

Background to the Proposed Rules and Regulations 2.24 Mutual Respect Policy

On November 17th at the 2003 Higher Education Law and Policy Institute, I attended a workshop given by Thomas Trager, Associate University Counsel, University of Colorado at Boulder on the topic of Harassment, Hate Speech and Free Speech, When is Politically Correct Legally Correct.

In the course of that workshop, Mr. Trager discussed a Supreme Court Decision, *Oncale v. Sundowner Offshore Services, Inc.*, in which the court decision states that anti-discrimination statutes are not a general civility code (see below). We were advised to review our policies and to develop a stand-alone civility/conduct policy instead of imbedding conduct standards in discrimination policies.

Our current Rules and Regulations 2.20 has our conduct policy as item #5, which reads as follows:

Discourteous, offensive or abusive conduct or language toward other employees, students or the public may subject employees to disciplinary action. This includes jokes, slurs, derogatory comments, or other non-work related conduct or language regarding a person's race, color, religion, national origin, age, gender, disability, marital status, sexual orientation, medical condition or other similar factors.

The proposed Rules and Regulations 2.24 Mutual Respect Policy is intended to be a stand-alone standard of conduct policy that applies to all employees and students. The first draft of 2.24 was distributed in May to members of the District Shared Governance Council. The draft was distributed with the understanding that the matter would be taken up in the fall for wide discussion at each of the colleges through the established governance processes. Companion policies that provide context were also distributed, and they are the Statement on Academic Freedom and Rules and Regulations 2.20 Policy on Equal Opportunity. Those two policies are not under review for revision.

Oncale v. Sundowner Offshore Services, Inc., et al.

Supreme Court Held: There is no justification in Title VII's [of the Civil Rights Act of 1964] language or the Court's precedents for a categorical rule barring a claim of discrimination "because of . . . sex" merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex. Recognizing liability for same-sex harassment will not transform Title VII into a general civility code for the American workplace, since Title VII is directed at discrimination because of sex, not merely conduct tinged with offensive sexual connotations; since the statute does not reach genuine but innocuous differences in the ways men and women routinely interact with members of the same, and the opposite, sex; and since the objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances.

SCALIA, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion.

Draft 2 of Proposed New Rules and Regulations 2.24: Mutual Respect Policy

1. The Board of Trustees is deeply committed to the premise that full participation in the educational process must be in a respectful environment conducive to working and learning for all members of the educational community and free from harassment.
2. The Board recognizes that the First Amendment protects expression of ideas that might be regarded as unpopular or offensive. The Board is committed to protecting freedom of speech in order to guarantee the free exchange of ideas that fosters knowledge, individual growth, and tolerance for new and different ideas.
3. Speech or expression that is intended to harass an individual or interferes with an individual's work, academic performance, or safety will not be tolerated. Expression of discourteous, threatening, offensive or abusive conduct or language toward other employees, students or the public visiting any sites within the District is discouraged. Such conduct by employees or students may result in disciplinary action.
4. The Chancellor's Office and the Colleges will actively seek to educate staff and students on the deleterious effects of expressions of hatred or contempt towards others.
5. The Chancellor's Office and the Colleges shall take all steps necessary to provide a positive environment that encourages equal educational and employment opportunities.
6. The Chancellor's Office and the Colleges will promote equality and mutual respect and understanding among all groups and individuals.