

**REPORT OF THE**  
**WINDOW POLICY REVIEW COMMITTEE**

**PRESENTED TO WILLIAM POWERS, JR., PRESIDENT**  
**THE UNIVERSITY OF TEXAS AT AUSTIN**

**JUNE 2009**

**COMMITTEE:**

**Faculty**

Elizabeth Cullingford, Department of English, Committee Chair  
Sanford Levinson, School of Law  
Janet Staiger, Faculty Council Chair-Elect  
John Yancey, Department of Art  
Laura Stein, Department of Radio, Television & Film

**Students**

Keshav Rajagopalan, Student Government  
Diane Nguyen, University Residence Hall Association  
Bradley Carpenter, Graduate Student Assembly  
Daniel Spikes, Graduate Student Assembly  
Chad Stanton, Student Government at-large  
Debbe Velásquez, Student Government at-large

**College Administration**

Richard Flores, Associate Dean, College of Liberal Arts

**Student Affairs**

Juan González, Vice President for Student Affairs

**Diversity & Community  
Engagement**

Ted Gordon, Associate Vice President,  
Thematic Initiatives & Community Engagement

**Legal Affairs**

Patti Ohlendorf, Vice President for Legal Affairs

**CAMPUS RESOURCES:**

Soncia Reagins-Lilly, Sr. AVP for Student Affairs, Dean of Students  
Jennifer Hammat, Assistant Vice President for Student Affairs  
Doug Garrard, Interim Senior Associate Dean of Students  
(formerly Associate Director, Housing & Food Service)  
Jan Austin-Scott, Office of the Vice President for Student Affairs

**REPORT OF THE WINDOW POLICY REVIEW COMMITTEE**

**Table of Contents**

Narrative..... 1  
Executive Summary..... 1  
Recommendations..... 2  
Appendix A: Detailed Account of Committee Meetings..... 4  
Appendix B: Information about Complaints..... 8  
Appendix C: Campus Climate Response..... 9  
Appendix D: Subchapters 13-100 through 13-500 of the General Information Catalog..... 11

## **Narrative**

Prior to October 9, 2009, the Division of Housing and Food Service policy stated, “Windows and screens may not be used to display advertisements, posters or clothing.” At a disciplinary hearing on October 8, 2008, Prather Dormitory residents Blake and Connor Kincaid were threatened with a registration bar unless they removed Obama campaign signs from their window. They declined to comply. On October 9 President Powers sent an e-mail to the University community in which he declared: “I believe that the free expression of ideas is crucial to our educational mission, and that our rules should foster civil discourse and debate.” He suspended the prohibition, replaced it with an interim regulation permitting the display of signs, and requested Vice President for Student Affairs Juan González to convene the present Window Policy Review Committee.

The Committee’s charge was to “review the existing policy limitations on displaying signs in individual residence hall room windows and on doors and recommend what these policies should be.” Although the charge continues, “other window or door signage policies may be reviewed concurrently,” the Committee judged that the existing policy on Speech, Expression and Assembly, contained in Subchapter 13.100 of the General Information Catalog, adequately addressed other signage issues. The Committee therefore decided to concentrate on the residence hall windows and doors, which had been given insufficient attention in the otherwise exhaustive report of the 2002 Task Force on Assembly and Expression.

## **Executive Summary**

The Committee met four times. We solicited and received input from student and institutional witnesses, including representatives of the Texas Student Media, the Resident Assistants, the Multicultural Information Center, the University Democrats, the Queer Students Alliance, the Fire Marshal, the Division of Housing and Food Service, and several Associate Vice Presidents for Legal Affairs. The College Republicans were invited twice but did not come.

After much listening, accompanied by spirited debate on constitutional, legal, ethical and practical issues, the Committee voted to recommend that the President’s suspension of the ban on window and door posting be made permanent. To that end we devised a small alteration in the current Subchapter 13, “Freedom of Speech, Expression, and Assembly,” of the Institutional Rules on Student Services and Activities, which are contained in Appendix C of the General Information Catalog. We also helped the Division of Housing and Food Service to frame new regulations, and included some language, characterized as “aspirational,” about the balance between maintaining a comfortable environment and allowing the expression of uncomfortable views.

The near-unanimity of the Committee’s vote (9-0-1) should not mask the fact that several committee members, troubled by the potential for hateful or violent speech, would have

liked a more forceful proscription of it than is currently provided by the sections on obscenity, defamation, incitement to violations of law, and harassment in Subchapter 13-200, "Prohibited Expression." The university lawyers, however, convinced most committee members that any attempt to incorporate such a proscription in the rules would be open to legal challenge. Professor Sandy Levinson and others defended the First Amendment on philosophical as well as practical grounds.

Although six months have passed since the ban was lifted and there have so far been no serious disruptions (see Appendix B), we urge President Powers to meet with representatives of the Dean of Students Office and the Division of Diversity and Community Engagement to consider whether current dispute resolution procedures (see Appendix C) are sufficient to handle any future outbreaks of hateful or violent speech. While the Dean of Students Office has so far been able to handle the volume of incidents, the Committee feels that any increase in disruption will necessitate a coordinated campus-wide response, and that it would be wise to plan ahead rather than be taken by surprise.

## **Recommendations:**

### ***General Information Catalog***

Add the italicized passage to Section 13-501(b) so that it now reads:

**b)** Subject to the rules in this subchapter and to the general rules in subchapter 13-200 and subchapter 13-300, a University person or organization may display a sign by holding or carrying it, by displaying it at a table (see subchapter 13-600), or by posting it on a kiosk, bulletin board, or other designated location. Signs may not be posted in any other location. *Subject to viewpoint-neutral size requirements, the Division of Housing and Food Service has designated the window and door of a residence hall room as locations where the resident(s) of that room may post signs. See Section 13-506, below, regarding other designated locations.*

### ***Rules of the Division of Housing and Food Service***

#### **Student Room Window and Door**

Residents may display signs and posters in their residence hall room windows as long as the signs/posters comply with university policies, subchapters 13-200 and 13-500 of Appendix C of the General Information Bulletin, regarding Prohibited Expression and Signs and Banners. Postings must also comply with health, fire, and life safety codes. Posters or other flammable materials may cover no more than 20 percent of any one wall; that 20 percent may include the window. Residents may post two 8.5" x 11" flyers on their room doors or adjacent tack boards; Housing Staff may post nametags on doors. Residents and Housing Staff should use appropriate posting adhesive to protect the finish of the door. It is preferred that students use tack boards where available. Resident room

doors may not be used for solicitation.

### **Residence Hall Public Areas**

Housing Staff may post flyers and bulletins, using appropriate posting adhesive, as needed in residence hall public areas. Two 8.5" x 11" flyers concerning university and residence hall policies or announcements are allowed on doors leading from public areas (e.g., main thoroughfares, leading from main building entrances or elevator landings) to private areas (e.g., residential living area hallways). Two 8.5" x 11" flyers for pertinent announcements, policies, deadlines, etc., are allowed on community bathroom doors. Floor bulletin boards are for use by Housing Staff and Residence Hall Councils. With approval of the area desk, registered student organizations may post signs on bulletin boards located in the public lobbies of residence halls, as directed by residence hall staff. Alcohol may not be mentioned or represented in any way. Bulletin boards may not be used for solicitation or sale of items. Signs may not violate any state or federal law, or university regulation, including solicitation. Signs that are improperly hung, have not been approved, or do not follow these guidelines will be removed. Housing Staff may post directional signs, announcements, and information in residence hall public areas and floor bulletin boards concerning conferences and meetings held in the building.

### **Note (to be appended to the Rules above)**

Postings, whether on doors or windows, should respect the mission and values of the university residence halls, which include providing all residents with a "comfortable, friendly environment" and "sense of community." Posters should not engage in gratuitously offensive expression that might be destructive of the desired community. Gratuitous insult is seldom persuasive. Nevertheless, the university encourages all members of its community to support the freedom of speech. Students are free to communicate their ideas vigorously; those who are exposed to such ideas, whether in the classroom, the grounds of the campus, or in the residence halls, should tolerate the expression even of views that they find offensive or unacceptable. Students who passionately disagree about important matters should be able to confront one another civilly and to recognize that, despite profound differences, they are engaged in the common pursuit of truth. The best response to offensive speech is more free speech.

## Appendix A

### Detailed Account of Committee Meetings

#### First meeting, November 24, 2008:

The Chair summarized the controversy that led to the formation of the Window Policy Review Committee and drew the attention of members to existing speech policy on campus.

After discussion of procedures, it was decided that students with a perceived stake in the outcome should be asked to address the Committee. A list of possible witnesses was drawn up with the help of Student Body President Keshav Rajagopalan.

#### Second meeting, December 10, 2008:

The following student representatives addressed the Committee:

- Leah Finnegan and Ben Trotter, Texas Student Media
- Kelly Hickman, Resident Assistant
- Melessa Rodríguez, Multicultural Information Center
- Jimmy Talarico, University Democrats

With the exception of Resident Assistant (RA) Kelly Hickman, who favored re-imposition of the ban on all window postings because of the difficulty RAs might experience in mediating disputes, all the students were eloquent in the defense of freedom of speech. The question of potential hate speech, and the presence of a Confederate flag in one of the dormitory windows, was also raised. Most of the student representatives who spoke were of the opinion that some offensive incidents were inevitable, but that they would generate vigorous and educative debate. The concept of the “teachable moment” was invoked. Some students and faculty on the Committee nevertheless remained concerned about the potential deterioration of civility that might follow from a permanent lifting of the ban.

At the same meeting, the Committee also heard from the following representatives of the institution:

- Garland Waldrop, Fire Marshal
- Doug Garrard, Department of Housing and Food Service
- Patti Ohlendorf, Vice President for Legal Affairs and Committee Member

The Fire Marshal explained that the presence of posters on dorm room windows was not seen as a fire hazard, as long as no more than twenty percent of the area of any dorm room wall was covered by flammable material. (He later confirmed that the twenty percent rule also applied to dorm corridors.)

Doug Garrard expressed the readiness of Housing and Food to rewrite their rules, but he

also explained the superior simplicity (if not enforceability) of the total ban.

Vice President Ohlendorf offered a discussion of *Ladue v. Gilleo*, a case in which the occupant of a house successfully sued for the right to post political signs in her yard despite aesthetic zoning rules against such signs.

### **Third meeting, February 12, 2009:**

The following students addressed the Committee:

- Katie Wanamaker, Queer Students' Alliance
- Blake Kincaid
- Connor Kincaid

Connor Kincaid was less concerned about the abstract question of free speech than about the uneven enforcement of the ban, but Katie Wanamaker and Blake Kincaid objected strongly to the curtailment of political speech. Although the College Republicans had been invited to this meeting (as well as to the previous one), they did not attend. Newspaper reports about the controversy, however, showed that on this issue (if on no other) they were as one with the University Democrats in their objection to the ban.

Committee member Professor Laura Stein presented some preliminary wording for a re-writing of the rules on window and door postings that would steer a middle course between the absolutist “permit all speech” and “ban all speech” options. The question of how to handle hate speech was considered. This potential problem was the main concern of Professor Stein and most members of the Committee, but opinions differed as to the best solution. Some members of the Committee were concerned that the failure to respond to hate speech might alienate vulnerable students and pose a public relations problem for the university. Professor Levinson reminded the Committee that the university is a place where potentially offensive speech offers an opportunity for vigorous and educative dialogue.

### **Fourth meeting, March 10, 2009:**

The following voting members were present:

Liz Cullingford, Chair  
 Richard Flores  
 Sandy Levinson  
 Diane Nguyen  
 Patti Ohlendorf  
 Daniel Spikes (proxy for Bradley Carpenter)  
 Janet Staiger  
 Laura Stein  
 Debbe Velásquez  
 John Yancey

Also present were

Jan Austin-Scott  
Doug Garrard  
Jennifer Hammat

Vice President Ohlendorf introduced Associate Vice Presidents for Legal Affairs Leo Barnes, Jeff Graves, and Susan Bradshaw. Starting from Professor Laura Stein's revised document, the group discussed the legal and ethical status of the previous ban, the virtues of the First Amendment, and the possible downsides of absolute freedom of expression. Professor Stein proposed a revised rule that addressed the potential for hate speech:

Postings should respect the mission and values of the University residence halls, which include providing all residents with a "comfortable friendly environment" and "sense of community." To this end, postings should not contain speech or expression intended to demean, intimidate or threaten individuals or groups. The Division of Housing and Food Service may require residents to immediately remove postings that may violate this policy.

The lawyers present, however, expressed the view that even the mildly prescriptive wording offered by Professor Stein, which largely echoes the language of Chapter 13 on Speech, Expression and Assembly, would not stand up to a legal challenge. Professor Levinson went one step further, arguing that the University's mission is not to prevent offensive speech but to prepare students to confront and debate it vigorously.

Professor Janet Staiger then made the motion:

"I move that we amend SEC. 13-501. (b) to include, 'A residence hall resident may post a sign in/on his/her residence hall window and/or door.' Technical editing of this wording is permitted."

Vice President Ohlendorf and John Yancey seconded the motion, which passed:

Yes: 9

No: 0

Abstaining: 1

The Committee agreed to entrust the technical editing to Vice President Ohlendorf. Doug Garrard undertook to revise the relevant portion of the Division of Housing and Food Service regulations. The Committee agreed to add a note to these regulations that would reiterate that the mission of the Residence halls is to provide a "comfortable, friendly" environment for students, but also affirm the foundational importance to a university of vigorous dissension and debate. Professor Sandy Levinson drafted this note and Professor Cullingford edited it.

### **Subsequent Developments**

During the final editing of the new policy, the regulations, and the note, Professor Gordon raised on e-mail the question of how the university would respond to any outbreak of hate speech that might occur as a result of these changes. Senior Associate Vice President and Dean of Students Soncia Reagins-Lilly outlined the existing procedures employed by the Dean of Students Office. These have proved adequate during the last six months, a period in which window postings have been permitted.

Indeed, since the interim lifting of the ban on October 9, 2008, window postings have caused no disruptions on campus, although a Confederate flag displayed in one dormitory window has occasioned offense. The Committee's charge does not extend beyond a recommendation on the policy itself, but we urge President Powers to meet with the Student Ombudsman and representatives of the Dean of Students Office and the Division of Diversity and Community Engagement to consider whether current dispute resolution procedures are sufficient to handle any future disruptions.

## Appendix B

### Information about Complaints

From the Division of Housing and Food Service and the Office of the Dean of Students

#### **During the six-month period BEFORE the policy was changed:**

No complaints about window postings were logged by either Housing or the Office of the Dean of Students. However, both bodies report complaints about offensive behavior, postings or graffiti that appeared within the residence halls or on-campus.

**Housing staff** report that complaints were logged in their Information Reporting System about racist, homophobic, and other harassing graffiti that were written on individual student dry-erase bulletin boards (located on student room doors), on bathroom stalls, or scribbled on existing postings on floor bulletin boards. For example, someone might scribble the word “FAGGOTS” on a flyer advertising a GLBTQ program or meeting. No window posting complaints were received. In a typical year, reported incidents of harassing graffiti are usually ten or fewer, and do not usually rise to the level of a hate crime as determined by UTPD.

**The Office of the Dean of Students** received two complaints – one regarding racist graffiti in a restroom at Mezes hall, and another complaint from a student against another student for racial slurs. No window posting complaints were received.

#### **During the six-month period AFTER the policy was changed:**

On April 9, 2009 Housing staff received one complaint about the confederate flag in Brackenridge Hall. A second complaint was received over the past weekend (April 25-26). Apart from opinions expressed in Window Policy Committee discussions, neither the Dean nor the Office of the Dean of Students has received complaints about the confederate flag or other window postings.

**Housing staff** report a small increase in window postings, but generally they have been harmless (sports signs, greetings and UT related). Other than the confederate flag in Brackenridge hall, staff are not aware of other postings that would create tension within the campus community. Immediately after the policy was changed a student used her dry-erase board to write profanity. Staff conversation with the student lead to more profanity appearing on the board. Unfortunately, racist, homophobic or generally harassing graffiti on dry-erase boards or scribbled on flyers appears to be a constant regardless of window posting policy.

**The Office of the Dean of Students** received one complaint about the graphic posters of the “Justice for All Pro-Life Exhibit” in February, and one complaint about improper postings. No window posting complaints were received.

## Appendix C

### Campus Climate Response

- **Assess impact of window posting on community. Evaluate the nature and severity of the incident within the context of:**
  - Safety of individual / campus community
  - Intent
  - University Policy
  - Publicity / profile of incident
  
- **Implement a multi-departmental approach as appropriate. Collaborate with university partners to inform / address issue: (convene CIRT if applicable)**

DDCE	Tx Union
HRS	Student Government
CMHC	UTPD
MIC	DHFS
DOS	University Residence Hall Association

\*Suggest forming a Core Response Team to address incidents of this nature (Campus Climate Response Team – CCRT)
  
- **Provide opportunity for mediation (as appropriate)**
  
- **Provide support and information to targeted student / group (and as appropriate to student who initiated incident)**
  - Counseling and mental health
  - DOS / DDCE / MIC / Campus organizations
  - “Freedom of expression” issues
  
- **Provide educational programming for UT community that explains what occurred and what actions were taken in response, and informs participants of available resources and planned educational events.**
  - Debate
  - Educational programs / forms
  - Resources for community, i.e., posters, etc.
  - Provide talking points to administrative / academic units to facilitate informal discussions

**Response may vary based upon origin of complaint / Locus of impact**

Within University Housing	Within Campus Community	External to Campus Community
<p>1) Housing staff will address window posting with student displaying sign. Staff will address in an educational manner with student. Offer to mediate meeting with student and other affected students.</p> <p>2) Hold a wing meeting to discuss issue and how relates to community standards</p> <p>3) Refer students who feel threatened by “window posting” to appropriate campus resources. Be open to room change.</p> <p>4) Ensure that student and roommate in whose room sign is posted are safe</p> <p>5) Develop educational programming to address incident.</p>	To be developed	To be developed

**\* Housing has an existing policy to address harassing behavior that occurs in the residence hall community (below)**

Current DHFS Policy – to address incidents of this nature

Harassment

Members of an educational community should adhere to standards of civility and good taste that reflect mutual respect. A respectful environment is free of harassment, violence and verbal abuse. Threats of violence as well as other acts or communications intended to intimidate, harass or annoy are prohibited. It is the policy of the university to maintain an educational environment free from harassment and intimidation.

In an effort to foster an environment free from harassment and intimidation, Residence Life is committed to combating acts of racism, sexism, heterosexism, ageism, ableism and any other force that seeks to suppress another individual or group of individuals. When acts of harassment or intimidation occur in the residence hall environment, the Residence Life staff, in conjunction with the Residence Hall Association, will lead a floor or hall meeting to discuss the incident and decide, as a community, appropriate steps that need to be taken to address the incident.

**Source: University Residence Hall Handbook**

<http://www.utexas.edu/student/housing/index.php?site=2&scode=0&id=353>

## **Appendix D**

From the General Information Catalog, Appendix C, Institutional Rules on Student Services and Activities

### **Subchapter 13-100. Governing Principles**

#### **Sec. 13-101. Freedom of Speech, Expression, and Assembly**

(a) The freedoms of speech, expression, and assembly are fundamental rights of all persons and are central to the mission of the University. Students, faculty members, and staff members have the right to assemble, to speak, and to attempt to attract the attention of others, and corresponding rights to hear the speech of others when they choose to listen, and to ignore the speech of others when they choose not to listen.

(b) Students, faculty members, and staff members are free to express their views, individually or in organized groups, orally or in writing or by other symbols, on any topic, in all parts of the campus, subject only to rules necessary to preserve the equal rights of others and the other functions of the University. Teaching, research, and other official functions of the University shall have priority in allocating the use of space on campus.

(c) Except as expressly authorized by subchapter 13-200, the University shall not discriminate on the basis of the political, religious, philosophical, ideological, or academic viewpoint expressed by any person, either in the enforcement and administration of these rules or otherwise.

#### **Sec. 13-102. Scope of This Chapter and Related Provisions**

(a) This chapter protects and regulates speech, expression, and assembly of students, faculty members, and staff members that is not part of the teaching, research, or other official functions of the University, not otherwise sponsored by the University or any academic or administrative unit, and not submitted for academic credit.

(b) This chapter also regulates certain speech that is part of the teaching, research, or other official functions of the University:

(1) Section 13-204 on harassment applies to all speech on campus.

(2) This entire chapter applies to speech by academic and administrative units, and speech that is submitted for academic credit, in outdoor locations on the campus. The dean of students administers and schedules outdoor signs, tables, exhibits, public assemblies, and amplified sound, even for faculty members, staff members, and administrative and academic units, because scheduling through a single office is necessary to avoid conflicts.

(c) Any program or event sponsored by an academic or administrative unit of the University shall have priority in the use of space and facilities over any speech, expression, and assembly that is not sponsored by an academic or administrative unit, except that programs or events sponsored by an academic or administrative unit shall not have priority in the use of weekday amplified sound areas defined in section 13-802. This chapter does not limit other existing authority of University officials to authorize programs and events sponsored by an academic or administrative unit and not provided for in this chapter.

(d) Additional rules concerning free speech and academic freedom of faculty members are found in the Regents' Rules and Regulations, Rule 31004, Number 2, Sections 1 and 2.

(e) Underlying rules concerning free speech of students are found in the Regents' Rules and Regulations, Rule 40501, Rule 80101, Rule 80103, and Rule 80104. Chapter 13 of the Institutional Rules implements those provisions and applies them to the Austin campus.

(f) Rules restricting access to the campus and restricting speech on the campus by persons who are not students, faculty members, or staff members are found in the Regents' Rules and Regulations, Rule 40501.

(g) Rules protecting and regulating speech on University computer networks are promulgated by Information Technology Services, and are currently found in ITS Policies, Acceptable Use Policy.

(h) Rules requiring University employees to make clear that controversial statements are made in their personal capacity are found in the Regents' Rules and Regulations, Rule 10403, Number 2, Section 10. Rules restricting use of University equipment, supplies, services, and working hours for political activities are found in the Regents' Rules and Regulations, Rule 30103, Number 2, Section 13.

### **Sec 13-103. General Definitions--Categories of Speakers**

As used in this chapter,

- (1) "Academic or administrative unit" means any office or department of the University.
- (2) "Faculty member and staff member" includes any person who is employed by the University.
- (3) "Off-campus person or organization" means any person, organization, or business that is not an academic or administrative unit, a registered student, faculty, or staff organization, or a student, faculty member, or staff member.
- (4) "University person or organization" includes academic and administrative units,

registered student, faculty, and staff organizations, and individual students, faculty members, and staff members. This phrase describes the most inclusive category of potential speakers on campus; all persons and organizations of any kind are either an "off-campus person or organization" or a "University person or organization."

(5) "Registered student, faculty, or staff organization" includes a registered student organization under chapter 6 (subchapter 6-200), a faculty or staff organization under the Regents' Rules and Regulations, Rule 40201, and Student Government and any unit or subdivision thereof;

(6) "Student" means a person who is currently enrolled in residence at the University, or who is accepted for admission or readmission to the University, or who has been enrolled at the University in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows, or who is attending an educational program sponsored by the University while that person is on campus.

(7) "Event" means something that occurs in a certain place during a particular interval of time. Events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.

#### **Sec. 13-104. Other General Definitions**

(a) "Amplified sound" means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this rule and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.

(b) "Dean of students" means the dean of students or any delegate or representative of the dean of students.

(c) "Main Plaza" means the area bounded by the south wall of the Tower, the line of the first north-south hedge immediately west of Garrison Hall, the north edge of Inner Campus Drive, and the line of the first north-south hedge immediately east of Battle Hall. The Main Plaza includes the south steps and south porches of the Tower.

(d) "Room or space" includes any room or space, indoors or outdoors, owned or controlled by the University.

(e) "University" means the University of Texas at Austin.

(f) "Weekday" means Monday through Friday, except for official University holidays; "day" means calendar day, except for days on which the University is officially closed.

## **Subchapter 13-200. Prohibited Expression**

### **Sec. 13-201. Obscenity**

No person or organization shall distribute or display on the campus any writing or visual image, or engage in any public performance, that is obscene. A writing, image, or performance is "obscene" if it is obscene as defined in Texas Penal Code, Section 21.08 or successor provisions, and is within the constitutional definition of obscenity as set forth in decisions of the United States Supreme Court.

### **Sec. 13-202. Defamation**

(a) No person shall make, distribute, or display on the campus any statement that unlawfully defames any other person.

(b) A statement unlawfully defames another person if it is false, if the false portion of the statement injures the reputation of the other person, and if the speaker has the constitutionally required state of mind as set forth in decisions of the United States Supreme Court.

### **Sec. 13-203. Incitement to Imminent Violations of Law**

No person shall make, distribute, or display on the campus any statements directed to inciting or producing imminent violations of law under circumstances such that the statements are likely to actually and imminently incite or produce violations of law.

### **Sec. 13-204. Harassment**

(a) No person shall make, distribute, or display on the campus any statement that constitutes verbal harassment of any other person. This section applies to all speech on the campus, including speech that is part of teaching, research, or other official functions of the University.

(b) (1) "Verbal harassment" means hostile or offensive speech, oral, written, or symbolic, that

(A) personally describes or is personally directed to one or more specific individuals; and

(B) is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the victim's ability to participate in or benefit from the services, activities, or privileges provided by the University; and

(C) is not necessary to the expression of any idea described in paragraph (2) of this subsection.

(2) To make an argument for or against the substance of any political, religious,

philosophical, ideological, or academic idea is not verbal harassment, even if some listeners are offended by the argument or idea. The categories of sexually harassing speech set forth in Policy 4.B.2 of the Revised Handbook of Operating Procedures are rarely, if ever, necessary to argue for or against the substance of any political, religious, philosophical, ideological, or academic idea.

(3) Verbal harassment may consist of threats, insults, epithets, ridicule, personal attacks, or the categories of harassing sexual speech set forth in Policy 4.B.2 of the Revised Handbook of Operating Procedures, and is often based on the victim's appearance, personal characteristics, or group membership, including but not limited to race, color, religion, national origin, gender, age, disability, citizenship, veteran status, sexual orientation, ideology, political views, or political affiliation.

(c) Harassment can also consist of nonverbal conduct, such as hazing, practical jokes, damage to property, and physical assault. In the case of sexual harassment and sexual misconduct, sexual conduct is often central to the offense. These forms of harassment are prohibited by section 11-804(a)(12) of these Institutional Rules, by Policy 4.A.3 and Policy 4.B.2 of the Revised Handbook of Operating Procedures, and by Regents' Rule 30105. Some forms of harassment violate the Prohibition of Campus Violence, Policy 2.A.3 in the Revised Handbook of Operating Procedures. For enhanced penalties for disciplinary offenses motivated by the race, color, or national origin of a student harmed by the offense, see section 11-501(b). To the extent of any conflict in the definition of verbal harassment, the more detailed definition in this section controls.

(d) The harassment that this section prohibits does not exhaust the category of speech that is unnecessary and inappropriate to vigorous debate in a diverse community of educated people. An essential part of higher education is to learn to separate substantive argument from personal offense, and to express even the deepest disagreements within standards of civility that reflect mutual respect, understanding, and sensitivity among the diverse population within the University and in the larger society. These are community norms, even though they cannot be enforced by disciplinary rules.

(e) Verbal harassment has been interpreted very narrowly by the federal courts. Policies on verbal harassment or hate speech at many universities have been held unconstitutional, either because they prohibited harassment only when it was based on race, sex, and similar categories, or because they failed to protect the expression of potentially offensive ideas. This policy should be interpreted as narrowly as need be to preserve its constitutionality.

(f) (1) A student who believes he or she has been harassed should report the alleged violation to the dean of students.

(2) A faculty member or staff member who believes he or she has been harassed should report the alleged violation to the Office of Equal Opportunity Services.

(3) Alternatively, any person who believes he or she has been harassed may report the

alleged violation to the Office of Equal Opportunity Services or to any University official, administrator, or supervisor. A faculty member is not an "official, administrator, or supervisor" for this purpose unless that faculty member holds an administrative position.

(4) Any University official, administrator, or supervisor who receives a report of alleged harassment shall promptly refer that report and the complainant to the Office of Equal Opportunity Services, or to the dean of students, as appropriate. A complainant whose report is not forwarded to the Office of Equal Opportunity Services, or to the dean of students, has not initiated proceedings for providing a remedy to the complainant or for imposing discipline on the alleged harasser.

(5) Investigation of the information provided, and any remedial or disciplinary proceedings, shall proceed under the procedures set out in the harassment policies cross-referenced in section 13-204(c).

### **Sec. 13-205. Solicitation**

(a) (1) No person shall make, distribute, or display on the campus any statement that offers or advertises any product or service for sale or lease, or requests any gift or contribution, except as authorized in subsection 13-205(b), by section 13-403, or by the Regents' Rules and Regulations.

(2) Words or symbols on personal apparel, or on decals or bumper stickers affixed to a vehicle by an owner of that vehicle, are not solicitation within this definition.

(3) Unadorned acknowledgments or thanks to donors are not solicitation within this definition.

(b) (1) A registered student, faculty, or staff organization may advertise or sell merchandise, publications, food, or nonalcoholic beverages, or request contributions, for the benefit of the organization, for the benefit of another registered student, faculty, or staff organization, or for the benefit of an organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. No organization may sell items obtained on consignment. No organization may request contributions for an off-campus tax-exempt organization for more than fourteen days in any fiscal year.

(2) Registered student, faculty, and staff organizations, and academic and administrative units, may sell, distribute, or display literature that contains advertising, subject to the limits in section 13-403. Individual students, faculty members, and staff members may distribute or display such literature, but may not sell it.

(3) Individual students, faculty members, and staff members may post advertisements for roommates, subleases, and sales of used goods that the seller has personally owned and used, but only on a bulletin board designated for that purpose by an academic or administrative unit in space that the unit occupies or controls. Any unit that designates a

bulletin board for this purpose may regulate that bulletin board under the procedures set forth in section 13-506.

(4) A resident of a University residence hall or apartment building may occasionally invite one or more salespersons to come to the resident's room or apartment, and in that room or apartment, the salesperson may offer products or services for sale to other residents of that residence hall or apartment building.

(5) A registered student, faculty, or staff organization may collect admission fees for programs scheduled in advance in accordance with chapter 10 (subchapter 10-200); provided, that neither University persons nor organizations may collect admission fees for the exhibition of movies on the campus.

(6) A registered student, faculty, or staff organization may collect membership fees or dues at meetings of the organization scheduled in advance under chapter 10 (subchapter 10-200).

(7) A registered student, faculty, or staff organization may sell charitable raffle tickets on behalf of an organization that is authorized to conduct a charitable raffle under the Texas Charitable Raffle Enabling Act, Texas Occupations Code, Chapter 2002, or successor provisions.

(c) A registered student organization that receives funds from solicitations under this section shall deposit and account for such funds under the rules in section 6-401(a).

(d) More detailed regulation of solicitation appears in the Regents' Rules and Regulations, Rule 80103. The provisions most relevant to students, faculty members, and staff members have been incorporated here.

## **Subchapter 13-300. General Rules on Means of Expression**

### **Sec. 13-301. Disruption**

(a) Except as expressly authorized in section 13-802, or by an authorized University official responsible for a program or event sponsored by an academic or administrative unit, no speech, expression, or assembly may be conducted in a way that disrupts or interferes with any

(1) teaching, research, administration, or other authorized activities on the campus;

(2) free and unimpeded flow of pedestrian and vehicular traffic on the campus; or

(3) signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.

(b) (1) The term "disruption" and its variants, as used in this rule, are distinct from and broader than the phrase "disruption of activities," as used in the Regents' Rules and Regulations, Rule 30103, Number 2, Section 2, and the phrase "disruptive activities," as used in the Regents' Rules and Regulations, Rule 40502. This rule is concerned not only with deliberate disruption, but also with scheduling and coordination of events to manage or minimize the inevitable conflicts between legitimate events conducted in close proximity.

(2) Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of University authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important to remind administrators and law enforcement officials that their judgments should not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.

(c) Potentially disruptive events can often proceed without disruption if participants, administrators, and law enforcement officials cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators and law enforcement officials should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges or arrest.

### **Sec. 13-302. Damage to Property**

(a) No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the University or of any person who has not authorized the speaker to damage or deface his or her property.

(b) No person may damage, deface, mark, discolor, alter, or interfere with any sign, table, or exhibit posted or displayed by another person or organization acting under the rules in this chapter.

### **Sec. 13-303. Coercing Attention**

(a) No person may attempt to coerce, intimidate, or badger any other person into viewing, listening to, or accepting a copy of any communication.

(b) No person may persist in requesting or demanding the attention of any other person after that other person has attempted to walk away or has clearly refused to attend to the speaker's communication.

**Sec. 13-304. Cosponsorship**

(a) Neither registered student, faculty, or staff organizations, nor individual students, faculty members, or staff members, may cosponsor any event on campus with an off-campus person or organization. Only academic or administrative units with authority delegated from the president of the University may cosponsor events with an off-campus person or organization.

(b) An event is a prohibited cosponsorship if an individual or a student, faculty, or staff organization

(1) depends on an off-campus person or organization for planning, staffing, or management of the event; or

(2) advertises the event as cosponsored by an off-campus person or organization; or

(3) operates the event as agent of, or for the benefit of, an off-campus person or organization, except for solicitation of charitable contributions under the authority of section 13-205(b)(1); or

(4) distributes any proceeds of the event to an off-campus person or organization, except for

(A) the proceeds of charitable contributions solicited under the authority of section 13-205(b)(1); or

(B) payment of a fair market price for goods or services provided to the University person or organization; or

(5) reserves a room or space for the use of an off-campus person or organization; or

(6) engages in any other behavior that persuades the dean of students that an off-campus person or organization is in fact responsible for the event, in full or in substantial part.

(c) The following facts do not, in and of themselves, indicate a prohibited cosponsorship:

(1) that a University person or organization endorses an off-campus person or organization or its message;

(2) that a University person or organization sells, distributes, or displays literature prepared by an off-campus person or organization or containing contact information for an off-campus person or organization (subject to the rules in section 13-205);

(3) that a University person or organization has purchased goods or services from an off-campus provider;

(4) that a registered student, faculty, or staff organization has invited a guest speaker under subchapter 13-1000;

(5) that a registered student, faculty, or staff organization has received financial contributions to support the event from an off-campus donor.

(d) The purpose of this rule is to preserve the limited space on campus for the use of students, faculty members, and staff members, and the rule shall be interpreted to serve that purpose.

### **Sec. 13-305. Other Rules with Incidental Effects on Speech**

(a) Other generally applicable or narrowly localized rules, written and unwritten, incidentally limit the time, place, and manner of speech, but are too numerous to compile or cross-reference here. For example, libraries typically have highly restrictive rules concerning noise; laboratories and rooms containing the electrical and mechanical infrastructure of the University typically have safety rules and rules excluding persons without specific business there; fire and safety codes prohibit the obstruction of exits and limit the constriction of hallways. Speech within classrooms is generally confined to the subject matter of the class; the right to attend a class at all is subject to registration and payment of tuition; individual professors may have rules of decorum in their classroom. These kinds of rules limit the right of students, faculty members, and staff members to enter and speak in the places to which these rules apply.

(b) Reasonable and nondiscriminatory rules of this kind generally control over the rights of free speech guaranteed in this chapter. But even these kinds of rules are subject to the constitutional right of free speech. Such rules must be viewpoint neutral. Such rules cannot regulate speech more restrictively than they regulate other activities that cause the problems to be avoided by the rule. Such rules should not restrict speech more than is reasonably necessary to serve their purpose. Such rules cannot ban unobtrusive forms of communication with no potential for disruption even in the specialized environment subject to the localized rule. Thus, for example, means of silent expression or protest confined to the speaker's immediate person, such as armbands, buttons, and t-shirts, are nearly always protected because they are rarely disruptive in any environment.

## **Subchapter 13-400. Distribution of Literature**

### **Sec. 13-401. General Rule on Distribution of Literature**

(a) Registered student, faculty, and staff organizations, and academic and administrative units, may sell, distribute, or display literature on campus, subject to the rules in this subchapter and to the general rules in subchapter 13-200 and subchapter 13-300.

Individual students, faculty members, and staff members may distribute or display literature but may not sell it. In either case, no advance permission is required.

(b) "Literature" means any printed material, including any newspaper, magazine, or other publication, and any leaflet, flyer, or other informal matter, that is produced in multiple copies for distribution to potential readers.

(c) Literature may be distributed only by members of the sponsoring student organization.

#### **Sec. 13-402. Not-for-Profit Literature Only**

(a) Except as expressly authorized by the Regents' Rules and Regulations or by contract with the University, no person or organization may sell, distribute, or display on campus any publication operated for profit. A registered student, faculty, or staff organization may sell publications operated for profit as part of a fund-raiser authorized by, and subject to the limits of, section 13-205(b)(1).

(b) A publication is operated for profit if any part of the net earnings of the publication, or of its distribution, inures to the benefit of any private shareholder or individual.

#### **Sec. 13-403. Limits on Advertising**

Literature distributed on campus may contain the following advertising:

(1) advertising for a registered student, faculty, or staff organization, or an academic or administrative unit;

(2) advertising for an organization that is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(3) paid advertising in a publication primarily devoted to promoting the views of a not-for-profit organization or to other bona fide editorial content distinct from the paid advertising; and

(4) other advertising expressly authorized by the Regents' Rules and Regulations or by contract with the University.

All other advertising in literature distributed on campus is prohibited.

#### **Sec. 13-404. Clean Up of Abandoned Literature**

Any person or organization distributing literature on campus shall pick up all copies dropped on the ground in the area where the literature was distributed.

#### **Sec. 13-405. Registered Student Organization Literature Disclaimer**

Literature distributed by registered student organizations on campus must contain a disclaimer that indicates that registered student organization literature is not official University literature and does not represent the views of the University or its officers.

## **Subchapter 13-500. Signs and Banners**

### **Sec. 13-501. General Rule on Signs**

(a) "Sign" means any method of displaying a visual message to others, except that transferring possession of a copy of the message is distribution of literature and not a sign.

(b) Subject to the rules in this subchapter and to the general rules in subchapter 13-200 and subchapter 13-300, a University person or organization may display a sign by holding or carrying it, by displaying it at a table (see subchapter 13-600), or by posting it on a kiosk, bulletin board, or other designated location. Signs may not be posted in any other location.

### **Sec. 13-502. Hand-Held Signs**

(a) Students, faculty members, and staff members may display a sign on campus by holding or carrying it by hand or otherwise attaching it to their person. No advance permission is required.

(b) Any person holding or carrying a sign shall exercise due care to avoid bumping, hitting, or injuring any other person.

(c) Any person holding or carrying a sign at a speech, performance, or other event shall exercise due care to avoid blocking the view of any other person observing the speech, performance, or event. Depending on the venue, this may mean that signs may be displayed only around the perimeter of a room or an audience.

(d) A law enforcement officer or the dean of students, or an usher or other University employee if authorized by officials responsible for managing the venue, may warn any person that his or her sign is being handled in violation of paragraphs (b) or (c). If the violation persists after a clear warning, the law enforcement officer, dean, authorized usher, or other authorized employee may confiscate the sign.

### **Sec. 13-503. Signs on Kiosks**

(a) A kiosk is an outdoor structure, attached to the ground in a fixed location, designed for the posting of signs.

(b) University persons and organizations may post signs on kiosks. No advance permission is required. Individuals may not post on kiosks any sign advertising goods or

services for sale (see section 13-205).

- (c) No sign posted on a kiosk may be larger than 11 inches by 17 inches.
- (d) Each sign posted on a kiosk must identify the University person or organization that posted the sign, and must state the date the sign was posted or the date of the event being advertised. No sign advertising an event may be posted on a kiosk more than fourteen days before the date of the event.
- (e) The person or organization that posts a sign on a kiosk must remove that sign not later than fourteen days after it was posted, or twenty-four hours after the event it advertised, whichever is earlier.
- (f) No sign may be posted on a kiosk on top of another properly posted sign.
- (g) No person or organization may post more than two signs on the same kiosk at the same time.
- (h) The dean of students may remove any sign that violates any of the rules in this section.

#### **Sec. 13-504. Banners**

- (a) "Banner" means a sign hung from a structure, or between two buildings, structures, or poles.
- (b) (1) The dean of students shall designate places where banners may be hung in outdoor locations not occupied or controlled by any other academic or administrative unit.  
  
(2) Other academic and administrative units may designate one or more places where banners may be hung in indoor or outdoor locations that the unit occupies or controls.
- (c) (1) Academic and administrative units and registered student, faculty, and staff organizations may hang banners in locations designated under paragraph (b). Individuals may not hang banners.  
  
(2) Advance permission is required from the unit administering the location, and usually, advance reservations are required. Academic and administrative units advertising official University events or programs may be given priority. In locations administered by academic or administrative units other than the dean of students, organizations affiliated with the unit administering the location may be given priority.
- (d) (1) In locations administered by the dean of students, each banner may be hung for one week. The banner may be renewed from week to week if space is available, but usually, other organizations are waiting their turn and renewal is not possible.

(2) Other units administering a location for banners may limit the time each banner may hang. Any such time limit shall be applied without discrimination to all organizations, except that academic and administrative units may be given preference.

(e) The dean of students shall maintain, on a Web site or on a flyer or pamphlet conveniently available at the dean's office,

(1) a list of outdoor locations where banners may be hung;

(2) the academic or administrative unit that administers banners at each outdoor location; and

(3) a current description of the rules and procedures for reserving the right to hang a banner in locations administered by the dean of students.

(f) The unit administering a banner location may require that the physical work of hanging the banners be performed only by Facilities Services employees or other appropriate University personnel.

**Sec. 13-505. A-Frames**

(a) "A-frame" means a movable and self-supporting sign board designed to stand on the ground.

(b) A-frames are subject to the rules on exhibits in subchapter 13-700.

**Sec. 13-506. Signs in Other Designated Locations (Including Departmental Bulletin Boards)**

(a) Each academic or administrative unit of the University may authorize the posting of signs in spaces that unit occupies and controls. Such authorization may be granted by general rule, by stamping or initialing individual signs, or by long-standing tradition.

(b) Signs in spaces occupied by academic or administrative units may be

(1) confined to bulletin boards or other designated locations;

(2) subjected to viewpoint-neutral rules limiting the size of signs, limiting how long they may be posted, requiring each sign to show the date it was posted and the name of the person or organization who posted it, and similar rules designed to facilitate fair and equal opportunities to post signs;

(3) confined to official statements or business of the unit, or to certain subject matters of interest within the unit, or to signs posted by persons or organizations affiliated with the unit.

(c) Each academic or administrative unit shall post on or near each bulletin board or other designated location that it administers

(1) either the rules applicable to that bulletin board or location, or a particular office or Web site where the rules applicable to that bulletin board or location may conveniently be found; and

(2) if a stamp or initials are required on signs before they are posted on that bulletin board or location, the name and office location of the person whose stamp or initials are required.

This notice shall be posted in the upper left corner of each bulletin board or other designated location for posting signs, or conspicuously in another nearby location. If no such notice is posted, then the only applicable rules are those contained in subchapter 13-200 and sections 13-301 to 13-304.

(d) Within the scope of the subject matters permitted on a particular bulletin board or other designated location, no academic or administrative unit shall discriminate on the basis of the political, religious, philosophical, ideological, or academic viewpoint expressed on a sign.

(e) This section does not apply to any enclosed bulletin board or display case that is accessible only to authorized personnel for official University business.