

**FLORIDA A&M UNIVERSITY BOARD OF TRUSTEES**



**NOTICE OF PROPOSED AMENDED REGULATION**

**Date:** June 8, 2018

**REGULATION CHAPTER TITLE:** Chapter 5

**REGULATION TITLE AND NUMBER:** Freedom of Expression and Assembly Rights and Responsibilities, Open Platform Areas (5.005).

**SUMMARY OF REGULATION:** The legislature enacted Florida Statute 1004.097 with an effective date of July 1, 2018. As a result of the passage of this law, portions of Regulation 5.005 are in conflict, and will be superseded by the Statute and no longer in effect. Therefore, this amendment reflects the new law that requires the removal of designated free speech zones.

The proposed amended Regulation continues to outline the authority of the President as it relates to Freedom of Expression and Assembly; and it provides guidelines, requirements, and proscriptions. Non-compliance with this new law can lead to court costs, attorney fees, and/or an injunction.

**AUTHORITY FOR REGULATION:** Article IX, Section 7, Florida Constitution, Board of Governors Regulation 1.001.

**UNIVERSITY OFFICIAL INITIATING THIS REGULATION:** Rodner B. Wright, AIA, Interim Provost and Vice President for Academic Affairs.

**PROCEDURE FOR COMMENTS:** Written comments concerning this proposed regulation shall be submitted within 14 days of the date of this notice to the person identified below. The comments must specifically identify the regulation on which you are commenting.

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS:** Shira Thomas, Interim Vice President and General Counsel, Office of the General Counsel, Suite 304 Foote-Hilyer Administrative Center, Tallahassee, Florida 32307, (850) 599-3591 (Telephone), (850) 561-2862 (Facsimile), shira.thomas@famuedu (Email).

**FULL TEXT OF THE PROPOSED REGULATION:** The full text of the proposed regulation follows:

## Florida A&M University Regulation



### 5.005 Freedom of Expression and Assembly Rights and Responsibilities, Open Platform Areas

Freedom of expression at Florida A&M University ("FAMU") includes the right to present and advocate ideas in the spirit and development of knowledge. Freedom of expression and assembly includes demonstrations, picketing, protests, petitioning, information dissemination, the formation of groups, gatherings, and participation in group activities. FAMU, as a public university, protects the First Amendment rights of all, including those constitutionally protected views and values contrary to FAMU's mission and fundamental principles. While the University upholds these freedoms, the University will not permit speech, expression, or assembly that advocates lawlessness and/or violence, or restrains, **disrupts**, or interferes with activities of members of the University community, whether by physical force or intimidation. The positions, expressions, or views, belong to those students, protestors, demonstrators, or speakers themselves, and do not necessarily reflect the views of the University. This Regulation is not intended to inhibit or interfere with academic freedom of expression, and it is understood that faculty exercising their rights under academic freedom will accept responsibility for both the substance and the manner of their messages.

As with all public universities, the word "public" does not mean that all areas on University property are open to the general public. There are areas that are not open to the public such as, but not limited to, classrooms, laboratories, offices, and research and field sites. The regulation of certain activity on the University's campuses is necessary to preserve the educational mission, vision, and fundamental principles of the University; to prevent unnecessary disruption of classes, study periods and/or administrative functions; to provide for the safety of University students, faculty, staff, and the public; and to protect the property of students, faculty, staff, and the University. Therefore, reasonable restrictions on the time, manner, and place of the expression are appropriate and necessary to maintain and protect the rights of its students, faculty, staff, and the public.

#### (1) University Guidelines.

Florida A&M University prescribes the following guidelines:

- (a) Demonstrations, picketing, and speeches must not be in violation of the federal, state, or local statutes, FAMU Board of Trustees, University, or Florida Board of Governors' ("BOG") regulations or policies governing unlawful assemblies.
- (b) Demonstrations, **picketing, and speeches** may be held on campus as long as they do not impede or disrupt the normal operation of the University or infringe on the rights of other members of the University community in accordance with this Regulation. Demonstrations, **picketing, and speeches** are not permitted: inside of University buildings; ~~to~~ **blockin**g the ingress or egress to University buildings, streets, or sidewalks; or on the grounds surrounding the Educational

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Research Center for Child Development, the Student Health Services' primary care clinic, and dormitories/housing facilities.

(c) For demonstrators not to **disrupt or** interfere with the operation of the University or the rights of others, they shall not:

- Obstruct entrances or exits to buildings or driveways;
- Obstruct vehicular, bicycle, pedestrian, or other traffic;
- Interfere with educational activities inside or outside any building;
- Interfere with scheduled University classes, ceremonies, or events;
- Disrupt normal activities to include breach of peace;
- Damage property, such as but not limited to buildings, landscapes, or vehicles;
- Harass, intimidate, or threaten passersby, or use fighting words, which are those words that by their mere utterance inflict violence or would tend to incite a reasonable person/individual to violence or other breach of the peace; or
- Obstruct, disrupt, or attempt to physically force the cancellation or continuance of a speaker; or interfere with or impede a scheduled speaker from being heard.

(d) Any use of sound amplification equipment on the outdoor areas of campus is prohibited without prior clearance through the Office of Student Activities. Such use will be permitted only if there is no interference or disruption of any academic or other University activities. Use of outdoor areas must also be consistent with all other University **Regulations and Policies**, and state, federal and local laws.

(e) Outside Speakers.

1. **University Sponsored.** Academic units, departments, alumni groups, recognized student organizations and other University affiliated groups, who sponsor outside speakers, are responsible for informing the speaker that the University is not to be used as a platform for the organization or the incitement of lawlessness or violence, and for obtaining the speaker's agreement not to use the event for such purposes. Please refer to University [Regulation 2.030, Student Activities](#) for additional information.

2. **Non-University Sponsored.** Entities, individuals, or public speakers who wish to lease or rent a University facility for an event must adhere to this Regulation and University [Regulation 10.124, Use of University Facilities and Services](#). Priority will be given to those groups and/or individuals whose activities are related to, and/or further the mission of the University.

(f) Signs may be posted on bulletin boards designated for public announcements. FAMU maintains a General Information Center and bulletin boards throughout the campus. Listings on the boards include information regarding campus events and activities, general information, and classified advertisements. Such listings are limited to the Quadrangle Information Center and bulletin boards and will not be displayed, for example, on trees, buildings, or road signs. Pre-approval for the posting of signs, to include posting for the purpose of solicitation, is required in accordance with [Regulations 3.011, Commercial Solicitation](#) and [2.030, Student Activities](#). In addition, the deans of the colleges and/or schools located at the satellite campuses can designate a posting area.

- (g) Infringement of Copyrighted Materials and Individuals' Expectations of Privacy. Recording of speeches, gatherings, rallies, events, and/or other activities may be restricted by copyright protection, and/or laws governing privacy. There are civil and criminal penalties with the recording of copyright protected events and in situations where there is an expectation of privacy.
- (h) To maintain the orderly operation of the University, demonstrations ~~may~~ can occur ~~in designated areas located at~~ but is not limited or restricted to: the University Quadrangle, parking lot south of the Student Union Building, Stadium parking lot, gymnasium parking lot, and west of the Student Union Building between the Student Union and Foster-Tanner Fine Arts Building on a space available basis. However, demonstrations must not disrupt, interfere with, or obstruct, normal operational processes of the University. In addition, ~~the deans of the colleges and/or schools located at the~~ satellite campuses can may designate but not limit or restrict a demonstration areas best suited for demonstrations that are least likely to obstruct University operations.
- (i) Symbolic speech, such as silent protest, wearing expressive clothing that is not obscene or a safety hazard, gesturing, or standing, may be conducted anywhere as long as the symbolic speech does not violate this Regulation, BOG or University Regulations and Policies, and/or federal, state or local laws. However, silent protests must not disrupt, interfere with, or obstruct, normal operational processes of the University.

## (2) Prohibited Items during Protests/Demonstrations/Speaker Events

To maintain the orderly operations of the University and the safety of all members of the University community and the public, the following items are prohibited during protests, demonstrations, and/or speaker events:

- Weapons of any kind to include toy weapons, weapon lookalikes, or fake weapons;
- Sharp objects;
- Lighters, matches, torches or open flame;
- Any athletic equipment or other items which could be used as a weapon;
- Masks of any kind; goggles; bandanas/scarfs; neck gaiters; shields;
- Flag poles, bats, clubs, sticks (**including sticks for signs**); umbrellas;
- Aerosol/pressurized cans; mace; pepper spray;
- Chains, padlocks, bicycle locks;
- Fireworks;
- Backpacks, bags, purses, clutches;
- Signs made of anything other than cloth, paper, foam core, cardboard;
- Cans, metal, or glass containers, beverages or alcoholic beverages;
- No water bottles of any kind (can be used as weapons);
- Pop-up tents, canopies or hammocks;
- Wagons or pull carts; coolers; grills, propane tanks;
- Drones or other unmanned aircraft systems;
- Pets (excluding ADA service animals);
- Bicycles, scooters, skateboards;
- Tobacco products of any kind;
- Illegal drugs;
- Laser pointers;

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- Water balloons;
- Megaphones or other amplified sound devices;
- Any other items that Campus Police determine pose a risk to safety, disruption of classes, or vehicular or pedestrian traffic.

### ~~(3) Authority of the President~~

- ~~(a) The President has authority to determine whether reasonable grounds exist to believe that a planned speech, demonstration, or other event is likely to:~~
- ~~1. Draw a large number of individuals (whether demonstrators for or against), who are not FAMU students, faculty, or staff;~~
  - ~~2. Obstruct ingress or egress to or from University classrooms or other facilities or travel across campus; or~~
  - ~~3. Interfere with the ability of students or faculty to study and enjoy a secure and peaceful academic atmosphere.~~
- ~~(b) In cases where the President makes the determination that a planned speech, demonstration or other event will likely cause any of the above issues, the President is authorized to designate an area on University property<sup>†</sup> that would mitigate such effects and is reasonably accessible to University students, faculty and employees, and to limit the event to such location. This authority is intended for the President to maintain the safety, welfare, and health of our students, faculty, staff, and the public; and to maintain the orderly operations of the University. Nothing in this section is intended to, nor shall be read to, imply an obligation on the part of the President or the University to secure or rent property for any speech, demonstration, or other event, nor is it intended to indicate that any and all speeches, demonstrations, or events can be accommodated.~~

### (3) Disruptive Action

- (a) In the event of disruptive action, University employees and students involved in demonstrations shall identify themselves by presenting appropriate documents such as ID cards when requested to do so by the President or President's designee, and such designee shall identify him/herself when making this request.
- (b) Demonstrators not officially related to FAMU may be directed to leave the campus immediately or be subject to arrest for a violation of the law forbidding the disruption or interference with the administration or functions of an educational institution.
- (c) If the President or his/her designee determines that a demonstration is disrupting normal University operations, or infringing on the rights of other members of the University community, the President or President's designee may:
1. Inform the demonstrators that they are in violation of the University policy and/or in violation of the law and specify the nature of the violation;
  2. Request that the violation cease; and/or

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<sup>†</sup>~~To include "Use Days" at the Civic Center.~~

3. In the event of non-compliance with this request, enlist the assistance of the Campus Police in restoring order and enforcing the law.
- (d) The University's Department of Campus Safety and Security ("Campus Police") has the primary mission of providing safety and security for all members of the University community including students, faculty, staff, and guests. Campus Police has full law enforcement authority to arrest individuals who violate the law on University property. In addition, the Campus Police maintains mutual aid agreements with city and county authorities, and host cities of the University campuses.

Campus Police has the authority and responsibility to:

1. Declare a demonstration to be in violation of law and request all demonstrators to cease and desist, and to disperse and clear the area, or be subject to arrest and/or University disciplinary action.
  2. Arrest any demonstrators observed to be in violation of the law; and
  3. Enlist the assistance of outside law enforcement agencies, if necessary.
- (e) If a demonstration or a protest is **disrupting**, impeding or obstructing normal University operations, and after the demonstrators have been officially notified of the impediment or obstruction, the act will be considered in violation of University policy and can be considered disturbance (breach) of the peace, which is a violation of the law. Within a reasonable length of time, those who fail to disperse may be subject to criminal, civil, as well as University disciplinary action as appropriate. Refer to University [Regulation 2.012, Student Code of Conduct](#), [Regulation 10.111, Disruptive Conduct](#), and [Regulation 1.019, University Code of Conduct](#); and applicable federal, state and local laws for further information.

#### **(4) Students and Employees (Faculty, Staff and Personnel)**

- (a) Students, faculty, staff, and all other personnel who intentionally act to impair, **disrupt**, interfere with, or obstruct the orderly conduct, processes, and functions of the University shall be subject to appropriate disciplinary action by the University authorities. Refer to University [Regulation 2.012, Student Code of Conduct](#), [Regulation 10.111, Disruptive Conduct](#), and [Regulation 1.019, University Code of Conduct](#) for further information.
- ~~(b) Recognized student organizations, individual students, or student groups within the University may hold or conduct demonstrations and protests on designated University property provided that the Dean of Students is notified, in writing, at least 24 hours before the demonstration or protest, and that the meeting does not interfere or obstruct with the orderly processes of the University.~~
- ~~(b) Students, faculty, staff, and all other personnel~~ who participate in marches, protests, picketing, and demonstrations are hereby notified that they will be held accountable individually for any actions that violate the BOG and/or University Regulations and Policies as well as federal, state and local laws. Faculty, staff, and all other personnel shall not participate while on work time.

(c) Students, faculty, or staff of the University may not materially disrupt previously scheduled or reserved activities on campus occurring at the same time.

**(5) Public and Guests**

(a) Members of the public and guests are responsible for their actions on any and all University property and will be held accountable for any violations of law, University Regulations, or Policies, which may include a trespass warning.

**(6) Security**

(a) It is the responsibility of the sponsor, individual, and/or group, including University sponsors, to coordinate security plans with Campus Police prior to the event, and to arrange for and cover costs of security as permitted by law.

(b) Additional duly appointed security officers may also be required depending upon the type of event, facility, and the expected number of individuals to attend. Security officers employed or secured must be approved by Campus Police.

(c) Two weeks prior to the scheduled outside speaker or other event, notice shall be given to Campus Police in order to plan and coordinate for security and safety concerns.

~~(d) 48 hours prior to a demonstration/protest, notice shall be given to Campus Police in order to plan and coordinate for security and safety concerns.~~

**(7) Definitions**

(a) Breach of the peace; disorderly conduct. Section 877.03, of the Florida Statutes, provides "[w]hoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of individuals who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

(b) Campuses (main and satellite campuses) are defined to include all properties and facilities under the guidance, supervision, regulation, or control of the University, or any of its direct support organizations.

(c) Fireworks are defined as, and includes, any combustible or explosive composition or substance or combination of substances, or except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation.

(d) Hate Crimes are criminal offenses that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity. Larceny-theft, simple assault, intimidation, and the destruction, damage, or vandalism of property can also be considered hate crimes.

(e) Solicitation is defined to be any act or event conducted for the purpose of financial or commercial gain to the vendor, individual(s), or organization(s), e.g. handing out promotional leaflets and

placing signs on University property. Please refer to University [Regulation 3.011, Commercial Solicitation](#) for further information.

- (f) Weapon is defined as any item, including, but not limited to metallic knuckles, swords, any dangerous chemical or biological agents, firearms, machine guns, starter guns, BB guns, stun guns, paintball guns, stun guns (Tasers), archery equipment, or any other object which will, is designed to, or may readily be converted to, expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device.

*Specific Authority: Article IX, Section 7, Florida Constitution, Board of Governors Regulation 1.001. History—New 1-2-2018, Amended 7- -18.*