

# **BOARD OF REGENTS BRIEFING PAPER**

## **1. AGENDA ITEM TITLE:** Freedom of Expression: Aspirational Statement of Values

**MEETING DATE:** Feb.28/Mar.1, 2019

## **2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

At a Special Board Meeting in October 2017, the Board of Regents discussed and expressed concerns regarding the rise of First Amendment free speech conflicts on higher education campuses, and those issues have received national attention over the past several years. In response, Chancellor Reilly established an NSHE Free Speech Policy Task Force, originally comprised of representatives from each NSHE institution. The central purpose of the Task Force was to develop a system-wide aspirational statement and policies regarding freedom of expression that could provide guidance to NSHE institutions, as well as members of the entire NSHE community.

Various members of the Task Force met numerous times during 2018, and a statement was originally intended to be placed in Title 2, Chapter 2 of the NSHE Code. It was presented and approved (as a first reading) by the Board of Regents in September 2018. However, since that time, the statement has undergone additional legal review and scrutiny, and members of the Task Force grew to include the general counsels of each institution, as well as student representatives.

The attached revised *Freedom of Expression: Aspirational Statement of Values* is presented in this agenda item for the Board of Regents review and consideration to be placed in Title 4, Chapter 1, Section 38 of the NSHE Handbook. This statement is a consensus document intended to not only accurately reflect the law and provide guidance on First Amendment policy; but to also represent the NSHE values of inclusivity, diversity, and critical thinking and who we, as a community of learners and Nevadans, aspire to be. Every word and mark of grammatical punctuation in the statement has been thoroughly debated and carefully crafted by the Task Force.

## **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Given that this amendment is to Title 4 of the NSHE Handbook, it requires only one reading. Members of the Task Force and the Office of the Chancellor respectfully request that the Board of Regents approve the attached statement presented in this agenda item.

## **4. IMPETUS (WHY NOW?):**

Issues regarding the First Amendment on campuses of higher education, including those in Nevada, have received increased public scrutiny in recent years and it is important for the Board of Regents to speak and provide guidance to members of the NSHE community on these issues.

## **5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase participation in post-secondary education)**
- Success (Increase student success)**
- Close the Achievement Gap (Close the achievement gap among underserved student populations)**
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)**
- Research (Co-develop solutions to the critical issues facing 21<sup>st</sup> century Nevada and raise the overall research profile)**
- Not Applicable to NSHE Strategic Plan Goals**

## **INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

Universities and colleges must have open and robust exchanges of all ideas to foster communication, learning, and participation in higher education.

**6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- It is the right thing to do.
- The statement is the product of an extensive stakeholder process, with input from administrative and academic faculty, as well as legal counsel and student representatives.
- The statement is consistent with First Amendment jurisprudence and best practices amongst higher education institutions.
- The statement will provide guidance to the NSHE community regarding freedom of expression issues.

**7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

The First Amendment speaks for itself and the statement is unnecessary.

**8. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

Request the Office of the Chancellor to continue working with the Task Force and revise the statement.

**9. RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:**

Approve the statement as drafted by the Task Force.

**10. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title 2, Chapter 2, Section 2.3
- Amends Current Board Policy: Title 4, Chapter 1, Section 38
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No **X**  
Explain: \_\_\_\_\_

**POLICY PROPOSAL - HANDBOOK**  
**TITLE 4, CHAPTER 1, NEW SECTION 38**  
Freedom of Expression: Aspirational Statement of Values

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

**Section 38. Freedom of Expression: Aspirational Statement of Values**

***The Nevada System of Higher Education (NSHE) and its eight institutions are committed to free and open inquiry in all matters and strive to afford all members of the NSHE community the broadest possible latitude to speak, write, listen, challenge and learn. Except insofar as limitations on that freedom are necessary to the functioning of NSHE and its institutions, NSHE and its institutions fully respect and support the freedom of all its students, faculty, and staff to discuss any topic that presents itself, free of interference. NSHE and its institutions support addressing issues and controversies by the method of open discussion.***

***The freedom to debate and discuss the merits of ideas is both welcomed and encouraged. The climate of conflict among competing ideas is quite natural and NSHE and its institutions are appropriate spaces for discourse that inspires critical thought and promotes enhanced learning opportunities.***

***This freedom, however, is not absolute. In narrowly-defined circumstances, NSHE and its institutions may lawfully restrict expression and may reasonably regulate the time, place, and manner of expression consistent with First Amendment principles.***

***NSHE and its institutions are committed to the principle that it may not restrict or suppress debate or deliberation because the ideas put forth are thought to be offensive, unwise, immoral, or misguided. History shows that when institutions of higher education attempt to censor or punish the free expression of ideas, they undermine their core function of promoting rational discussion, inquiry, discovery, and the dissemination of knowledge. It is not the proper response of NSHE and its institutions to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. It is for members of the NSHE community to make those judgments for themselves.***

***Members of the NSHE community are encouraged to promote an atmosphere of mutual respect that is aligned with institutional values of inclusivity, diversity, and critical thinking. These values and this encouragement inform the vision of the community we aspire to be.***

***Faculty, students, staff, and others are free to criticize, contest, and condemn views expressed on campus; however, they may not obstruct, disrupt, suppress or otherwise interfere with the freedom of others to express views they reject or even loathe. For members of the NSHE community, a proper response to ideas they find offensive, unwarranted, and dangerous is to engage in robust counter-speech that challenges the merits of those ideas and exposes them for what they are. To this end, NSHE and its institutions have a responsibility not only to promote a lively and fearless freedom of expression and deliberation, but also to protect that freedom when others attempt to restrict it.***