

October 15, 2015

I'll begin by stating that, in my opinion, UNM's policies are constitutional and comply with the First Amendment.

I say this because all UNM policies go through a review process that includes an OUC attorney examining them for First Amendment implications. This is because the OUC understands the University's important role as a marketplace of ideas and that even speech which is highly offensive to some deserves protection in an academic setting, unless it falls within one of the recognized limitations on free speech, such as speech that is likely to incite or provoke immediate bodily harm or is prohibited under federal law, such as sexually harassing speech. Court decisions interpreting the right of free expression under the First Amendment are used to guide the attorney assigned to the policy review.

Because First Amendment jurisprudence is not stagnant but is constantly evolving and being modified and because new interpretations of federal law and regulations do occur, from time to time UNM policies are reviewed and revised to reflect the most current understanding of the application of the First Amendment. An example of this is the current policy prohibiting sexual harassment which went through such a process over the last two years.

For these reasons, in my opinion, the UNM's policies pass constitutional muster and comply with the First Amendment.

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