

**2. Act on Proposed Roll-Out of Free Expression Statement**

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General Counsel**

**Summary and Staff Recommendation**

*Last month the Board adopted its Statement on Free Expression and the companion Use of Campus Grounds and Facilities and Interference with Conduct of Institution policy amendments. The Board and the Governance Committee have discussed how the Statement will be advertised and used by the Universities. The Governance Committee recommends Board adoption of the action items set forth below.*

**Background**

The Board adopted a Statement on Free Expression (copied in full below) and amendments to two relevant policies<sup>3</sup> at its March 17, 2021 meeting. Questions were raised regarding how this Statement would be rolled-out and used on the state university campuses.

Early drafts of the Statement contained the following two paragraphs:

“The Board hereby directs each state university to review its time, place and manner policies and protocols to ensure they are in alignment with the Board’s Statement on Freedom of Expression, Board policy, Kansas statutes, applicable federal laws, and with the United States and Kansas Constitutions and the legal opinions interpreting those provisions.

“In addition to reviewing time, place and manner policies and protocols, each state university shall review discrimination, harassment and other campus policies and codes that may impact free speech to ensure that they are consistent with the principles expressed in the Board’s Statement on Freedom of Expression, appropriately address unlawful conduct, and do not unlawfully restrict or ban protected speech. These reviews shall be completed by December 31, 2021.”<sup>4</sup>

The Governance Committee ultimately removed these paragraphs from the Statement itself because they determined the language to be foreign to and to exceed the purpose and design of the Statement. However, the Committee did not want to lose sight of this aspect of achieving the Board’s goal to provide guidance to the universities and their constituencies. Recommendations for rolling out the Board’s Statement and amended policies are as follows:

- The Board’s Statement on Free Expression shall be readily available through a link on each state university’s official website homepage and on a web page dedicated to student life.
- The Board’s Statement on Free Expression shall be included in each state university’s student orientation materials provided to incoming students, in either printed or digital format.
- Each state university, pursuant to regular university processes,<sup>5</sup> shall review its time, place and manner policies and protocols to ensure they are in alignment with the Board’s Statement on Free Expression, Board policy, Kansas statutes, applicable federal laws, and with the United States and Kansas Constitutions and the legal opinions interpreting those provisions.
- Each state university, pursuant to regular university processes, shall review discrimination, harassment and other campus policies and codes that may impact free speech to ensure that they are consistent with the

<sup>3</sup> Use of Campus Grounds and Facilities, and Interference with Conduct of Institution.

<sup>4</sup> As part of its review of the early drafts, the Students Advisory Committee requested that any university policy amendments or development, be endorsed by the university’s student government to give students an opportunity to engage in that process.

<sup>5</sup> Each university’s regular review and development processes for policies of this nature include student participation.

principles expressed in the Board's Statement on Free Expression, appropriately address unlawful conduct, and do not unlawfully restrict or ban protected speech.

- Each state university shall certify to the Board Governance Committee, by June 30, 2021, that the university has completed these reviews and have either completed or are in the process of making any required changes.
- Each state university that chooses to adopt its own statement of free expression or time, place and manner policies or protocols rather than adopting the Board's shall provide a detailed explanation of how their statement, policies, and protocols are consistent with the Board's.
- Each state university shall present to the Board for review at the April or May 2022 Board meeting a collection of their freedom of expression materials.

The Board understands that some of the state universities have recently reviewed their policies to ensure alignment with the First Amendment and state and federal statutes, pursuant to their regular processes and with student involvement. Those institutions are not expected to complete this work again. The Board also recognizes that some of the universities have already begun to review their policies with this goal in mind, and that work is appreciated. In view of the fact that this work has already begun and in some cases has already been accomplished, it seems reasonable to require that these reviews be completed by June 30, 2021.

The Governance Committee recommends adoption of these requirements with the noted parameters. Additionally, the Governance Committee recommends that Washburn University and each of the community and technical colleges consider adoption of the Board's Statement on Free Expression.

### **Kansas Board of Regents Statement on Free Expression**

The Kansas Board of Regents adopts this Statement on Free Expression to reaffirm the System's long-held commitment to full and open inquiry and discourse, and the robust exchange of ideas and perspectives by students enrolled in our State Universities and present on our State University campuses. The principles of freedom of speech and freedom of expression in the United States and Kansas Constitutions, in addition to being legal rights, are essential to achieving the three-part university mission to deliver a high-quality academic experience for our students, engage in meaningful and productive research, and provide other valuable public services for the benefit of our local communities, the State of Kansas, the nation, and the world. The purpose of this Statement is to express our continuing dedication to these principles and to maintaining our campuses as environments where the open exchange of knowledge and expression of ideas furthers our mission. This Statement generally concerns student expression in non-academic situations; it does not attempt to address the rights of non-students or students' academic work within the classroom setting.

A fundamental purpose of an institution of higher education is to provide an environment where divergent ideas, opinions, and philosophies can be rigorously debated and critically evaluated. Through this process, often referred to as the marketplace of ideas, students are generally free to express their ideas and opinions, even if others may disagree with them or find those ideas and opinions to be disagreeable or even offensive. The very process of debating divergent ideas and challenging others' opinions develops the intellectual skills necessary to think critically and respectfully argue through civil discourse. The development of these important skills leads to personal and scholarly growth and is an essential component of the academic and research missions of each of our institutions.

It is equally important that we, as governmental entities, not stifle the lawful dissemination of students' ideas, even if we or members of our communities find those ideas abhorrent. Students wishing to express ideas with which others may disagree must generally be free to do so without fear of being disciplined by the University. This does not mean that such ideas are necessarily endorsed or tolerated, nor should they go unchallenged by members of the University community openly and vigorously contesting their merit, but the Board and the Universities are prohibited from pursuing disciplinary or punitive actions that *unlawfully* inhibit or penalize *protected* expression.

And though we value civil behavior and believe all members of our campus communities have a responsibility to promote and maintain a climate of civility and mutual respect, the Board, and by extension the Universities they govern, cannot use a desire for civility and respect as the basis to silence expression. The Board and the Universities should empower, enable and encourage students to speak and listen and to do so respectfully, rather than interfere with or silence their protected expression of ideas.

We also recognize, however, that some speech is not protected, such as true threats, incitement to imminent violence, “fighting words,” and unlawful, targeted harassment. The Board and its Universities can restrict speech that is not protected by the First Amendment, though it is important to note that these exceptions are narrowly interpreted. Additionally, reasonable restrictions on when, where, and how expression is disseminated are allowable and appropriate. Because universities and colleges are first and foremost places where people go to engage in scholarly endeavors, it is necessary to the efficient and effective operations of each University for there to be reasonable limitations on the time, place, and manner in which First Amendment rights are exercised. By law, these time, place, and manner limitations must be narrowly drawn and content-neutral and must serve to ensure that our students have the opportunity to express their ideas and opinions.

The Kansas Board of Regents is committed to protecting and encouraging students’ exercise of their First Amendment free speech rights in accordance with this Statement.

Credits. Concepts and language for this Statement were gleaned from the following sources: State University System of Florida Statement on Free Expression, the Chicago Principles Report of the Committee on Freedom of Expression, Kansas State University’s Statement on Free Speech and Expression, the Arizona Board of Regents Policy on Free Expression, and the Iowa Board of Regents Policy on Free Expression. We are grateful for the work of these organizations.