. Moving from a Challenger Brand to a Champion Brand!!!

Bowl Schedule Week 1 Schedule

Cost of attendance results: The chase to pay college players

By [Jon Solomon](#) Aug 20, 2015 at 9:31 am ET • 13 min read

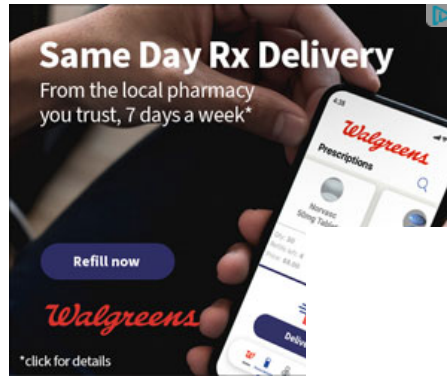
Football Bowl Subdivision (FBS) schools are budgeting more than \$73 million for new cost of attendance expenses that range from under \$1,000 per scholarship to more than \$6,000, according to a [CBS Sports survey examining the costs of the additional money now allowed under NCAA rules](#).

Eighty-two of the 129 FBS schools surveyed responded with their new cost of attendance (COA) budget, resulting in a cumulative average of approximately \$900,000 per school. In reality, more schools will provide COA but they are either private universities and not obligated to publicly share information, or they said they have not finalized their plans.

2015-16 COA database
Detailed breakdowns from every conference

The survey showed a divide between the commitment from schools in Power Five conferences (SEC, ACC, Big Ten, Big 12, Pac-12) and those in the Group of Five (Conference USA, MAC, Mountain West, AAC, Sun Belt). It's believed that every Power Five school will provide COA. At least 13 Group of Five schools said they are not offering the new stipend this year.

schools to pay for athletes' miscellaneous personal expenses and transportation allowance.



Many coaches and administrators have been calling to establish COA for years. Yet now that it's here and coupled with ongoing litigation that currently prevents the NCAA from setting a cap on COA, there is some concern the new money could impact recruiting. There are also questions of whether COA figures are getting increased due to athletics.

The National Association of Student Financial Aid Administrators conducted a survey last winter after the NCAA rule change that showed 25 percent of sampled financial aid officers had received pressure from outside influences at the university. Of that 25 percent, a majority said the pressure had come from the athletics department.

That doesn't mean financial aid officers adjusted figures due to athletic pressure. But as Big 12 commissioner Bob Bowlsby said, "There is some indication that the numbers have already crept (up). The office of financial aid on every campus is the place where these decisions are supposed to be made. There isn't supposed to be any athletics input into it. But I guess I'd be naive if I didn't think that there had been lots of conversations and perhaps there was some back and forth on that."

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COA varies by school and can depend on how financial aid offices determine figures, such as using student surveys to create average miscellaneous and travel expense costs. The CBS Sports survey found these are the highest average numbers for new cost per scholarship from schools that are providing at least some COA money:

Florida Atlantic*	\$6,060	\$300,000^	Florida
Florida State*	\$6,018	\$2,000,000	Florida
UCLA*	\$5,941	\$1,500,000	California
Tennessee	\$5,666	\$1,400,000	Tennessee
Stanford*	\$5,610	Declined to provide	California
Auburn	\$5,586	\$2,100,000	Alabama
South Alabama	\$5,470	\$850,000	Alabama
Alabama*	\$5,386	Did not provide	Alabama
Louisville	\$5,364	\$1,300,000	Kentucky

** Footnotes available on full COA database.



Cincinnati has the highest cost of attendance in the nation for 2015-16. (USATSI)

conference. The AAC, Big 12 and Sun Belt have six schools each at that amount, followed by the Big Ten (five); ACC, C-USA and Mountain West (three each); Pac-12 (two); and MAC (one).

"There are some SEC schools that have a really high cost of attendance even though they're in a relatively small town, so I'd like to see the formula that they're coming up with," said Arizona coach Rich Rodriguez, whose school has one of the lowest COA amounts (\$1,602) in the FBS. The SEC passed a rule requiring its schools to annually inform the conference office how they determine the value of "other expenses" and any individualized COA variances provided to athletes.

Cost of attendance is not calculated by "we give you all kind of money because you live in Palo Alto, L.A. or Dallas," Stanford coach David Shaw said. "It's a little more complicated, which is why some of the metropolitan areas aren't as high as some of us thought they would be and some of the smaller-town areas are bigger because they factor in travel, driving to an airport and what goes into being at a school."

- SEC schools on average are budgeting \$1.24 million in new COA costs. For most SEC schools, that equates to about 1 percent or less of their athletic budget. The anticipated costs per school in the other Power Five conferences: Big Ten -- \$1.16 million, ACC -- \$1.07 million, Big 12 -- \$921,000, Pac-12 -- \$736,000.

Said Oregon coach Mark Helfrich, whose school's COA (\$2,382) is among the lowest in the FBS: "I've seen a few of the numbers. It's an interesting number. The people that can control it, there are some ways you can manipulate the system. It will be another clear battle (in recruiting)."

■ Some traditional rivals within the same state have wide COA gaps. Florida State's out-of-state COA is \$6,018, while Florida is offering \$3,830. Florida State is budgeting about \$1 million more than Florida in new COA costs.

UCLA's COA for off-campus students (\$5,941) and on-campus (\$5,242) far exceed fellow Los Angeles school USC, whose number as a private school is \$1,580 and could reach \$2,151 based on individualized cases. Private universities have an incentive to keep COA low to avoid sticker shock to students since their tuition cost tends to be very high. "I think (recruits) are going to start asking (about cost of attendance)," USC coach Steve Sarkisian said. "We're probably not reaping the benefits of other schools if they go all the way to that threshold. But USC is a private school and they provide for all students, not just student-athletes."

BYU's COA exceeds Utah's by about \$1,000. "I guess if the discrepancy is big enough, it could be a competitive advantage or disadvantage," Utah coach Kyle Whittingham said. "But if you're talking a \$40 or \$50 difference a month, you hope you're recruiting athletes who see the big picture and understand that's not what they're going to base their decision on. Scholarship checks have always been different across the country."

■ Ohio State, college football's defending national champion, has the fourth-lowest COA in the Big Ten among public universities (\$2,970). "It's wrong, it's wrong," Ohio State coach Urban Meyer said of the varying numbers by school. "That needs to be fixed. Whoever came up with that ruling, it's wrong. That needs to be a standardized (number)."

Penn State has one of the Big Ten's highest COA figures at \$4,700. "If that's going to be the deciding factor (for a recruit), you give them the information and they do what they want with it," Penn State coach James Franklin said. "It's not like we can modify it or change it. I think what you'll see is if it comes down to two schools and you're behind in cost of attendance, then you're selling all those other areas of why, long-term, you think your school will be the best decision."

Defending men's basketball champion Duke, which is a private university, declined to provide its COA data.

■ Athletic departments that are providing COA to partial-scholarship athletes have taken different approaches on how to calculate those numbers. Some equivalency-sport coaches are keeping it simple and saying, for example, that an athlete on a 50-percent scholarship gets 50 percent of COA. Others are stretching out the new money in order to add players onto a scholarship, not necessarily bumping up an existing athlete's scholarship value. For instance, UCF said it's letting coaches decide how to proportionally give COA to equivalency sports.

"That's not what the intent of the rule was, but that's how it's going to go," Auburn athletic director Jay Jacobs said.

"Some coaches are going to say what's better for my student-athletes is to have more scholarship athletes and more players on aid and that's helpful for my team."

MAC commissioner Jon Steinbrecher said if too many coaches use COA to expand their roster sizes "then we're going to need to tighten it up further because that would be a concern. I think most people went into this with the idea of paying by equivalency, but it's not spelled out clearly."

■ Boise State, which once adamantly opposed an NCAA rule allowing up to \$2,000 for COA, is offering about \$5,100 per new scholarship cost and budgeting \$1.15 million in additional expenses. Boise State argued in 2011 that COA would create a divide between the haves and have-nots. The Broncos' COA is higher than any in the Big Ten and Big 12 and exceeds nine SEC schools.

Appalachian State, Army, Bowling Green, Charlotte, East Carolina, Marshall, Miami (Ohio), Rice, Rutgers, Utah State and Wake Forest were the other current FBS schools that successfully helped to override the \$2,000 cap. Some of the reasons had to do with Title IX concerns at the time. Today, all of the schools said they are providing at least some new scholarship money this year except for Appalachian State (not offering COA), Army (not applicable to service academies) and Rice (declined to provide data). Marshall, which in 2011 said it was not in position to fund additional costs associated with the miscellaneous expense, has budgeted \$500,000 for COA.

New England. Partial-scholarship athletes on a percentage scholarship will receive the percentage of their dominator, and athletes on a dollar-figured scholarship will receive the dollar amount. Boston College declined to say how much money it's budgeting.

- North Carolina public universities have lower COA than in the past because student health insurance is no longer built into the full cost of attending those colleges. That means the COA is \$1,600 less at East Carolina. NC State's COA of \$2,706 was the third lowest reported by ACC schools.
- The Sun Belt and Conference USA have the most schools not offering COA this year (six in each conference). From C-USA: Louisiana Tech, Florida International, Old Dominion, UAB, UTSA and Western Kentucky. From the Sun Belt: Appalachian State, Georgia Southern, Georgia State, Idaho, New Mexico State and Texas State. It appears there's a have vs. have-nots over COA within Group of Five conferences. For instance, while some rivals aren't offering any new money yet, C-USA's Marshall and UTEP are each budgeting at least \$500,000 in new COA costs, and the Sun Belt's Arkansas State and South Alabama are providing more than \$800,000.
- Some Group of Five schools said they are phasing their COA plan in over multiple years. For example, East Carolina will provide football and men's and women's basketball players with \$4,025 extra this year and \$2,025 to all remaining sports. The school said it will fully fund all programs in 2016-17, resulting in COA costs increasing from \$720,000 to \$970,000.

What's next for cost of attendance?

The bottom line: New money is now coming into the hands of college athletes. Because of this, many more schools are providing financial education to athletes. Some are providing the money in monthly installments or over a period of several months.

"Some people on the team have bad situations and they can put that money to the side for their parents and a little money they keep for themselves so that's a good thing," Alabama linebacker Reggie Ragland said. "I'll use it to buy food and pay bills. Might get some clothes and shirts."

LSU offensive lineman Vadal Alexander said he might use COA money to pay for a couple months of his car loan, get some sneakers and buy his mom something nice. "Although we make a lot of money for LSU and the SEC, we're getting something a lot of kids don't have and that's an opportunity to go to school for free and put ourselves on a platform to make a lot of money," Alexander said. "I'm grateful for that, but I'm definitely not going to say no to more money."

How COA impacts college sports on the field -- if it does at all -- remains to be seen. Teams have been on uneven playing fields for years in many ways, as evidenced by coaches' salaries, athletic department budgets, sports facilities, and staff sizes for academic assistance and NCAA compliance. Change in college sports, though, tends to cause fear and confusion. Depending on pending court cases and membership feedback, the NCAA's handling of COA may evolve in the future. Notre Dame athletic director Jack Swarbrick, whose private university has one of the lowest COA figures in FBS, believes schools should provide recruits with disclosure statements explaining every element in a proposed scholarship.

"Like when you buy a car, there ought to be a simple, federally-mandated disclosure form that says here's what it is," Swarbrick said. "One reason cost of attendance numbers are different is because figures embedded in other elements of the scholarship are different. You could have a different meal plan. If I only provided you 10 to 12 meals a week, your cost of attendance is higher. If you provide a 17-meal plan, it doesn't impact your cost of attendance."

Bowlsby, the Big 12 commissioner, thinks that built-in buffers at universities will keep COA from dramatically rising in the future. COA impacts what types of grant programs a school is eligible for and what kinds of loans a student can receive. "I think over time ... the bottom (COA figures) may come up and the top may either sit still or come down a little bit," Bowlsby said.

Interest in COA is nothing new for financial aid offices. Clemson financial aid director Chuck Knepfle said he often gets complaints by students who want their loan eligibility to reflect their desire to live in a single room on campus. The difference now is the Clemson athletic department now is very interested in this number, too.

"If there's one gatekeeper to put this on, I think financial aid directors are the right person," Knepfle said. "From the day we start this job, we understand the ramifications of not following federal guidelines. If we do something wrong on our

Steinbrecher, the MAC commissioner, said CCA should not wildly fluctuate in the future. He hopes the purpose of the rule -- provide more money to athletes -- does not get lost in the arms race of recruiting.

"We have a few coaches out there who are spending a lot of time splitting the differences and I don't really think that's the purpose in this," Steinbrecher said. "I'm really looking more from feedback from our students and what it means to them. Is this doing what we hoped it would do? Time will tell."

Serena Williams announces retirement plans: Tennis superstar 'ready for what's next'

By [Nicholas Parco](#) 56 mins ago • 3 min read



One of the most prominent American athletes is ready to retire. Tennis legend Serena Williams [announced her retirement plans Tuesday in a first-person essay in the latest issue of *Vogue*](#). Williams does plan to play in the 2022 US Open, which starts later this month.

"It's the hardest thing that I could ever imagine," the tennis star told *Vogue*. "I don't want it to be over, but at the same time I'm ready for what's next."

Name, Image, and Likeness in US College Athletics: One Year Later

Article By:
Andrew H. King

In the United States, college athletics are as popular as professional sports, generating revenues of over \$1 billion for the 2021 fiscal year. Despite this popularity, college athletes have long been classified by the National Collegiate Athletic Association (“NCAA”) as having amateur status.

The NCAA—which promulgates the rules and regulations pertaining to student-athletes’ participation and eligibility in college sports—defines an amateur as “someone who does not have a written or verbal agreement with an agent, has not profited above his/her actual and necessary expenses or gained a competitive advantage in his/her sport.”

Throughout the history of the NCAA, student-athletes were prohibited from making money from their name, image, or likeness—a concept commonly referred to as “NIL.” They could not be paid for signing autographs or entering into sponsorship deals, nor could they profit from the sales of jerseys bearing their name. Put differently, many of the ways in which professional athletes make their money were strictly off-limits to college players. But on July 1, 2021, the world of college sports transitioned into a new era, as the NCAA lifted the ban on player compensation and instituted an [Interim NIL Policy](#).

This is the first of a three-part blog series that examines how, one year later, the various entities that operate within the world of college athletics, such as the players, businesses, and the academic institutions themselves, have adapted to the new reality and the dawn of NIL.

The *Alston* Case Changes the College Athletics Landscape

There has been a long-standing debate regarding the question of whether student-athletes should receive compensation in exchange for their participation in college sports. The NCAA’s position was that paying college athletes could erode the idealism of a player’s “amateur” status. NCAA member institutions harbored other concerns; they believed that allowing college players to be compensated would result in an inequitable recruiting process, as it could open the door to impropriety, such as a pay-for-play model. The players themselves were the biggest critics of the NCAA’s rules limiting student-athlete compensation, arguing that they are the most disadvantaged by such regulations. As such, it is no surprise that it was student-athletes who led the charge that ushered in the NIL movement.

Legal action seemed inevitable, and in 2019 a number of current and former college athletes sued the NCAA, in a case captioned [NCAA v. Alston](#). There, the athletes sought to challenge the NCAA’s rules limiting the compensation that student-athletes could receive, arguing that they were in violation of federal antitrust law. At the time, student-athlete compensation was limited to education-related benefits. This consisted of tuition, fees, room and board, books, and cash for incidental expenses such as laundry. The court found the restrictions to be in violation of Section 1 of the Sherman Act. As a result, the court issued an injunction barring the NCAA from enforcing the rules.

The case was appealed by the NCAA, first to the Ninth Circuit—which affirmed the lower court’s ruling— and again to the Supreme Court in June 2021. Applying the “rule of reason” analysis, the Supreme Court agreed with

the lower courts and found that the NCAA's rules limiting player compensation were unreasonable because they substantially suppressed and destroyed the competition, thus violating the Sherman Act.

Affirming the ruling once more and determining the scope of the lower court's permanent injunction to be appropriate, the Supreme Court remarked that "[n]owhere else in America can businesses get away with agreeing not to pay their workers a fair market rate... And under ordinary principles of antitrust law, it is not evident why college sports should be any different. The NCAA is not above the law." Though the case did not specifically mention name, image, or likeness, the Supreme Court opinion set the stage for NIL laws to be passed across the nation.

On the heels of *Alston* and anticipating an imminent wave of legislation, the NCAA suspended its previous regulations and implemented an interim NIL policy that became effective on July 1, 2021. The NCAA continues to study the implications of NIL and is assessing how best to implement NIL regulations. They also expect for there to be some form of uniform legislation implemented across the nation sometime in the near future. Until then, they have opted to take a hands-off approach to rules concerning NIL activity.

Among other things, the interim regulations allow for the use of professional service providers, such as agents or lawyers, in the procurement of NIL deals. The interim policy prohibits only (1) "pay-for-play" and (2) "improper recruiting inducements" in connection with such engagements. The NCAA defines "pay-for-play" as "compensation for athletic participation or achievement (e.g., financial incentive based on points scored)." And "improper recruiting inducements" are defined as "compensation contingent on enrollment at a particular school." In other words, the NCAA's primary objective, for the time being, is to prevent NIL activity from being utilized as a vehicle to improperly recruit and retain college athletes at particular institutions.

Coming up in Part 2, we examine how the *Alston* ruling set the stage for a wave of NIL laws to be passed across the nation. In the third and final blog post of the series we will look at how schools, companies, and players alike have engaged with the world of NIL.

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How US Federal and State Legislatures Have Addressed NIL

Article By:
Andrew H. King

As discussed in [part one of this blog series](#), the landmark decision by the United States Supreme Court in the *Alston* case effectively paved the way for collegiate athletes to profit from their own name, image, and likeness (“NIL”). While many states quickly enacted legislation addressing NIL, it remains to be seen whether and how NIL will be legislated at the federal level.

State Law Addressing NIL

As of July 8, 2022, 29 states have passed legislation regulating or otherwise addressing how student-athletes can profit from their name, image, and likeness. Of those, 24 such laws are currently in effect^[1]. Those that are not yet in place are slated to take effect by July 2023 at the latest^[2]. An additional 10 states have proposed legislation currently pending in various stages of the legislative process^[3].

State NIL laws share certain common characteristics, particularly in terms of the restrictions placed on student-athletes. One common restriction limits the duration of contracts; many laws provide that contract lengths can’t extend past the time the athlete participates in collegiate athletics at a particular institution.

Another common restriction forbids NIL activity from being tied to athletic performance; in other words, players cannot enter into deals that are contingent on their athletic participation or achievement. This is essentially a legal bar on pay-for-play, one of the prohibitions imposed by the NCAA in their interim policy.

Furthermore, many NIL laws allow institutions the flexibility to place their own school-specific restrictions on the deals their student-athletes enter into. For instance, allowing schools to restrict the athlete’s use of team logos for their own name, image, and likeness activity. Less common, some laws impose restrictions prohibiting student-athletes from contracting with specific industries, such as adult entertainment, alcohol, tobacco, and firearms, to name a few. Regardless, most academic institutions prohibit association with these sorts of industries by way of their own NIL policy.

NIL legislation is new and is not without criticism or concern. For instance, with a number of different laws across various states, some are less restrictive and arguably more student-athlete-friendly than others. As such, there is a general concern that a particular state’s NIL law might be the determinative factor on whether a student-athlete decides to attend a school within that state, i.e., a student might choose to attend a school within a state with a less restrictive NIL law.

The state of Alabama serves as an illustrative example. Alabama was one of the first states to pass an NIL law, and did so prior to the introduction of the NCAA’s interim policy, which many anticipated would be highly restrictive. Alabama accordingly sought to make its state law less restrictive than what they anticipated from the NCAA. Such wasn’t the case, however, as the NCAA’s NIL rules ended up being more flexible than Alabama’s NIL law. As a consequence, Alabama has since repealed its law and now simply follows the NCAA’s interim policy. According to Representative Kyle South, who sponsored the bill to repeal the Alabama law, NIL legislation stricter than the NCAA interim policy would put them at a disadvantage in the recruiting process.

Lawmakers in Louisiana, Mississippi, Missouri, Tennessee, and South Carolina have similarly followed Alabama's lead. These states have either amended or suspended their initial NIL laws. A number of the amendments remove an institutional involvement prohibition which barred schools from engaging with third-parties in facilitating deals for their college-athletes. College coaches and athletic officials in these states can now work with third-parties to help procure NIL activities for their players, effectively allowing them to become part of the NIL process.

Federal Law Addressing NIL

Due to concerns regarding potential unfairness in the recruiting process, there have been calls for a uniform federal law, including from the NCAA which has expressed a desire for a federal framework around NIL.

NCAA president Mark Emmert testified before Congress that there are “‘many challenges and concerning trends. These concerns, if not addressed soon, may be very difficult to reverse’ . . . [t]he ‘patchwork’ of state laws fails to provide uniform protections for college athletes nationwide and creates an uneven playing field”^[4].

Since 2019, eight federal laws have been introduced, but none has garnered enough support sufficient for passage. The most recent NIL bill, however, suggests that a continued interest exists in getting some sort of federal legislation in place. The Amateur Athletes Protection and Compensation Act was introduced by Senator Moran of Kansas in February 2021, and has since been referred to committee. Notably, the bill would “[p]rohibit the NCAA, athletic conferences or schools from rendering an amateur intercollegiate athlete ineligible on the basis of entering into a contract or receiving covered compensation” for NIL rights. Such legislation would be unprecedented, as it would explicitly strip the NCAA and educational institutions of any authority in declaring a student-athlete “ineligible” on the basis of their NIL activities. This would effectively nullify any force that the current NCAA interim NIL policy has, leaving the matter largely up to federal law.

Additionally, the Uniform Law Commission (“ULC”) has also chimed into the discussion. ULC members are practicing lawyers “appointed by state governments as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.” Less than a month after the *Alston* ruling, the ULC drafted the Uniform College Athlete Name, Image or Likeness Act (the “Act”). To date, the Act has been introduced as a bill in both the District of Columbia and Wisconsin.

While many states were quick to enact NIL legislation as soon as the *Alston* ruling came down, some are skeptical as to whether the lack of uniformity amongst these laws will bode well for the world of NIL in college athletics. Amongst these critics, the NCAA has voiced its concerns the loudest articulating the fear that a mix of inconsistent state laws will result in uncertainty, if not unfairness in the recruiting process. Notwithstanding this concern, there still is no federal law in place and it remains to be seen whether one will be passed.

The third and final part of this blog series will highlight the ways in which schools, corporations, and college players themselves have engaged in the NIL space.

FOOTNOTES

[1] The following states have enacted legislation addressing NIL that are currently in effect: Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Kentucky, Louisiana, Maine, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

[2] The following states have enacted legislation addressing NIL that are not yet in effect, but soon will be: California (Jan. 1, 2023), Maryland (July 1, 2023), Michigan (Dec. 31, 2022), and Montana (June 1, 2023). New Jersey is the single exception; its law will take effect in August 2025.

[3] The following states have proposed legislation addressing NIL: Delaware, Iowa, Kansas, Massachusetts, Minnesota, New York, Rhode Island, Vermont, West Virginia, and Wisconsin.

[4] Maria Carrasco, *Congress Weighs In on College Athletes Leveraging Their Brand*, Inside Higher Ed (Oct. 1, 2021), <https://www.insidehighered.com/news/2021/10/01/congress-holds-hearing-creating-federal-nil-law>.

Ezzat Nsouli contributed to this article.

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How Schools and Private Entities Have Engaged in NIL Activity

Article By:
Andrew H. King

Now that a regulatory framework is in place, either by way of the NCAA's interim policy or through [the various state laws discussed in the second iteration of this blog series](#), academic institutions and private entities, such as alumni and companies, have quickly engaged in the NIL space. This final post of our three-part blog series explores some of the ways these entities and individuals have interacted with NIL in the world of college athletics.

How Schools and Their Athletes Are Entering the Mix

Recognizing that NIL deals are now a significant factor in recruitment and that NIL is here to stay, schools are getting involved in the process. This is primarily accomplished in two ways: through school-specific NIL policies, and NIL departments aimed at facilitating and educating players.

School NIL Policies

Academic institutions are setting their own NIL policies to govern in addition to the NCAA's interim policy and any applicable state law. These policies are primarily aimed at protecting a particular school's intellectual property, e.g. trademarks, service marks, logos, or symbols. For instance, many institutional NIL rules prohibit players from appearing in photos or videos while wearing apparel bearing the school's indicia. Where state laws do not do so, many school policies also prohibit players from engaging in NIL activity in particular industries, such as alcohol and tobacco.

NIL Departments and Partnerships

Many institutions have established NIL departments to help their players understand, navigate, and succeed in the new NIL landscape. The Ohio State University, for example, is at the forefront of this movement and has implemented what it refers to as an "Edge Team." The goal of this team is to serve as "an internal advisory group whose members can assist student-athletes with access and resources to successfully pursue NIL opportunities. The Edge Team may work with companies and brands to assist in the NIL process, and it will also have the flexibility to monitor and adapt to changing guidelines and legislation."

With virtually all of Ohio State's varsity sports having designated staff to work on NIL requests, the university has also made it simple for companies to work with the players; a dedicated page on the OSU athletics website, titled *NIL Simplified*, allows for companies to fill out a form with their contact information and an indication of the player they would like to work with.

Schools have also instituted programs that, in addition to helping facilitate NIL deals, are designed to educate their student-athletes. To again use Ohio State as an example, the university has established a "Corporate Ambassador Program." Through this program, Ohio State athletes serve as a corporate ambassador for a company within the community. In addition to "engag[ing] with the marketing department of each company to promote their brand," student-athlete ambassadors will also be provided with career-building skills such as resume assistance, lessons on how to navigate corporate relationships, and an overall mechanism for them to

gain marketing and advertisement experience. The purpose of the Corporate Ambassador Program, above all else, is to provide student-athletes with professional development to best prepare them for life after sport.

Rather than instituting internal NIL programs, other schools contract out such work to third-party entities to achieve similar goals, as outlined below.

How Companies and Private Individuals Are Entering the Mix

Experts predict that the NIL space is now a \$100 million industry, with some athletes earning at least \$1 million at the end of 2021¹. Companies and private individuals have also entered the mix. One such way in which the corporate world has entered the NIL space is through the creation of consulting firms. Another way is through the formation of NIL Collectives and Directives.

NIL Consulting Firms

Since *Alston* was decided, the NIL consultant industry has boomed and is predicted to continue to grow as more companies look to sign college athletes to NIL deals. In addition to facilitating activities, these consulting firms provide athletes with brand value assessments, live consultations, simplified ways for players to disclose their NIL activities to ensure compliance, as well as ways for players to maximize their social media presence.

Many of these firms partner with institutions and serve as the resource hub for student-athletes. NIL consultants primarily make their money when they match players to a particular deal, i.e. they receive a percentage of the deal's total value.

NIL Collectives & Directives

Fans and alumni of various universities have taken it upon themselves to also assist student athletes in securing NIL opportunities through the formation of entities known as "NIL Collectives."

NIL Collectives are entities formed to benefit specific schools, and are made up of fans and alumni. They generate NIL activities and funds for players by gathering funds from donors and businesses. Amongst other things, much of these activities include player participation in promotion for brand content, engagement in VIP events and experiences, autographed photos and personalized video messages, and special appearances on radio programs.

There are currently more than fifty NIL Collectives nationwide, with more being announced on a nearly weekly basis. For most NIL critics, Collectives are the crux of their concern. They argue that deals secured through Collectives straddle the line between lawful NIL recruiting deals and the prohibited pay-for-play model.

Additionally, there appears to be a new movement toward "NIL Directives," which are similar to Collectives in that they are donor-driven and school-specific. Where they differ, however, is that "they are one-to-one financial transactions, typically between a wealthy booster or businessman and a specific college athlete from the school they support." This form of facilitating NIL deals for players has also been the subject of scrutiny by NIL critics.

In an attempt to regulate these school-specific NIL Collectives/Directives, the NCAA amended its guidelines in May 2022, primarily to deal with booster involvement. In defining the term "booster,"² the guidelines state that "[i]t appears that the overall mission of many, if not all, of [these] third party entities is to promote and support a specific NCAA institution by making available NIL opportunities to prospective student-athletes (PSA) and student-athletes (SAs) of a particular institution, thereby triggering the definition of a booster."

The document goes on to provide guidance for dealing with booster-backed deals for both prospective and current student athletes. Notably, for prospective players, all recruiting conversations with individuals or entities that "[have] triggered booster status" are strictly prohibited.

The guidance for current players is far less restrictive and provides that agreements between players and boosters “may not be guaranteed or promised contingent on initial or continuing enrollment at a particular institution.” Though the question of how these guidelines will be effectively enforced is yet to be answered, the threat of losing everything they’ve worked for may be enough to compel student-athletes to comply.

Since the *Alston* ruling just over a year ago, the academic institutions, players, corporations, and private citizens that comprise the world of collegiate athletics have been navigating uncharted waters. The NIL space is lucrative, but because it is still in its infancy, those operating therein must tread carefully to ensure that they not only follow all academic rules, NCAA guidelines, and state laws, but also monitor the same as they continue to adapt and change to the new world of college athletics.

FOOTNOTES

[1] Some of the most lucrative NIL deals to date include the following: a football recruit is alleged to have signed a deal for \$8,000,000; a football recruit signed a \$1.4 million deal to sign autographs, and; a football player signed an \$800,000 deal in exchange for certain brand promotion content. NIL is also not limited to collegiate football; for instance, and notably, a gymnast signed a promotion deal for a particular brand in excess of \$1 million.

[2] The NCAA defines the term “booster” as: [A]n individual, independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization who is known (or who should have been known) by a member of the institution’s executive or athletics administration to have participated in or to be a member of an agency or organization promoting the institution’s intercollegiate athletics program or to assist or to have assisted in providing benefits to enrolled student-athletes or their family members. *Interim Name, Image and Likeness Policy Guidance Regarding Third Party Involvement*, Nat’l Collegiate Athletic Ass’n, https://ncaaorg.s3.amazonaws.com/ncaa/NIL/May2022NIL_Guidance.pdf (last visited June 29, 2022).

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June 22, 2021

National Collegiate Athletic Association v. Alston

Sarah Eberspacher, Martin Edel

Goulston & Storrs PC

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Supreme Court Sides with Student-Athletes in *NCAA v. Alston*, Expands Permissible Types of Compensation

On June 21, 2021, the United States Supreme Court unanimously found that NCAA rules blanketly prohibiting student-athletes from receiving certain types of compensation violate the federal antitrust laws. The *Alston* decision recognizes that the NCAA’s “amateurism” rules cannot work to benefit everyone except the student-athletes who produce the product in the first place. Further, the Court left open the question as to how much additional “educational-related benefits” may exist without violating that bedrock NCAA principle of “amateurism.”

In this article, we provide an overview of the *Alston* case and highlight some of the key issues that colleges and universities—and their athletic departments—need to consider in light of the Court’s decision.

1. The *Alston* Case

On the eve of March Madness 2014, former West Virginia running back Shawne Alston and former University of California center Justine Hartman, as representatives for a class of former men’s and women’s college football and basketball players, commenced an antitrust action against the NCAA. The *Alston* plaintiffs alleged that the NCAA’s eligibility rules, which limit the types and amounts of compensation to which student-athletes are entitled, violate Section 1 of the Sherman Antitrust Act.

The Sherman Act prohibits unreasonable restrictions on competition among the states. Courts typically apply a “rule of reason” standard of review to sports cases, which consists of a three-part test to determine if the alleged restraint is unreasonable. The plaintiffs first have the burden of showing that the challenged practice unreasonably restrains competition in a relevant market.

Once the plaintiffs make that showing, the burden shifts to the defendants to show a pro-competitive justification for the practice. The third and final part of the test shifts the burden back to the plaintiffs to show that a less-restrictive alternative (LRA) is available and that the defendants did not employ it.

In applying the three-part “rule of reason” test, the U.S. federal district court in *Alston* found that the NCAA’s eligibility rules constituted an antitrust violation. The court determined that (i) the class of student-athletes met their burden of showing that the NCAA rules artificially capping their compensation restricted competition in a relevant market—here, the market for “athletic services in men’s and women’s Division I basketball and FBS football”; (ii) that the NCAA articulated an economically relevant defense—that “amateurism” distinguished the NCAA’s product from professional sports leagues, thereby widening consumer choice by providing the option of a unique product; but that (iii) there was an LRA to complete prohibitions on compensation for student-athletes, specifically allowing for education-related benefits such as paid internships, tutors, computers, science equipment, musical instruments, and so forth.

The district court determined that such education-related benefits would not harm the NCAA’s amateur-athlete product, because while the NCAA needs “ample latitude” to run its enterprise, allowing the reasonable adjustments on education-related benefits would not blur the lines between a professional-sports product and an amateur-sports product—“if anything, they emphasize that the recipients are students.” The district court also held, based on the facts presented, that schools could provide student-athletes up to \$5,980 per athlete per year in “academic-achievement awards,” which is the same maximum award currently allowed annually for certain athletic achievements.

On appeal, the Ninth Circuit Court of Appeals held that the district court had properly applied the “rule of reason” test and there was an antitrust violation. The Ninth Circuit further upheld the district court’s determination that an LRA existed. The Ninth Circuit affirmed the district court’s finding that schools could provide education-related benefits without sacrificing amateurism.

The Supreme Court affirmed the Ninth Circuit’s decision. In so doing, the Court reaffirmed the three-part “rule of reason” analysis as applying even to colleges and universities. And, the Supreme Court held that the NCAA and its member institutions had violated the antitrust laws in their blanket prohibitions on student-athlete compensation through education-related benefits.

Justice Kavanaugh, in a concurring opinion, highlighted the uncertainty that remains for the various stakeholders around these issues, however—namely, that “the rest of the NCAA’s compensation rules are not at issue here, and therefore remain on the books.” Justice Kavanaugh noted that the NCAA’s broader rules against pay-for-play likely implicate the same antitrust issues that were discussed in the narrower *Alston* holding, and that just as the NCAA’s defense in *Alston* came up short, so too might it be insufficient in defending broader prohibitions on compensation for student-athletes. In short, *Alston* is likely to have an immediate impact on college sports—but it may be more preview of what’s to come than last word on the issue.

2. **What Now? Issues College and University Athletic Departments Should Address**

The *Alston* decision is likely to force college and university athletic departments to change how they deal with revenue and Olympic student-athletes in significant ways:

- *First*, to competitively recruit student athletes, colleges and universities likely will have to promise not only grant-in-aid packages but also additional, education-related benefits to student-athletes.
- *Second*, colleges and universities will need to determine not only how annual “academic achievement awards” will impact their budgets, but also how these awards will impact compliance with Title IX.
- *Third*, colleges and universities will need to determine whether student-athletes receipt of these types of compensation transforms them into employees, entitled to mandatory benefits and possible unionization for collective bargaining purposes under the National Labor Relations Act.

We address these issues:

To competitively recruit student-athletes, will colleges and universities have to promise not only grant-in-aid packages but also additional, education-related benefits?

Athletic Directors should anticipate the need to develop recruiting packages that include a robust grouping of education-related benefits, in addition to traditional grant-in-aid packages. Based on *Alston*, the NCAA’s limitation on paying athletes a grant-in-aid package without other educational-related benefits cannot withstand antitrust scrutiny. This necessarily will include developing rules as to what *is* an educational-related benefit, who is eligible, who will be responsible for paying (the role of boosters v. the college)—and how much.

The benefits listed by the *Alston* courts—tutors, computers, science equipment, musical instruments—will likely be fair game for inclusion as educational-related benefits. The scope likely will not be so limited. Colleges could wait for NCAA guidance, but that guidance may not be quickly forthcoming, leaving individual schools and conferences to determine the rules of the road. As with NIL rules, waiting for NCAA guidance may impact a school’s recruiting advantages.

What is the impact of an annual “academic achievement award” on college budgets, who will be eligible, and for how much up to that cap?

ADs will need to consider whether to offer student-athletes up to \$5,980 per academic year. The *Alston* decision does not *require* these payments by every school or to every student-athlete—it only prohibits the NCAA from *restricting* athletes from receiving them. ADs also need to be aware that \$5,980 may represent the floor, not the ceiling, on permissible payments to student-athletes. The Court’s decision leaves the door open to periodic legal challenges to that \$5,980, in that ultimately, prevailing market rates could be deemed the actual limit and necessitate upward adjustments over time.

Conferences and schools remain free to set their own caps on this amount. Discussions will therefore need to take place both with fellow ADs and individual universities: How would these amounts impact Athletic Department budgets? Should they be in addition to or in lieu of now-uncapped education-related benefits? Will the ways in which schools allocate the education-related benefits impact compliance with Title IX? And will discussions among ADs—either at the conference level or beyond—potentially create antitrust liability for that group?

Notably, schools with smaller athletic budgets may not be in a position to offer either education-related benefits or the cash or cash-equivalent awards. Yet as counsel for the student-athletes argued in *Alston*, a disparity between big-money programs and schools operating in smaller divisions and conferences (and with correspondingly smaller budgets) already exists. Moreover, even student-athletes at smaller schools may still benefit financially from a landscape that allows for more compensation opportunities, full-stop—whether that is through opportunities made available by the *Alston* decision or ongoing NIL legislation.

To that end, ADs at schools of all sizes and in all divisions should be aware of the interplay between *Alston*’s expansion of permissible compensation to student-athletes, and parallel pushes for NIL legislation occurring country-wide. How one influences the other remains to be fully seen, but ADs can anticipate either way the need for development or refinement of financial-planning seminars, and even potentially tax-preparation help, for student-athletes.

If student-athletes are more explicitly receiving payments for playing their sports—i.e., pay-to-play—how likely is it that student-athletes will unionize for collective bargaining purposes under the National Labor Relations Act?

If student-athletes are more clearly being paid to play, there will likely be a renewed push by student-athletes to unionize for collective bargaining purposes.

The Northwestern University football team came close several years ago, arguing that they deserved employee status under the law, and the right to bargain collectively with the NCAA. Legally, an “employee,” among other things, must be found to perform services for another, under their control, for compensation. More clear-cut compensation untethered from payments

for academics, room, and board could push student-athletes toward firmer “employee status.” The grant to student-athletes of employee status would have significant economic consequences for colleges and universities, including, but not limited to, the payment of employee benefits, time off and possible unionization. ADs should be prepared for this prospect and spend time proactively considering its implications, rather than reactively responding to that future event.

3. Putting It All Together

These are not the only issues implicated by *Alston*—some may be school-specific, while others may percolate up over the next couple of years as its early impacts are felt.

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GOVERNANCE



DI Council endorses Transformation Committee concepts
DI Board of Directors to vote next month
Michelle Brutlag Hosick
Media Center
Posted: 7/20/2022 7:30:00 PM

The Division I Council on Wednesday endorsed several recommendations intended to better support student-athletes, improve efficiency and timeliness in the infractions process, and improve clarity in the transfer environment.

Developed through the work of the Transformation Committee, the recommendations will go to the Division I Board of Directors next month for adoption.

If the recommendations are approved by the board, schools would be empowered to support student-athletes in a variety of ways without asking for waivers, including providing any support needed for a student-athlete's personal health, safety and well-being; paying for items to support a student's academic pursuits; purchasing insurance of various types; and funding participation in elite-level training, tryouts and competition.

The Council also endorsed several concepts intended to address challenges in the infractions process, including:

- Incentivizing parties to secure cooperation from representatives, family members and others with relevant information.

- Expanding the use of a public dashboard for all infractions.
- Reserving hearings before the Committee on Infractions for only the most significant behaviors.

Additional enhancements to fair and timely processing of infractions cases will be considered by the Council next month.

Finally, the Council endorsed a concept that would eliminate the blanket rule prohibiting transferring more than once. The concept would also implement transfer portal "entry windows," or periods of time in which student-athletes must provide their school with written notification of transfer to be eligible to compete immediately the following academic year.

For winter and spring sports, students could provide written notification of transfer the day after NCAA championship selections in that sport for 60 calendar days. In fall sports, two separate windows would provide a total of 60 calendar days. The first window would be 45 days beginning the day following championship selection and the second would be from May 1 to May 15. Reasonable accommodations will be made for participants in the Football Bowl Subdivision and Football Championship Subdivision championship games.

Additionally, schools that accept four-year transfer students receiving financial aid will be required to provide financial aid to the student-athlete through the completion of the student's five-year period of eligibility or undergraduate graduation, whichever comes first, unless the student transfers again or enters a professional draft. The student would continue to count against roster and financial aid limits unless the student is medically disqualified, exhausts eligibility, transfers or enters a professional draft.

Members expressed some concern about some details related to implementation of the transfer changes; although, most of the Council agreed the concepts will improve the transfer environment.

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ACC looking for ways to boost revenue, shrink financial gap

By Aaron Beard
Associated Press • Jul 22, 2022 at 5:30 am



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CHARLOTTE, N.C. — Atlantic Coast Conference commissioner Jim Phillips leads a league bringing in record revenues, with more and more money going to member schools.

It's also a league struggling to keep up with peers in the Big Ten and Southeastern conferences.

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League schools have talked for years about finding ways to close that growing gap. But as the Big Ten and SEC expand to add marquee names, the ACC's concern becomes more pressing and even stirs uncertainty about its long-range future in terms of whether schools might eventually try to chase money elsewhere.

For now, that means trying to squeeze more money [out of a long-running TV deal](#), kicking around ideas and even holding out hope that Notre Dame might one day shed football independence to join the ACC and boost the bottom line.

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At ACC Kickoff preseason media days earlier in the week, Phillips said “all options are on the table.”

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The league's deal with ESPN, which included [the long-sought 2019 launch of its own network](#), runs through 2036. It also has an extension of a grant-of-rights provision that gives the league control of media rights for any school that attempts to leave for the duration of the deal, which is a move to deter defections in future realignment.

That appears to have the ACC on stable footing for the immediate future. But for how long? Figuring out a way to better grow the financial picture could determine that.

Phillips described the league and ESPN as partners with a mutual interest in making the ACC Network as profitable as possible to support the league.

“How can they have a partnership and an asset and not want it to really be thriving over the next 14 years?” Phillips told the AP. “That doesn’t make any sense. So they are motivated. And when you talk about [how] we’re considering multiple options, it’s just that.

“You’re not trying to eliminate potential opportunities, you’re trying to create. ... You can do something with your network. You can do something with events. You can do something certainly with expansion if you so choose. But there has to a value in whatever move you end up making.”

The ACC’s most recent tax filing listed a record \$578.3 million in total revenue while distributing an average of \$36.1 million per school for the 2020-21 season, [which included Notre Dame as a one-year full football member](#) for scheduling purposes during the COVID-19 pandemic.

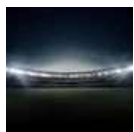
Additionally, TV revenue has increased from roughly \$288.6 million in the 2018-19 fiscal year before the launch of the ACC Network to \$397.4 million in 2020-21.

And yet, years of healthy growth are heavily outpaced by numbers coming out of the SEC and the Big Ten. For that same 2020-21 season, the SEC reported nearly \$833.4 million in revenue and an average distribution of \$54.6 million, while the Big Ten checked in at \$679.8 million and an average \$47.9 million payout.

And with those leagues announcing upcoming name-brand additions — [Texas and Oklahoma to the SEC](#), [USC and UCLA to the Big Ten](#) — the revenue gap could grow more aggressively.

“It’s a concern,” North Carolina State coach Dave Doeren said. “If one school is getting \$30 million more than another school, they can do more things with the money. It’s been that way for a while, though.

“If you look at what’s happened, we’ve still had a team in the playoffs [seven of eight] years. So we’ve overcome it. But you wouldn’t like to overcome it if you didn’t have to.”



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Several others shrugged off the topic.

Louisville offensive lineman Caleb Chandler, a sixth-year senior, wasn’t focused on it because he’ll be gone next year and “won’t affect me in any way.” N.C. State quarterback Devin Leary said he wasn’t worried about it, either.

“You want to talk about revenue and gaps, like that’s just – I coach football,” Boston College coach Jeff Hafley said. “That’s beyond me.”

And then there was Clemson coach Dabo Swinney, whose program has reached six College Football Playoffs with two national championships.

“I don’t have any concern because other people worry about all of that stuff and deal with it and figure out whatever,” Swinney said. “I mean, Lord have mercy, in 2036 I don’t know where I’ll be. That’s a long time and they will figure all of that stuff out.”

Besides, there’s little the ACC teams can do other than win games and become more appealing brands. Beyond that, it’s up to league leadership to figure out the next moves.

“You have to be measured and it has to be ultimately good for the long-term health of the conference,” Phillips told the AP. “To make a move just to make a move is not the right thing for the ACC. It just isn’t.”



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College football rights deals by media network (\$mm)

College Football TV Rights	2017	2018	2019	2020	2021	2022	2023	2024	2025
ESPN/ABC									
SEC	144	151	158	166	174	183	192	292	307
Big Ten	160	168	176	185	194	204	205	216	226
ACC	139	146	153	160	168	177	186	195	205
Big 12	88	92	96	121	127	134	140	147	155
Pac-12	96	101	106	111	116	122	128	137	144
AAC	18	19	20	21	63	66	69	72	76
Mid American	20	21	22	23	24	25	27	28	30
ESPN/ABC Total	663	696	731	788	868	911	947	1,087	1,142
FOX									
Big Ten	200	210	221	232	243	255	256	269	283
Pac-12	96	101	106	111	116	122	128	137	144
Big 12	79	83	87	91	96	101	106	111	117
Big East	36	38	40	42	44	47	49	51	55
Mountain West	-	-	-	20	21	22	23	24	26
FOX Total	411	432	453	496	521	547	563	593	624
CBS									
SEC	62	65	67	70	74	77	81	-	-
Mountain West	17	18	19	20	21	22	23	24	26
CBS Total	79	82	86	90	95	99	104	24	26

Source: ESPN, Sports Business Journal, Wells Fargo Securities, LLC estimates