

PROPOSED REGENT POLICY DOCUMENT ON COMMITMENT TO ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION

BACKGROUND

Over the course of its history, the University of Wisconsin Board of Regents has been a leader in its support of the importance of academic freedom and freedom of expression. In recent years, these principles of academic freedom and freedom of expression have been tested at several other universities.

REQUESTED ACTION

Adoption of Resolution II.10.

DISCUSSION

The State of Wisconsin Legislature is currently considering a bill that would direct the Board of Regents to adopt a policy on free expression that includes disciplinary sanctions for those who disrupt the free expression of others, and includes other accountability requirements.

The attached Regent Policy Document, “Commitment to Academic Freedom and Freedom of Expression,” communicates the expectations of the Board of Regents regarding academic freedom and freedom of expression, expectations for those who violate the free expression and others. The proposed policy requires the UW System to report annually to the Board regarding efforts to uphold these principles, and prohibits UW institutions from taking actions to require students or staff to express a particular view on a public policy issues. The proposed policy also requires UW institutions to address the issue of freedom of expression during freshman and transfer student orientation, and annually provide notice to all students and employees of the policy. Finally, the proposed policy supersedes and nullifies any provisions of institutional policies that improperly restrict speech, and requires UW institutions to revise or remove any such policies.

RELATED BOARD OF REGENTS POLICIES

Regent Resolution 10600, adopted December 15, 2015

Regent Resolution 10906, adopted July 7, 2017

DRAFT 9-25-17

Regent Policy Document

Commitment to Academic Freedom and Freedom of Expression

Scope

This policy applies to all UW System students, staff, and visitors.

Purpose

The purpose of this policy is to communicate the Board of Regents' commitment to academic freedom and freedom of expression, and expectations for those who violate these freedoms.

Policy Statement

1. Commitment¹

The Board of Regents of the University of Wisconsin System has a longstanding tradition of support for academic freedom, dating back to 1894 and the famous “sifting and winnowing” statement contained in the University of Wisconsin Board of Regents’ Final Report on the Trial of Richard Ely. The Board of Regents of the University of Wisconsin System hereby reiterates its commitment to the principle of academic freedom and affirms its commitment to the principle of freedom of expression.

Academic freedom includes the freedom to explore all avenues of scholarship, research, and creative expression, and to reach conclusions according to one's own scholarly discernment. Freedom of expression includes the right to discuss and present scholarly opinions and conclusions on all matters both in and outside the classroom. These freedoms include the right to speak and write as a member of the university community or as a private citizen without institutional discipline or restraint, on scholarly matters, or on matters of public concern. The UW System is committed to these principles and provides all members of the university community the broadest possible latitude to explore ideas and to speak, write, listen, challenge, and learn.

Of course, different ideas in the university community will often and quite naturally conflict. But it is not the proper role of the university to attempt to shield individuals from ideas and opinions they, or others, find unwelcome, disagreeable, or even deeply offensive. Although the university greatly values civility, concerns about civility and mutual respect can never be used as

¹ Sources: Richard Ely Trial Committee Final Report, September 18, 1894, University of Wisconsin Board of Regents; Report of the Committee on Freedom of Expression at the University of Chicago; Johns Hopkins University Statement on Academic Freedom; Princeton University Statement on Freedom of Expression; Purdue University Commitment to Freedom of Expression

justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members within the university community.

The freedom to debate and discuss the merits of competing ideas does not mean that members of the university community may say whatever they wish, wherever they wish. Consistent with longstanding practice informed by law, institutions within the System may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the university. In addition, the institutions may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt ordinary activities. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with each institution's commitment to a completely free and open discussion of ideas.

These principles carry responsibilities. Academic freedom carries the responsibility for the faithful performance of professional duties and obligations. All members of the university community at each of the institutions in the University of Wisconsin System share in the responsibility for maintaining civility and a climate of mutual respect. Although members of the university community at each institution are free to criticize and contest the views expressed on campus, they may not obstruct or otherwise interfere with the freedom of others, including speakers who are invited to campus, to express views they reject or even loathe. Freedom of expression also carries the obligation to make clear that when speaking on matters of public interest or concern, one is speaking on behalf of oneself, not the institution. Each institution in the University of Wisconsin System has a solemn responsibility not only to promote lively and fearless exploration, deliberation, and debate of ideas, but also to protect those freedoms when others attempt to restrict them. Exploration, deliberation, and debate may not be suppressed because the ideas put forth are thought by some or even by most members of the university community (or those outside the community) to be offensive, unwise, immoral, or wrong-headed. It is for the members of the university community, not for the institution itself, to make those judgments for themselves, and to act on those judgments not by seeking to suppress exploration of ideas or expression of speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the university community to engage in such debate and deliberation in an effective and responsible manner is an essential part of each institution's educational mission. Accordingly, the University of Wisconsin System Board of Regents expresses its expectation that the principles of academic freedom and freedom of expression will be upheld because today, as previously stated by Regents on September 18, 1894: "Whatever may be the limitations which trammel inquiry elsewhere, we believe the great state University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."

2. Conduct on University Lands; Student and Staff Discipline

Chapters UWS 17 (Student Nonacademic Misconduct Procedures) and UWS 18 (Conduct on University Lands) of the Wisconsin Administrative Code and other relevant Administrative Code provisions, UW System and UW institution policies, and State statutes govern the conduct of

students, staff, and visitors on all real property owned or leased by, or otherwise under the control of the Board of Regents. These Administrative Code provisions, statutes and policies provide UW institutions with authority to address disruptive behavior by students, staff, and visitors.

Chapter UWS 17.09 describes misconduct that may subject a student to discipline, including but not limited to, disruption of university-authorized activities; dangerous conduct; unauthorized use of or damage to property; violation of criminal law; serious and repeated violations of municipal law; violation of university rules; and violation of Chapter UWS 18. Chapter UWS 17.10(1) contains a range of disciplinary sanctions for students under the jurisdiction of the institution who engage in violent or other disorderly conduct that materially and substantially disrupts the free expression of others.

Chapter UWS 18 describes misconduct that may subject a student or staff member to discipline, and that may subject students, staff, and campus visitors to municipal fines or criminal sanctions, including but not limited to Chapter UWS 18.10 (offenses against public safety); Chapter UWS 18.07 (use of campus facilities), and Chapter UWS 18.11 (offenses against public peace and order). Chapter UWS 18.13 describes forfeiture penalties for violation of certain sections of Chapter UWS 18.

Students charged with misconduct by the University shall be provided the procedural protections in Chapter UWS 17 and parallel UW institution policies. Those protections include, but are not limited to: the right to a written report detailing the alleged misconduct, describing all information available to the university regarding the alleged misconduct, and specifying the sanction sought; the right to a hearing before an impartial hearing examiner or hearing committee; the right to question adverse witnesses; the right to present information and witnesses; the right to be heard; the right to be accompanied by an advisor who may be an attorney; and the right to an appeal .

A formal investigation and disciplinary hearing is required the second time a student is alleged to have engaged in violent or other disorderly misconduct that materially and substantially disrupted the free expression of others. Any student who has twice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment shall be suspended for a minimum of one semester. Any student who has thrice been found responsible for misconduct that materially and substantially disrupted the free expression of others at any time during the student's enrollment shall be expelled. This paragraph shall be effective upon amendment of Chapter UWS 17 of the Wisconsin Administrative Code under Chapter 227 of the Wisconsin Statutes to include a parallel provision. The report regarding repeat violators described in Section 5 of this policy will not be required after the effective date of the amendment to Chapter UWS 17.

Staff charged with misconduct described in Chapter UWS 18 and UW institution policies governing employee conduct shall be provided the procedural protections in applicable Wisconsin Administrative Code sections and UW institution policies.

3. Freedom of Expression

Students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment of the U.S. Constitution and Article I of the Wisconsin Constitution permit. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity does not materially and substantially disrupt the functioning of an institution.

Protests and demonstrations that interfere with the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction. This policy shall not prohibit administrators, faculty, or other instructors from maintaining order. Access to UW institutions for purposes of free speech and expression shall occur within the limits of reasonable viewpoint-neutral and content-neutral restrictions on time, place, and manner of expression and the provisions of Chapter UWS 21 (Use of University Facilities) of the Wisconsin Administrative Code.

4. Restriction of Expression

UW institutions may restrict expressive activity not protected by the First Amendment of the U.S. Constitution or Article I of the Wisconsin Constitution, including any of the following:

- (a) Violations of state or federal law.
- (b) Defamation.
- (c) Harassment.
- (d) Sexual harassment.
- (e) True threats.
- (f) An unjustifiable invasion of privacy or confidentiality.
- (g) An action that materially and substantially disrupts the function of an institution.
- (h) A violation of a reasonable time, place, and manner restriction on expressive activities.

Nothing in this policy shall be construed to prevent institutions from regulating speech or activity as allowed by law.

5. Accountability

Annual Report: The Wisconsin Constitution recognizes in Article I, Section 3, that “Every person may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right” and in Article I, Section 4, that the “[R]ight of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged.” The First Amendment to the U.S. Constitution provides parallel protection for these rights. Upholding the constitutional rights of persons who have differing viewpoints can be challenging within the academy and elsewhere.

The UW System shall report annually to the Board of Regents regarding the efforts of its institutions to uphold the principles expressed in this policy and to fulfill the Board’s Commitment to Academic Freedom and Freedom of Expression. The UW System’s report shall

describe any affirmative steps its institutions have taken in furtherance of the Board's Commitment, as well as any material barriers to these freedoms within the System and steps being taken to remove those barriers. The report also shall describe any formal complaints of violations of these freedoms during the reporting period and the administrative response to those complaints, including any disciplinary proceedings involving students or staff. The report shall comply with all federal and state law privacy protections for students and staff.

Report Regarding Repeat Violators: If a UW institution does not suspend or expel a student who has been found responsible through the student disciplinary process on two or more occasions of materially and substantially interfering with the expressive rights of others at any time during the student's enrollment, the UW institution's chancellor shall report to the Board of Regents regarding the disciplinary process and decision. The report shall comply with all federal and state law privacy protections for students.

6. Neutrality

Each UW institution shall not take action, as an institution, in such a way as to require students or staff to express a particular view on a public policy issue.

7. New Student Orientation

Each UW institution shall include in orientation for freshman and transfer students, information regarding freedom of expression consistent with this policy.

8. Notice

Each UW institution annually shall provide notice to all enrolled students and employees informing them of this policy.

9. Inconsistent policies

This policy supersedes and nullifies any provisions in the policies of a UW institution that improperly restrict speech at that institution and are, therefore, inconsistent with the policy. Each UW institution shall remove or revise any such provisions in its policies to ensure compatibility with this Board policy.

Oversight, Roles and Responsibilities

Each chancellor shall be responsible for implementing the provisions of this policy.