

D. Governance

1. Amend Existing Board Policy to Include Language Regarding Improper Use of Social Media

Regent Logan
Julene Miller,
General Counsel

Summary and Staff Recommendation

Staff proposes a revision to the Board Policy Manual to provide clarity regarding what is considered an improper use of social media. The language of the amendment is taken directly from United State Supreme Court cases. Any employment decisions made pursuant to this new policy, just as with the existing provisions in the section, would be subject to the grievance provisions at the end of that section of the policy. We have worked with the Attorney General’s Office and it has advised that it they believe it is constitutionally sound from a First Amendment and procedural due process perspective.

Background

Recognizing that the Board Policy Manual currently has no provisions specifically dealing with use of social media in a way that respects and protects the rights of individuals to speak freely while also addressing the employee’s responsibility to the university and the university’s need to operate in an efficient and effective manner, the Board Chair, Board President and CEO and other Board staff recommend adoption of a proposed policy that does so.

Most of the language in the proposed policy was drawn directly from United States Supreme Court free speech precedents including *Garcetti v. Ceballos*, 547 U.S. 410 (2006), *Waters v. Churchill*, 511 U.S. 661 (1994), *Rankin v. McPherson*, 483 U.S. 378 (1987), *Pickering v. Board of Education*, 391 U.S. 563 (1968), and *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942). The existing Grievance Procedures paragraph in this section of the Board Policy would apply to this new language in the same way it does to the other provisions of this section.

This proposed policy was reviewed by the Attorney General’s Office and found to be constitutionally sound on its face under a First Amendment analysis. They also noted that the policy appropriately meets procedural due process requirements.

Because of the proliferation of the use of this medium for communication purposes and its particular susceptibility to misuse and damage to the universities, we believe that a provision outlining improper uses of social media will be beneficial to all parties. The proposed policy is intended to provide guidance to both employees and university administration in determining what is and is not acceptable use.

Proposed Revision to Board Policy

C. CHIEF EXECUTIVE OFFICER, FACULTY AND STAFF

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6. SUSPENSIONS, TERMINATIONS AND DISMISSALS

a. Felony Offenses

- i Felony Conviction. The chief executive officer of a state university has the authority to discharge any employee, including a tenured faculty member, immediately upon conviction of any felony.

ii Felony Charge. The chief executive officer of a state university has the authority to discharge or place on leave without pay any employee, including a tenured faculty member, who has been charged with a felony offense. Prior to any such determination, the employee shall be given notice of the proposed action and an opportunity to respond.

b. Other

Faculty and staff may also be suspended, dismissed or terminated from employment for reasons of significant reduction in or elimination of the funding source supporting the position, program discontinuance, financial exigency, or for just cause related to the performance of or failure to perform the individual's duties or for violation of the reasonable directives, rules and regulations, and laws of the institution, the Board and the State of Kansas or the United States.

The chief executive officer of a state university has the authority to suspend, dismiss or terminate from employment any faculty or staff member who makes improper use of social media. "Social media" means any facility for online publication and commentary, including but not limited to blogs, wikis, and social networking sites such as Facebook, LinkedIn, Twitter, Flickr, and YouTube. "Improper use of social media" means making a communication through social media that:

- i. directly incites violence or other immediate breach of the peace;
- ii. when made pursuant to (i.e. in furtherance of) the employee's official duties, is contrary to the best interests of the University;
- iii. discloses without authority any confidential student information, protected health care information, personnel records, personal financial information, or confidential research data; or
- iv. subject to the balancing analysis required by the following paragraph, impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's official duties, interferes with the regular operation of the university, or otherwise adversely affects the university's ability to efficiently provide services.

In determining whether the employee's communication constitutes an improper use of social media under paragraph (iv), the chief executive officer shall balance the interest of the university in promoting the efficiency of the public services it performs through its employees against the employee's right as a citizen to speak on matters of public concern, and may consider the employee's position within the university and whether the employee used or publicized the university name, brands, website, official title or school/department/college or otherwise created the appearance of the communication being endorsed, approved or connected to the university in a manner that discredits the university. The chief executive officer may also consider whether the communication was made during the employee's working hours or the communication was transmitted utilizing university systems or equipment. This policy on improper use of social media shall apply prospectively from its date of adoption by the Kansas Board of Regents.

c. Grievance Procedure

- i Each state university shall establish and publish grievance procedures for use by faculty and staff in appealing employment decisions of the institution. The procedures shall provide the employee with notice of the action to be taken, the reasons for the action where appropriate, and an opportunity to be heard. A copy of all institutional grievance procedures shall be provided to the institution's general counsel for review prior to becoming effective.
- ii The decision of the chief executive officer, or the chief executive officer's designee, concerning any grievance appealing employment decisions of the university shall be final and is not subject to further administrative review by any officer or committee of the university or by the Board of Regents.

E. Other Matters

1. Act on the Fort Hays State University Presidential Profile

**Andy Tompkins,
President and CEO**

Summary

One of the first responsibilities of a Presidential Search Committee and its consultants is to develop the attributes and characteristics that will be used in the advertisement of the position and that will become a part of the presidential profile. The Search Committee spent several hours at its first meeting identifying and discussing these utilizing the charge from the Board. Additionally, the search consultants visited with a host of constituencies while in Hays. The Search Committee is meeting on Monday, December 16th to adopt a set of attributes and characteristics to be used in the ad and profile to recommend to the Board at the December meeting. Further, the entire profile maybe ready for the Board's review and approval.