

**ADVICE TO HONOURABLE DEMETRIOS NICOLAIDES
MINISTER OF ADVANCED EDUCATION**

FREE SPEECH POLICY REVIEW PROCESS

PURPOSE

To seek the Minister's approval for a process to review and approve free speech policies developed by post-secondary institutions.

RECOMMENDATION

- It is recommended that the Minister approve the process outlined below by signing the briefing note.

BACKGROUND

Ministerial Direction

- On July 4, 2019, the Minister sent a letter to the board chairs of all 26 publicly funded post-secondary institutions providing additional direction to institutions for conforming with the Chicago Principles statement on free speech. The Minister gave the institutions three options:
 - passing a resolution formally adopting the Chicago Principles statement,
 - passing a resolution adopting eight key principles from the Chicago Principles statement, or
 - adopting a policy that conforms with the Chicago Principles statement as outlined in the eight key principles.
- It is expected that several institutions will pursue the third option and develop their own policies.
 - Keyano College initially submitted a draft policy, but subsequently has elected to pass a Board Resolution adopting the principles.
 - Northern Lakes College has also recently submitted a resolution adopting the principles.
- The Minister has asked institutions to submit their responses to officials in the ministry by November 15, 2019.
- Ministry officials will review each draft policy to confirm that it aligns with the requirements outlined in the letter. The Minister will formally approve each policy in order for the institution to post it to its website by December 16, 2019 (December 15, 2019, the date indicated in the letters, is a Sunday).
 - Institutions passing a resolution adopting the Chicago Principles statement or the key principles will also be expected to post them to their websites.

Review Template

- For any institutions that choose to submit free speech policies, a formal assessment with recommendations to the Minister will be required of the ministry.

- Ministry staff have developed a draft template to perform such an assessment (Attachment 1), which would be used internally to advise the Minister.
- The template uses a system of colour coding to identify wording in the policies that aligns with the eight key principles. Ministry staff would highlight the wording that aligns with any of the eight key principles in the appropriate colour.
 - If wording aligns to more than one key principle, the wording will be repeated in brackets, and highlighted in the appropriate colours.
 - Staff will highlight wording that partly or fully aligns with any of the key principles.
- A table would also be used to reflect any partly or fully aligned wording, and rationale for assessing it in that fashion.
- Staff would then score the policy, with each key principle being worth one point. For each key principle, an institution would receive half of a point for partly aligned wording, or a full point for fully aligned wording.
- Staff would then make a general recommendation to the Minister.
 - In most cases, it is proposed that policies scoring a cumulative six out of eight or higher would be recommended to the Minister for approval.
 - Staff would recommend that policies scoring below six out of eight not be approved (with some exceptions; see below), and that the institution would be provided with feedback for improving its policy. The institution would be expected to submit a revised policy as soon as possible.
- Following direction from the Minister's Office, exceptions to this rule can also be made.
 - For example, if any principle is contradicted in a policy, or if a policy failed to have two of three vitally important principles (principles 2, 3, and 8 of the attached), it would not be recommended for approval, even if it achieved a score of 6.0 or higher.
 - Similarly, a policy without explicit reference to three principles inherent to the functioning of the institution (principles 1, 5, and 6 of the attached), could still be approved, despite not achieving a score of 6.0 or higher, as these principles are assumed to inform all aspects of day-to-day life at the institution.
- The template also includes sections for overall comments, and elements for further consideration.
- Each policy submitted would be scored by at least two staff members.
 - Legal counsel from Justice and Solicitor General will also have a role in reviewing the evaluation itself, to ensure that the process is defensible (e.g., that the department considered only relevant factors, applied its evaluation criteria consistently, does not demonstrate bias, etc.).
- With policies being provided to the ministry by November 15, 2019, it is proposed that the ministry's review take approximately two weeks, giving the Minister approximately 10 business days to review the ministry's recommendations.

- Feedback could be delivered to institutions no later than December 16, 2019.

KEY CONSIDERATIONS

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- Although the use of the template adds a degree of consistency and rigour, determining whether language in a policy aligns with the key principles is subjective. Institutions may disagree with the ministry’s assessments of their documents.
- It is unclear what action will be taken if an institution fails, or refuses, to comply with the Minister’s direction. Institutions are generally responsible for their internal policies, and may not agree to detailed or extensive changes to their existing free speech policies.
- While approved policies (or resolutions adopting the Chicago Principles statement or the eight key principles) will bring greater clarity to freedom of expression issues on campus, institutions will nonetheless continue to have to exercise discretion in these matters.

APPROVAL _____ **DATE** _____
 Honourable Demetrios Nicolaidis
 Minister of Advanced Education

ATTACHMENT

1. Free Speech Policy Review Template

CONTACT: Peter Leclaire, Assistant Deputy Minister
 Advanced Learning and Community Partnerships, 780-641-9349

Free Speech Policy Review Template

1. *Insert draft policy.*
2. *Highlight the wording aligned to the specific key principles from the Chicago Principles statement according to the colour coding in the chart below.*
3. *Highlight the text in full or partial alignment.*
4. *Complete the chart below by considering if the policy aligns with the substance of the Chicago Principles statement and the key principles identified for direct alignment.*

<i>[Insert Institution Name]</i> Free Speech Policy Assessment				
	Chicago Principles Statement Summary Point (Key Principle)	Aligned Wording	Level of Alignment to Principle	Comments
1	Free speech may not violate Canadian law.	<i>Insert all relevant wording from the policy that align to the principle.</i>	Choose from: <ul style="list-style-type: none"> • Fully Aligned • Partly Aligned • Not Aligned Score: <ul style="list-style-type: none"> • Choose from 0, 0.5, or 1. 	<i>Provide any relevant comments explaining reasoning.</i>
2	Institutions are places of free and open inquiry in all matters, and all members or each institution's community are guaranteed the broadest possible latitude to speak, write, listen, challenge, and learn.			
3	Community members have the right to criticize and question other views expressed on campus, but cannot obstruct or interfere with others' freedom of speech.			
4	Institutions should not attempt to shield students from ideas or opinions they disagree with or find offensive. Mutual respect and civility are valued, but do not constitute sufficient justification to limit free speech.			
5	The institutions may reasonably regulate the time, place, and manner of			

	expression to ensure that it does not disrupt the ordinary activities of the institution.			
6	The institution may restrict expression that violates the law, falsely defames an individual, or constitutes a genuine threat or harassment that unjustifiably invades substantial privacy or confidentiality of interests.			
7	Debate or deliberation may not be suppressed because the ideas put forward are thought by some, or even most, to be offensive, unwise, immoral, or wrong-headed.			
8	It is for individuals, not the institution, to make those judgements for themselves and to act not by seeking to suppress speech, but by openly and vigorously contesting the ideas they oppose.			
			TOTAL SCORE: _ /8	

Overall Assessment (*highlight one*): Not Aligned Partly Aligned Fully Aligned

- Not Aligned: _/8
- Partly Aligned: _/8
- Fully Aligned: _/8

Conditions:

1. None of the principles may be contradicted.
2. Principles 1, 5, and 6, as limitations on free expression, are inherently necessary and constitute a prerequisite to the functioning of the institution. They can be omitted from the free speech policy. The free speech policy may still be recommended for approval in the absence of direct references to these principles.
3. Two out of the following three principles – 2, 3, or 8 – must be fully aligned. Partial alignment is acceptable for other principles.

Recommendation

Should the policy be approved by the Minister? ___Yes ___ No

Note: In general, wording that is not aligned should be given a score of 0, wording that is partly aligned should be given a score of 0.5, and wording that is fully aligned should be given a score of 1. Policies that achieve a score of 6.0 or more will generally be recommended for approval if they fulfill the conditions

highlighted above. Policies may also be approved if they fall short of a score of 6.0 but fulfill the conditions above.

Overall Comments:

Provide any additional overall comments that justify your overall assessment (_/8). Are there key principles which the institution needs to elaborate on or explain further in order to be fully aligned with the Chicago Principles statement and properly understood by the institution's community members and guests?

Elements for further consideration:

Provide any additional observations or questions around elements that require further consideration or are currently missing from the policy. Potential topics may include: applicability of the policy, responsibilities, policy violations and complaints, references to and alignment with other institutional policies, links to institutional mandates and vision statements, etc.