Advisory Report on the Spring 2024 Demonstrations and Encampment

University of Denver Freedom of Expression Committee

Prepared for the Faculty Senate
17 September 2024

Freedom of Expression Committee Members

Dean Saitta, Professor of Anthropology and President of the Faculty Senate (Committee Co-Chair)

Derigan Silver, Associate Professor & Chair, Department of Media, Film and Journalism Studies and Faculty Director, DU Free Expression & Pluralism Initiatives (Committee Co-Chair)

Renée Botta, Associate Professor, Media, Film and Journalism Studies and Immediate Past-President of the Faculty Senate

Detric Robinson, President of the Staff Senate

Ross Logan, Vice President of the Staff Senate

Alexi Freeman, Professor of the Practice, Associate Dean of Diversity, Equity & Inclusion, Director of Externships & Social Justice Initiatives, and Faculty of Color Association (FOCA) Representative, Sturm College of Law.

Alex Martinez, Staff of Color Association (SOCA) Representative

Tyler Miller, Undergraduate Student Government President

Rosepetal Van de Graaf, Graduate Student Government President

Alan Chen, Professor, Sturm College of Law

Becca Hall, Programming Specialist for Freedom of Expression and Civil Discourse Initiatives

Stuart Halsall, Interim Vice Chancellor for Student Affairs

Christopher Whitt, Vice Chancellor of Diversity, Equity, and Inclusion

Mary Clark, Provost

Executive Summary

This report provides a consensus-based account and analysis of what happened during the spring 2024 pro-Palestine demonstrations and encampment on the DU campus. It establishes a timeline of events, reflects on what went right and wrong, and offers recommendations for a permanent Demonstrations Policy and future campus programming around freedom of expression. Among the key recommendations are the following:

- Creation of a permanent Demonstrations Policy that clarifies key terms and the conditions under which community members will be asked to show university identification, and includes sections on 'First Principles and Values' and 'The Difference between Free Speech and Civil Disobedience'.

- Support for creation of a university task force to investigate and make recommendations about how DU might resolve conflicts resulting from the exercise of free expression on campus, including the question of what a crisis de-escalation team should look like.

- Convening of Town Halls and other community events in 2024-25 to debrief all that happened in spring 2024, solicit feedback on the substance of this Advisory Report, generate ideas about ways to better support free expression and pluralism on campus, and engage in community healing.

- Campus-wide programming for a shared understanding of the distinct roles, responsibilities, and reciprocal obligations that trustees, administrators, faculty, staff, and students have in a coherent and robust system of university governance.

- Curriculum development (e.g., FSEMs) for first-year students that addresses issues of free speech and expression.

The events of spring 2024 produced a frayed social fabric, deep divisions between community stakeholders, and a climate of suspicion and mistrust for which we bear collective responsibility. The campus community will have to work hard to address these conditions given the many challenges confronting higher education and the larger society moving forward.

I. Introduction

One of the functions of the university's Freedom of Expression (FoE) Committee is to produce Advisory Reports on "*incidents where freedom of expression has allegedly been unjustifiably curtailed or that expression has been practiced in ways that diminish or conflict with other DU values*". The FoE committee represents multiple constituencies and a diversity of viewpoints. It includes student government representatives, Faculty and Staff Senate representatives, Student Affairs and Inclusive Excellence leadership, Office of Diversity, Equity and Inclusion leadership, Faculty and Staff of Color Association representatives, faculty scholars expert in First Amendment and freedom of expression issues, and the Provost of the university.

The Committee believes that events around the spring 2024 demonstrations encampment warrant a report to the entire DU community. The goal of this report is to provide a consensus-based account and analysis of what happened during the spring demonstrations and encampment, with different perspectives on events provided where necessary. We establish a timeline of events, discuss what went right and wrong, and offer recommendations for a permanent Demonstrations Policy and future campus programming around freedom of expression.

This report is based on the personal experiences of committee members, informal discussions with community members involved with the demonstrations, and a formal post-demonstration survey of faculty and staff senators. The FoE Committee did not conduct a comprehensive investigation nor structured interviews of a representative sample of participants and witnesses. However, as individuals closely involved with the events we bring a diverse set of perspectives and opinions to the topics discussed in this report. To their credit, members of the FoE Committee who are university administrators took a hands-off approach to the writing of this report other than correcting factual errors.

Several other internal and external reviews of the spring 2024 events have been commissioned by the administration. These other reviews include confidential interviews with members of various campus constituencies. The results of these reviews will be reported in due course. They should be used in conjunction with this Advisory Report, as well as national survey data, to address free expression issues on campus. In this academic year a task force on conflict resolution and crisis management will be convened by the university's Senior Vice Chancellor for Operations & Strategy Implementation. The task force includes staff and Faculty Senate representatives and will make recommendations about how DU should resolve conflicts resulting from the exercise of free speech on campus.

The most important finding of this Advisory Report is that what happened at other universities (e.g., Columbia, UCLA, Emory, Stony Brook, U Buffalo, Indiana U, U Chicago) didn't happen at the University of Denver. There was no full-scale riot. There were no physical assaults on persons that led to the filing of formal charges. Denver police, while on call, were never summoned onto campus to forcibly disband the encampment. There were no arrests of students, staff, or faculty. The encampment was peacefully concluded and June

commencements were conducted without disruption. While there were some student sanctions and suspensions, at DU the outcome was similar to those achieved by Brown, Northwestern, Wesleyan, and the University of Wisconsin-Milwaukee. Demonstrations at these institutions concluded with agreements by the contending parties to yield on some issues, hold fast to their positions on others, and continue talking about others. That such a resolution occurred at DU is a credit to all university stakeholders: student demonstrators, trustees, administration, staff, and faculty.

At the same time, what occurred at DU was not an exemplar of how to have respectful "dialogues across difference". There were some troubling incidents of vandalism on campus and at the private residences of academic deans. The level of vitriol was unprecedented, at least for community members having decades of service at the university. Official statements by the administration were perceived by many as problematic and, on some accounts, served to escalate tensions and prolong the stand-off. Some of the messages on the DU For Palestine Instagram site were similarly problematic and unnerving to faculty and staff serving as mediators. Tensions were exacerbated by widespread circulation of rumors that included partial truths, false statements, and misleading information. Rumors included impending sweeps of the encampment and student arrests, and exaggeration of the number of students put into the Student Rights and Responsibilities (SRR) disciplinary process. Some narratives about events became so entrenched that they were likely impervious to facts. Other accounts appear to have had a "I wouldn't have seen (or heard) it if I hadn't believed it" quality. The expenses associated with maintaining the security of the encampment and the campus were significant, approaching a half million dollars.

Respecting the positions of all involved and impacted, it's clear that the DU community was operating in a politically-volatile, emotionally-charged, and rapidly-evolving information environment. This produced a climate of uncertainty, distrust, and fear that the community must accept collective responsibility for generating. There is direct evidence and reliable reports of uncivil and intimidating behavior by demonstrators, counter-demonstrators, and their sympathizers. Jewish students participating in the encampment were labelled as self-hating, confused, brainwashed, and antisemitic for expressing any critique of Israel. Non-Jewish students participating in the encampment were similarly besieged. They were subjected to abusive language from counter-protesters, including being labeled as terrorists. Palestinian and Muslim students felt unsupported by the University. They perceived University messages and events prior to and during the encampment to neither acknowledge their concerns nor speakers who identified similarly. Encampment participants were threatened with physical violence and sexual assault. Jewish students not participating in the encampment were denounced as Zionists, fascists, and homophobes. Some felt like moving targets who were compelled to travel in groups and arm themselves with pepper spray in order to feel safe. Personal and professional relationships between and among faculty and staff were degraded.

All of this has produced a frayed social fabric, some deep divisions between community stakeholders, and a climate of suspicion and mistrust. The campus community will have to

work hard to address these conditions given that violence in Gaza continues and a very divisive U.S. presidential election is on the horizon.

II. Timeline of Events

The following timeline is assembled from multiple data sources including FoE Committee discussions, official DU administration messages, DU For Palestine Instagram site postings, *Clarion* accounts, DU AAUP email messages, news reports (*Denver Post*, *Denver Gazette*, local TV), and discussions with faculty marshals, Campus Safety officers, and other witnesses. Hyperlinks to many of these data sources are provided in-text so that readers can evaluate their veracity for themselves.

2023

October 17: In the wake of the October 7 Hamas attack, the Chancellor sends a message to the campus community articulating university principles. These include rejecting hate in all of its forms, emphasizing student safety, reaffirming commitments to free expression and civil discourse, and remaining neutral on geopolitical issues so as not to stifle the free expression rights of community members.

November 15: The Chancellor sends a message to the campus community responding to nationwide reports of incidents of hate and intolerance associated with the Middle East conflict. The message reaffirms the principles communicated on October 17. It notes that DU policies "prohibit speech that incites violence and acts of discrimination, including harassment, on the basis of shared ancestry and ethnic characteristics, including antisemitism and Islamophobia."

2024

February 16: In response to a request from the Chancellor and Provost and in anticipation of possible DU protests concerning the conflict in Gaza, the FoE Committee holds an initial meeting to discuss the formulation of a university Demonstrations Policy. A subcommittee is tasked with developing a draft for the Committee's consideration. The subcommittee includes Renée Botta (Media, Film, and Journalism Studies and Faculty Senate president), Derigan Silver (Media, Film, and Journalism Studies and Faculty Director of Free Expression and Civil Discourse Initiatives), and Alan Chen (Sturm College of Law).

February 16-April 17: The FoE subcommittee works in consultation with Vice Chancellor of Student Affairs Todd Adams and the Provost, and then circulates a draft policy to the full Committee. The subcommittee labels it an "interim" policy given the Chancellor's desire to have something in place before commencement. All parties acknowledge that following the full process necessary to adopt a permanent policy will require more time than is available. The Committee meets on April 17 to discuss the draft interim policy and provide feedback.

April 17-May 1: The subcommittee reviews the draft Demonstrations Policy and modifies the draft in light of the input of the Committee. The Provost seeks input from University Counsel. A new draft is circulated to the Committee on May 1.

April 27: DU's Faculty Senate Executive Committee sends a message (**Appendix I**) to all faculty noting the emergence, on campuses across the country, of student protests and demonstrations related to the Israel-Hamas conflict. It laments the harsh administrative crackdowns on protests at some of these campuses. It reaffirms the right of DU students to peacefully protest. It indicates that Faculty Senate leadership (specifically, the president and president-elect) has been working with the administration for many months to develop a Demonstrations Policy that balances freedoms of peaceful assembly and protest with institutional commitments to campus safety, security, and free and open academic inquiry.

April 29: With the prospect of campus demonstrations ramping up, DU AAUP (aka DUOrganize) holds a faculty marshal training session. The position statement on faculty marshaling reads in part: *"As faculty members, we are committed to protect and defend our students and our colleagues' academic freedom and right to protest.* The marshals perceived their role as: "*to stand between protesters and counter-protesters and to de-escalate when needed while also fostering opportunities for meaningful civil dialogue about the issues at hand".* The position statement also notes that "*This role does not indicate an individual faculty member's personal position on the demands or issue related to a given protest or direct action, rather, it is a commitment to use our bodies and our positions to protect students' right to free speech, free assembly, and peaceful protest, and defend them from arrest, assault, and repression*." Marshal training covers topics like accountability, security culture, skills/roles, actions and risks, and more. The marshals conduct their actions independently of and not in consultation with the FoE Committee.

April 30: Students at the Morgridge College of Education stage a classroom Walkout for Palestine event at 11am.

May 2: The FoE Committee meets to discuss the latest draft of the Interim Demonstrations Policy. Over the next few days the subcommittee suggests additional revisions to the policy and works with the Provost to create a draft for sharing with the Chancellor. Some of the issues covered include the accountability of event sponsors for any unexpected trouble that might break out, and steps to follow before calling police onto campus. The draft submitted to the Chancellor contains a provision allowing identification checks at demonstration events. Not all members of the FoE Committee support an ID check requirement as part of the interim policy. Concerns about this are repeatedly expressed by members over the next few weeks, with the Chancellor responding that he will not yield on the issue. The interim policy does not include a provision establishing a system for monitoring demonstrations.

May 3: The Chancellor issues a statement to the university community about 'Antisemitism, Discrimination, and Harassment'. It acknowledges the demonstrations on campus and reports that one of these contained antisemitic language. It indicates that such language will not be

tolerated, and urges DU community members to be familiar with university policies on discrimination and the Student Honor Code.

May 4: Students hold a demonstration for Gaza at the Evans Bridge. They request the presence of faculty marshals. Marshals wear yellow vests to identify themselves.

May 5: The Faculty Senate president sends a message to senators alerting them to the Chancellor's impending release of an Interim Demonstrations Policy containing guiding principles and rules of conduct (**Appendix II**). It emphasizes that the interim policy received input from all members of the FoE Committee.

May 9: Students erect a tent encampment on Carnegie Green. DU For Palestine calls on university officials to end financial and academic ties with Israel over its war in Gaza, acknowledge the "ongoing genocide" of Palestinians, appeal for an immediate ceasefire, and accede to other demands. Later that day the Chancellor, Provost, and other senior administrators send a message to the DU community about the encampment which includes a link to the Interim Demonstrations Policy. The policy permits an encampment. The administration's message commits Campus Safety personnel to help facilitate the safety of community members. The message says that acts of violence, antisemitism, and Islamophobia will not be tolerated. It limits protest participation to DU community members. It warns that disruptions to the university's learning environment and normal business operations will not be tolerated. As stipulated by the Student Honor Code, protest participants are reminded that they must show their university identification upon request of university officials. One motivation for this requirement is the news out of Columbia University that 30% of those arrested during that university's encampment were unaffiliated with the institution. A one-page document detailing these and other conduct rules is distributed to encampment participants.

May 10: The Chancellor and Provost send a follow-up message reiterating the university's stance on protest involvement. It emphasizes that participation in the encampment is limited to DU community members and reminds members of the ID card requirement. The Chancellor and Provost meet with the FoE Committee and commit to regular, ongoing meetings. They also offer to meet with protesters and counter-protesters. A meeting with counter-protesters is held today and is described as "productive". Daniel Bennett, the Executive Director of Hillel of Colorado, publishes a blog post on the organization's website committing his group to protecting the safety of Jewish students on campus. He notes that some Jewish students are dialoguing quietly with protesters while others are angry and still others are feeling unsafe or frightened. Faculty marshals receive good reviews for their work maintaining the peace. DU AAUP sends an email message to members soliciting sign-ups for faculty marshaling at the encampment, and shares slides from the April 29 marshal training.

May 11: DU For Palestine responds to the Chancellor's May 10 message. As part of the response it declares that because of DU's existence on "stolen land", protesters occupying the "liberated zone" of the encampment "…are not required to prove their legitimacy…and therefore reject ID checks". It is clear that protesters are also worried about their names being

used in 'doxxing' efforts by people hostile to the encampment. This is the central element of their argument that showing ID cards will compromise personal safety. The FoE Committee sends a message to Faculty Marshal leaders requesting help in conducting ID checks (the backside with the stripe, not the frontside with identifying information) as a positive step toward discussing protester demands. DU AAUP sends a message to university leadership clarifying the role of faculty marshals. The message frames marshaling as an expression of free speech that should not be regulated or manipulated. DU For Palestine posts a formal list of demands:

1. *Disclose: all investments as a form of accountability to all its impacted community members.*

2. *Divest: from all companies invested in and responsible for the illegal occupation, apartheid, and genocide of Palestinians in the West Bank, Gaza, and historic Palestine.*

3. *Declare: The university shall boycott Israel (a) economically and (b) academically.*

4. *Defend: the right to protest, free speech on campus and provide full amnesty for students, faculty, and staff in support of non-violent Palestinian liberation. This includes separating resistance to colonial Zionism from the idea of antisemitism.*

5. *Decolonize: Require all key administrators and board members to go through education and facilitators curated from the Jewish Voice for Peace and impacted Palestinian students about the history of Palestine.*
   -Remove the memorialization of John Evans from campus names, acknowledge the local genocide, and install education about these local issues as led by impacted students and professors.

University officials distribute a printed document to encampment participants reiterating expectations of compliance with university policies and alerting them to the consequences of non-compliance. A story spreads via DU For Palestine that administration is planning a sweep of the camp in the next 36 hours.

May 12: Administration sends a message to the DU community expressing growing concern about reports of unacceptable behavior, including antisemitism. It describes a productive May 10 meeting with counter-protesters and a meeting today with protesters to discuss the five demands listed above. DU For Palestine holds a videotaped press conference after today's meeting which is posted to its Instagram site. According to one attendee, and as reported in *The Denver Post*, the meeting with protesters produced "a verbal agreement that [administration] would continue meeting with DU For Palestine on topics of disclosure." The DU administration's message reports continuing non-compliance with ID checks, and notes that non-compliance will be referred to the SRR process. The message corrects several misperceptions that have been spreading, such as threatening students with arrest and an

imminent sweeping of the camp. It states that a "reciprocal partnership" is needed in order to maintain a safe and respectful environment for all.

May 13: A story in *The Clarion* details some of the hateful and homophobic remarks that have been directed at protesters by counter-protesters. Student members (now graduated) of the 2023-24 FoE Committee offer more examples, and react to the "one-sidedness" of the administration's May 12 message to the community. Another story in *The Clarion* summarizes events between May 9 and May 12. It reports that the Chancellor's office has been sending repeated emails to the student body reaffirming support for free expression and urging compliance with ID checks. The story also describes DU Rabbi Yossi Serebryanski's experience in the encampment promoting dialogue and demonstrating that the encampment poses no threat to Jewish students. Later in the day encampment participants who do not show IDs upon request are issued interim disciplinary measures, including warnings and location restrictions. DU For Palestine posts that the university is singling out and threatening student 'Police Liaisons' at the camp who function to maintain camp safety. It also reports that a conversation with DU's Chief of Security confirms that the camp is free of antisemitism. DU For Palestine sends a message to the Chancellor and Provost stating that it will agree to show IDs if within 48 hours the university meets the first demand to fully disclose its investments.

May 14: Administration reiterates to encampment participants that they are violating university policy. An ID check of participants in a counter-protest event is successfully conducted. DU officials meet with the Denver Police Department (DPD) to better understand the conditions that would warrant police intervention.

May 15: DU officials meet with Colorado Department of Public Safety officials amidst continued protester non-compliance with university policy. Disciplinary action against encampment participants ramps up. Daniel Bennett of Hillel of Colorado posts a statement demanding that DU officials immediately make good on promises to remove any "outside elements" from university grounds and hold students who participate in antisemitic acts accountable to consequences including suspension or expulsion. It urges the university to keep Jewish students safe, and partner with Hillel to stop antisemitism at DU. At the FoE Committee meeting held this day administration officials disavow the report by DU For Palestine that specific individuals in the encampment are being targeted for disciplinary action.

May 16: A letter is sent to students in the encampment providing new terms for ID checks. The letter says that checks will be conducted by Faculty Marshals along with a rotating member of the Chancellor's Cabinet or Student Affairs leadership. An Encampment Update message is sent by administration to the DU community that once again reiterates expectations for ID checks. The message disavows discriminatory remarks directed at a student by a professor speaking in the encampment. It notes that the choice to violate university policy is not a form of free expression, but rather civil disobedience that can result in disciplinary action. Protesters demonstrate indoors at the Community Commons, which university officials say violates university policy. DU AAUP sends a letter of concern to the administration about a rumor that university staff are being prohibited from serving as encampment marshals. It argues that this is

an infringement on individual free speech rights. Administration later responds that staff have never been officially excluded from serving as marshals and may participate as 'staff marshals' during their non-working hours.

May 17: Another notification is sent to encampment participants about SRR conduct processes. DU officials meet with Denver's Director of Public Safety. The Chancellor and Provost meet with another contingent of Jewish community leaders to hear their concerns. *The Denver Gazette* reports that Jewish students at DU have created their own safety patrols (sometimes referred to as 'Jews for DU') based on security fears and what they interpret as a protester demand for Israel's annihilation. DU's Director of Judaic Studies is reported to have criticized the administration for not doing more to protect Jewish students, and laments the "Instagram Intifada" being promoted by DU For Palestine. The DU Faculty Senate meets and hears from the Chancellor and Provost about the encampment (*The Clarion* reports on the proceedings). They field questions about messaging, the ID requirement, and student disciplinary procedures. The Chancellor notes yesterday's news about the discovery of stockpiled weapons in DePaul University's pro-Palestine encampment. Senators report (as does *The Clarion*) numerous peaceful, community-building activities (including teach-ins and interfaith services) taking place in the encampment. A resolution of support for encampment protesters is introduced by senators who also serve as faculty marshals. It asks that all current and future disciplinary actions against protesting students be ended. Passage will require 2/3 senator approval. The vote is conducted on Qualtrics and the result will be announced on May 23. An encampment ID check conducted by Campus Safety yields student IDs with photos of Palestinians killed in Gaza taped over student pictures.

May 19: The Chancellor and Provost participate in a Q&A held by Hillel of Colorado. Vandalism in the form of spray-painted messages is found at the Ritchie School of Engineering and Computer Science. There's no firm evidence connecting the vandalism to encampment protesters. KDVR reports interviews with protesters about disciplinary measures. It observes that "each student's location restriction appeared to be different". This seems to confirm application of an 'individuated' discipline process (as opposed to something indiscriminate) stipulated by the Honor Code and upheld by Student Affairs. However, another account from a faculty marshal suggests that a warning wasn't issued first for at least one student, which is mandated by SRR's 'progressive' discipline process. DU AAUP sends a message to the Chancellor criticizing the disciplinary measures as "wrong-headed" and "disproportionate" to the offenses.

May 20: DU officials offer to meet with encampment participants to discuss their safety and the safety of the campus community. A story in *The Clarion* reports on how protesters at other institutions (e.g., Northwestern, Rutgers) "have negotiated successful victories or compromises with their respective administrations". The student author speculates that the "stalemate" between protesters and administration at DU may suggest that the university "has simply been too good at its job" in promoting student involvement in the "discourse of ideas". The author concludes that if a successful outcome is to prevail at DU then both parties "are going to have to give."

May 21: Additional vandalism is reported at the Daniels College of Business. The Chancellor, Provost, and Senior Vice Chancellor for Operations & Strategy Implementation hold a two-hour afternoon meeting with encampment protesters. There are differing reports about the productivity of this meeting. The administration account, as reported to the FoE Committee, suggests that there was agreement on a number of concrete action steps in response to protester demands. These include making DU For Palestine an official DU organization, lifting all student conduct sanctions, and helping students find other means of protest in return for disbanding the encampment. It's reported that a vote was taken among protesters and that a majority supported dismantling the camp.

Sometime around 6:00pm DU For Palestine posts an urgent call that the university will be sweeping the camp at 8:00pm and that "community support is desperately needed". The Chancellor sends a message to the campus community around 7:00pm reporting that the camp must close and asking protesters to clear the area voluntarily by 9:00pm. He offers university support to help pack up personal belongings. If this doesn't happen, then the university "will determine other appropriate action to disband the camp". Some tents come down, as reported by encampment participants and external observers. However, the bulk of the encampment remains in place.

Some members of the FoE Committee believe that the Chancellor's message may have precipitated the presence of a larger and more hostile group of counter-protesters and bystanders than had been at the encampment in previous days. However, the committee can't be certain about this. A faculty marshal reports that campers are worried about removing their tents with a crowd of counter-protesters and bystanders gathering, many of whom are perhaps hoping for a violent confrontation. Other reports suggest that the gathering crowd is interpreted by protesters as indicating broad and substantial support for their cause. This supposedly inspired a new vote to reverse course and maintain the encampment (coincidentally, an event at Korbel featuring Palestinian speakers emptied out when news that the encampment was about to be swept took hold, releasing a couple hundred more people to Carnegie Green). Still other reports suggest that protesters were worried that camp disbandment would play into a "counter-protesters won" narrative. There are reports of tense encounters, threats, and assaults on an encampment participant and a faculty marshal. Some of these encounters are captured on video. Some are likely to have been fueled by alcohol.

The Chancellor and Provost send a second message to the campus community at 10:00pm noting that they shared no plans with protesters at today's meeting to have police or Campus Safety sweep and dismantle the camp. They express disappointment that their expectation of voluntary camp removal was not met, and reiterate that they will determine other steps toward safe disbanding.

May 22: A representative of the faculty marshals sends a message to Faculty Senate leadership detailing "grave concerns" about how the crisis associated with the encampment is being handled. The central concern is the failure to inform a variety of stakeholders, including Faculty Senate, Staff Senate, AAC staff, and college deans of the administration's intention to decamp students on May 21. Administration email messages are described as "inciteful rather than de-

escalating, collaborative, or frankly truthful with regard to portraying the situation on the ground." Literature about best practices for effective crisis management is shared.

May 23: The FoE Committee meets with the Provost and Chancellor to debrief about the events of May 21. It is a frank and pointed conversation, covering "unforced errors" in messaging and "missed opportunities" to end the stalemate. The Chancellor and Provost send a message to the DU community reporting an agreement with protesters to bolster security at the encampment given renewed fears for safety after the events of May 21 (this includes apparent threats by outsiders on the Fizz app to "take matters into their own hands" if the university doesn't do something to end the encampment). The joint statement with DU For Palestine reads: *"All members of the DU community deserve to be safe. Last night, the members of the encampment experienced harm. As a response to this, Chancellor Haefner and Provost Clark have offered to put up a protective barrier as an additional safety measure. The members of DU For Palestine that were involved in the conversation today agreed that this would be an effective measure to increase their safety and reduce harm.*" The protective barrier takes the form of fortified orange fencing to go along with a beefed-up Campus Safety officer presence and bright lighting. The administration's message thanks the faculty, staff, and Campus Safety officers who worked late into the night on May 21 to protect the community. The Faculty Senate vote on the first reading of the resolution to support encampment protesters by ending all disciplinary sanctions is announced: 44% for and 56% against. Having not achieved the 2/3 majority for passage, the resolution will proceed to a second senate reading and debate on June 7.

May 24: Campus Safety sends an evening message to the DU community about another act of vandalism to a university building, specifically Craig Hall. Three individuals are arrested, two of whom are DU students. One individual fled before Denver police could arrest them. The Hillel of Colorado Board of Directors and Staff post a response to the failed encampment removal and the beefed-up security by suggesting that the latter "…only adds to the feeling of tent-encampment permanence that deeply exacerbates what to us is antisemitism in our midst". The message goes on to suggest that the encampment's narrative is being controlled by outside organizers with a national playbook intended to eliminate the state of Israel.

May 26: The FoE Committee debriefs with the Provost about a number of issues including protester demands, vandalism, university messaging on May 21, and other topics. Concerns about the commitment of faculty marshals to neutrality are raised. While there is evidence that marshals helped to de-escalate some tense situations on May 21, other witnesses report marshals filming encounters with counter-protesters in an intimidating way. To the extent that some faculty marshals are in supervisory positions, it's noted that their presence can have a chilling effect on the speech and behavior of subordinate staff and faculty who hold different viewpoints.

May 27: Upon receiving report of an "unhoused" individual staying at the encampment, administration secures two of the three points of ingress/egress for the safety and security of the encampment. University IDs are requested of all people seeking to enter and exit. Letters

are sent to students in the SRR process reminding them of their status and indicating that, because of "ongoing intentional disregard for university policies" there is no longer any consideration of rescinding their discipline as part of ending the encampment. A representative of the faculty marshals sends an email message to the FoE Committee expressing concerns about the closing off of entrances to the encampment without wider consultation and advance warning. This is cited as another example of the administration escalating a tense situation and squelching dissent by circumventing governance bodies that represent the campus community. KDVR reports on interviews with Jewish students not involved in the encampment about the events of last week. These students report increasing antisemitic behavior and slurs being directed at them. One says that he filed a police report for assault but did not press charges. In the KDVR report Rabbi Yossi Serebryanski, previously involved in promoting dialogue at the encampment, suggests that the university is coddling encampment protesters while Jews on campus are feeling "unheard, unseen, and unsafe". *The Clarion* publishes a story citing the "administration's troubling narrative" as a cause of the hate and homophobic slurs being directed at encampment protesters.

May 28: The Chancellor and Provost meet with encampment protesters at noon for 90 minutes. Students focus on two demands: Disclose investments and Declare support for a permanent Gaza ceasefire. They claim that that there was no movement on either of these demands. The FoE Committee learns in a meeting with the Provost that disclosure was made orally but could not be put into writing for the community. We also learn that four people were arrested and charged for the May 24 vandalism in Craig Hall, including spray painting of messages on carpets and walls and in lounges and elevators. Three were DU students associated with the encampment. This explains why some students received the May 27 letters saying the disciplinary measures taken against them will not be removed even if the camp is disbanded. DU AAUP sends an 'Open Letter on Student Sanctions' to senior administrators urging that all sanctions against students be dropped, and criticizing their "end-runs" around governance bodies like the FoE Committee. It also criticizes administration for refusing to engage "…not only with students in the encampment, but also with faculty and staff who have communicated concerns" about their actions.

May 29: Protesters remove the encampment in the hours before sunrise. The Chancellor sends a message to the DU community complimenting the protesters for their dedication and passion, thanking them for complying with the university's call to end the encampment, and thanking faculty and staff for helping to reach a peaceful conclusion. DU For Palestine posts a message on Instagram about the decampment that differs from the Chancellor's account. The preamble reads: *A letter to our Revolutionary Community. Our fight is not over. The Board of Trustees, Chancellor Jeremy Haefner, and the rest of administration are cowards who continue to support genocide. Genocidal cowards never win. We know that a better world is possible. It is up to the people to start the revolution, and it will be the people who win. Stay tuned for next steps in DU4Palestine's fight against DU's genocidal support. The fight is NOT over.* Protesters rally at GSSW to present demands to the school's new dean. A rally is held outside Evans Chapel to call for its re-naming.

May 30: Vandalism occurs overnight in the Community Commons. The personal residences of two academic deans are vandalized with red paint and graffiti.

June 2: The Faculty Senate President, Chancellor, Provost, and Vice Chancellor for Student Affairs receive a letter from Rabbi Yossi Serebryanski criticizing faculty for promoting the most antagonistic positions of the protesters and canceling classes so that students could participate in the protests. The rabbi claims that faculty marshals—the "Yellow Shirts", in his words (others take to calling marshals the "Yellow Vests")—were not always acting as impartial or neutral agents. He suggests, based on personal observations, that they were involved in the planning of activities at the camp and that they endorsed its most vile messages.

June 3: An article in *The Clarion* reports the different views of camp disbandment. It refers to the university's "incredibly biased emails" that "brought dangers to the camp." It reiterates DU For Palestine's message that the fight is not over. Another *Clarion* article summarizes an interview with a marshal who is identified as a "recent DU graduate". The interviewee attests to "shocking mistreatment" of staff and faculty marshals throughout the protest, largely by counter-protesters and community members opposed to the encampment. He attests to "intense and horrible homophobic attacks" and asserts that he saw no antisemitism coming from inside the encampment. The article ends by noting the "conflicting narratives" that filled the few weeks of the encampment's life. A *Clarion* Letter to the Editor offers a Jewish student's perspective, with particular attention to the social and psychological effects of the "tropes and language" used during the demonstrations. Later this night a 'Dialogue Dinner' hosted by the Faculty Director for Free Expression and Civil Discourse Initiatives is disrupted by student protesters.

June 5: Campus Safety sends a message to the DU community reporting additional acts of vandalism on and near campus, including the Cable Center, Community Commons, Sturm Hall, and Knudson Hall.

June 7: Faculty Senate holds its final meeting of the academic year. It collects verbal input on a permanent Demonstrations Policy and establishes a Qualtrics site where written input can be posted until June 21. The Provost reports that development of the policy will be slowed down in order to collect input from all relevant campus constituencies. By unanimous consent, the Senate passes a *Faculty Senate Statement on Academic Freedom and Expression* (**Appendix III**). This document asserts the free expression, freedom of assembly, and due process rights of all members of the campus community, including students. The provost answers questions about student sanctions related to the encampment. The second reading of an amended resolution in support of encampment protesters (**Appendix IV**) is held. The resolution renews the call for administration to cease all disciplinary actions against student protesters. A Qualtrics vote is set-up with voting to occur until June 14. The Senate is informed that the FoE Committee will be preparing an Advisory Report about the encampment that will include lessons learned and recommendations going forward. Dean Saitta, Department of Anthropology, becomes president of the Faculty Senate and accepts primary responsibility for preparation of the Advisory Report.

June 14: The Faculty Senate vote on the second reading of the resolution to support encampment protesters is announced: 43.5% for and 56.5% against. Having not achieved a simple majority, the resolution does not pass. Two graduate commencement ceremonies occur without significant disruption.

June 15: The undergraduate commencement ceremony occurs without significant disruption.

August 16: The Chancellor sends a message to the campus community stating that "DU will no longer permit camping for protest purposes on our campus."

August 24: The summer commencement ceremony occurs without disruption.

III. Reflections: What Went Right, What Went Wrong, and What is Still Disputed

Official University Communications

Chancellor Haefner's official messages to the university community about the encampment are archived here. The substance and tone of several messages concerning the encampment (e.g., on May 21 and May 29) were perceived by some committee and many community members to be one-sided and otherwise problematic. They generated ill-will toward the administration and had other unintended consequences. The FoE Committee was not given adequate opportunity to review some official communications. At other times in the process committee members made recommendations about communications but their advice was not heeded. The FoE committee is in an advisory role and its members believe that their input should be fully respected, the need to move quickly as events unfold notwithstanding. In fairness, administration did take these concerns to heart and endeavored to be mindful of their messaging as circumstances changed.

Identification Checks

Identification checks were a key point of contention between demonstrators and administration, as they were between some members of the FoE Committee and administration. DU's Honor Code and other policies clearly state that DU community members can be asked to show their affiliation with the university and must comply. Demonstrators were reasonably concerned about doxxing given the harassment that protesters endured at places like Harvard. The administration was, at least for some FoE Committee members, reasonably concerned about campus security given what played out elsewhere. These instances included but were not limited to stockpiled weapons in the encampment at DePaul and evidence for high percentages of non-community member involvement in the encampment at Columbia. Other members of the FoE Committee believe that the persistent focus on ID checks kept us from having meaningful dialogue with the protesters about their demands.

Faculty and Staff Marshals

The Campus Safety Officer, Student Police Liaison, and Faculty/Staff Marshal dynamic was particularly fraught. It's clear that some marshals effectively de-escalated tensions, helped

to maintain a peaceful demonstration, and worked with other faculty and staff to share accurate information. Their involvement was appreciated by demonstrators. It's also clear that some marshals were subjected to rough treatment, insults, and threats by counter-protesters.

On other hand, there are reports that marshals did not always act impartially and that they occasionally had contentious encounters with Student Affairs and Inclusive Excellence staff and Campus Safety officers. As noted above, faculty and staff were free to marshal on their own time. There's a suggestion that faculty marshals came to "own" their roles as mediators to the exclusion of all others.

A June 3 story in *The Clarion* creates uncertainty about the employment status of at least one person identified as a faculty/staff marshal. Additional testimony from a DU administrative staff member disclosed that someone associated with the Auraria encampment was vested as a marshal on the first weekend of the DU encampment. This information raises a reasonable concern that the marshal's ranks were populated by outsiders. It suggests that there are issues to work out around when to use identification checks and who has responsibility for crowd control in a volatile protest environment.

The Encampment

Although the point is arguable, compared to the crack-downs seen at other campuses the DU administration exercised patience and restraint in accommodating the protest encampment. This was so even under conditions when university property and the private residences of academic deans were being vandalized. Administration did not publicly share information about vandalism that might have further inflamed tensions between the DU community and external actors. It respected the privacy of DU students who may have been involved in university disciplinary processes or Denver Police investigations. This was done at the risk of perpetuating a belief among community members that student sanction decisions were arbitrary and capricious. Administration and protesters worked together to secure the encampment after the events of May 21. It's disputed whether sufficient advance warning was given to students before they were put on place restrictions, and whether established 'progressive discipline' steps were always followed.

Outcomes

The demonstrators achieved some of their goals. The administration made a verbal disclosure of the university's investments to protest leaders. The chair of DU's Board of Trustees Financial Planning Committee made a commitment to hold discussions with students about the university's endowment. This is an important concession given that there are many misconceptions among students, staff, and faculty about how university endowments are built, how they are invested, where they are invested, and how they can be used. Though they were not specifically requested by DU For Palestine, the administration offered other pathways forward. These included support for establishing DU For Palestine as an official student organization, and a commitment to expand study abroad programs and on-campus programming centering the Palestinian experience.

At the same time, there's a question about whether some of these outcomes could have been achieved much earlier. The negotiations on May 21 provided an important opportunity to peacefully and amicably end the protest. This was a key moment. What derailed the afternoon agreement to end the encampment? Was this a consequence of bad faith negotiating on one or more sides? There are also competing narratives about who drove the encampment termination on May 29. The administration offered a firm but conciliatory message; DU For Palestine took it another way and vowed to continue the fight.

IV. Post-Demonstration Faculty, Staff, and Student Surveys

A. DU Faculty Survey

The survey (**Appendix V**) was sent to all faculty senators (n= 98). There were 43 completed surveys, for a response rate of 44%. Senators responded either as an individual, for their unit, or for both. Unit breakdown for the number of survey responses:

CAHSS	12
CNSM	9
DCB	5
MCE	5
GSSW	3
JKSIS	3
RSECS	3
GSPP	1
SCOL	1
UCOL	1
University Libraries	0
TOTAL	**43**

Responses to selected questions:

1. ID Checks: 58% of respondents see ID checks as appropriate, 37% have issues with them, and 5% are unsure.

Narrative comments about ID checks run the gamut. Some faculty see them as necessary for ensuring security and accountability. Others see them as punitive and reflective of a paternalistic approach to campus relations.

2. Faculty Marshals: 46% of respondents are OK with having marshals, 35% are not OK, and 19% are unsure.

Many respondents say that marshals are appropriate if they volunteer on their own time. There are questions about the appropriateness of faculty and staff who occupy

supervisory positions (e.g., associate deans, assistant vice chancellors, etc.), or who represent a key governance body (e.g., the Faculty Senate or Staff Senate) serving as marshals. This can intimidate and/or create trust issues with subordinates or peers with whom they have to work. In such instances rights to free expression should be carefully weighed against one's professional responsibilities in the workplace and to the governance of the university.

A number of other questions and concerns about faculty marshaling were raised by witnesses and survey respondents:

- Is faculty marshal training adequate as concerns crowd control, mediation, conflict resolution, de-escalation techniques, and physical and mental first aid?
- Are faculty marshals knowledgeable enough about the particular issues at hand to foster "meaningful civil dialogue" about those issues (in the case of the Israel-Gaza conflict, the issues are extraordinarily complex and may be beyond the scholarly expertise of most faculty)?
- Would a faculty member be on the marshaling line if it was a cause that they didn't believe in? Even if marshals could adopt a position of strict neutrality, are counter-protesters, passers-by, and other casual observers perceiving neutrality? How confident can a non-involved student be that a faculty marshal will grade them fairly if they are seen marshaling for a cause that the student doesn't believe in?
- Faculty marshaling conceivably reflects a paternalistic approach to student support. Students at the university are encouraged to have agency; they might be allowed to practice it and accept its consequences.
- If circumstances become physically threatening, do parents/guardians want the only person between their student and the physical threat to be academic staff?

3. Encampments as a Protest Form: 53% of respondents are OK with encampments as a form of protest, 37% are not OK, and 12% are unsure.

This question is now moot given the August 16 Chancellor's message that encampments are now banned from campus. Several FoE Committee members involved in summer 2024 discussions about what to anticipate when students return in the fall were aware that things were moving in this direction. Some shared their thoughts in private conversations with the Chancellor. However, the full FoE Committee was not consulted about the Chancellor's decision.

B. DU Staff Survey

A staff survey (**Appendix VI**) closely modeled on the faculty survey was sent to 39 staff senators. Fourteen senators completed the survey, for a response rate of 36%. Staff responses generally align with those of faculty in reflecting polarized opinion on campus. Identification checks were seen as consistent with the university's Honor Code and as a necessary safety measure. However, they can also be used as a tactic to suppress rights to free speech and assembly, perhaps especially for members of minoritized communities. Marshals can be

helpful, but they can also cause harm if perceived as enforcers or if they stray from a posture of strict neutrality. Some staff members support encampments as a demonstration strategy, while others recognize health and safety issues and the strain that monitoring an encampment can put on university resources.

Like faculty, staff request clear guidelines for employee participation in campus demonstrations. They want clearly defined terms such as "spontaneous" and "disruptive". They want a Demonstrations Policy that clearly defines roles for campus safety officers, Student Affairs professionals, and external authorities like the DPD. They would like the policy to emphasize non-punitive interventions based on mediation and conflict resolution. There is near unanimity that the policy should provide for event monitors who are assiduously neutral.

C. National Student Survey

To our knowledge University of Denver students have not been surveyed about the Interim Demonstrations Policy nor the spring 2024 encampment. The Foundation for Individual Rights in Education (FIRE) and College Pulse have surveyed students nationally about their awareness of campus policies governing demonstrations and the appropriateness of encampments and other actions as protest forms. The survey included 3,803 undergraduate students at 30 randomly selected four-year colleges and universities and was conducted between 17 May 2024 and 25 June 2024.

Results of the survey pertinent to this report are as follows. Nearly half of the students surveyed (48%) confess to being either "not very" or "not at all" aware of their campus speech policies. On the question of encampments, 10% say that it is "always acceptable" to establish encampments, 28% say that it is "never acceptable", and 61% say it is "sometimes" or "rarely" acceptable. On the question of defacing school property 65% say that it is "never acceptable", 2% say it is "always acceptable", and 33% say it is "sometimes" or "rarely" acceptable. FIRE's website has the full results of the survey and College Pulse offers a download.

V. FoE Committee Recommendations

A. Permanent Demonstrations Policy

The Interim Demonstrations Policy, developed in collaboration with multiple university constituencies, was an experiment. It was severely tested by demonstration dynamics and developments. The challenge for the permanent policy is to effectively balance all reasonable concerns about freedom of assembly, freedom of expression, student health and safety, campus security and, first and foremost, the right of all community members to an unencumbered learning environment. Based on faculty and staff feedback it's highly unlikely that we'll be able to craft a permanent Demonstrations Policy that will satisfy everyone. Some community members would like greater clarity about particular terms; e.g., what it means to "substantially interfere" with a speaker or "unreasonably impede" access to an event or a person's ability to engage in free expression. Free speech experts argue that these terms are dependent on context, and that they are common legal standards best applied by an

adjudicative body on a case-by-case basis. The permanent Demonstrations Policy might offer a few examples that clearly do or do not meet these standards.

1. Encampments as a Protest Form

The encampment served as a safe, community-building space for the demonstrators. It hosted teach-ins, interfaith services, and guest speakers. On the other hand, some non-protesters certainly perceived the encampment as 'hostile architecture'. The question of whether encampments should be allowed going forward was settled by the Chancellor's August 16, 2024 message to the campus community. That message noted that the encampment:

> *…resulted in dozens of complaints filed about harassment and discrimination from individuals across campus; approximate costs of $400K from overtime, property destruction, and equipment; disruptions of academic operations; and most concerningly, serious safety concerns for our campus community members. It also served to create hostility and division within our community that is damaging to all we strive to achieve.*

The Chancellor's decision to ban encampments on campus is based on the belief that it created a hostile environment. Some FoE Committee members suggest that rather than *creating* a hostile environment the encampment *enabled* existing hostilities to flourish by exposing underlying biases, divisions, and tensions on campus. Members question whether the encampment ban addresses the problem of a hostile environment or merely serves as a temporary fix that fails to tackle root causes while at the same time suppressing free speech. As noted above, other internal and external agencies have been charged with evaluating the encampment's impact on our community. The Committee looks forward to receiving summaries of these studies and further discussing ways to promote and protect free speech on campus. It will work with the office of EOIX to develop community meetings to discuss the intersection of free expression and EOIX issues at DU given new guidance from the US Department of Education.

The University of Pennsylvania, University of Virginia, and the University of California system have banned encampments. More institutions are likely to follow suit. Alternatively, Indiana University-Purdue University Indianapolis—an institution with a civic engagement mission that's much stronger than most—has for the last 20 years been maintaining and evolving a 'Democracy Plaza' that serves as a dedicated gathering space and venue for programming critical social issues. Dedicated 'speaker's corners' and/or 'demonstration areas' are other possible accommodations. These can be effective ways to use physical space to promote an inclusive culture of 'belonging'. We recommend more careful thinking about the social and material conditions that can better foster a climate of free expression and belonging at DU.

2. Faculty and Staff Marshals

Incidents—including faculty arrests—at Emory, Princeton, Washington U and elsewhere suggest that it would be prudent for faculty and staff to stay in their lanes as educators, advisors, mentors, counselors, and consultants rather than serve as security personnel. Alternatively, faculty and staff can collaborate with others to safeguard expressive activity. The University of Mississippi uses a First Amendment Support Team (FAST) comprised of trained faculty and staff volunteers who work alongside student affairs professionals to "support expressive activity held on campus planned by students at which student engagement is anticipated". Columbia University uses "Rules Delegates" to manage student demonstrations. Rules Delegates are student affairs professionals conversant with codes of conduct and trained in de-escalation techniques. They also receive a modest stipend for their work. However, even student affairs professionals might be "wary of confronting student demonstrators, worrying that a negative encounter could undercut their effectiveness in other work with these students". The issue is complicated; the Senior Vice Chancellor for Operations & Strategy Implementation's task force will help us navigate the complexities. We recommend supporting the task force's work and having additional discussions about what a standing de-escalation team should look like. Such a team should include faculty and staff participation in some form.

3. Identification Checks

Requests to show ID cards raise worries about the surveillance state and differential (arbitrary, capricious) treatment of members of historically marginalized communities. We recommend campus-wide education on this point. More importantly, we recommend greater transparency about who is authorized to check IDs, and when. The permanent Demonstrations Policy should clearly detail the conditions under which community members will be asked to show university identification, and checks should be conducted only when there is a reasonable suspicion that people from outside the campus community are participating in a demonstration at DU.

4. Policy Enforcement

Conversations with individual Campus Safety officers during the encampment suggest that they weren't always in the loop about what was happening nor entirely clear about what their role should be. If we don't want Campus Safety to be the first or only line of peacekeeping in a protest environment, then we need to create some other de-escalation entity that can function as a coherent team. Again, we support the creation of a task force to investigate and make recommendations on how DU might resolve conflicts resulting from the exercise of free speech. We also recommend having a representative of Campus Safety on the FoE Committee.

5. Statement of First Principles and Values

We recommend inserting into the permanent Demonstrations Policy a section about first principles and values. Proposed language:

The University adopted a robust statement of Policy and Principles on Freedom of Expression on May 19, 2017 ("University of Denver Statement of Policy and Principles on the Freedom of Expression"). This Policy on Demonstrations, Protests and Free Expression is adopted as a supplement to the Freedom of Expression Policy. Nothing in this policy is meant to supersede or replace statements in the 2017 Freedom of Expression Policy or other applicable university policies. This policy applies to all activities on university premises and all other protests, events and meetings (regardless of location) that are part of University programs. As noted in the Freedom of Expression Policy:

> *As a private institution of higher learning, the University of Denver has historically and consistently dedicated itself to supporting the most fundamental goals of higher education, including establishing a community that promotes a culture of robust debate and open dialogue about a wide range of issues across a number of different campus venues. An essential element of promoting these values is the facilitation of free expression on campus to the fullest extent reasonably possible. The American university is the quintessential marketplace of ideas. Academic discourse and higher order learning cannot take place in an environment in which individuals are not at liberty to express their thoughts and ideas, however controversial or provocative.*

The principles of free speech and inquiry are complemented by the principles of debate, challenge, and protest. While dissent may be vigorous, it must not substantially interfere with a speaker's ability to communicate, regardless of the speech's content, with an audience's ability to hear and see a speaker, or with the university's ability to fulfill its educational duties and conduct its operations. Dissent also must not interfere with the physical safety or security of members of the university community or restrict ingress and egress to physical spaces around campus.

6. Statement on The Difference Between Free Speech and Civil Disobedience

We recommend inserting into the permanent Demonstrations Policy a section that clarifies the difference between free speech and civil disobedience. Proposed language:

Free speech and civil disobedience are distinct concepts, although the latter is frequently engaged in as a form of demonstration, protest, or dissent. Civil disobedience is the act of violating a law or policy that those engaged in disobedience believe is unjust, such as Rosa Parks' brave decision to violate Montgomery, Alabama's rules requiring racial segregation on public transportation. Those engaged in civil disobedience sometimes seek to protest things other than the laws or rules they violate. For example, during the 1960s and 1970s, many protesters on college campuses engaged in sit-ins to protest United States policy in Vietnam, sometimes occupying university buildings and otherwise violating university rules to call attention to their beliefs. Those protesters were expressing themselves, but were not engaging in speech that is constitutionally (or otherwise) protected. Those engaged in civil disobedience are willing to accept the legal or other consequences of violating laws or rules in order to

express their ideas. However, there is also a long tradition of universities showing tolerance and grace for civil disobedience. All acts of demonstration, protest, and dissent might be viewed as disruptive, even those that are protected by the freedom of speech, but universities have often permitted acts of civil disobedience so long as they are not unduly disruptive to the university's essential functions or harmful to others. Interpretation and enforcement of community accountability should be undertaken with these considerations in mind.

B. Community Healing Initiatives

Given the rifts created by the spring 2024 demonstration we recommend sponsoring town halls and other community events during the 2024-25 academic year to debrief the events, to let people have their say about the substance of this Advisory Report, and to solicit ideas about ways to better support free expression and pluralism on campus.

C. Academic and Community Programming

Going forward the FoE Committee will be taking a more proactive approach to supporting free expression and pluralism on campus. There are already signature programs in place including Denver Dialogues, Debate Across the Curriculum, and SPARK. New programming for 'Constitution Day' on September 17, 2024 could become a regular occurrence. Other opportunities to be explored include the space where values of free expression intersect with practices of civil disobedience (e.g., as usefully covered by the *New York Times* article of June 4 entitled "Universities Weigh Calls from Student Protesters to Drop Charges").

It's not clear that students and faculty associated with the protest were behaving in a manner that would lead to carefully targeted, substantive change. Drawing on the constitutional scholar Robert Post's distinction between *democratic legitimation* (served by First Amendment free speech rights) and *democratic competence* (served by the transmission of expert knowledge) we recommend programming for a shared understanding of the distinct roles, responsibilities, and reciprocal obligations that trustees, administrators, faculty, staff, and students have in a coherent and robust system of university governance.

D. Curriculum Development

Assuming positive feedback on AY 2024-25's First-Year Seminar (FSEM) pilot on free expression and civic engagement, we recommend expanding the program to include more faculty. We might do the same with Advanced Seminars (ASEMs). The Common Curriculum is already inundated by ideas for what DU should be promoting in the way of general education. Advocates for diversity, sustainability, social justice, generative AI, and other thematic emphases are all making appeals. We recommend considering where freedom of expression fits in this list.

E. Community Standards about Language

A set of common, widely used slogans were part of the pro-Palestine encampments on all American campuses. Their use here at DU obviously produced distress among some of our students and community partners. Calling out the more problematic slogans and other forms of incendiary language (e.g., labeling opponents with epithets rooted in various "isms") was

sometimes a conversation-stopper between those committed to supporting the protesters and those seeking a path toward resolution. As noted above, Palestinian, Muslim, and Jewish students alike expressed concern about the language directed their way during the demonstrations. A *New York Times* article entitled "The Battle over College Speech will Outlive the Encampments" (5/29/24) suggests that part of the challenge in rebuilding campus community in the wake of the spring protests (notwithstanding the fact that more are likely to come) is to "hash out community standards about language." For Columbia University law professor David Pozen such hashing out is the only way to cultivate a "set of norms about what speech goes too far that students on all sides would accept as legitimate." Establishing community standards about language is fraught with all sorts of anti-free speech implications and consensus is very likely impossible to achieve. Instead, we recommend educational initiatives that will help students have a greater perspective on, and appreciation for the consequences of their word choices.

F. National Academy of Free Expression and Pluralism

This developing initiative is intended to build civil discourse skills and inculcate values necessary for the functioning of a democratic society. We recommend supporting this initiative as a way to distinguish DU's position in what is becoming a very busy campus free expression space.

G. First Year Student Orientation

Many institutions are planning, beginning fall 2024, mandatory instruction about free expression rights and responsibilities as part of orientation for newly enrolled students. We recommend doing the same here at DU.

H. Free Expression Guides for Student Organizations and their Faculty Advisors

In light of several recent incidents on campus involving controversial outside speakers, we recommend the creation of free expression guides for faculty who advise student organizations. One question that might be considered in developing such a guide: Does it infringe on free speech rights if private universities—given their academic mission and in the spirit of promoting democratic competence—ask student organizations to sponsor speakers and events that have some redeeming educational value?

VI. Conclusion

Several points should be emphasized in closing. This Advisory Report is based on the personal experiences of FoE committee members, informal discussions with community members involved with the spring 2024 demonstrations, and a formal post-demonstration survey of faculty and staff senators. We purposely reached out to other community members (e.g., those involved with DEI initiatives and Spiritual Life) to solicit whatever input to this report they thought would be valuable. FoE Committee members brought different perspectives on the spring demonstrations to our debriefing of events, and we have incorporated these different perspectives and opinions into the report.

We trust that this report reliably covers the diversity of community member responses to the spring 2024 events. However, our recommendations for development of a permanent Demonstrations Policy and campus programming around free expression reflect a committee consensus. As noted above, several other studies of the spring 2024 events have been conducted by internal and external agencies, and another internal study will be conducted this academic year. This Advisory Report should be used in conjunction with these other studies to consider how DU should resolve conflicts resulting from the exercise of free expression on campus.

Appendix I

Faculty Senate Executive Committee Message to DU Faculty about
Student Protests and the Demonstrations Policy

From: Renee Botta <Renee.Botta@du.edu>
Date: Saturday, April 27, 2024 at 3:06 PM
Subject: Protecting the right to peaceful demonstration

Dear University of Denver faculty,

We, the Executive Committee of the Faculty Senate, write today in support of faculty, staff, and students' right to peacefully protest. Like many of you, we are disturbed by actions taken across the country at other universities where administrators have chosen to deny students their First Amendment rights by forcefully removing and arresting students who were peacefully gathered to demonstrate on behalf of their beliefs in non-disruptive ways.

We want faculty, staff and students to know that your University of Denver Faculty Senate has been working with University administrators for several months to develop a demonstrations policy that respects freedom of speech and freedom to peacefully protest and demonstrate. Once the draft is complete, student, staff, and faculty senates will have the opportunity to review the policy and offer feedback before the policy is finalized.

We also recognize that a critical issue at other universities regards the use of armed police excessive force to remove non-violent demonstrators. Such unacceptable tactics are extreme and lead to needless escalation. These actions have also heightened concerns about the University of Denver's plans to give Campus Safety officers access to guns and to partner with City of Denver police when necessary, a plan many faculty, staff, and students have been critical of. Please know that we will continue to advocate for all reasonable, experience-tested alternatives to arming Campus Safety officers and to allowing armed law enforcement officers to police peaceful demonstrations. We do so because we strongly support peaceful, non-disruptive protests on our campus, and know that any policing of demonstrations must also be peaceful.

Warm regards,
Your Faculty Senate Executive Committee
Renée Botta, Faculty Senate President

Appendix II

Message to Faculty Senate About Release of Interim Demonstrations Policy

From: Renée Botta <Renee.Botta@du.edu>
Date: Sunday, May 5, 2024 at 10:17 PM
To: Faculty Senate
Subject: University Demonstration Policy

Hello Senators

Last week, as we saw armed police forcefully removing students and faculty from campus protests, we assured you that Senate representatives and others widely representing faculty, staff, and students at DU have been working on a demonstrations policy that will protect peaceful protesters. We have also seen demonstrations around the country where protesters or counter-protesters (who may or may not be affiliated with the universities) have resorted to property damage, intimidation, hate speech, or violence. We assure you that the official demonstrations policy also addresses these unacceptable acts and the importance of ensuring that DU community members feel safe and are able to carry out our educational activities and university operations.

Crafting a fair and comprehensive Policy on Demonstrations, Protest, and Dissent has been a long and nuanced process by the standing Freedom of Expression Committee (FoE). Members of the committee working on the policy represent undergraduate student government, graduate student government, Staff Senate, Faculty Senate, Faculty of Color Association, Staff of Color Association, Student Affairs, the Office of Diversity, Equity and Inclusion, the Provost, and 2 faculty who are scholarly experts of the First Amendment and Freedom of Expression. Committee members began conversations and research last year with a commitment to inclusion, open deliberation, and transparency. This is a time-sensitive issue, however, and the FoE committee determined that it would not be possible to further refine the document and complete the usual process of Senate approval prior to potential protests and year-end activities. Therefore, in consultation with the Senate Executive Committee and representatives from Staff Senate and student government, the Chancellor and Provost have decided to release and follow an Interim Demonstrations Policy based on the existing draft to provide guiding principles, rules of conduct, and plans to work with students and faculty to ensure the protection of peaceful protest while protecting the DU community and campus. Tomorrow (Monday), the Chancellor will announce the interim policy, which will be applied equitably, without regard to the positions expressed.

The formal process of feedback, revision, and approval will continue as we enact an official and permanent policy for the 2024-2025 academic year and beyond. We encourage faculty to share concerns and comments with their Faculty Senate representatives or the Executive Committee prior to our **discussion of the policy at the May 17 Senate meeting**, which is when we will begin our discussions of the interim policy and any necessary changes in creating a permanent policy.

Faculty Senate Executive Committee
Renée Botta, Ph.D.
Faculty Senate President

Appendix III

Faculty Senate Statement on Academic Freedom and Expression
(Approved by Unanimous Consent, 7 June 2024)

Academic freedom and freedom of expression are currently imperiled on American campuses. Politicians, donors, traditionalists, cultural crusaders, and other actors who lack knowledge of academic disciplines and the role of the university in a democratic society are actively inserting themselves into campus educational affairs. University administrators are under external and internal pressure to account for when and how they use their voices to address current events. In some instances, leaders have used institutional power to violate the free speech, assembly, and due process rights of students and faculty. Faculty, staff, and students have expressed fears for their safety in exercising classroom, workplace, and extramural speech about the pressing issues of the day.

Twenty years ago, the DU Faculty Senate issued a position statement on 'Academic Values, Rights, and Responsibilities'. This was done in response to a particular historical circumstance that put Colorado colleges and universities at the center of a national debate about academic freedom for teachers and students. In 2024 the debate is much wider, deeper, and more consequential.

This new statement reaffirms Faculty Senate support for the statement on academic values, rights, and responsibilities articulated 20 years ago. In light of current events it also emphasizes the following:

- Rights of academic freedom and freedom of expression, as defined in DU's APT and Freedom of Expression policies, are bedrock principles of the university. They are indispensable to the spirit of open inquiry, discussion, and debate that energizes and sustains an academic community.

- Individual members of the university community have the broadest possible latitude to exercise academic and free speech rights without fear of internal and external surveillance, interference, censorship, coercion, threats, and retaliation.

- Faculty in individual departments, schools, colleges, and other academic units are free to collectively voice their opinions and beliefs about contemporary issues and events as warranted by resident scholarly expertise. However, they should be mindful that such statements may have adverse effects, both inside and outside the unit, by signaling viewpoint orthodoxy.

- Rights of free assembly and protest on campus are sacrosanct, subject to conditions established by DU's Freedom of Expression policy, Demonstrations policy, and other relevant governing documents.

- Faculty, students, and staff accused of violating academic freedom and/or free expression policies, or who are otherwise called to account for their speech, are guaranteed full due process protections. Their cases must be reviewed and settled in keeping with all established university procedures and precedents.

- Any new university policies governing academic life should arise from established mechanisms of shared governance, be informed by relevant academic expertise, and have review and input from all appropriate consultative bodies on campus.

DU's Faculty Senate, as the governing body representing all DU faculty, has a vital role to play in articulating and upholding principles, practices, and protections around academic freedom, free expression, and due process. The Senate's role is complementary to those of the Administration and the Board of Trustees in the system of shared responsibility and joint effort that allows higher education to work for the common good.

Appendix IV

Resolution of Support for DU Encampment Protestors
(Amended and Presented to the Faculty Senate, 7 June 2024;
The Resolution Failed to Pass by a Majority Vote)

Whereas the University of Denver is committed to creating a diverse, ethical, and intellectually vibrant campus community to provide a challenging and liberating learning environment,

Whereas University of Denver faculty are committed to creating an equitable learning environment for all students, including minoritized students from historically marginalized communities,

Whereas University of Denver faculty believe in freedom of expression for our community and will defend our students' right to free speech,

Whereas University of Denver campus safety and upper administration targeted student protest leaders for disciplinary action based on minor charges; present student leaders with changing requirements for compliance with university policy; treat student protesters differently than counter-protesters, other students on campus, and visitors to campus; and administer disciplinary and legal threats to students,

Whereas under the principles of shared governance, faculty members should retain purview over and primary responsibility for the curriculum, methods of instruction, academic standards, program development, degree requirements, and academic student affairs, including classroom relations, teaching, student learning, and grading,

The Faculty Senate resolves the following:

The Faculty Senate supports our students' right to free speech and dissent, and ability to use their voices and bodies on DU campus;

The Dean of Students Office and the Chancellor's Office cease any current or future disciplinary action against students for exercising their free speech rights, not seek legal action against any students, and support the safety of student protesters;

The Dean of Students Office and the Chancellor's Office cease to misuse the public safety functions of the Denver Police Department to take disciplinary or legal action against student protestors, unless their actions meet the standard of posing a physical threat of violence to themselves or others;

The Dean of Students Office and the Chancellor's Office cease to diminish faculty authority by imposing student penalties that interfere with faculty purview over classroom relations, student learning, teaching, or grading;

The Faculty Senate calls for a public review of the policies and protocols of Campus Safety, including any protocol for calling in outside law enforcement to campus;

The Faculty Senate calls for an investigation of the ad hoc changes to the interim demonstrations policy.

Appendix V

Demonstrations Policy Faculty Survey Questions

In reviewing the interim demonstrations policy, and in considering making a permanent policy please answer the following questions and submit any comments you and/or your constituents have.

1. What suggested changes to the interim demonstrations policy do you have in consideration of making a permanent policy?

2. What do you see as the strengths of the interim policy?

3. What do you see as the weaknesses of the interim policy?

4. What thoughts do you have about making faculty and staff marshals a permanent part of the policy? (this evolved organically and was not part of the interim policy) Why or why not is this a good idea?

5. What thoughts do you have about making ID checks a permanent part of the policy?

6. What are your thoughts on making encampments a permanent part of the policy?

7. What input do you have on what would constitute a 'disruption' so significant that it impedes university functions/operations?

8. What feedback do you have on including enforcement as part of the permanent policy? (This might include things like being specific about when calling DPD in is appropriate, the role of Student Rights and Responsibilities versus campus security, etc.)

Appendix VI

Demonstrations Policy Staff Survey Questions

1. What suggested changes to the interim demonstrations policy do you have in consideration of making a permanent policy?

2. What do you see as the strengths of the interim policy?

3. What do you see as the weaknesses of the interim policy?

4. What thoughts do you have about making faculty and staff marshals a permanent part of the policy? (this evolved organically and was not part of the interim policy). Why or why not is this a good idea?

5. What thoughts do you have about making ID checks a permanent part of the policy?

6. What are your thoughts on making encampments a permanent part of the policy?

7. What feedback do you have on including enforcement as part of the permanent policy? (This might include things like being specific about when calling DPD in is appropriate, the role of Student Rights and Responsibilities versus campus security, etc.)

8. What input do you have on what would constitute a 'disruption' so significant that it impedes university functions/operations?

9. Should any permanent policy include a provision for neutral monitors to be at the scene of any demonstration or encampment?