

**COMMITTEE MEMORANDUM**

**TO:** Education and Student Affairs Committee  
Board of Regents, State of Iowa

**FROM:** Susan Anderson

**DATE:** June 1, 2005 *ASN*

**SUBJ:** Adoption of amendments to Iowa Administrative Code  
(Rules of Personal Conduct)

**Recommended Actions:**

1. Recommend approval of adoption of amendments to the Iowa Administrative Code §681, Chapter 9.
2. Authorize the Executive Director to file the appropriate documents.

**Executive Summary:**

Iowa Administrative Code Amendments      The Committee is asked to recommend to the full Board approval of the adoption of amendments to Chapter 9 of the Iowa Administrative Code and to authorize the Executive Director to file the appropriate documents.

Chapter 9 – Personal Conduct      In March 2005, the Board approved the filing of notice to amend Chapter 9 of the Regents administrative rules regarding uniform rules of personal conduct, in order to address collective disturbances and related behavior. The amendments presented for adoption are substantively the same as those presented in March, and include only editorial changes which were suggested by the Code Editor prior to the publication of the Notice of Intended Action on April 13.

Background      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 functions 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].

The Notice of Intended Action as it appeared in the Iowa Administrative Bulletin, including the current language with the amendments presented for adoption, is shown in Attachment A.

Written comments

When these proposed amendments were initially filed and published, a minimum twenty-day period for public comment was required and established. The written comment period ended May 6, 2005.

The Board Office and/or the universities received 29 written comments from 25 people, as summarized below:

## Summary of Written Comments

- A total of 10 students, 8 staff members, 6 faculty members and 1 community member sent written comments.
- Of the 10 students (1 ISU, 9 SUI and 0 UNI): 1 was in favor of the amendments; 9 had concerns about maintaining freedom of speech and assembly.
- Of the 8 staff members (2 ISU, 6 SUI and 0 UNI): 1 was in favor of the amendments; 6 had concerns about maintaining freedom of speech and assembly; 1 had concerns about maintaining the ability to carry firearms and set campfires on legitimate outings by groups such as the ISU Fisheries and Wildlife Biology Club.
- Of the 6 faculty members (2 ISU, 4 SUI and 0 UNI): 5 had concerns about maintaining freedom of speech and assembly, of which 1 also expressed concerns about off-campus regulation; 1 had concerns about maintaining the ability to carry firearms and set campfires on legitimate outings by groups conducting research such as wildlife ecologists involved in field projects for the Department of Natural Resources or the Fish and Wildlife Service.
- The one community member (from the Ames area, former ISU student) sent 4 written comments expressing his belief in the Positive, Normative Peer Management Technique in which there would be no rules imposed externally on students; instead, students would govern their behavior according to internal norms established through student involvement and ownership in their own destinies. The community member, however, had no specific objections to the substance of these particular amendments

The freedom of speech and assembly concerns are addressed by the definitions which are incorporated from the Iowa Code and by the provisions already in section 9.1(6) of the Regents administrative rules themselves: "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."

The concerns about the ability to carry firearms and set campfires on legitimate group outings can be addressed by having each university establish written standing authorizations for specific student organizations and individuals.

The written comments in their entirety are available to the Board at the Board Office.

Oral comments at  
ICN public hearing

The Notice of Intended Action which was published on April 13 also established a date and locations for a public hearing to occur simultaneously over the ICN on all three campuses. The three universities also posted the notice of hearing along with the proposed amendments on campus websites. The public hearing was held from 2:00 to 4:00 on the afternoon of May 6. A Board Office staff member was the presiding officer at the hearing, which was conducted in accordance with Board rules and policies. The Board Office staff member was present at the ISU site along with ISU General Counsel. SUI General Counsel was present at the SUI site; the UNI Vice President of Student Affairs was present at the UNI site.

Oral comments were received from a total of 5 individuals who attended the ICN hearing, as summarized below:

- A total of 4 students and 1 community member presented oral comments.
- The 4 students (0 ISU, 4 SUI and 0 UNI) expressed concerns about maintaining freedom of speech and assembly. None of the four students had sent written comments.
- The community member (from the ISU site) was the same individual who had sent 4 written comments; the substance of his oral comments reiterated the written comments as described above.

The public hearing proceedings were electronically recorded on DVD and audiotape, both of which are available to Board members at the Board Office.

None of the oral or written comments summarized below resulted in changes to the amendments presented for adoption.

Administrative  
Rules Review  
Committee

Representatives of the Board Office and Iowa State University appeared before the Administrative Rules Review Committee on May 10 and responded to informational questions from the committee.

Effective Date if  
Adopted

If the proposed amendments are adopted by the Board at the June meeting, the earliest effective date of the amended rules would likely be the end of August 2005.

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**IOWA ADMINISTRATIVE BULLETIN**  
**VOLUME XXVII**  
April 13, 2005

**ARC 4110B**

**REGENTS BOARD[681]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 262.9(12) and 262.12, the Board of Regents hereby gives Notice of Intended Action to amend Chapter 9, “Policies, Practices and Procedures,” Iowa Administrative Code.

These amendments are intended to do the following:

The amendments will assist Regent universities in educating students and employees on prohibited personal conduct and consequences related to participating in riots, unlawful assemblies, and failure to disperse at university-sponsored events. Recent studies show that there is an accelerating pattern of university-related riots in the United States. While rioting is already forbidden under Iowa Code chapter 723, entitled “Public Disorder,” students and employees should specifically be made aware of their legal obligations at university-sponsored events. The amendments will also:

- Assist in preventing future collective disturbances;
- Put students and employees on notice that such behavior is unacceptable;
- Make students and employees aware of the consequences for such behavior;
- Apply a uniform rule for all regent universities;
- Include in the definition of “student” admitted but nonmatriculated students, students suspended for a fixed term, and students continuing their studies with the 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 of personal conduct (9.1(1));
- Broaden provisions on physical abuse, damage to property, and possession of weapons and dangerous materials to include conduct occurring at or during university-authorized functions or

events, and to include student conduct at such activities as band trips, athletic functions and other events away from the campus (9.1(2)“c,” “d,” and “f” to “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(262)).

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681 IAC 19.18(17A).

Any interested person or persons may present their views either orally or in writing at the public hearing which will be held over the Iowa Communications Network (ICN) on Friday, May 6, 2005, from 2 to 4 p.m. at the following three locations:

1. Iowa State University: N147 Lagomarcino Hall, Corner \_\_\_\_\_ of Knoll Road and Pammel Drive, Ames, Iowa.
2. University of Northern Iowa: 130 Schindler, Corner \_\_\_\_\_ of Hudson Road and 23rd Street, Cedar Falls, Iowa.
3. University of Iowa: 107 North Hall, End of North \_\_\_\_\_ Madison Street, Iowa City, Iowa.

Written comments may also be directed by May 6, 2005, to Susan Anderson, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322. Comments may also be made by May 6, 2005, through E-mail to [seander@iastate.edu](mailto:seander@iastate.edu) or by fax at (515)281-6420.

These amendments are intended to implement Iowa Code sections 262.9 and 262.12.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 681—9.1(262) as follows:

**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~~ *means* 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~~ *means* 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; 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~~ *A member of the faculty or staff* 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 subrule apply at the universities governed by the board. The universities are authorized to adopt other definitions of misconduct in addition to those in this rule.* 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~~ *Participation in a riot or 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~~ *subrule* 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.~~

~~c.~~ Any sanction imposed under this ~~section~~ *subrule* 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.

ITEM 2. Amend rule 681—9.2(262) as follows:

**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~~ *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.” ~~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~~ *regent* 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.

ITEM 3. Amend rule 681—9.3(262) as follows:

**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.~~