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TO: UW Chancellors
FROM: Jay Rothman
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RE: Guidance on Campus Responses to Protest Activities

With the potential for an increased level of protest activity at the Universities of Wisconsin this fall, it is appropriate that we follow some consistent practices in response to those activities. While the facts and circumstances of specific situations will undoubtedly be different, there are some common baselines that should be considered, particularly given that a response by one university has the potential to impact the other twelve. As a result, there is a need to ensure a reasonable level of consistency on some points among each of the Universities of Wisconsin while simultaneously recognizing the autonomy to which the universities are entitled and the authority of the chancellors to act on behalf of their respective campuses.

The guidelines below are intended to provide chancellors and individual campuses within the Universities of Wisconsin with assistance as they interpret the provisions of Regent Policy Document 4-21 (Commitment to Academic Freedom and Freedom of Expression) (RPD 4-21), and the authorities found under Wis. Admin. Code chs. UWS 17 (Student Non-academic Misconduct Procedures) (UWS Chapter 17) and UWS 18 (Conduct on University Lands) (UWS Chapter 18) regarding protests, encampments, rallies, demonstrations and other assemblies, as well as expected coordination and communication with the Universities of Wisconsin Administration (UWSA) leading up to and during such events. I expect that the guidelines will evolve over time as we continue a dialogue on this subject and as circumstances change.

It also is clear that no set of guidelines will cover every situation, so discretion and judgment will inevitably need to be exercised in any given circumstance. I understand that the chancellors are in the best position to make those determinations on their respective campuses. The following guidelines are provided in that spirit:

- Universities should endeavor to maintain viewpoint neutrality and should avoid making institutional statements on issues not directly related to their core educational mission. For these purposes, an institutional statement is one that is publicly released and is intended to be or could be conceived to be a statement representative of the entire university. UWSA commits to being available on an “on-call basis” to consult with any university on this topic. While the universities will work to maintain viewpoint neutrality as contemplated above, students, faculty, employees and other university stakeholders are entitled (speaking in their individual capacities and not on behalf of the university) to exercise their First Amendment rights to express their views on any such matters, subject to appropriate limitations (e.g., content-neutral time, place and manner restrictions as well as applicable student codes of conduct or employment regulations).

- The universities should continue to ensure that lawful protestors are provided the opportunity to express themselves freely consistent with the principles of the First Amendment and RPD 4-21. Universities are encouraged to continue to strive to create and nurture vibrant marketplaces of ideas in a manner fitting their important educational mission.
- The universities are encouraged to take steps to use protest activity as teaching moments for students as well as all university stakeholders.
- Student codes of conduct should be enforced in connection with protest activity applying normal and customary discretionary authority. As a general matter, “blanket” immunity for violations of such student codes of conduct is not appropriate.
- No chancellor should, on an after-the-fact basis, authorize illegal activities violative of UWS Chapter 17 or UWS Chapter 18. As a general matter, pre-event waivers of UWS Chapter 18 relating to encampments in connection with potential protests are not appropriate.
- Universities should use their best efforts to remain coordinated with the UWSA Office of Public Affairs and Communications regarding communication plans around protest activity. As a general matter, only the chancellor or the chancellor’s designee(s) should be authorized to issue statements on behalf of the campus on these matters, and any such statements should maintain viewpoint neutrality as noted above.
- Appropriate disciplinary action should be taken to address faculty and other instructors who, for example, cancel classes or exams to participate in or act with the intent to facilitate student engagement in protest activity. The foregoing is not, however, intended to limit an instructor’s ability to allow students during regularly scheduled class time to attend a protest as part of a legitimate assignment related to the teaching and focus of the class. For example, a journalism or history class could be “cancelled” to allow students to attend (versus “participate in”) a protest as part of a class assignment or project.
- All other university employees should be subject to appropriate disciplinary action if their participation in a protest occurs during their specified working hours absent an approved leave.
- In the event negotiations occur with any protesting group, the applicable university should provide UWSA with periodic updates on the status of those discussions. Likewise, UWSA should be afforded the opportunity to consult with university leadership on any material agreement with a protesting group that could reasonably be seen to impact comparable situations at other universities prior to such agreement being signed/finalized. UWSA commits to being available on an “on-call basis” to respond promptly to any request for consultation.
- While the final decision rests with the chancellor, UWSA should be notified before significant police action is authorized by any university relative to protest activity other than in the case of an emergency (e.g., a situation in which life/physical safety and/or property damage is threatened) or any other situation in which advance notification is not reasonably practicable. UWSA commits to be available on an “on-call basis” for any such consultation.

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