

Contact: Aimee Claeys

### **BOARD POLICY MANUAL REVISIONS – CHAPTER 4.2**

**Action Requested:** Approve, as a first and final reading, revisions to Board of Regents Policy Manual Chapter 4.2 – Freedom of Expression, and instruct the Universities to implement the revisions no later than July 1, 2021.

**Executive Summary:** On April 18, 2019, the Board of Regents adopted a Freedom of Expression policy applicable to the Regent universities. In November 2020, Board President Michael Richards Established a Free Speech Committee to the Board of Regents with a charge to evaluate the implementation of the Board's policy, as well as best practices from other institutions and bring any recommendations on changes that need to be made to strengthen our efforts on free speech. On February 24, 2021, the Board approved the recommendations brought by the Free Speech Committee, including establishing the Free Speech Committee as a permanent committee of the Board of Regents.

In order to implement the Free Speech Committee's recommendations, Board approval of the following revisions to Board of Regents Policy Manual Chapter 4.2 is requested:

#### **4.2 Freedom of Expression**

##### **A. Policy Statement**

The Board of Regents is committed to the principles of free expression embodied in the First Amendment to the United States Constitution and Article 1, Section 7 of the Constitution of the State of Iowa. The Board recognizes that the primary mission of the institutions of higher education under its jurisdiction is the promotion of teaching, research, and scholarship. In support of this mission, the institutions of higher education under the jurisdiction of the Board of Regents must provide ample opportunity for members of the campus community to engage in the free exchange of ideas.

The Board's fundamental commitment is to the principle that debate or deliberation must not be suppressed merely because the viewpoints presented are considered by some or even most members of the campus community to be unwelcome, disagreeable, or offensive. In order to maintain an environment that fosters the free exchange of ideas, the universities must not restrict the expression of viewpoints in violation of the First Amendment to the United States Constitution. It is not the responsibility of the universities to shield individual members of the campus community from viewpoints they may find unwelcome, disagreeable, or offensive. Rather, it is the responsibility of individual members of the campus community to make these determinations for themselves and to respond, not by seeking to suppress speech, but to openly and vigorously debate those viewpoints that they oppose.

##### **B. Guiding Principles**

- i. The primary function of the Regent universities is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the universities must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the First Amendment to the Constitution of the United States.

- ii. It is not the proper role of the Regent universities to shield individuals from speech protected by the First Amendment to the Constitution of the United States, which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.
- iii. It is the proper role of the Regent universities to encourage diversity of thoughts, ideas, and opinions and to encourage, within the bounds of the First Amendment to the Constitution of the United States, the peaceful, respectful, and safe exercise of First Amendment rights.
- iv. Students, faculty, and staff have the freedom to discuss any problem that presents itself, assemble, and engage in spontaneous expressive activity on campus, within the bounds of established principles of the First Amendment to the Constitution of the United States, and subject to reasonable time, place, and manner restrictions that are consistent with established First Amendment principles.

**C. Definitions**

- i. Campus Community – students, administrators, faculty, and staff at a Regent university and guests invited to a Regent university by the university’s students, administrators, faculty or staff.
- ii. Outdoor Areas of Campus - the generally accessible outside areas of campus where students, administrators, faculty, and staff at a Regent university are commonly allowed. The term “outdoor areas of campus” does not include areas outside health care facilities including both stand-alone facilities and mixed-use facilities that are embedded within another facility, veterinary medicine facilities, a facility or outdoor area used by an athletics program or teams, or other outdoor areas where access is restricted to a majority of the campus community.
- iii. University – as used in this section 4.2 “university” shall include all colleges, departments, administrative units, and employees acting in their official capacity or within the scope of their employment.

D. The University shall not discriminate against or deny educational benefits to any member of the campus community because of the member’s viewpoint or expression of that viewpoint as protected by the First Amendment of the Constitution of the United States.

DE. Use of University Grounds and Facilities.

- i. The outdoor areas of campus are public forums, open on the same terms to any member of the campus community subject to reasonable time, place, and manner restrictions that are consistent with established principles of the First Amendment to the Constitution of the United States.
- ii. Members of the campus community may engage in non-commercial expressive activity in any outdoor area of campus in accordance with the provisions of Iowa Code Chapter 261H and published university policies governing time, place, and manner restrictions. No area of campus shall be designated as a free speech zone, nor will the universities create policies that restrict expressive activity to a particular outdoor area.
- iii. Each university shall develop viewpoint-neutral time, place and manner policies identifying outdoor areas of campus and governing use by members of the campus community that are consistent with this Chapter 4.2 and Iowa Code Chapter 261H. These policies shall be published on the university’s website in a location that is readily accessible to the public.

- iv. University policies may permit reservation of university grounds or facilities, including the outdoor areas of campus, provided any system of reservation is applied in a viewpoint-neutral manner. The use of outdoor areas of campus or other university grounds and facilities for non-commercial expressive activity may be conditioned upon the payment of reasonable expenses to be incurred by the university in accommodating a speaker or event. Expenses must reasonably reflect the actual costs estimated to be incurred by the university, and under no circumstances shall costs be based on the viewpoint of any speaker.
- v. For the purposes of this subsection 4.2.4.E, “chalking” is defined as the marking of a sidewalk surface with water-soluble chalk (commonly referred to as sidewalk chalk). Members of the campus community shall be permitted to engage in non-commercial chalking in the outdoor areas of campus. The Universities may establish reasonable time, place, and manner restrictions on chalking in the outdoor areas of campus provided such policies are content neutral. The Universities may prohibit chalking in designated portions of the outdoor areas of campus provided that members of the campus community are afforded ample alternative areas to engage in non-commercial chalking.

F. Campus Speakers and Programs. The universities shall encourage students and staff to hear diverse points of view from speakers and programs sponsored by the university and/or recognized student, faculty, and employee organizations.

- i. Restrictions. In sponsoring campus speakers and programs, recognized faculty, student, and employee organizations shall comply with institutional rules on the advance reservation of rooms, the posting of notices, and the payment of rental charges when applicable and such other rules as the institution prescribes for the use of its buildings to avoid any interference with the regular program of the institution.
- ii. Sponsorship of Meeting. To encourage the presentation of diverse points of view on any issue, the president of a Regent university or a campus committee may at any particular meeting, or from time to time, sponsor, or encourage recognized campus groups to sponsor, additional speakers or programs that will contribute to the full and frank discussion of such issue.

G. Student Organizations.

- i. The universities shall not deny benefits or privileges available to student organizations based on the viewpoint of a student organization or the expression of the viewpoint by the student organization or its members, as protected by the First Amendment to the Constitution of the United States.
- ii. The universities shall not deny any benefit or privilege to a student organization based on the student organization’s requirement that the leaders of the student organization agree to and support its beliefs, as those beliefs are interpreted and applied by the student organization, and to further its mission.
- iii. Student organizations may, but are not required to, limit leadership positions to students who, upon individual inquiry, affirm that they support the student organization’s beliefs and agree to further the student organization’s mission.

H. Nothing in this policy shall be interpreted as prohibiting the Regent universities from regulating or restricting expressive activity that is not protected by the First Amendment.

H. University Statements on Matters of Public Concern. The University's proper role is in supporting and encouraging freedom of inquiry by fostering opportunities for the expression of differing views regarding many issues in multiple areas of study, research, and debate, including current political, social, and public policy issues. The Universities shall not take action in such a way as to require or unduly pressure members of the campus community, in their personal capacities, to express or adopt a particular viewpoint on a political, social or public policy matter. The University may speak, as an institution, on political, social, or public policy matters when such matters are central to the mission or critical operations of the University as reasonably determined by the University. In all instances, University statements on political, social, or public policy matters must be consistent with any stated position of the Board of Regents.

J. Complaints to the Board of Regents.

- i. Any member of the campus community aggrieved by a violation of this policy may file a complaint with the Executive Director of the Board of Regents.
- ii. Complaints must be filed within one year of the date when the alleged violation occurred or when the member of the campus community should have been reasonably aware of the alleged violation.
- iii. The Executive Director may (i) forward the complaint to the Board of Regents Free Speech Committee for review, (ii) may direct the matter to the applicable university for initial review, (iii) or take other action as determined by the Executive Director to resolve the complaint.
- iv. Any complaint directed to the University for initial review may be appealed to the Board of Regents pursuant to Chapter 1.7 of this policy manual.
- v. The universities shall develop internal procedures for reviewing complaints involving a violation of any university policy addressing freedom of expression under the First Amendment of the Constitution of the United States, including penalties for violating any university or board policy addressing freedom of expression. University complaint procedures shall be in addition to the procedures contained in this subsection 4.2.J. The Executive Director or the Free Speech Committee may decline to consider any matter that is pending or has been adjudicated through a university procedure.

K. The Universities shall publish the Board of Regents Freedom of Expression Policy and all University policies and procedures regarding freedom of expression in a prominent place on the University website. The Universities shall also provide all students, faculty, and staff with training on the First Amendment matters on, at a minimum, an annual basis.