

## **MEMORANDUM**

**TO: DANIELLE DESAWAL**

**FROM: ANTHONY PRATHER – GENERAL COUNSEL – INDIANA UNIVERSITY**

**RE: BOARD OF TRUSTEES DRAFT EXPRESSIVE ACTIVITY POLICY**

**DATE: JUNE 21, 2024**

Dear Ms. Desawal,

I write to you today to request your review and comment on the attached Board of Trustees Draft Expressive Activity Policy.

### **Background and Objective**

A core value of Indiana University is our commitment to the rights of free speech and peaceful assembly, and the closely related principles of academic freedom. Indeed, Indiana University, and especially our flagship campus in Bloomington, has a long and cherished tradition of free speech and robust debate. Maintaining that tradition, along with a determination to honor our obligations under the U.S. Constitution and the laws of Indiana regarding the rights of free speech and peaceful assembly, is the guiding principle of this Draft Expressive Activity Policy.

Consistent with that core value, Indiana University also has a longstanding commitment to compliance with its obligations under Title VI of the Civil Rights Act of 1964 to prohibit unlawful discrimination and harassment, to avoiding disruption to the fulfillment of its mission, and to protecting the safety and well-being of everyone on our campuses. Indiana University is also committed to ensuring that the speech and assembly rights of all members of our community are protected through the administration of reasonable and viewpoint-neutral time, place, and manner restrictions that ensure no one group or viewpoint can exclude or interfere with the rights of others.

These values and commitments are reflected in Indiana University's current policy regarding free speech and the First Amendment to the U.S. Constitution, [UA-14](#), and in an older [policy](#) – originating in an [action by the Board of Trustees](#) in 1969 – that established Dunn Meadow on the Bloomington campus as the university's "assembly ground." More recently, however, Indiana law made clear that free speech and assembly rights could not be limited to a single designated area, and, in any event, the growth of Indiana University to encompass multiple campuses increasingly made the designation of a single "assembly ground" impractical.

Nevertheless, the policy governing the assembly ground remained unchanged until April 2024, when, employing the “ad hoc committee” mechanism provided for in the Dunn Meadow policy, Indiana University made clear that structures – which were not explicitly addressed in the 1969 Trustees’ action – could not be maintained in Dunn Meadow without prior approval. The controversy over the events at Dunn Meadow -- together with a change in Indiana law that requires public universities to open *all* outdoor areas of campus to expressive activities, the need to adopt a uniform policy across all Indiana University campuses, and other developments -- led Indiana University to undertake a thorough review to determine whether revisions or additions to its policies are needed to provide greater clarity to members of our community and to continue to fulfill the objectives described above.

### **The Policy Development Process and Request for Feedback**

Earlier this spring, my office was tasked with undertaking that review and, if necessary, with drafting a new policy applicable to all Indiana University campuses. As a result of the passage of an Indiana law that requires public universities to open all outdoor areas of campus to expressive activities, the passage of an Indiana law that grants the Boards of Trustees of all Indiana public universities authority to use all lawful means to prevent unlawful or objectionable acts, and the need to address in 2024 issues associated with Expressive Activities that were not considered in 1969 or in subsequent reports, my office drafted the attached Board of Trustees Draft Expressive Activity Policy. Prior to preparing the Draft Policy, we received feedback from the IU Bloomington campus (BFC Executive Committee and students), IU Indianapolis campus (staff, faculty, and students), and the Regional Campuses (faculty, staff, and students). Feedback had been sought specifically with respect to two questions:

- What are the principles that should guide us as Indiana University considers expression of free speech on all of our campuses?
- What should the university do to ensure our university communities follow the policies and procedures?

This feedback was appreciated and helped inform our drafting of the Draft Policy.

The Trustees would like additional feedback from stakeholders, including faculty, students, and staff, regarding the proposed Expressive Activity Policy. Without in any way attempting to limit the range of issues that feedback may address, I do ask that all submissions address the following two questions:

- Are there any significant items missing from this Draft Policy?
- Is there any additional input you would like the Trustees to consider?

I ask that each of you consult with your constituents and provide one response back to me no later than July 15. I apologize for the short amount of time for you to provide feedback. However, that deadline date is necessary as the Board of Trustees has made the decision to have an Expressive Activity Policy in place no later than August 1, 2024. Please note that in the Spring of 2025, President Whitten will lead an effort to receive input from Indiana University Community Members regarding opportunities to enhance the efficacy of the Expressive Activity Policy.

## Summary of the Draft Policy

This Policy provides the time, place, and manner guidelines for Expressive Activity on property owned by Indiana University. While recognizing the historic significance of Dunn Meadow to the Bloomington campus and Indiana University as a whole as a place associated with free expression, the policy also recognizes that there are many spaces across Indiana University where Expressive Activity may take place and provides a uniform policy to govern it. Its provisions include (but are not limited to):

- *Definitions of Key Terms:* The Draft Policy provides definitions for “Expressive Activity,” “Substantial Disruption,” and “Indiana University Community Members.” To safeguard the rights of free speech and peaceful assembly, it specifically excludes from the definition of “Substantial Disruption” any conduct that is protected under the First Amendment to the Constitution of the United States, Article 1, Section 9 of the Constitution of the State of Indiana, or any applicable Indiana law.
- *Policy Statement:* A nine-point Policy Statement addresses various aspects of Expressive Activity, including but not limited to:
  - Protection of free speech from various forms of interference or obstruction by others.
  - Protection of University operations from substantial disruption.
  - Reasonable limitations on the erection and display of signs and structures.
  - Reasonable limitations on certain markings (spray chalking, etc.).
  - Clarification that overnight camping is not a form of Expressive Activity and is prohibited unless expressly authorized.
  - Prohibition on blocking ingress or egress to Indiana University buildings and other facilities, and on blocking vehicular or pedestrian traffic.
  - Clarification of the policy generally permitting non-disruptive amplified sound.
  - Limitation of Expressive Activity to the hours between 6:00 am and 11:00 pm.
  - A reminder that, in addition to compliance with the Draft Policy, Expressive Activity must comply with applicable law.
- *Procedures:* Various approval processes and other procedures necessary to implement the policy statement.
- *Sanctions:* Noting that violations of the Draft Policy can result in health, safety, and security concerns, as well as damage to University property and University operations, the Draft Policy provides for a range of sanctions and legal remedies, as well as appeal processes.

The above summary is intended only as a guide to the Draft Policy. Those providing feedback should address their comments to the actual text of the Draft Policy and not this abbreviated summary.

## Conclusion

Preservation of the health and safety of our university community in a manner consistent with the community’s free speech rights and our deep commitment to robust debate and academic

freedom is of paramount importance to all of us, and it is a need made urgent by the events of recent months. That urgency has led to the Board of Trustees' commitment to have an Expressive Policy in Place in time for the Fall Semester. While this allows less time than we might otherwise prefer for your review and comment, I am confident that you and your colleagues will give it the time and attention it deserves, and I look forward to your responses.

Thank you for your assistance in gathering feedback on this important Policy. If you have any questions, please contact me at your convenience.