

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF PROPOSED AMENDMENTS TO REGULATION

REGULATION NO.: FIU-110
REGULATION TITLE: Demonstrations

SUMMARY: In order to reflect the alignment of the regulation with the provisions of the Florida Campus Free Expression Act (“CFEA”), which became effective on March 11, 2018, the title of this regulation is changing from “Demonstrations” to “Expressive Activities in Outdoor Areas of Campus”. It is also being updated to remove all references to “Free Assembly Areas” since the CFEA prohibits the creation of such zones. The revised regulation defines what expressive activities are, during what hours certain types of expressive activities are not allowed to take place on campus, and the process to request the use of amplification in expressive activities, and appeals of the denials of such requests.

TEXT OF REGULATION: The full text of the Proposed Amendments to Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu/>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, (305) 348-2103.

AUTHORITY: Board of Governors Regulation 1.001(7)(g)

NAME OF PERSON INITIATING PROPOSED AMENDMENTS TO REGULATION: Carlos B. Castillo, General Counsel

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED AMENDMENTS TO REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED AMENDMENTS TO REGULATION: Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu Phone: (305) 348-2103, Fax: (305) 348-3272.

DATE OF PUBLICATION: May 4, 2018

THE FULL TEXT OF THE PROPOSED AMENDMENTS TO REGULATION IS PROVIDED BELOW:

FIU-110 ~~Demonstrations~~ Expressive Activities in Outdoor Areas on Campus.

1. Definitions: For purposes of this regulation, the following definitions shall apply:
 - a. ~~Demonstrations:~~ Expressive Activities: Expressive activities are activities such as assemblies, exercises of free speech, protests, parades, marches, and picketing protected under the First Amendment to the United States Constitution and Article 1 of the Florida Constitution. Expressive activity does not, for purposes of this regulation, include commercial speech.
 - b. Outdoor areas of campus: Outdoor areas of campus are generally accessible areas of the University's Modesto A. Maidique Campus and Biscayne Bay Campus in which members of the campus community are commonly allowed, including grassy areas, walkways, or other similar common areas. The term does not include outdoor areas of campus to which access is restricted. Restricted areas include: areas designated by the President or the President's designee either temporarily or permanently as restricted, parking facilities/areas, athletic or recreational facilities, fields and stadiums. Furthermore, outdoor areas of campus do not include any buildings or other indoor facilities.
 - ~~b.c.~~ University Community: -The University Community consists of Florida International University faculty, staff and students.
 - ~~e.d.~~ University Organization(s):- University Organization(s) are recognized University faculty and staff organizations and registered University student organizations. This definition excludes individuals, groups, and/or organizations sponsored by or affiliated with University Organization(s).
2. Subject to the terms of this regulation and related University regulations: expressive activities are permitted in outdoor areas of campus so long as the conduct is lawful and does not materially and substantially disrupt the normal operations of the University or materially and substantially infringe upon the rights of others.
 - ~~a.~~ the University Community and University Organizations may use University grounds to conduct demonstrations, except as specified below.
 - ~~b.~~ non University persons and non University Organizations may conduct demonstrations in those areas of the University designated as "Free Assembly Areas," as specified below.
- ~~3.~~ In no event shall campus buildings, indoor facilities, parking facilities/areas, athletic or recreational facilities, fields and/or stadiums be used for demonstrations unless specifically permitted in writing by the Vice President of Student Affairs or his or her designee.
- ~~4.~~ 3. Subject to the other provisions of this regulation, including sections (8), (9) and (10), the University Community and University Organizations Sections 5, 6 and 7, persons may organize, conduct, or participate in demonstrations on University grounds expressive activities in outdoor areas of campus, except for grounds

within fifty (50) feet of the following (unless a greater distance is required by applicable laws):

- a. a. University residential facilities;
- b. b. Buildings, facilities, or areas where such use could impair entrance to or exit from the building, facility or area, or interfere with activities therein;
- c. c. The Children's Creative Learning Center;
- d. d. Buildings wherein child care services, elderly care services and health care services including, without limitation, mental health and substance abuse services, take place; and
- e. The FIU Libraries.

~~5. Subject to University regulations, policies and procedures, non-University persons and non-University Organizations are limited to the "Free Assembly Areas" listed below for purposes of organizing and conducting demonstrations on University grounds:~~

- ~~a. The Fountain Area located immediately north of the Charles Perry Building on the Modesto A. Maidique Campus;~~
- ~~b. The portion of the open grassy area directly north of the Graham Center Ballrooms entrance, east of the sidewalk leading from the Graham Center to Owa Ehan and west of the sidewalk leading from the Graham Center to Chemistry and Physics;~~
- ~~c. The portion of the grassy open area directly north of the Graham Center parking lot, east of the sidewalk leading from the Graham Center to Chemistry and Physics and south of the Health & Life Sciences I Building;~~
- ~~d. The open grassy area directly west of the Gold Parking Garage, east of the MARC building, south of the covered walkway between the Gold Parking Garage and the Primera Casa building, and north of Southwest 17th Street;~~
- ~~e. The paved area immediately north of Academic Building I at the Biscayne Bay Campus; and,~~
- ~~f. The grassy area north of the Wolfe University Center at the Biscayne Bay Campus.~~

~~6. The Free Assembly Areas may also be used for demonstrations by the University Community and University Organizations. The use of these Free Assembly Areas is subject to availability. Free Assembly Areas will be provided on the University campuses, provided the University reserves the right to re-locate Free Assembly Areas from time to time when determined to be in the best interest of the University, including, but not limited to, accommodating development of new buildings on the University campus and accommodating the needs of the University's educational and other programs.~~

7.4. Events on the University's campuses occasionally draw attention from the University Community and general public and demonstrationsexpressive activities may result. Where necessary to ensure crowd control and the safety and security of persons on campus and to ensure an opportunity for demonstratorspersons

engaging in expressive activities to communicate regarding the event(s), the University may designate specific areas situated in close proximity to the event-for the expressive activity. On these occasions, demonstrations expressive activities related to the event(s) must be conducted in the areas specified by the University.

~~8.5.~~ All persons and organizations conducting demonstrations on University grounds expressive activities in outdoor areas of campus must abide by the general requirement that no such activities may materially and substantially interfere with, disrupt, or impede the normal operations of the University or otherwise materially and substantially interfere with or infringe on the rights of others. Interference Material and substantial interference with, disruption of, or impeding the normal operations of the University and/or interference with the rights of others includes, without limitation:

- ~~a.~~ a. obstruction of vehicular, bicycle, pedestrian, or other traffic;
- ~~b.~~ b. obstruction of entrances or exits to buildings or driveways or impeding entry to or exit from any building or parking lot or vehicular path;
- ~~c.~~ c. obstruction or disruption of any educational, research, or administrative activities inside or outside any building;
- ~~d.~~ d. violation of a law, rule, regulation, or ordinance; violation of Board of Governors regulations, or violation of a University regulation, policy and/or procedure;
- ~~e.~~ e. posing an environmental hazard or a health or safety threat to the University, the University Community, University Organizations, or the general public;
- f. interference with or precluding a scheduled speaker from being heard;
- g. threatening persons or using fighting words which are those words that by their mere utterance inflict violence or would tend to incite a reasonable person to violence or other breach of peace;
- h. damaging property of the University ~~or on University grounds~~; or
- i. utilizing sound amplification, including bullhorns, except as approved in advance in writing as set forth below and within sound limits that will not disrupt normal University operations.

~~9.6.~~ No protests, parades, marches, picketing, demonstrations, and other similar expressive activities are permitted on the University campuses between the hours of 10:00 pm and 8:00 am.

~~10.7.~~

All persons and organizations conducting demonstrations on University grounds expressive activities in outdoor areas of campus, must comply with all applicable federal, state and local laws, all Board of Governors regulations, and all other applicable University regulations, policies and/or procedures. –The University recognizes, respects and values the right of individuals to express

themselves on its campuses. -While civil disobedience sometimes plays a role in ~~demonstrations~~expressive activities, civil disobedience involves a refusal to comply with laws or regulations as a form of protest.- The failure to comply with law or regulation when exercising rights under this regulation shall be grounds for the University to take appropriate action as described in Sections ~~11, 12~~8, 9 and ~~13~~10.

~~11~~8.

~~f a demonstration is~~If expressive activity is materially and substantially disrupting normal University operations or infringing on the rights of others contrary to the requirements of this regulation, the President or ~~his or her designated representative~~ the President's designee has authority to:

- a. identify himself or herself to the ~~demonstrators~~persons engaging in expressive activity in an outdoor area of campus, providing the person's name and official position;
- b. inform the ~~demonstrators~~persons engaging in expressive activity in an outdoor area of campus that they are in violation of the University regulation(s), policies and/or procedures, Board of Governors regulations or applicable law and specify the nature of the violation;
- c. request that the violation cease (which could include relocation of the activity to avoid the disruption); and/or
- d. in the event of non-compliance with this request, enlist the assistance of the Florida International University Police Department ~~of Public Safety~~ and/or law enforcement personnel in restoring order and enforcing the law.

~~12~~9. In the event of a material and substantial disruption, the Florida International University Police Department ~~of Public Safety~~ or other law enforcement personnel has authority to:

- a. require that any individual identify himself or herself by presenting appropriate documentation such as identification cards;
- b. declare ~~a demonstration~~expressive activity to be disruptive, disorderly, or in violation of the University regulation or law and request all participants to cease and desist and to disperse and clear the area, including leaving the University grounds immediately, or be subject to arrest;
- c. arrest any participants observed to be in violation of applicable federal, state or local laws; and/or
- d. enlist the assistance of outside law enforcement agencies, as may be necessary.

Nothing contained in this regulation is intended to limit or restrict the authority of the Florida International University Police Department ~~of Public Safety~~ or other law enforcement personnel under applicable laws or University regulations, policies and procedures.

~~13~~10. University Community members -or University Organizations who intentionally act to materially and substantially impair, interfere with, or obstruct

the orderly conduct, processes, and functions of the University or materially and substantially interfere with, or infringe upon, the rights of others, are subject to appropriate disciplinary action by the University authorities.

14.11. Amplification equipment is not allowed except as otherwise is provided herein.

In order to coordinate University events and other activities taking place ~~on~~ University grounds in outdoor areas of campus, with due consideration for the health and safety of all individuals, any person or organization who intends to ~~demonstrate on University grounds~~ engage in an expressive activity in outdoor areas of campus must notify the University at least two (2) business days in advance if: ~~(a) the demonstration event shall involve a group consisting of more than 30 participants; or (b) if~~ sound amplification equipment shall be used. All permitted use of amplification equipment shall maintain a reasonable sound level which meets the communication needs of the event without excessive noise penetration to adjacent areas.

Notification must be provided on the designated notification form, which is available in any one of the following Offices.- The notification must be submitted in writing to the designated University representative noted below at the applicable University ~~Campus~~ campus:

Modesto A. Maidique Campus:— Attention: Vice President of Student Affairs
or ~~his or her~~ designee
11200 S.W. 8th Street, Graham Center Room 4215GC219
Miami, Florida 33199

Biscayne Bay Campus: —Attention: Vice Provost of the _____ Campus
Biscayne Bay or ~~his or her~~ designee
_____3000
N.E. 151st Street, Library Room 315
_____North
Miami, Florida 33181

The designated University representative at each applicable University ~~Campus~~ campus may deny the referenced amplification request ~~to demonstrate on the University grounds~~ within two (2) business days after receipt of the notice for the following reasons:

- a. The proposed use ~~or activity of~~ amplification would materially and substantially interfere with the normal operations of the University and/or interfere with the rights of others due to one of the reasons enumerated in ~~subsection 8~~ Section 5 above;
- b. The proposed use ~~or activity of~~ amplification would conflict with previously planned programs, activities and/or events organized and conducted by the University and/or University Organizations and previously scheduled for the same time and place; ~~and~~.

~~e. A fully executed prior notification for the same time and place has been received and processed granting the prior requestor the authorization to use the area.~~

~~15.~~12. Any person or organization that is denied permission ~~to demonstrate~~for a proposed use of amplification may appeal such denial in writing to the Provost or ~~his or her~~the Provost's designee. - The appeal must be made within two (2) business days after receipt of a written denial from the University's designated representative. -The Provost's or ~~his or her~~the Provost's designee's decision on this matter shall be final.

13. The University may prohibit the carrying of certain items during expressive activities if the carrying of such items may increase safety and security risks of the persons engaged in the expressive activities or otherwise on campus.

14. Nothing in this regulation limits the authority of the University to allow areas of its campuses to be scheduled or reserved in advance for the use of the University or of a specific person or organization; the outdoor areas of campus being available on a space-available basis for expressive activities.

Specific Authority Section 1004.097, Fla. Stat. (2018) (the Campus Free Expression Act); Board of Governors Resolution dated 1-07-03 History: New 12-23-76, Amended 8-7-83, Formerly 6C8-5.008, Amended 9-12-08, 11-14-08, 4-8-14.