

## American Bar Association Considers Overhaul of Free Speech Rules for Law Schools Amidst Escalating Campus Tensions



In an anticipated move set for Friday, the American Bar Association (ABA) is poised to vote on transformative free speech regulations for law schools. This development comes at a critical juncture as clashes between supporters of Israel and Palestine escalate on college campuses.

### Addressing Campus Free Speech Rights in the Wake of Middle East Conflict

The enduring Middle East conflict has thrust campus free speech rights into the spotlight. This issue has been a focal point for numerous distinguished law schools over the past two years. The ABA's legal education arm aims to tackle this challenge through proposed amendments to its accreditation standards.

### The Proposed Standard: Fostering a Diverse Exchange of Ideas

The proposed standard emphasizes that effective legal education and the evolution of the law necessitate the free, robust, and uninhibited sharing of ideas across a broad spectrum of viewpoints. According to the envisioned changes, law schools must formulate free speech policies that protect the exchange of ideas.

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### Safeguarding Controversial and Unpopular Ideas

Under the proposed alterations, institutions must develop their free speech policies. However, these policies must explicitly safeguard the rights of faculty, staff, and students to express controversial or unpopular ideas. Furthermore, the policies should ensure the preservation of robust debates, demonstrations, or protests within the bounds of the law.

### Balancing Expression and Limitations

The proposed changes also prohibit disruptive activities that impede free expression or substantially interfere with law school functions. While schools are permitted to restrict activities that constitute a genuine threat, harassment, defamation, or law violations, there is no specific enforcement mechanism outlined in the proposal.

### Accreditation at Stake for Non-Compliant Schools

While the proposed rule lacks a defined enforcement mechanism, law schools failing to adhere to the ABA's standards risk losing accreditation. The ABA Council is set to decide on the new free speech rule this Friday, and if approved, it will undergo final scrutiny by the ABA's House of Delegates in February.

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### Precipitating Incidents and Public Feedback

The proposal arose after highly publicized Stanford and Yale Law School free speech incidents. Instances where students disrupted controversial speakers prompted criticism of the school's handling of such situations. Removing the former president of New York University School of Law's Student Bar Association in October has fueled the

debate. The student was ousted after attributing full responsibility to Israel for a deadly attack by Hamas in an online newsletter.

### **Public Response and ABA's Flexible Approach**

The ABA's Council of the Section of Legal Education and Admissions to the Bar, responsible for overseeing law school accreditation, solicited public input in August. The proposal garnered 22 comments, overwhelmingly in support of the change. While some comments sought a further definition of harassment or protection measures for those affected by unprotected speech, the ABA, in its memo, opted for a "general statement of minimum requirements." This approach affords law schools flexibility as they draft their free speech policies.

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