

Introduction

The Board of Regents received two comments from the public regarding the proposed modifications to UWS Chapter 18. Both comments were in support of the proposed modifications and described the specific changes that the commenters believed should be made.

FIRE Comment

The first comment the Board received was from Laura Beltz on behalf of the free speech advocacy group the Foundation for Individual Rights in Education (FIRE). FIRE first noted its longstanding objection to the current provisions in UWS Chapter 18 regarding harassment in electronic communications and further stated that communications that use “lewd” or “profane” language are almost always protected by the First Amendment. As a result, FIRE supported the proposed modifications to UWS 18, and recommended specific language.

FIRE’s first recommendation was to define “harassment” as behavior that is “discriminatory, targeted, and ‘so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.’” This is how the Supreme Court defined hostile environment harassment in *Davis v. Monroe County Board of Education*, 526 U.S. 629, 651 (1999), and so FIRE believes this should be the applicable standard. Second, because the proposed changes to UWS 18 contemplate banning communications that use “truly threatening or intimidating language,” FIRE suggested that UWS define “true threats” as “those statements where the

speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” FIRE derived this proposed standard from the Supreme Court’s decision in *Virginia v. Black*, 538 U.S. 343, 359 (2003).

Finally, FIRE evaluated the impact that adopting all of these additional changes would have for the UW System. Currently FIRE rates UWS Chapter 18 as a “yellow light” policy, meaning that FIRE believes it to be arguably unconstitutional based on its “vague and overbroad restrictions.” FIRE stated that adopting its suggested change—in addition to the already-proposed modifications—would cause FIRE to rate UWS Chapter 18 as a “green light” policy, meaning that it is constitutional. If FIRE rated UWS Chapter 18 as a “green light” policy, the University of Wisconsin-Madison would earn an overall green light rating, which is a distinction that only fifty institutions currently have. FIRE did not clarify if the other institutions in the UW System would also receive an overall green light rating.

Tara Sellen Comment

The second comment the Board received was from a student at the University of Wisconsin-Green Bay named Tara Sellen. Ms. Sellen’s comment echoed much of the concerns that FIRE had with the current UWS Chapter 18, saying that the current policy stifles free speech. Ms. Sellen suggested that UWS 18.11 be modified to read “No person may, with intent to harass, annoy or offend another person, send a message to the person on an electronic mail or other computerized communication system and in that message use any obscene, lewd or profane language or suggest any lewd or lascivious act that

constitutes harassment, defined as conduct that is so severe, pervasive, and objectively offensive that the person is effectively denied equal access to institutional resources and opportunities." Similar to FIRE's proposal, Ms. Sellen's proposed language would adopt the Supreme Court's standard from *Davis v. Monroe County Board of Education*.