

BUFFALO STATE COLLEGE

DIRECTORY OF POLICY STATEMENTS

Policy Number: VIII:05:00

Date: July 1, 2004

Subject: Rules for the Maintenance of Public Order

Summary:

It is the policy of the State of New York (University) to comply with legal requirements of NYS Education Law 6430. Accordingly, the Board of Trustees of the State University of New York has adopted written rules (8 NYCRR 535) for the maintenance of public order on University campuses and other campus properties used for educational purposes pursuant to NYS Education Law 6430.

This policy outlines the rules for the maintenance of public order (including prohibited conduct), applicability and communication of the rules, and statements regarding freedom of speech, assembly, picketing and demonstrations on campuses. Campus procedures and penalties for the violation of the rules and enforcement procedures are prescribed.

Policy:

I. Rules for the Maintenance of Public Order

The Board of Trustees of the State University of New York (University) has adopted written rules (8 NYCRR 535) for the maintenance of public order on campuses of the University and other campus properties used for educational purposes pursuant to NYS Education Law 6430.

- A. Prohibited Conduct – No person either singly or in concert with others shall:
1. willfully cause physical injury to another person, nor threaten to do so for the purpose of compelling or inducing such other person to refrain from an act which he or she has a lawful right to do or to do any act which he or she has a lawful right not to do;
 2. physically restrain or detain any other person;
 3. remove anyone from any place where he or she is authorized to remain;
 4. willfully damage or destroy property of the campus or property under its care;
 5. remove property of the campus or property under its care;
 6. use campus property or property in campus's care without authorization;
 7. enter into any private office of an administrative officer, member of the faculty or staff member without implied or explicit permission;
 8. enter into and remain in any campus building or facility for any purpose other than its authorized uses or in such manner as to obstruct its authorized use;
 9. remain in any building or facility after it is closed without authorization;
 10. refuse to leave a campus building or facility after being required to do so by an authorized administrative officer;

11. obstruct the free movement of people and vehicles in any place to which these rules apply;
 12. deliberately disrupt or prevent the peaceful and orderly conduct of classes, lecture, and meetings;
 13. deliberately disrupt or prevent the freedom of any person to express his or her views, including invited speakers;
 14. knowingly have in his or her possession upon the premises to which these rules apply, any rifle, shotgun, pistol, revolver, or other firearm or weapon without the written authorization of the President whether or not a license to possess the weapon has been issued to the person;
 15. willfully incite others to commit any of the acts prohibited in this section with the specific intent to procure them to do so;
 16. take any action, create or participate in the creation of any situation, which recklessly or intentionally endangers the mental or physical health of anyone for the initiation into or affiliation with any organization;
- B. Supplementary Rules – The rules section I.A. of this policy may be supplemented by additional rules for the maintenance of public order but only to the extent that such rules are not inconsistent with those listed here.
1. The additional campus rules must be approved by the Board of Trustees of the State University of New York and filed with the commissioner of education and the Board of Regents within 90 days of adoption by the Board of Trustees.
 - a. The establishment of supplementary rules for the maintenance of public order does not preclude the establishment of student behavior codes by College Councils in accordance with the procedures described in Board of Trustees policy Student Conduct Regulation Guidelines.
 - b. Hereafter, whenever this policy refers to the Rules for the Maintenance of Public Order it shall also be deemed to include any supplementary rules promulgated here under.
- C. Applicability of the Rules – The rules and regulations contained in section I.A. of this policy govern the conduct of students, faculty, all other staff, licensees, invitees and all other persons, whether or not their presence is authorized, upon any University campus to which the rules apply. They also apply to the same individuals with respect to any other premises or property, under the control of the University or University campus, and that are used in teaching, research, administrative service, cultural, recreational, athletic or other programs and activities.
1. Charges against any student for violation of the rules in section I.A. of this policy that result from alleged actions upon the premises of any other campus to which these rules apply shall be heard and determined at the campus where the student is enrolled.
- D. Communication of the Rules – The rules in section I.A. of this policy as well as any approved additional campus rules for the maintenance of public order shall be provided to all students enrolled in the campuses of the University.

1. Campuses shall promptly communicate with all members of the campus community (administration, faculty, staff and students) on issues related to the rules in section I.A. of this policy as well as supplementary rules adopted and approved by the Board of Trustees.
2. To the extent that time and circumstances permit, such communication shall precede the exercise of the authority, discretion and responsibilities granted and imposed by the rules in this policy. Each campus in matters such as these shall employ such procedures and means, formal and informal, as will promote such communication.

E. Freedom of Speech and Assembly; Picketing and Demonstrations.

1. No student, faculty member or other staff member or authorized visitor shall be subject to any limitation or penalty for expressing his or her views or for assembling with others for such purpose.
 - a. peaceful picketing and other orderly demonstrations in public areas of campus grounds and buildings are not subject to interference provided there are no violations of the rules in section I.A. of this policy.
2. In order to provide maximum protection to the participants expressing their freedom of speech and to the campus community, each President shall:
 - a. promulgate procedures appropriate to that campus for provision of reasonable advance notice of the date and time of any planned assembly, picketing or demonstrations upon the grounds of the campus; the proposed location of the assembly or exercise; and the intended purpose;
 - i. the procedures and processes shall be reviewed and revised periodically;
 - ii. the procedures and processes for advance notice shall not be made a condition precedent to any assembly, picketing or demonstration, and;
 - iii. providing advance notice shall not automatically have permission to use a campus facility or building without also following the appropriate processes for obtaining permission to use campus facilities and buildings.

II. Campus Procedures and Penalties for the Violation of the Rules of Maintenance of Public Order

The Board of Trustees of the State University of New York has adopted campus procedures and penalties for the violation of the rules of maintenance of public order on campuses and other campus properties used for educational purposes pursuant to NYS Education Law 6430, as outlined herein.

A. Procedures and Penalties for Different Categories of Individuals.

1. The President shall inform any licensee or invitee who shall violate any provisions of these rules that his or her license or invitation is withdrawn and shall direct him or her to leave the property of the campus. In the event of a failure or refusal to leave the premises the President shall cause the licensee or invitee's ejection from the campus.
2. In the case of any other violator, who is neither a student nor faculty or other staff member, the President shall inform the violator that they are not authorized to remain on the property of the campus and direct them to leave

the premises. In the event of failure or refusal to leave the premises the President shall cause the violator's ejection from the campus's property.

Nothing in this subdivision shall be construed to authorize the presence of anyone at any time prior to such violation nor to affect his or her liability to prosecution for trespass or loitering as prescribed in the penal law.

3. In the case of a student, charges for violation of any of these rules shall be presented and shall be heard and determined in the manner hereinafter provided in section II.3.b. and section II.3.c. of this policy.
 - a. The policy Student Conduct Regulation Guidelines authorized by NYS Education Law 356(3)(g) and codified in 8 NYCRR 500 PROVIDES FOR College Councils to promulgate or review and ratify rules for student conduct subject to supervision of the Board of Trustees of the State University of New York. The rules so established in such local conduct codes are valid only if they are adopted by College Councils in the manner consistent with Trustee policy. The decision to charge a student under such rules in the campus's local conduct code or those rules contained in section I.A. of this policy must be made. Once the choice is made, the campus must completely adhere to and follow the procedures, processes and penalties described for the path elected. A campus cannot charge a student under both the campus local code of conduct and the rules and procedures set forth in this policy.
 - b. Notice, Hearing and Determination of Charges against Students
 - i. Whenever a complaint is made to the President of a violation by a student or students of the rules prescribed in section I.A. of this policy or whenever he or she has knowledge that such a violation may have occurred, he or she shall cause an investigation to be made and the statements of the complainants, if any, and of other persons having knowledge of the facts reduced to writing.
 - ii. If the President is satisfied from such investigation and statements that there are reasonable grounds to believe that there has been such a violation, he or she shall prepare or cause to be prepared charges against the student or students alleged to have committed such violation.
 - iii. The charges shall state the specific offense and section designation of the offense's prohibition and shall specify the ultimate facts alleged to constitute the offense. Such charges shall be in writing and shall be served on the student or students named therein by delivering the charges to the student or students personally, if possible, or, if not, by mailing a copy of such charges by registered mail to the student or students home address or addresses, if different.
 - iv. The notice of charges so served shall fix a date for a hearing of the charges not less than 10 or more than 15 days from the date of service which shall be the date of mailing where necessary to effect service by mail.
 - v. Failure to appear in response to the charges on the date fixed for the hearing, unless there has been a continuance for good cause shown, shall be deemed to be admission of the facts stated in such charges and shall warrant such action as may then be appropriate. Before taking such action, the hearing committee, referred to section II.3.c. or this policy, shall give notice to any student, who has failed to appear, in the manner prescribed in section II.3.b.iv. of this policy, of its proposed findings and recommendation to be submitted to the President and so shall submit such findings and

recommendations 10 days thereafter unless the student has meanwhile shown good cause for his or her failure to appear, in which case the hearing shall be rescheduled.

- vi. Upon demand at any time before or at the hearing, the student charged or his or her duly designated representative shall be furnished a copy of the statements taken by the President in relation to such charges and the names of other witnesses who will be produced at the hearing in support of the charges. The provision of the witness names and statements shall not preclude the testimony of witnesses who were unknown at the time of such demand.
 - vii. The President may, upon the service of charges, suspend the student named therein, from all or any part of the campus's premises or facilities pending the hearing and determination thereof, whenever, in the President's judgment, the continued presence of such student would constitute a clear danger to himself or herself or to the safety of persons or property on the premises of the campus or would pose an immediate threat of disruptive interference with the normal conduct of the campus's activities and functions; provided, however, that the President shall grant an immediate hearing on request of any student so suspended with respect to the basis for such suspension.
- c. The Hearing Committee and its Procedures for Charges against students
- i. There shall be constituted at each campus a hearing committee to hear charges against students of violation of the rules for the maintenance of public order entailed to in section I.A. of this policy. Such committee shall consist of three members of the administrative staff and three members of the faculty, the members named by the President. The President shall appoint a chairperson of the committee.
 - ii. Each such member shall serve until his or her successor or replacement has been designated.
 - iii. No member of the committee shall serve in any case where he or she is a witness or is or has been directly involved in the events upon which the charges are based. In order to provide for cases where there may be such a disqualification and for cases of absence or disability, the President shall designate an alternate member of the administrative staff and an alternate member of the faculty, and the President's principal designees shall designate an alternate student member, to serve in such cases.
 - iv. Any five members of the committee may conduct hearings called by the chairperson and make findings and recommendations as hereinafter provided. At any campus where the President determines that the number of hearings which will be required to be held is, or may be, so great that they cannot otherwise be disposed of with reasonable speed, he or she may determine that the hearing committee shall consist of six members of the administrative staff and six members of the faculty to be designated by him or her and six students who shall be designated by members designated by him or her. In such event the President shall designate one of such members as chairperson who may divide the membership of the committee into three divisions each to consist of two members of the administrative staff, two faculty members and two students and may assign charges among such divisions for hearing. Any four members of each such division may conduct hearings and make recommendations as hereinafter provided.

- v. The hearing committee shall not be bound by the technical rules of evidence but may hear or receive any testimony or evidence which is relevant and material to the issues presented by the charges and which will contribute to a full and fair consideration thereof and determination thereon.
 - vi. A student against whom the charges are made may appear by and with representatives of his or her choice. The charged student but not his or her representatives or witnesses may confront and examine witnesses against him or her and may produce witnesses and documentary evidence in their own behalf.
 - vii. There may be present at the hearing: the student charged and his or her representatives and witnesses; other witnesses; representatives of the campus's administration; and, unless the student shall request a closed hearing, such other members of the campus community or other persons, or both, as may be admitted by the hearing committee.
 - viii. A transcript of the proceedings shall be made.
 - ix. Within 20 days after the close of a hearing, the hearing committee shall submit a report of its findings of fact and recommendations for disposition of the charges to the President together with a transcript of the proceedings, and shall at the same time transmit a copy of its report to the student concerned or his or her representative. Within 10 days thereafter the President shall make his or her determination thereon.
 - x. Final authority to dismiss the charges or to determine the guilt of those against whom they are made and to expel, suspend, or otherwise discipline them shall be vested in the President. If the President shall reject the findings of the hearing committee in whole or in part, he or she shall make new findings which must be based on substantial evidence in the record and shall include them in the notice of the final determination which shall be served upon the student or students with respect to whom it is made.
- d. Penalties – Students found to be responsible for a violation of the rules of public order shall be subject to expulsion or such lesser disciplinary action as the facts of the case may warrant, including suspension, probation, loss of privileges, reprimand or warning.
4. In the case of a faculty member having a continuing or term appointment, charges of misconduct in violation of these rules shall be made, heard and determined in accordance with title D of Part 338 of the Policies of the Board of Trustees (see UUP Bargaining Agreement Article 19).
- a. Penalties – If a faculty member having a continuing or term appointment, is found guilty of misconduct through violations of the rules in section I.A. of this policy, he or she may be subject to dismissal or termination of his or her employment or such lesser disciplinary action as the facts may warrant including suspension without pay or censure.
5. In the case of any staff member who holds a position in the classified civil service, described in NYS Civil Service Law 75, charges of misconduct in violation of these rules shall be made, heard and determined as prescribed in that section.

6. Any other faculty or staff member who shall violate any provision of these rules be dismissed, suspended without pay, or censured by appointing authority as prescribed in the Policies of the Board of Trustees.
7. Organizations which operate upon any campus of the University or upon the property of any University campus used for educational purposes shall be prohibited from authorizing the conduct described in section I.A. 16. of this policy.
 - a. The President at each campus shall be responsible for the enforcement of this section.
 - b. Whenever the President has determined on the basis of a complaint or personal knowledge that there is reasonable ground to believe that there has been a violation of section I.A.16. of this policy by any organization, the President shall prepare or cause to be prepared written charges against the organization, which shall state the rule, and section violated and shall specify the ultimate facts alleged to constitute such violation.
 - c. Such written charges shall be served upon the principal officer of the organization by registered or certified mail, return receipt requested, to the organization's current address and shall be accompanied by a notice that the organization may respond in writing to the charges within 10 days of receipt of said notice. The notice of the charge so served shall include a statement that the failure to submit a response within 10 days shall be deemed to be an admission of the facts stated in such charges and shall warrant the imposition of the penalty described in section II.A.7.g. of this policy. The response shall be submitted to the President and shall constitute the formal denial or affirmation of the ultimate facts alleged in the charges. The President may allow an extension of the 10-day response period.
 - d. Upon written request, by an authorized representative of the organization, the President shall provide the representative organization an opportunity for a hearing. A hearing panel designated by the President shall hear or receive any testimony or evidence which is relevant and material to the issues presented by the charge and which will contribute to a full and fair consideration thereof and determination thereon. The organization's representative may confront and examine witnesses against and may produce witnesses and documentary evidence on its behalf.
 - e. The hearing panel shall submit written findings of fact and recommendations for disposition of the charge to the President within 20 days after the close of the hearing.
 - f. Final authority to dismiss the charges or to make a final recommendation shall be vested in the President. Notice of the decision shall be in writing; shall include the reasons supporting such decision; and shall be served on the principal officer of the organization by mail in the manner described in section II.A.7.c. of this policy within a reasonable time after such decision is made.
 - g. Any organization, which authorizes the prohibited conduct described in section I.A.16. of this policy, shall be subject to the rescission of permission to operate upon the campus or upon the property of the campus. The penalty provided in this subdivision shall be in addition to any penalty which may be imposed pursuant to the penal law and any other provision of law, or to any penalty to which an individual may be subject pursuant to this policy or the student code of conduct of the campus.

III. Mandates for Enforcement of the Rules for Maintenance of Public Order

- A. The Board of Trustees of the State University of New York has adopted enforcement policies for the rules and regulations for the maintenance of public order on campuses and other campus properties used for educational purposes pursuant to NYS Education Law 6430 as outlined herein.

Enforcement Program

1. The President shall be responsible for the enforcement of the rules in I.A. of this policy and he or she may designate to other administrative officers authorization to take action in accordance with such rules when required or appropriate to carry them into effect.
2. It is not intended by any provisions herein to curtail the right of students, faculty or staff to be heard upon any matter affecting them in their relations with the campus. In the case of any apparent violation of the rules in section I.A. of this policy by such persons, which, in the judgment of the President, does not pose any immediate threat of injury to person or property, the President may make reasonable effort to learn the cause of the conduct in question. They may make a reasonable effort to persuade those engaged therein to desist and resort to permissible methods for the resolution of any issues which may be presented. In doing so, the President shall warn such persons of the consequences of persistence in the prohibited conduct, including their ejection from any premises of the campus where their continued presence and conduct is in violation of these rules.
3. In any case where violation of the rules in section I.A. of this policy does not cease after such warning and in other cases of willful violation of such rules, the President shall cause the ejection of the violator from any premises, which he or she occupies in such violation. The President shall initiate disciplinary action as provided in section II or this policy.
4. The President may apply to the public authorities for any aid, which he or she deems necessary in causing the ejection of any violator of these rules.
5. The President may request the University counsel to apply to any court of appropriate jurisdiction to restrain the violation or threatened violation of such rules.