

AFCON Opposes New Regents Free Expression Policy

A Statement from the Academic Freedom Coalition of Nebraska

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The Academic Freedom Coalition of Nebraska has been increasingly concerned about Regents Policy 6.4.10 on free expression, adopted January 25 by the University of Nebraska Board of Regents. As explained below, we are particularly concerned about (1) unconstitutional restrictions on where expression is free, (2) unconstitutional restrictions on what students may say, and (3) warnings to faculty to avoid “controversial matters” in their classes. Since the passage of this policy, both UNL and UNO have taken actions confirming our worst fears.

At its March 10 meeting, the AFCON Board of Directors voted unanimously to oppose R.P. 6.4.10. Although the policy includes strong statements of commitment to free expression, First Amendment rights, and academic freedom, we concluded after thorough discussion that the policy as a whole is a major infringement on intellectual freedom at the University of Nebraska and should be rescinded.

Where speech is free

The public areas of college campuses have been widely viewed since the 1960s as traditional public forums like streets and parks where anyone may proclaim anything they wish about any topic, as both ACLU Nebraska and the Foundation for Individual Rights in Education (FIRE) have argued. R.P. 6.4.10, in contrast, assumes that no part of any campus is a traditional public forum. Campuses are authorized to identify distinct speech zones and determine the regulations governing expression within each. First Amendment rights are fully respected only in limited areas of campus under limited circumstances, as determined by each campus.

UNO has issued draft regulations implementing the Regents policy, including limited zones for free speech and a 30-day waiting period. UNO professor emeritus Sam Walker, who met with AFCON March 10, is planning to protest the policy.

What speech is free

Contrary to what some have suggested, the University of Nebraska has not adopted the widely acclaimed University of Chicago free expression policy. Although the Regents have drawn on the Chicago policy in some places, the language has been altered to allow broader censorship and punishment of speech. UNL already has a Student Code of Conduct and other policies that threaten constitutionally protected speech, as documented in letters it received from the Foundation for Individual Rights in Education (FIRE) in August 2014 and September 2015. The new Regents policy has not resulted in any reconsideration of UNL’s restrictive speech codes.

On the contrary, since approval of the Regents policy, UNL has extended its unconstitutional restrictions into the classroom. In a February 22 email message to all faculty, UNL's Executive Vice Chancellor (and chief academic officer) distributed a one-page "TipSheet" concerning "safe and civil discourse in learning spaces." The TipSheet made clear that the UNL Student Code of Conduct applies in classrooms and should be strictly enforced. Instructors are urged to include in the syllabus of each course "a safe and civil discourse statement" making it clear to students that their speech must always meet standards of respect and civility and that any speech deemed "abusive, harassing, intimidating, or coercive" may result in expulsion from the classroom and further disciplinary action. UNL expects its faculty to enforce its unconstitutional speech code in all classes.

Controversy in the classroom

The Regents policy also briefly addresses academic freedom, focusing especially on avoiding "controversial matters" in the classroom. Regents Bylaw 4.2 on Academic Freedom mandates without exception: "Members of the professional staff are entitled to freedom in the classroom in discussing their subjects." R.P. 6.4.10 makes no reference to this bylaw. Instead it warns, "teachers are entitled to freely discuss topics in the classroom, but they should be careful not to introduce controversial matters, which have no relation to the subject being taught."

Although the Regents academic freedom policy claims to draw on the 1940 policy statement of the American Association of University Professors (AAUP), the AAUP language has been subtly altered in a manner that rules out AAUP's 1970 interpretation. The AAUP warns faculty to avoid matters unrelated to the curriculum, especially when such matters are controversial. The Regents policy, in contrast, warns faculty to avoid controversial matters, because such matters are not part of the curriculum.

Controversy is of course central to academic work. The new Regents policy is utterly inconsistent with AAUP policy, with the Regents' own Bylaws, and with any conception of academic freedom.

Conclusion

With R.P. 6.4.10 and subsequent campus actions, the University of Nebraska is (1) restricting free speech on campus through speech codes and speech zones that violate the First Amendment and (2) maintaining classrooms in which no one will feel disrespected or offended, even at the expense of curricular freedom for the instructor and freedom of discussion for students. AFCON is happy to assist anyone at the University of Nebraska or elsewhere in developing policies that respect intellectual freedom for students, teachers, and researchers in all academic contexts and in resisting infringements on academic freedom. Contact AFCON President David Moshman at dmoshman1@unl.edu.