

Education and Student Affairs Committee
Board of Regents, State of Iowa

Subject: Notice of Intended Action to File Amendments to Administrative Rules

Prepared by: Susan Anderson

Date Submitted: March 2, 2005

Recommended Actions:

1. Approve filing of Notice of Intended Action to amend Section 681 Iowa Administrative Code Chapter 9.
 2. Authorize the Executive Director to file the appropriate documents.
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Executive Summary:

Iowa Administrative Code Revisions

The Board is asked to approve filing of Notice of Intended Action to amend Chapter 9, regarding uniform rules of personal conduct, in order to address collective disturbances and related behavior. The current language with the proposed revisions is shown in **Attachment A**. The rule as it would appear if the revisions were adopted is shown in **Attachment B**.

Background

All of our Regent universities are exposed to the potential for group disturbances. Recent studies show that there is an accelerating pattern of university-related riots in the United States. Studies by McCarthy, Martin, McPhail and Cress in 2002 and 2004 showed that between 1985 and 1995 there were 64 such events (an average of 5.8 per year) across the country. From 1995-2002, there were 144 such events (an average of 20.6 per year). The variety of institutions that have experienced such events (such as Colorado State University, University of Colorado, Minnesota State University-Mankato, University of Minnesota, Ohio State University, University of Oregon, Northeastern University, the University of Maryland, University of New Hampshire, Pennsylvania State University) indicates how widespread the problem is, especially for public institutions.

As a result of these events, campuses have instituted specific provisions prohibiting rioting and related behavior. The most comprehensive report at a university was conducted at Ohio State University. That report recommended that students clearly need to be informed that such behavior has serious consequences.

While rioting is already forbidden under Iowa Code Chapter 723 entitled "Public Disorder", students and staff should specifically be made aware of the law, including provisions regarding failure to disperse. The recent disturbances surrounding Iowa State's VEISHEA events were made more serious because so many students did not understand their obligation to disperse when ordered to do so.

Chapter 9: Board's Policies, Practices and Procedures

The proposed amendments, which were drafted with input from all three Regent universities, incorporate state law [9.1(2)(h)], and complement existing campus regulations. Iowa Code Chapter 723 provides definitions of "riot", "unlawful assembly" and "failure to disperse". The amendments would provide the basis for educational programs for our students and staff on their legal obligations at university-sponsored events. The amendments would also:

- Assist in preventing future collective disturbances;
- Put students and the public on notice that such behavior is unacceptable;
- Make students and staff aware of the consequences for such behavior;
- Apply a uniform rule for all Regent Universities;
- Include in the definition of "students" admitted but non-matriculated students, students suspended for a fixed term, and students continuing their studies with intent to return but who are not formally enrolled (as with many graduate students on leave) [9.1(1)];
- Delete the language which makes suspended students and employees "visitors" since they would be treated as students or employees [9.1(1)];
- Make clear that the universities have authority to adopt provisions supplemental to the uniform rules [9.1(1)];
- Increase the reach of provisions on physical abuse, damage to property, and possession of weapons and dangerous materials to reach conduct occurring at or during university-authorized function or events, and to reach student conduct at such things as band trips, athletic functions and other events away from the campus [9.1(2)(c), (d), (f), (g), (h) and (i)];
- Remove the provision that requires a hearing for new applicants or persons who have lost status as employees as there is no due process requirement for this. The proposed amendments retain the obligation to provide a hearing to those who have a right of reinstatement (such as those on a term suspension) [9.1(3) (b)]; and
- Allow university presidents the option of appointing qualified hearing examiners if university resources are not adequate on a particular occasion [9.3].

CURRENT RULE WITH INSERTIONS AND DELETIONS

CHAPTER 9
POLICIES, PRACTICES AND PROCEDURES
[Prior to 4/20/88, Regents, Board of [720]]

681—9.1(262) Uniform rules of personal conduct.

9.1(1) Definitions. For purposes of these rules, the following words shall have the meaning set forth unless the context requires otherwise.

“Admission” means admission, readmission, reentry, registration, and reregistration as a student to any educational program of the university.

“Board” means the state board of regents, state of Iowa.

“Campus” includes all property owned or used by the university.

“Dismissal of a member of the faculty or staff” means termination of status as an employee without right of reemployment.

“Expulsion of a student” means termination of status as a student without right of readmission.

“Member of the faculty or staff” includes all employees of the university.

“Person” means any student, member of the faculty or staff, or visitor.

“President” means the president (or acting president) of the university or any person or persons designated to act on the president’s behalf for purposes of these rules.

“Student” means a person who is currently registered as a student at the university in an undergraduate, graduate or professional program on the campus, and includes students who have been suspended for a fixed period of time, during that fixed period; as well as admitted students prior to enrollment; and persons continuing to work on a program of studies with the intent of returning to the university, even though not formally enrolled.

“Suspension of a member of the faculty or staff” means that during a specified period of time, the member of the faculty or staff is not eligible to continue as an employee of the university, or to resume employment status or to be granted admission as a student. Subject to other rules and regulations of each institution concerning continued employment by the institution, a member of the faculty or staff who has been suspended for a specified period shall be reinstated by the university at the expiration of the suspension period provided that during the suspension period the member of the faculty or staff has not committed other acts of misconduct specified in 9.1(2) or in the policies of the university. One under such suspension whose reemployment is denied on the basis of alleged acts of misconduct committed during a suspension period shall have a right to a hearing on that issue as provided in 9.1(3).

“Suspension of a student” means that during a specified period of time, the student shall be denied admission to the university ~~or employment by it~~. Subject to the rules and regulations of each institution concerning enrollment at the institution, a suspended student shall be reinstated to the university at the expiration of the suspension period provided that during the suspension period the student has not committed acts of misconduct specified in 9.1(2). A suspended student whose reinstatement is denied on the basis of alleged acts of misconduct committed during this suspension period shall have a right to a hearing on that issue, as provided in 9.1(3).

“University” means an institution of higher learning under the jurisdiction of the board. When used in the plural, the word means all institutions of higher learning under the jurisdiction of the board.

“Visitor” means any person on the campus who is not a student or a member of the faculty or staff. ~~A suspended member of the faculty or staff, or a suspended student, who is on the campus during the period of such suspension shall be deemed a visitor.~~

9.1(2) Rules of personal conduct. The acts of misconduct defined in this subsection apply at the universities governed by the board. The universities are authorized to adopt other definitions of misconduct in addition to these rules. Any person, student, member of the faculty or staff, or visitor, who intentionally commits, attempts to commit, or incites or aids others in committing any of the following acts of misconduct shall be subject to disciplinary procedures by the university as hereinafter provided ~~action~~:

a. Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other university or university-authorized function or event.

b. Unauthorized occupation or use of or unauthorized entry into any university facility. However, any entry into, use of, or occupation of any university facility by a student or member of the faculty or staff, which does not violate any of the other rules of personal conduct set forth herein, shall be deemed unauthorized only if specifically prohibited, if that facility is closed at that time to general use or if the person fails to comply with proper notice to leave.

c. Physical abuse or the threat of physical abuse against any person on the campus or at or during any university-authorized function or event, or other conduct which threatens or endangers the health or safety of ~~any such person~~ others.

d. Theft of or damage to property of the university or of a person on the campus or at or during any university-authorized function or event.

e. Interference with the right of access to university facilities or with any other lawful right of any person on the campus.

f. Setting a fire on the campus or at or during any university-authorized function or event without proper authority.

g. Use or possession on the campus or at or during any university-authorized function or event of firearms, ammunition, or other dangerous weapons, substances, or materials (except as expressly authorized by the university), or of bombs, explosives, or explosive or incendiary devices prohibited by law.

~~h. Conduct off campus which leads directly to a violation of any of paragraphs “a” to “g” of this subrule~~ Participating in a riot, unlawful assembly or failure to disperse, as defined by state law, whether such acts occur on or off the campus, if such act or failure to act occurs:

1. In the contiguous metropolitan area in which any university governed by the board is located; or

2. During a function or event authorized or sponsored by the university or an organization recognized by or affiliated with the university.

~~i. Conduct off campus which leads directly to a violation of any of paragraphs “a” to “h” of this subrule.~~

9.1(3) Sanctions.

a. Any student or member of the faculty or staff who is found after appropriate hearing to have violated any of the rules of personal conduct set forth in 9.1(2) may be sanctioned up to and including suspension, expulsion, or dismissal.

NOTE: “Appropriate hearing” as used throughout these rules means pursuant to existing hearing procedures in effect at the university for students and members of the faculty and staff.

~~If a suspension is ordered after the start of a semester or quarter, however, the time period of the suspension shall be deemed to run from the beginning of the semester or quarter rather than from the actual date of the order.~~ A faculty or staff member who is suspended as a sanction under rule shall receive no salary during the period of suspension; provided, however, that payment shall be made for work done prior to the date of the suspension order.

b. A person who applies for admission reinstatement to or employment reemployment by the university (~~either for the first time, or after a term of suspension or dismissal~~) may be denied such admission reinstatement or employment reemployment if it is found that such person has committed any acts of misconduct specified in 9.1(2) ~~while a visitor on the campus or in the policies of the university~~. A person denied admission reinstatement or employment reemployment under this section shall have a right to an appropriate hearing or to follow the grievance process of the university.

c. Any sanction imposed under 9.1(3)*“a”* and *“b”* shall have operative effect at all universities, and a person not eligible for admission to or employment by one university shall be barred similarly at the other universities.

9.1(4) Emergency power.

a. The president is authorized to declare a state of emergency to exist at the institution upon a determination that violent actions or disruptive activities at the university are of such a nature as:

(1) To present a clear and present danger to the orderly processes of the university or to persons or property on the campus, and

(2) To require extraordinary measures to:

1. Safeguard persons or property at such institution, or
2. Maintain educational or other legitimate institutional functions.

b. The state of emergency shall cease to exist automatically 48 hours after it is declared unless the president, after reviewing the situation, determines that it should be extended, such determination to be made under the standards established in 9.1(4)*“a”*(1) and 9.1(4)*“a”*(2). Each extension shall be for a maximum period of 48 hours with a new determination being made for each extension. The president may declare the state of emergency to be over before the 48-hour period has run.

c. As soon as feasible after declaring a state of emergency, the president shall notify the board of actions taken.

d. Upon a finding by the president as set forth in 9.1(4)*“a”* the president is authorized to take such action as may be necessary to eliminate or alleviate a clear and present danger to the orderly processes of the university and to safeguard persons or property at the university or to maintain educational or other legitimate university functions including barring a particular person or persons from the campus.

9.1(5) Sanctions under emergency power.

a. Any person who, after appropriate hearing, is found to have violated knowingly a presidential order issued as contemplated in 9.1(4) may be ~~expelled or dismissed~~ disciplined, up to and including expulsion or dismissal from the university.

b. Any person who, after appropriate hearing, is found to have violated during a state of emergency, knowing that a state of emergency has been declared, any of the regents' rules of personal conduct, set forth in 9.1(2) of this policy, may be ~~expelled or dismissed~~ disciplined, up to and including expulsion or dismissal from the university.

~~c. Any person who, after appropriate hearing, is found to have violated knowingly a presidential order as contemplated in 9.1(4) and, knowing that a state of emergency had been declared, is found to have violated during the state of emergency any of the regents' rules of personal conduct, set forth in 9.1(2) of this policy, may be expelled or dismissed from the university.~~

~~d. c.~~ Any sanction imposed under this section shall have operative effect at all universities, and a person not eligible for admission to or employment by one university shall be barred similarly at the other universities.

9.1(6) Constitutional rights. The foregoing rules shall be construed so as not to abridge any person's constitutional right of free expression of thought or opinion, including the traditional American right to assemble peaceably and to petition authorities.

681—9.2(262) Transfers. All transfer applicants from any institution of higher learning to a university governed by the board of regents are asked about their eligibility to return to the institution from which the applicant is transferring. If the applicants are not eligible to return, the following rules apply:

9.2(1) Transfers among regent institutions. Transcripts at all regent universities now include an appropriate notation if a student is ineligible for readmission or reenrollment. Admission is denied if the applicant currently is under disciplinary suspension or has been dismissed from one of the other regent universities for violation of the regents' rules of personal conduct and is not eligible to reenter. Further, if such transfer applicant is currently on probation for having violated the regents' rules of personal conduct at one university, the applicant, if admitted to another regents university is admitted on probation.

9.2(2) Transfers from nonregent institutions. If the application for admission or the transcript from another institution shows that the applicant is not eligible to reenroll there, further inquiry will be made to determine the reason. Such inquiry may lead to admission, conditional admission, or denial of admission. Appeals from the decision will be referred to appropriate university channels.

9.2(3) Applications from "visitors." ~~Under the regents' rules of personal conduct, "visitors"~~ "Visitors" to the campus who are believed to have violated the rules of personal conduct and who later apply for admission or employment may be denied admission or employment because of their prior conduct, subject to review if the denial is appealed by the applicant. An applicant who would be subject to such a denial and review at any university governed by the board of regents shall be subject to the same denial and review by the other two regents universities if application for admission or employment is made to them. The three universities shall cooperate in making known the identity of such persons barred from admission or employment among all three institutions.

681—9.3(262) ~~Regents approved judicial system~~ Alternate procedures when resources are not adequate.

9.3(1) ~~If, in the university president's judgment, the university's disciplinary procedures resources are not adequate to the task of enforcement providing hearings regarding violations of rules governing conduct at the institution on any particular occasion, the president may temporarily set aside or supplement local administrative disciplinary procedures by appointing a hearing examiner from a panel of hearing examiners who have previously been approved by the board of regents~~ appoint one or more hearing examiners. Hearing examiners shall be licensed attorneys in the state of Iowa or shall have experience administering student judicial processes for a public institution.

9.3(2) ~~The examiner so appointed finds the facts, and, if a violation is found, recommends to the president, or designee, as to sanctions. In the event review is sought from the president's decision, requests for review may be made to the board of regents, and the board may in its discretion review the case.~~

RULE AFTER AMENDMENT

CHAPTER 9
POLICIES, PRACTICES AND PROCEDURES
[Prior to 4/20/88, Regents, Board of [720]]

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“Board” means the board of regents, state of Iowa.

“Campus” includes all property owned or used by the university.

“Dismissal of a member of the faculty or staff” means termination of status as an employee without right of reemployment.

“Expulsion of a student” means termination of status as a student without right of readmission.

“Member of the faculty or staff” includes all employees of the university.

“Person” means any student, member of the faculty or staff, or visitor.

“President” means the president (or acting president) of the university or any person or persons designated to act on the president’s behalf for purposes of these rules.

“Student” means a person who is currently registered as a student at the university in an undergraduate, graduate or professional program on the campus, and includes students who have been suspended for a fixed period of time, during that fixed period, as well as admitted students prior to enrollment and persons continuing to work on a program of studies with the intent of returning to the university, even though not formally enrolled.

“Suspension of a member of the faculty or staff” means that during a specified period of time, the member of the faculty or staff is not eligible to continue as an employee of the university, or to resume employment status or to be granted admission as a student. Subject to other rules and regulations of each institution concerning continued employment by the institution, a member of the faculty or staff who has been suspended for a specified period shall be reinstated by the university at the expiration of the suspension period provided that during the suspension period the member of the faculty or staff has not committed other acts of misconduct specified in 9.1(2) or in the policies of the university. One under such suspension whose reemployment is denied on the basis of alleged acts of misconduct committed during a suspension period shall have a right to a hearing on that issue as provided in 9.1(3).

“Suspension of a student” means that during a specified period of time, the student shall be denied admission to the university. Subject to the rules and regulations of each institution concerning enrollment at the institution, a suspended student shall be reinstated to the university at the expiration of the suspension period provided that during the suspension period the student has not committed acts of misconduct specified in 9.1(2). A suspended student whose reinstatement is denied on the basis of alleged acts of misconduct committed during this suspension period shall have a right to a hearing on that issue, as provided in 9.1(3).

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a. Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other university or university–authorized function or event.

b. Unauthorized occupation or use of or unauthorized entry into any university facility. However, any entry into, use of, or occupation of any university facility by a student or member of the faculty or staff, which does not violate any of the other rules of personal conduct set forth herein, shall be deemed unauthorized only if specifically prohibited, if that facility is closed at that time to general use or if the person fails to comply with proper notice to leave.

c. Physical abuse or the threat of physical abuse against any person on the campus or at or during any university–authorized function or event, or other conduct which threatens or endangers the health or safety of others.

d. Theft of or damage to property of the university or of a person on the campus or at or during any university-authorized function or event.

e. Interference with the right of access to university facilities or with any other lawful right of any person on the campus.

f. Setting a fire on the campus or at or during any university-authorized function or event without proper authority.

g. Use or possession on the campus or at or during any university-authorized function or event of firearms, ammunition, or other dangerous weapons, substances, or materials (except as expressly authorized by the university), or of bombs, explosives, or explosive or incendiary devices prohibited by law.

h. Participating in a riot, unlawful assembly or failure to disperse, as defined by state law, whether such acts occur on or off the campus, if such act or failure to act occurs:

1. In the contiguous metropolitan area in which any university governed by the board is located; or

2. During a function or event authorized or sponsored by the university or an organization recognized by or affiliated with the university.

i. Conduct off campus which leads directly to a violation of any of paragraphs “a” to “h” of this subrule.

9.1(3) Sanctions.

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NOTE: “Appropriate hearing” as used throughout these rules means pursuant to existing hearing procedures in effect at the university for students and members of the faculty and staff.

A faculty or staff member who is suspended as a sanction under these rules shall receive no salary during the period of suspension; provided, however, that payment shall be made for work done prior to the date of the suspension order.

b. A person who applies for reinstatement to or reemployment by the university after a term of suspension or dismissal may be denied such reinstatement or reemployment if it is found that such person has committed any acts of misconduct specified in 9.1(2) or in the policies of the university. A person denied reinstatement or reemployment under this section shall have a right to an appropriate hearing or to follow the grievance process of the university.

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b. The state of emergency shall cease to exist automatically 48 hours after it is declared unless the president, after reviewing the situation, determines that it should be extended, such determination to be made under the standards established in 9.1(4)“a”(1) and 9.1(4)“a”(2). Each extension shall be for a maximum period of 48 hours with a new determination being made for each extension. The president may declare the state of emergency to be over before the 48-hour period has run.

c. As soon as feasible after declaring a state of emergency, the president shall notify the board of actions taken.

d. Upon a finding by the president as set forth in 9.1(4)“a” the president is authorized to take such action as may be necessary to eliminate or alleviate a clear and present danger to the orderly processes of the university and to safeguard persons or property at the university or to maintain educational or other legitimate university functions including barring a particular person or persons from the campus.

9.1(5) *Sanctions under emergency power.*

a. Any person who, after appropriate hearing, is found to have violated knowingly a presidential order issued as contemplated in 9.1(4) may be disciplined, up to and including expulsion or dismissal from the university.

b. Any person who, after appropriate hearing, is found to have violated during a state of emergency, knowing that a state of emergency has been declared, any of the regents’ rules of personal conduct, set forth in 9.1(2) of this policy, may be disciplined, up to and including expulsion or dismissal from the university.

c. Any sanction imposed under this section shall have operative effect at all universities, and a person not eligible for admission to or employment by one university shall be barred similarly at the other universities.

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one of the other regent universities for violation of the regents' rules of personal conduct and is not eligible to reenter. Further, if such transfer applicant is currently on probation for having violated the regents' rules of personal conduct at one university, the applicant, if admitted to another regent university is admitted on probation.

9.2(2) *Transfers from nonregent institutions.* If the application for admission or the transcript from another institution shows that the applicant is not eligible to reenroll there, further inquiry will be made to determine the reason. Such inquiry may lead to admission, conditional admission, or denial of admission. Appeals from the decision will be referred to appropriate university channels.

9.2(3) *Applications from "visitors."* "Visitors" to the campus who are believed to have violated the rules of personal conduct and who later apply for admission or employment may be denied admission or employment because of their prior conduct, subject to review if the denial is appealed by the applicant. An applicant who would be subject to such a denial and review at any university governed by the board of regents shall be subject to the same denial and review by the other two regent universities if application for admission or employment is made to them. The three universities shall cooperate in making known the identity of persons barred from admission or employment among all three institutions.

681—9.3(262) Alternate procedures when resources are not adequate.

9.3(1) If, in the university president's judgment, the university's resources are not adequate to the task of providing hearings regarding violations of rules governing conduct at the institution on any particular occasion, the president may appoint one or more hearing examiners. Hearing examiners shall be licensed attorneys in the state of Iowa or shall have experience administering student judicial processes for a public institution.