

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,¹ incitement to imminent violence,² "fighting words,"³ and unlawful, targeted harassment.⁴ 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.

Credits⁵

¹ Criminal threats directed at a specific individual or group with the intent of placing the individual or group in fear of bodily harm or death. *Watts v. United States*, 394 U.S. 705, 708 (1969).

² The government may prohibit speech advocating the use of force or crime if the speech "is directed to inciting or producing imminent lawless action," and is "likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

³ Personally abusive epithets in one's face, tending to cause an immediate violent reaction. *Chaplinsky v. State of New Hampshire*, 315 U.S. 568 (1942), citing *Cantwell v. Connecticut*, 310 U.S. 296, 309, 310 (1940).

⁴ Conduct sufficiently severe or pervasive "to alter the conditions of [employment] and create an abusive working environment." *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999) ("whether an environment is 'hostile' or 'abusive' can be determined only by looking at ... the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance")

⁵ 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.