

**FREE EXPRESSION COMMITTEE MEETING
ARIZONA BOARD OF REGENTS
2020 N. CENTRAL AVE. SUITE 230
PHOENIX, AZ 85004
Tuesday, December 11, 2018
9:00 – 10:00 a.m.**

Committee Members:

John Arnold, Chair
Derrick Anderson, ASU
Michael Bergstrom, ASU
José Cárdenas, ASU
Stefanie Lindquist, ASU
Joanne Vogel, ASU

Dylan Graham, NAU
Erin Grisham, NAU
Kimberly Ott, NAU
Michelle Parker, NAU
Eric Yordy, NAU

Toni Massaro, UA
Natalynn Masters, UA
Kathy Adams Riester, UA
David Schmidtz, UA
Robert “Bob” Sommerfeld, UA

- 9:00 a.m. CALL TO ORDER, GREETINGS, AND ANNOUNCEMENTS FROM THE COMMITTEE CHAIR**
- 9:05 a.m. 1. Approval of Minutes**
The board office asks the committee to review and approve the minutes of the August 7, 2018 and August 17, 2018, Free Expression Committee meetings.
- 9:10 a.m. 2. Review of Open Meeting Law**
The committee will review Open Meeting Law.
- 9:15 a.m. 3. Review Statutory Charge to the Free Expression Committee to Submit an Annual Report (See Attached)**
- 9:30 a.m. 4. Review of 2017-2018 Statutory Report**
- [2017-18 Statutory Report](#)
 - Appreciate the input from the universities and committee members
 - Have we received any feedback?
 - Same format for next year?
- 9:45 a.m. 5. Preparation of 2018-2019 Statutory Report**

- In the spring, we will begin to prepare the 2018 report (for approval by the board in August and to submit to the legislature by September 1, 2019).
- Identify a point of contact at each university to collect and coordinate input from committee members and others for the report.

9:55 a.m. 6. Comments or questions

10:00 a.m. ADJOURN

PLEASE NOTE: This agenda may be amended at any time prior to 24 hours before the committee meeting. Estimated starting times for the agenda items are indicated; however, discussions may commence, or action may be taken, before or after the suggested times. Any item on the agenda may be considered at any time out of order at the discretion of the committee chair. The committee may discuss, consider, or take action regarding any item on the agenda. During the meeting, the committee may convene in executive session pursuant to A.R.S. § 38-431.03(A)(3) for legal advice regarding any item on the agenda.

ARIZONA BOARD OF REGENTS
Minutes of the Free Expression Committee
August 7, 2018

A meeting of the Free Expression Committee was held on August 7, 2018 at the board office in Phoenix, Arizona.

Present: John Arnold
 Derrick Anderson (via phone)
 Stefanie Lindquist (via phone)
 Joanne Vogel (via phone)
 Erin Grisham (via phone)
 Michelle Parker
 Eric Yordy (via phone)
 Kimberly Ott (via phone)
 Natalynn Masters (via phone)
 Kathy Adams Riester (via phone)
 David Schmitz (via phone)
 Robert "Bob" Sommerfeld (via phone)

Absent: José Cárdenas, Michael Bergstrom and Dylan Graham.

Also present were Regent Taylor Robson (via phone), Nancy Tribbensee, Jennifer Pollock, Julie Newberg, Lia Foy, Monica Simental, Kate Linder and Suzanne Templin from the board office; and Cynthia Jewitt (via phone) and Christine Wilkinson (via phone) from Arizona State University. In the audience Rachel Leingang and Casey Kuhn.

John Arnold called the meeting to order at 2:02 p.m.

Review of Statutory Authorization for the Committee: A.R.S. § 15-1867 (Item 1)

Nancy Tribbensee presented the statute that requires the Board of Regents to establish a committee on Free Expression. The statute includes requirements for the content and distribution of a report on free expression.

Discussion and Action Regarding Statutory Report (Item 2)

Nancy Tribbensee stated that the statutory report was originally scheduled for action to review and approve at this meeting, but because the committee has not had an opportunity to view the report, the committee will use this meeting to discuss the responsibilities of the committee and the universities under this new legislation and items on the report. Approval will be moved to a future meeting.

Nancy stated that legislation went into effect on August 3, 2018. The first report is due to the governor, legislature and the secretary of state by September 1, 2018. Nancy has been working with the senior associates to the presidents and university legal counsel to develop the draft report for the committee to review.

The report will help to demonstrate how the AZ public universities address speech issues on campuses. The report will document for the members of the committee, the campuses, the legislature and the regents what the universities have been doing to protect and promote free speech.

As educational institutions it is a core part of our mission to explain that it is not the role of the universities to shield students or the broader community from protected speech. We do have a role in explaining what it means for speech, including offensive speech, to be protected. As part of our educational mission, the universities work with constituents to explain why offensive speech may be protected and may discuss strategies for responses that are consistent with constitutional protections.

Broadly the statutory requirements for the annual report are to address any barriers to, or disruptions of free expression on campus. The universities are strong advocates for free expression, they take this very seriously and welcome the opportunity to demonstrate their commitment to free speech through this committee and the report that will be provided to the legislature.

The proposed report will explain that the universities do not tolerate barriers to, or disruptions of free expressions. There are reasonable time, place and manner restrictions in place because we are public educational institutions. Speech that disrupts the educational mission may be subject to restriction by the universities. Each university has established procedures for scheduling expressive activities on campus and for speech that arises extemporaneously that does not violate safety, restrict public access, or is so loud that it disrupts classes. When a university receives an allegations that someone is disrupting protected speech, the circumstances are reviewed to make sure that protected speech is allowed to continue and flourish on campus. The report will provide information from each university about its policies and procedures.

The universities strive to promote diversity of thought and not to decide what views people should take on campus. There is no single administrative position on issues that faculty, staff and students are required to promote. There is a great effort to address speech, even offensive speech, with opportunities for more speech to encourage the safe expression of divergent viewpoints. Each university engages in a tremendous amount of educational programming with incoming students, to make sure students understand their rights and responsibilities.

Nancy thanked the individuals that have provided information to draft the proposed report. The level of commitment to training people who work with students and educating students is outstanding. The universities have materials in orientation programs for new students to campus who may not be familiar with this diverse of an environment. The statute focuses on student expression because of a number of nationally examples in which controversial speakers have come to campuses resulting in student protests and increased security costs. None of these examples have been from Arizona universities. Speech is not just an important student issue it is of great importance to employees that work on campus and

faculty who cherish academic freedom. Universities' commitments to speech and protections for speech go beyond the statutory requirements.

The statute also requires the universities to provide an allocation of student activities fees that are used to support and facilitate "the expression and activities of students or student organizations". There are not very many (if any) student fees that are directly allocated to speech and because the statute has just gone into effect, these records have not been previously maintained.

The report will be distributed to the Governor, Speaker of the House of Representatives, the President of the Arizona Senate and the Arizona Secretary of State. Arizona Board of Regents is also required to post the report on our website. ABOR's communication team has created a website dedicated to the work of the Free Expression's Committee, where the report will be posted, along with the ongoing work of the committee, resources for anyone that is interested in free expression, such as the University of Chicago statement, the Kalven report, the state constitution, first amendment and the bill passed establishing the Free Expression's committee. Nancy asked that any recommendations on materials to be posted on the website be sent to her. The goal is to be thorough, transparent and comply with the statute and to begin the year by describing the tremendous amount of work that the universities are already doing.

Chair Arnold thanked Nancy and opened the floor for discussions and questions.

David Schmitz asked about the dimensions of diversity that the committee will be concerned about i.e.: that women don't get intimidated in a classroom setting; people with non-mainstreamed political views are not intimidated? Intimidation is only a subset of the categories that the committee should worry about. When talking about diversity, is the discussion in any direction that can be imagined? What is the context? Is it other colleges not in Arizona where visiting speakers have not been allowed to speak? Is this the type of headline news situation to be worried about? Or is the committee to talk about things that are way more subtle or more ambiguous than that? What if someone says, "I hear what you're saying about diversity of thought, but I actually think there are some forms of diverse thought that are beyond the pale and we should make sure people like that don't get to talk or at least don't feel comfortable when they do talk." There are philosophical puzzles, like when someone says that they think there is speech that shouldn't be protected. Do we say you have a right to your point of view? Do we say we have a duty to be officially neutral? Do we have to give the impression that we think the truth is somewhere in the middle? Or do we just say freedom of speech, you are wrong to want to limit it and then someone says you are limiting freedom of speech. Will these be something that the committee will get to? Is it part of the committee's purview?

Nancy Tribbensee commented that these are questions the committee may discuss over the next year. The question back is, if these conversations can't happen at a university where can they happen? Some are difficult conversations, not everyone may agree on perspectives on those issues. There are some people for whom some speech is so

intolerable and so offensive that it is very hard to protect, but we are having the conversation not only in the context of First Amendment jurisprudence, but also other laws that are out there that protect individuals from speech that is so directed at an individual that it is no longer subject to protection. These type of philosophical questions are important ones, the universities wrestle with these more nuanced questions about particularly offensive speech. The legislature is encouraging the universities to always remain neutral and not have an official position. It is a challenge for universities that are very conscious of the effect of words on members of their communities, so I believe this is an ongoing conversation and an important one.

The report is anticipated to be distributed to the committee by August 8 or August 9. Nancy reminded the committee that they are subject to the open meeting law. The report will be sent in a way that members can respond to her only and not to other members of the committee. Nancy cautioned that we cannot have a quorum of the committee emailing about committee business.

Chair Arnold asked that the committee send comments or questions to Nancy Tribbensee. Nancy is the key staff contact for this committee.

Next Steps – Meetings and Potential Topics for Next Year (Item 3)

Chair Arnold asked for a review of the open meeting laws as they relate to the Free Expressions Committee be discussed at the next meeting.

Chair Arnold recommended that committee meetings be held quarterly to prepare and review for next year's report.

Bob Sommerfeld asked to include on the agenda a review of any sort of freedom of expression events that have occurred in that quarter that can be looked at and discussed for possible after action and possible future actions to be taken.

Kathy Riestler asked for a discussion item to identify what type of events to track for future reporting, and a standardized format.

Chair Arnold stated that ABOR staff will be contacting the committee to schedule a meeting for next week, and to schedule a mid-fall meeting. Send any suggestions for future meetings to Nancy Tribbensee. The webpage designated for the Free Expression Committee will be housed on the Arizona Board of Regents website. The committee materials, announcements and other materials will be uploaded to the website. All suggestions are welcome for additions to the website.

ADJOURNMENT

Chair Arnold made the motion, seconded by Michelle Parker to adjourn. The meeting adjourned 2:30 p.m.

Submitted by:

Suzanne Templin
Committee Secretary

DRAFT

This page intentionally left blank

ARIZONA BOARD OF REGENTS
Minutes of the Free Expression Committee
August 17, 2018

A meeting of the Free Expression Committee was held on August 17, 2018 at the board office in Phoenix, Arizona.

Present: John Arnold
 José Cárdenas (via phone)
 Derrick Anderson (via phone)
 Michael Bergstrom (via phone)
 Stefanie Lindquist (via phone)
 Joanne Vogel (via phone)
 Eric Yordy (via phone)
 Kimberly Ott (via phone)
 Robert “Bob” Sommerfeld (via phone)

Absent: Erin Grisham, Michelle Parker, Dylan Graham, Natalynn Masters, Kathy Adams Riester, David Schmidtz and Toni Massaro

Also present were Regent Taylor Robson (via phone), Regent Lauren L’Ecuyer, Nancy Tribbensee (via phone), Jennifer Pollock, Julie Newberg, and Suzanne Templin from the board office. In the audience Rachel Leingang.

Chair Arnold called the meeting to order at 9:02 a.m.

Review of Open Meeting Law (Item 1)

Jennifer Pollock, briefed the committee on Open Meeting Law as it pertains to the committee. It is the policy of the state of Arizona that meetings of public bodies hold their meetings openly and that notices and agendas be posted for their public meetings that contain sufficient information for the public to know what is going to be discussed or decided. The Free Expression committee is a committee of the board and the board is a public body, therefore the Free Expression committee is considered a public body.

Committee meetings are public meetings, so the public is permitted to attend and listen to the committee’s deliberations and proceedings. Meeting notices must be posted and agendas made available 24 hours before the meeting. The agendas need to list the items that are going to be discussed or considered and the committee may only discuss, consider or take action on the matters listed on the agenda or related to those agenda items. Minutes are taken of the meetings. There are provisions for executive sessions, which are not open to the public. Executive session may be held only in accordance with the statutory provisions for the executive session. Executive session can occur, most likely for this committee for legal advice, but can also occur for discussion or consideration of personnel matters, litigation, contract negotiations, settlement discussion with the public body attorneys, salary negotiations, negotiations on international or intrastate agreements or discussion pertaining to real estate matters.

A meeting is a gathering, in person or through technological devices, of a quorum of the members of a public body where the public body discusses, propose or takes legal action. It can include a telephonic meeting, an in person meeting, through video conference, but it can also include electronic communication.

An exchange of electronic communications amongst a quorum of members of a public body that involves discussion, deliberation or taking of legal action by the public body regarding a matter that foreseeable is likely to come before the public body is considered a meeting that needs to be posted and agendized. One way electronic communication, by one members of a public body that proposes legal action is also considered a public meeting. Be cautious when engaging in electronic communication. Committee members may receive electronic communication from staff containing meeting materials and information and may communicate with staff electronically. Committee members should not copy the committee on their correspondence to staff. Communications regarding committee business through electronic means can be considered public records that are subject to disclosure.

Chair Arnold advised the committee, the statute changed this year, and we are required to record in our minutes how each member of the committee voted. Mr. Arnold recommended the committee hold a general vote and any descending or abstentions, the members identify themselves for the minutes.

Discussion and Action Regarding Statutory Report (Item 2)

Chair Arnold expressed his thanks for all the participation and comments on the report and expressed gratitude to Nancy Tribbensee who drove the process for the report.

Nancy Tribbensee, thanked the committee for their quick turnaround. The report itself demonstrates the continued commitment of the board and the universities to free expression. It identifies some areas that the universities and the board will be looking at over the upcoming year both to continue to educate our communities about the importance of free expression and the nuances of competing legal obligations of the universities. The report includes a description of the policies, practices and resources to make sure that we continue to protect these very important constitutional rights, recognize our other legal obligations and most importantly recognize the importance our fundamental educational mission. With the committee's permission, the board office would like to continue to make non-substantive changes (i.e., typos, resources) as we prepare the report for submission.

Regent Taylor Robson asked for clarification on the Foundation for Individuals to a Right for Education "FIRE" ranking, how a university obtains a green light ranking and if UA and NAU are working towards a "green light" FIRE ranking.

Nancy Tribbensee responded that policies from the universities and the board are reviewed and the universities receive an overall rating or ranking from F.I.R.E. based on F.I.R.E.'s evaluation of those policies.

José Cárdenas concurred, the F.I.R.E. website explains the criteria and explains the ranking each university receives.

Nancy Tribbensee shared that Jon Dudas from UA and Michelle Parker from NAU are reviewing the F.I.R.E. rating issues.

Regent Taylor Robson asked for clarification on the reference to an ASU Gold Card that provides information to students about free speech on campus and resources available in ASU's summary.

Jose Cardenas responded that he would forward information to Regent Taylor Robson.

Regent Taylor Robson asked for clarification on Exhibit D, Allocation of Student Activity Fees by University, for ASU and NAU's notation state that "information about specific allocations of funds towards the support and/or facilitation of free expression is not available."

Joann Vogel from ASU responded that the structure is being setup to record for the upcoming year to track these expenditures. With the limited time to submit the report, it was not feasible to review every expenditure for the past year.

Regent Taylor Robson asked if the line could be modified to note "due to time constraints imposed by the legislation this information was not available for this report but that is the intent of the university to provide this information in subsequent report."

Nancy Tribbensee will incorporate this change in the report.

A motion was made by John Arnold, seconded by José Cárdenas to approve forwarding the Statutory Report to the full board for approval with the changes suggested by Regent Taylor Robson. John Arnold, José Cárdenas, Derrick Anderson, Michael Bergstrom, Stefanie Lindquist, Joanne Vogel, Eric Yordy, Kimberly Ott, Bob Sommerfeld voted "Aye", none opposed, none abstained. The motion carried.

ADJOURNMENT

Chair Arnold adjourned the meeting at 9:21 a.m.

Submitted by:

Suzanne Templin
Committee Secretary

This page intentionally left blank

15-1867. Arizona board of regents; committee on free expression; annual report; committee termination

A. The Arizona board of regents shall establish a committee on free expression consisting of at least fifteen members.

B. The committee on free expression shall submit an annual report on or before September 1 to the governor, the speaker of the house of representatives and the president of the senate. The Arizona board of regents shall post a copy of the annual report on its website and shall submit a copy of the annual report to the secretary of state. The annual report shall include:

1. A description of any barriers to or disruptions of free expression within the universities in this state.
2. A description of the administrative handling and discipline relating to barriers to or disruptions of free expression within the universities in this state.
3. A description of substantial difficulties, controversies or successes in maintaining a posture of administrative and institutional neutrality.
4. Any assessments, criticisms, commendations or recommendations that the committee decides to include in the annual report.
5. An accounting of how student activity fees were allocated in the prior year. For the purposes of this paragraph, "student activity fees" means any fee that is charged to students by a university in this state and that is used to support and facilitate the expression and activities of students or student organizations.

C. The committee established pursuant to this section ends on July 1, 2026 pursuant to section 41-3103.