



## **AAUP Statement on the Kansas Board of Regents Social Media Policy**

December 20, 2013

On December 18, the Kansas Board of Regents adopted new rules under which faculty and other employees may be suspended, dismissed or terminated from employment for “improper use of social media.”

The policy defines social media as “any facility for online publication and commentary” and covers but is “not limited to blogs, wikis, and social networking sites such as Facebook, LinkedIn, Twitter, Flickr, and YouTube.” This definition could arguably include any message that appears electronically, including email and online periodicals and books. The policy defines “improper use of social media” in extremely broad terms, including communications made “pursuant to ... official duties” that are “contrary to the best interest of the university,” as well as communication that “impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker’s official duties, interferes with the regular operation of the university, or otherwise adversely affects the university’s ability to efficiently provide services.”

According to media accounts, in voting to adopt the policy the board ignored calls by elected faculty leaders to delay a vote so that there could be more discussion of its ramifications. Although the policy instructs university presidents to “balance the interest of the university in promoting the efficiency of the public services it performs through its employees against the employee’s right as a citizen to speak on matters of public concern,” it provides no clear guidance as to how such balance might be achieved. The policy does not seem to distinguish between faculty use of social media in a professional capacity (e.g., to communicate with other scholars; promote research; or engage in pedagogical exercises) and use in a personal capacity (e.g., to communicate with friends and express personal opinions about political, social or cultural controversies).

The American Association of University Professors (AAUP) condemns this policy as a gross violation of the fundamental principles of academic freedom that have been a cornerstone of American higher education for nearly a century. Not only faculty, but students and the general public benefit from the free exchange of information and ideas that are at the heart of the academic enterprise, whether conducted orally, in print, or electronically. We urge the Regents to revisit this decision, to repeal this ill-advised policy, and to work with elected faculty representatives to develop a social media policy that protects both the legitimate interest of the university in security and efficiency as well as the paramount interest of faculty and students in the unfettered exchange of ideas and information.

In our recently published draft report on “Academic Freedom and Electronic Communications” the AAUP recommended “that each institution work with its faculty to develop policies governing the use of social media. Any such policy must recognize that social media can be used to make extramural utterances, which are protected under principles of academic freedom.” With respect to extramural speech, AAUP has previously declared, “Professors should . . . have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint, save in response to fundamental violations of professional ethics or statements that suggest disciplinary incompetence.” This principle “fully applies in the realm of electronic communications, including social media.”

Unfortunately, the Kansas Regents’ policy fails on both counts. It was developed without faculty participation -- indeed, in apparent defiance of faculty appeals for consultation -- and makes a mockery of faculty members’ rights to speak as public citizens on matters of public concern, including speech about university affairs. Under this policy, if a faculty member disagrees with an administration policy and as part of official duties serving on a university committee speaks out against it, this could lead to termination. Under this policy a faculty member who dissents from university policies or simply disagrees with colleagues online may also be terminated for impairing “discipline” or “harmony,” vague criteria that all but invite gross abuse.

According to media accounts, Regents Chairman Fred Logan said the policy tracks language in U.S. Supreme Court decisions on First Amendment rights and was deemed constitutional by the Kansas Attorney

General's office. But the policy seeks to apply to faculty expression the principles of the Court's 2006 decision in *Garcetti v. Ceballos*, in which the justices explicitly stated that the decision need not apply to scholarship and teaching in higher education and which left intact all public employees' rights to First Amendment protection for speech as citizens on matters of public concern. But even if the policy is Constitutional, that hardly means it is desirable. If unopposed and unmodified, it will surely yield multiple deleterious consequences for public higher education in Kansas. As University of Kansas provost Jeff Vitter warned the Regents, "You are potentially walking into a dangerous situation."

In a communication to faculty on December 19, University of Kansas chancellor Bernadette Gray-Little wrote:

Application of this policy falls to the individual universities. As is the case with other Regents policies governing faculty and staff rights and responsibilities, we will work closely with university governance on how to apply this policy at KU in a way that respects our university's core values and beliefs, as well as our rights and responsibilities as public university employees.

During discussion of the policy, board members made clear this policy is to be part of the ongoing conversation among the various stakeholder groups involved in the issue. Freedom of thought, inquiry and expression are central to the success of a university. We also know that as employees of a public flagship university, our words and actions are closely scrutinized. Indeed, a few weeks ago AAUP released a draft report on the challenges faced by the academy as we adopt these new social media tools.

While we certainly welcome the chancellor's reference to our report, we remain concerned that this "ongoing conversation" may well become one-sided both at Kansas and the other institutions in the state's public higher education system. And nothing in this statement suggests that university officials will seek the policy's repeal or replacement. Indeed, even before this policy was adopted the university suspended a faculty member for a controversial tweet about gun control that clearly should have enjoyed the protection of academic freedom. On December 5, even before this policy was promulgated, the university administration instructed faculty not to engage with state legislators without "checking in" with the administration. Under

the new policy, this might apply even to an email a professor as a citizen addressed to his own elected representative. We have also been told that the provost has in the past warned some faculty members not to criticize the governor for fear it might hurt the university, suggesting that Facebook pages with such political expression linked to university email accounts could be censored. Under the new policy, “improper” expression on such pages could result in termination regardless of whether the page is linked to a university account.

We cannot help but agree with the view of Kansas State University professor Phil Nel, who wrote on his blog: “I understand why the Kansas Board of Regents would want to encourage responsible use of social media. However, I find it harder to understand how a body that oversees an educational system designed to foster free and open exchanges of ideas would seek to impede free and open exchanges of ideas.” Unfortunately, as Nel acknowledges, that statement might itself, under this new policy, lead to his termination. Indeed, faculty members at Kansas universities face a truly frightening prospect. If they seek to communicate opposition to this policy -- or to any other policy -- via electronic media, under the policy itself they risk being suspended or terminated for acting “contrary to the best interests of the University,” or for “impairing discipline by superiors [administrators] or harmony among co-workers.”

Defending the policy, one state legislator said, “Universities need the flexibility to address the actions of staff that tarnish their institution’s image.” But nothing could tarnish the image of universities in Kansas more than adoption of ill-considered policies like this one, which undermine the very basis of education and scholarship and threaten the right of Kansas students to the best possible education. We therefore call on the Kansas Board of Regents to repeal this social media policy and work with faculty representatives to craft a new social media policy that respects academic freedom and the values that have made the American higher education system the envy of the world.