



## Melissa Talks Legal

Advice from the Office of General Council

### Cancel /Call out Culture and Public Complaints About Inappropriate Social Media Posts

#### What is Cancel Culture?

*Cancel culture* refers to the popular practice of withdrawing support for (*canceling*) public figures and companies after they have done or said something considered objectionable or offensive—typically involving racism, sexism, or disparagement of other minority groups (LGBTQIA+ people, immigrants, indigenous peoples, or people with disabilities). *Cancel culture* is generally discussed as being performed on social media in the form of group shaming. Usually canceling someone involves calling out the bad behavior and calling for people to boycott their work in an attempt to take away their public platform and power.<sup>1</sup>

Some examples of celebrity canceling are:

1. Kanye West being canceled (boycott of his music and shoes) for saying that slavery was a choice.
2. Jimmy Fallon being canceled after a photo of him donning black face surfaced online.
3. Roseanne Barr, the lead actress in “Roseanne,” had her show canceled after tweeting that a senior advisor to former President Barack Obama was the equivalent of if the “Muslim brotherhood & planet of the apes had a baby.”
4. Ellen DeGeneres being canceled after she drew parallels between self-isolating in a multi-million-dollar mansion and being in prison.

Canceling a celebrity rarely results in the total destruction of their career. It is only when their offenses were serious enough to irreparably damage their careers, alongside a push to lessen their cultural influence, such as the case with Harvey Weinstein, Bill Cosby, and Michael Richards. Cancel culture is growing on the

<sup>1</sup> <https://www.dictionary.com/e/pop-culture/cancel-culture/>

Internet, with no signs of slowing or stopping down. While cancel culture is a growing issue with celebrities and companies, there is another practice that seeks to address behaviors of everyday “me and you’s.”

### **Cancel Culture vs. Call-Out Culture**

Cancel culture is often confused with the practice of call-out culture. The contemporary idea of a “call-out,” however, generally refers to interpersonal confrontations occurring between private individuals on social media. In theory, call-outs should be very simple – someone does something wrong, people tell them, and they avoid doing it again in the future. But this is not what happens in real life. In real life, call-outs come with demands for people to be fired from their jobs, expelled from school, and ostracized by society.

### **Does Cancel and Call-Out Culture work?**

Former President Barack Obama has spoken out about cancel culture, particularly on college campuses. He has stated that cancel culture prompts people to draw quick conclusions and take sides and that it conflates larger problems without considering the nuances of particular situations. Most of all, he said cancel culture does not make an honest effort to change the behavior or the group being canceled. The issue walks a fine line between activism and character assassination, and it is often easier to cancel first and ask questions later. Cancel culture is not productive, but using problematic events as a starting point for activism is.<sup>2</sup> Likewise, call-out culture can be just as problematic.

You see that when denunciation is done through social media, you can destroy people without even knowing them. There’s no personal connection that allows apology and forgiveness. It also ensures that the lesson attempting to be taught is swept away in a wave of anger and defensiveness because the call-out has essentially polarized the parties in a “me vs. you” mentality that depersonalizes the entire situation.

### **The Political Climate Today**

The information presented here is intended to be a discussion about cancel and call-out culture. When faced with this situation at your college, please follow the guidance at the end of this handout.

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<sup>2</sup> <https://www.gwhatchet.com/2019/11/25/cancel-culture-is-not-an-effective-way-to-incite-change/>

## Call-outs involving MCCCCD students

We all fear it, the dreaded email that starts off a little something like this:

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*“You have a racist student attending your college. I also attend the college and I want something done to remove this student from campus. I want something done now!”*

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The email contains snapshots of tweets, FB posts, or other social media/Internet posts where the student has said some pretty Islamophobic things.

### **What do you do?**

There should be a response to the call-out acknowledging the receipt of the email/tweet/letter, etc. As is mentioned in the protocols below, the recipient of the email/tweet/letter “calling-out” a student’s social media posts should inform the college president (or the Vice Chancellor for Student Affairs if the call-out is received by a District employee) who should work with the Office of General Counsel to both craft a response and to address the behavior being “called out.”

On a general note, I would caution against doing more than reaffirming the college's commitment to diversity and inclusion and that we support a student's First Amendment rights. The code of conduct currently states that we exercise jurisdiction over students on and off-campus, which is a stretch and grounds for a constitutional challenge. Jurisdiction will be addressed in the code of conduct revision that is currently taking place.

Also, generally speaking, unless there is some connection to the college (for example, the student is holding themselves out as a student spokesperson for the college, there is some reaction to the conduct that impedes the college’s ability to provide a safe environment for students/staff, or the speech otherwise creates a substantial disruption, there is no reason to intervene with discipline.

### **What about if the student at issue is an incoming first-year student?**

As was stated above, the protocols for addressing these types of situations should be followed. As part of that process, there would be an interrogation as to whether the conduct contains a nexus to the college/district and should be addressed through the code of conduct. Generally, it is legally easier for a college to address hateful and racist speech by incoming students than matriculating students IF we have some sort of

clause or provision that reserves the college's right to rescind an offer of admission based on conduct. Does MCCCDC have such a clause? As an open admissions district, it is likely that we do not have such a clause. In this case, I would still caution against doing more than reaffirming the college's commitment to diversity and inclusion and that we support a student's First Amendment rights. It is also a good idea to redouble your efforts to promote free expression on your campus—the best way to combat offensive speech is with more speech.

### **What about this unique situation?**

If nexus to the college/District or an interference with the college/District's ability to conduct its business is necessary, what do you do if you receive an email like this:

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*“Joe Blow is a new member of your college's water polo team. I am attaching some screenshots from three years ago when he attended a KKK rally and was holding up a sign that calls for the killing of undocumented aliens attempting to cross the southern border. I want this athlete's scholarship removed and him kicked off the team. I would like someone to call me back and let me know when he is removed from the team.”*

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There are a few very public examples across the country where schools are rescinding offers of admission or scholarships based on a student athlete's social media posts. These examples are of private institutions that have more latitude to take such actions. As a public institution, we must address the First Amendment issues present in these situations. In the event you receive one of these call-out emails, the protocols listed below must be followed. Generally speaking, unless this incoming student athlete has signed the college athletic department's social media policy and/or other documents that outline that they are held to a higher standard because of their position as a representative of the college, it would be hard to support any kind of sanction for behavior that precedes the student athlete's time with the college. If the student has signed a code of conduct or social media policy, it may be possible to withdraw the scholarship offer, but the focus should be on assisting the student in understanding the importance of digital integrity.

### **How do educational records relate to call-out culture?**

With the nationwide protests, riots, and occasions of looting, there is the possibility that you may see a current or former student on the news. What do you do if you see a former student on television looting the local Walmart? Can you call the authorities to report the name and contact information for the student, since you have access to their personal information? Isn't this your civic duty?

NO! NO! NO! We do not use our student databases to provide the police information unless we are forced to do so via a court order. If we do receive a court order, it should

be delivered to the Office of General Counsel for processing. Any information we have related to a student's educational record is protected by FERPA and is not subject to disclosure. While student names are considered directory information, this does not mean that we can look up the names of students who were in our classes and pass that information along to third parties for these purposes. The same can be said for using HCM to provide information on employees who may engage in the aforementioned conduct.

### **Call-outs involving MCCC employees**

Recently a Weber State University professor came under fire for some of his social media posts which many complained were inciting violence. In response to a post questioning whether a female protester would have been shot for resisting arrest if she was black, the professor replied, "if the woman who got arrested in that park was black, and got shot, gosh maybe she should've avoided the park. Duh." In another social media post he said: "That's not how I would have driven the car into the crowd."

Multiple complaints were made to the university about the professor's posts demanding he be fired from his job. The university responded publicly with a short statement saying,

"We know sometimes the comments that are said under the guise of freedom of speech can be very hurtful and can be very upsetting to our students, our faculty, our staff, and can make them feel insecure and unsafe. And that's why we take these so seriously." The statement continued, "We are going to reach out proactively to our students, faculty, staff, to ensure that they feel safe and comfortable, and that they understand that the university is looking at this very carefully."

### **What would you do? Do you investigate for possible discipline?**

To reiterate, if anyone receives a call-out on an employee, the protocols below must be followed. Generally speaking, there is likely no reason to investigate for possible discipline, considering the professor or employee has a First Amendment right to express him or herself. If there is a nexus to the college or district, such as students refusing to take the professor's class, engage with the employee in their official capacity, or some other substantial disruption that hampers the college's ability to operate and serve students, then the college may want to investigate to determine whether there has been a policy violation, whether there are grounds for disciplinary action, or whether there is a need to address the situation in a more pronounced manner.

## **SO, WHAT DO I DO WHEN FACED WITH THIS TYPE OF SITUATION?**

1. First and foremost, take a deep breath. Give thanks for the email/tweet. Don't promise anything. At all costs, avoid knee jerk reactions.
2. If the college president or administrator (for the District office) has not been notified of the demand for immediate action, **INFORM THEM IMMEDIATELY.**
3. The college president (or designee) must work with the Office of General Counsel to craft a response and to discuss the First Amendment issues.
4. Monitor social media to see if the "call-out" is going viral and compile the emails/tweets as they come in.

If you have any questions, please feel free to reach out to Melissa Flores at [melissa.flores@domail.maricopa.edu](mailto:melissa.flores@domail.maricopa.edu) or at 480-731-8418 (office) or 801-557-1657 (cell).