

## KIRKWOOD INSTITUTE COMPLAINT LEADS TO FINDINGS OF ETHICS VIOLATIONS BY THREE UNIVERSITY OF IOWA FACULTY MEMBERS

Des Moines, Iowa. Kirkwood Institute President and Chief Counsel Alan R. Ostergren announced today (Feb. 2, 2022) that an ethics complaint lodged with the University of Iowa on behalf of a graduate student has led to findings of violations against three university employees.

The Kirkwood Institute represented University of Iowa graduate student Jacob Johnson in the matter. Mr. Johnson is pursuing a master's degree. He was punished by his faculty advisor and threatened with being removed from his graduate program because of his speech.

Mr. Johnson had participated in a casual conversation before class with fellow students. The conversation ranged on a variety of topics. During the conversation, Mr. Johnson expressed his view that homosexual conduct was contrary to his religious beliefs. His statements were not directed toward any particular student. The conversation continued on, moving from topic to topic, until class started.

Later, Mr. Johnson was summoned to his faculty advisor's office. He was told that his comments could be considered harassment, homophobic, and theological in nature. He was told that he should discontinue expressing such sentiments and that if any student complained about him in the future he could be kicked out the graduate program. The advisor stated this decision had been agreed to by two other members of the department who were in a supervisory capacity.

The Kirkwood Institute agreed to represent Mr. Johnson and brought a complaint before the university for the violation of his due process, free speech, and academic freedom rights he enjoys under university policy as well as the U.S. and Iowa constitutions. After an investigation, the university agreed that its policies had been violated and sustained ethics violations against the individuals involved. The university disavowed any claim that Mr. Johnson had violated any policy or was subject to discipline for expressing his views to other students.

"We are pleased that the University of Iowa recognized that the actions of its faculty members were indefensible. University students have the same rights of academic freedom as any faculty member. It is not the university's place to police what their students think or to suppress ideas because someone didn't like hearing them," said Ostergren.

"This incident shows that the University of Iowa still has a lot of work to do to train its faculty members in the values of free speech and open discussion. The university has repeatedly been found to have engaged in anti-Christian viewpoint discrimination by federal courts and it appears that this incident was similarly motivated. This is unacceptable and must immediately be corrected," Ostergren added.

"I am glad that the university corrected its mistakes, but this should have never happened in the first place," said Johnson. "I worry that other students have been similarly mistreated but did not have the ability to find a lawyer to help them with their case," he

continued. Johnson said, "I look forward to continuing with my studies without having to hide who I am or what I believe."

The Kirkwood Institute is a nonprofit and nonpartisan public-interest law firm based in Des Moines, Iowa. It is dedicating to protecting the constitutional rights of all Iowans. More information about it may be found at [kirkwoodinstitute.org](http://kirkwoodinstitute.org).

Attached to this release is the university's report of its ethics investigation and the letter to the university from the Kirkwood Institute that lodged the ethics complaint.

**The Kirkwood Institute, Inc.**  
*A Public Interest Law Firm*  
500 Locust Street – Suite 199  
Des Moines, Iowa 50309

Dr. Kevin C. Kregel  
Executive Vice President and Provost  
The University of Iowa  
111 Jessup Hall  
Iowa City, IA 52242-1316

November 18, 2021

Re: Complaint against three university officials

Dear Dr. Kregel:

The Kirkwood Institute represents University of Iowa graduate student Jacob B. Johnson and is assisting him by making a formal ethics complaint against the following individuals:

1. **Patrick T. O'Shaugnessy**, Professor of Occupational and Environmental Health;
2. **Peter S. Thorne**, Professor and Head, Occupational and Environmental Health; and
3. **Margaret Chorazy**, Associate Dean for Academic Affairs, Department of Public Health.

These individuals have violated university policies about academic freedom, the due process rights of Mr. Johnson, and guarantees of free speech and the free exercise of religion protected by the Constitution of the State of Iowa and the Constitution of the United States.

I have enclosed with this letter an email sent by Professor O'Shaugnessy to Mr. Johnson. The email memorializes the response of the named individuals to a complaint made by one or more students about a conversation that they engaged in with Mr. Johnson. This conversation ranged on several topics about the world view of the various students who were participating. During the conversation Mr. Johnson expressed, as it is fully his right to do, his view that homosexual conduct was one of

many sins committed by people. Nothing about his comments was directed toward any particular student.

You should immediately recognize that Professor O'Shaugnessy did not comply with university policies regarding allegations of student misconduct. Mr. Johnson was summoned to a meeting where he was told, in part, that his conversations were not acceptable if other students "develop a sense of discomfort, especially one that can be viewed as harassment."

Such a standard does not comport with the university's obligation to respect the academic freedom of its students. And a disciplinary standard where one is free to speak unless and until another person "develop[s] a sense of discomfort" is utterly inconsistent with the constitutional rights that the University of Iowa, as a public institution, must respect.

Professor O'Shaugnessy's email continues by stating that going forward there would be a "zero-tolerance approach" and that the criteria for violation would be whether another student is made uncomfortable by Mr. Johnson's speech. Professor O'Shaugnessy recites that this determination has been made in consultation with department head Professor Thorne and Associate Dean Chorazy. If true, this means these individuals are equally guilty of violating Mr. Johnson's rights.

University policy 15.2(f) promises students like Mr. Johnson the "same intellectual freedom which the faculty member enjoys." The policy goes on to state that "[r]estraints must not be imposed upon the student's search for or consideration of diverse or contrary opinion. More positively, the faculty member has an obligation to protect the student's freedom to learn, especially when that freedom is threatened by repressive or disruptive action."

The individuals identified above failed Mr. Johnson. Rather than responding to the complaining students that they were all free to think, learn, and discuss their views, the faculty members indulged the view that some ideas are forbidden and those who hold them must be silenced. Not only did they fail to rebuke the students who sought to silence Mr. Johnson, they made themselves active participants in the effort.

It should be noted that Mr. Johnson expressed to his fellow students his beliefs based on traditional concepts of sexual morality found in the Christian religion. The animus towards this viewpoint is barely concealed by Professor O'Shaugnessy's reference in his email to the "theological" expression by Mr. Johnson and his conclusion that such views may be called "homophobia."

And all of this was done without the slightest thought of due process. Mr. Johnson did not receive notice of charges against him, nor was he afforded any kind of meaningful hearing to contest the accusations. He was simply summoned to a faculty member's office and told he was guilty and would be punished accordingly.

The actions of these university officials did not just violate Mr. Johnson's rights under school policy. Their actions also violated clearly established federal law reflecting the university's obligations under the First and Fourteenth Amendments to the United States Constitution.

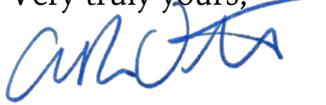
As you know, the university has been rebuked twice this year by the United States Court of Appeals for the Eighth Circuit. In *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8<sup>th</sup> Cir. 2021) the court denied various university defendants qualified immunity for their actions violating the First Amendment rights of Christian students. Similarly, in *Intervarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4<sup>th</sup> 855 (8<sup>th</sup> Cir. 2021), the court denied qualified immunity to university officials who had engaged in viewpoint discrimination against a Christian student organization.

It appears that the university has not responded to the messages it has repeatedly received from the federal courts. The anti-Christian discrimination exhibited by Professor O'Shaugnessy and his colleagues will surely be denied qualified immunity. So, too, will their denial of due process to Mr. Johnson. *Goss v. Lopez*, 419 U.S. 565 (1975).

An immediate investigation is warranted. Because the misconduct in this case involves the head of the department and the responsible academic dean, we have lodged this complaint with you. I will look forward to hearing from you promptly to acknowledge receipt of this complaint.

Mr. Johnson will cooperate fully in the investigation. Please coordinate with me to schedule a time to interview him in my presence.

Very truly yours,



Alan R. Ostergren

*President and Chief Counsel*

[alan.ostergren@kirkwoodinstitute.org](mailto:alan.ostergren@kirkwoodinstitute.org)

Enclosure

**From:** O'Shaughnessy, Patrick T <[REDACTED]>

**Sent:** Wednesday, September 29, 2021 1:42 PM

**To:** Johnson, Jacob B <[REDACTED]>

**Subject:** Summary of meeting today

Hi Jacob

As part of our advising meeting today, we discussed a complaint I had received from some of your peers that expressed their discomfort with statements you had made to them that they perceived as judgmental and unprofessional. They also expressed concerns that some of your statements, and actions, constitute homophobia on your part.

To summarize my conversation with you, I mentioned that personal interactions with other students are certainly fine on a sociable, friendly level, but not if others develop a sense of discomfort, especially one that can be viewed as harassment. I heard you say that you have engaged in conversations of a theological nature with some students that may have been perceived as judgmental, but that was not your intent. I also heard you apologize for causing this situation.

We agreed that your primary reason for being at the University of Iowa is to obtain a masters degree that will then better your future life. As such, we agreed that, moving forward, you should limit your social interactions to be able to apply the time and effort needed to obtain that goal.

I also stated to you that the department head for OEH, Dr. Thorne, and the Associate Dean for Student Affairs, Dr. Chorazy, were made aware of the concerns expressed by your peers. As such, I mentioned that there would be a zero-tolerance approach going forward, which, if not complied with would result in a meeting with Dr. Chorazy. I am also going to follow-up with those who expressed their concerns and relate to them that they should let me know if any additional statements, or actions, are made by you that continues to make them feel uncomfortable. I'm confident that won't occur, but am letting you know of the consequences if they do.

Dr. O'Shaughnessy

**TO:** Lois Geist, Associate Provost for Faculty  
Edith Parker, Dean, College of Public Health

**FROM:** Keela Herr, Associate Dean for Faculty, College of Nursing  
Kay Shie, Senior HR Leader, College of Public Health

**DATE:** December 22, 2021

**RE:** Investigation Summary – Jacob Johnson complaint

### **Background**

Mr. Jacob Johnson is a second-year MS student in the Department of Occupational and Environmental Health in the College of Public Health. He has been a student in this department since Fall 2020.

On November 17, 2021, a formal complaint was filed against Professor O'Shaughnessy, Professor Chorazy, and Professor Thorne alleging violations of the University of Iowa Professional Ethics and Academic Responsibility policy, and, the Ethics and Responsibilities for University of Iowa Staff policy (Chorazy and Thorne). The Office of the Provost received the official complaint statement on November 18, 2021 from Alan Ostergren, President and Chief Counsel for The Kirkwood Institute, Inc. It alleges that Jacob Johnson's academic freedom, due process, and guarantees of free speech and the free exercise of religion were violated by the three individuals named above.

On December 2, 2021 Associate Provost Geist and Dean Parker assigned Keela Herr, Associate Dean for Faculty, College of Nursing and Kay Shie, Senior Human Resource Leader, College of Public Health to investigate the allegations/concerns. This report summarizes the investigation process and findings.

### **Process**

The following documents were gathered and reviewed:

- Student Grievance Timeline Description.pdf provided by Patrick O'Shaughnessy
- Student Grievance Emails.pdf provided by Patrick O'Shaughnessy

The investigators interviewed the following individuals, listed in alphabetical order:

- Margaret Chorazy, Associate Dean for Academic Affairs, College of Public Health
- Jacob Johnson, Industrial Hygiene Master's student the Department of Occupational and Environmental Health, College of Public Health
- Patrick O'Shaughnessy, Professor for Statistics for Experimenters course, Advisor to Jacob Johnson, Director of Graduate Studies of the Department of Occupational and Environmental Health, College of Public Health
- Peter Thorne, Professor and Head, Department of Occupational and Environmental Health, College of Public Health.

Interviews were 45-60 minutes in length. The following topics were explored in the interviews:

## Background

- Establish affiliation with UI including responsibilities of and tenure in current role

## Main topics

- Complaint:
  - Knowledge of the circumstances of the complaint
- Actions related to the circumstance in which the complaint was based
- Policy awareness and evidence in the circumstance related to:
  - Due Process
  - Free Speech (15.2, 16.4, Board of Regents, State of Iowa: 4.2 Freedom of Expression)
  - Harassment (14.2)
  - Professional Ethics and Responsibility policy (15.2)
  - Ethics and Responsibility policy (16.4)
- Consequences:
  - Knowledge of and/or endorsement of consequences

## Summary of Timeline

Date	Action	Email (direct quotes with student names redacted)
9/23/21 3:01 PM	Dr. Patrick O'Shaughnessy and Dr. Matt Nonnenmann received an email directly from one of the complainants, Student A, with three others cc'd, Student B, Student C, and Student D (collectively, "the students").	Hi Dr. Nonnenmann and Dr. O'Shaughnessy, I decided to send this email to my advisor and Jacob's advisor: A couple of my colleagues and I have had some poor interactions with Jacob Johnson. He has told others that we are "immoral" since we are not as religious as him. Specifically, he targets [Student B] and we do not know why. He says it's due to our use of alcohol (since he does not drink), but [Student B] is not a heavy drinker. We believe this may be due to homophobia. Is there any way you could talk to him about pressing his judgement onto others? Me and a few others do not feel comfortable going to class with him and sitting next to him as he states unprofessional comments. We feel this is a hostile learning environment since we all feel targeted. I'm looking forward to hearing back from you soon. Best, [Student A]
9/23/21 3:28 PM	O'Shaughnessy responded to all the students and Nonnenmann stating that as Johnson's advisor and the Director of Graduate Studies for the department he would ask Johnson to meet with him to discuss this and promised to follow-up afterwards.	Hi [Student A], I am sorry to hear this, but am glad you have brought it to my attention. As the Director of Graduate Studies for this department, and also being Jacob's advisor, I will ask him to meet with me to discuss this. I will certainly keep your names out of the conversation. I will hope to get a meeting date sometime next week. I will follow up with you all after talking with him. Dr. O'Shaughnessy
9/23/21 3:34 PM	O'Shaughnessy forwarded the original email and his reply to Dr. Peter Thorne (DEO of OEH) and Dr. Maggie Chorazy (CPH Associate Dean for Student Affairs). O'Shaughnessy mentioned his plan and asked for ideas on how to best handle the situation.	Hi Peter and Maggie I am looping you both into an email I received this afternoon from some concerned students. I am attaching my reply which also includes the original email. I am hoping that talking to the named student about this will stop the problem. I will get back to you after my meeting with him. If you have any other thoughts on how to handle this, feel free to let me know. Thanks Patrick

9/23/21 3:50 PM	Chorazy replied with concerns that this may constitute harassment – especially with regards to a protected classification (sexual orientation). She supplied the university’s anti- harassment policy and suggested Patrick seek guidance from the Office of Institutional Equity.	Thank you for sharing, Patrick. I realize that we don't have all of the details, but given the context of the email that was sent to you and the specific language used - I have immediate concerns re: harassment. Furthermore, the complaint alleges perceived harassment based on a protected classification (i.e., sexual orientation). Here is a link to the university's anti-harassment policy: <a href="https://opsmanual.uiowa.edu/community-policies/anti-harassment#14.2">https://opsmanual.uiowa.edu/community-policies/anti-harassment#14.2</a> . I would recommend seeking guidance from the Office of Institutional Equity. Maggie
9/23/21 3:54 PM	A reply email from Student A with all cc’d thanked O’Shaughnessy for his quick reply. It also provided some additional detail that the conversations between Jacob and the students often occurred when they met in the course that O’Shaughnessy directs, OEH:4540 Statistics for Experimenters that meets Monday and Wednesday from 9:30 to 10:45.	Hi Dr. O’Shaughnessy, Thank you for your quick reply and for taking this seriously -- we all appreciate it. Additionally, I don’t believe we have ever conducted ourselves in an unprofessional manor while he has been present. We consumed alcohol once in his presence at an IH social at Big Grove last semester, but there was no peer pressuring. We're all adults and we behave as such. Yes, every Monday morning before our stats class, we talk about our weekends (which may or may not have included a social) which he may overhear and form a judgement. Other than overhearing our conversations, I'm not sure what metrics he's using to tell us we're immoral. Please let us know if you need any further details. We sincerely appreciate you taking the time to sort through this issue. [Student A]
9/23/21 4:16 PM	O’Shaughnessy responded back to all by thanking them for the additional information and suggesting that they offer any other details to him individually if they felt like doing so.	Hi [Student A] Thanks for this additional information. If any of the others on this email want to let me know anything more, feel free to email me individually. For example, I am wondering whether you would you say there have been a few incidents or the comments have been relatively consistent. And/or your perception of the level of the severity of the comments to you personally. Not necessary to reply but just if you want to. Dr. O’Shaughnessy
9/23/21 4:36 PM	Nonnenmann replied to all by also thanking them for their additional information and suggesting that O’Shaughnessy had a good plan in place and with an offer to help if needed.	Hi, all. Thank you for sharing this information and I am also very sorry to hear this! Dr. O’Shaughnessy has good plan in place and I will communicate with him as needed. Please let me know if I can help you further. Sincerely, Matt Nonnenmann
9/24/21 10:15 AM	O’Shaughnessy had a previously scheduled meeting to talk to Student B because she is one of his advisees. He shared that he did not plan to talk about this incident immediately, but she began her remarks by referring to it and the strain it has caused her. She had not hidden her sexual orientation as a lesbian in the past, so O’Shaughnessy assumed that she was the student to whom Johnson was allegedly making the homophobic comments (although there was no documentation from the students that homophobic comments were actually made or directed at Student B). O’Shaughnessy did not press her for additional details given that she seemed stressed by the issue and his	NA

	<p>being aware of the personal nature of it from her standpoint. O'Shaughnessy therefore continued the rest of their meeting as planned around advising information.</p>	
<p>9/24/21 11:25 AM</p>	<p>Thorne replied to O'Shaughnessy and Chorazy with a request to stay informed and an offer to help as needed to resolve the issue.</p>	<p>Please keep me informed and feel free to pull me in as needed to resolve this. Peter</p>
<p>9/25/21</p>	<p>O'Shaughnessy received a phone call on his personal cell phone from Nonnenmann in which Nonnenmann expressed his concerns for the situation, especially with regards to the homophobic comments allegedly made by Johnson toward Student B. Nonnenmann stated that his PhD advisee, Student E, had at least one conversation with the students and was very disturbed by what they said and had suggested that action be taken immediately. (No details were noted regarding what was said in these conversations.)</p>	
<p>9/28/21</p>	<p>To follow-up on Chorazy's advice, O'Shaughnessy made a call to the OIE (Office of Institutional Equity). After no answer, O'Shaughnessy read the link to the Operations Manual given by Chorazy and came to the conclusion that this may constitute a harassment situation, and concluded that it would be in Johnson's best interest to be told of the contents of the students' email to prevent further escalation that might result in him being formally reprimanded.</p>	

<p>9/28/21 1:36 PM</p>	<p>O'Shaughnessy met with Dr. Thomas Peters briefly in his office to let him know of this situation. The students and Jacob are enrolled in the same academic program, the MS in Industrial Hygiene, and Peters is the director of the program. O'Shaughnessy felt it necessary to let Peters know of this situation. O'Shaughnessy then followed up that conversation with an email to him with the original email sent to me by the students.</p>	<p>The original email sent to me.</p>
<p>9/29/21 1:00 PM</p>	<p>O'Shaughnessy had a previously scheduled advising meeting with Johnson at this time. After discussing advising-related information O'Shaughnessy brought up this issue. O'Shaughnessy started by stating the complaints made by the students without naming them directly, and then asked if Johnson knew why they would make such claims. The details of the conversation were written immediately after the meeting.</p>	
<p>9/29/21 1:43 PM</p>	<p>O'Shaughnessy authored an email to Johnson containing the details of the conversation that started at 1 PM.</p>	<p>Hi Jacob As part of our advising meeting today, we discussed a complaint I had received from some of your peers that expressed their discomfort with statements you had made to them that they perceived as judgmental and unprofessional. They also expressed concerns that some of your statements, and actions, constitute homophobia on your part. To summarize my conversation with you, I mentioned that personal interactions with other students are certainly fine on a sociable, friendly level, but not if others develop a sense of discomfort, especially one that can be viewed as harassment. I heard you say that you have engaged in conversations of a theological nature with some students that may have been perceived as judgmental, but that was not your intent. I also heard you apologize for causing this situation. We agreed that your primary reason for being at the University of Iowa is to obtain a masters degree that will then better your future life. As such, we agreed that, moving forward, you should limit your social interactions to be able to apply the time and effort needed to obtain that goal. I also stated to you that the department head for OEH, Dr. Thorne, and the Associate Dean for Student Affairs, Dr. Chorazy, were made aware of the concerns expressed by your peers. As such, I mentioned that there would be a zero- tolerance approach going forward, which, if not complied with would result in a meeting with Dr. Chorazy. I am also going to follow-up with those who expressed their concerns and relate to them that they should let me know if any additional statements, or actions, are made by you that continues to make them feel uncomfortable. I'm confident that won't occur, but am letting you know of the consequences if they do. Dr. O'Shaughnessy</p>

9/29/21 2:10 PM	O'Shaughnessy authored an email to the students and Nonnenmann stating that he had talked to Johnson. He mentioned that they were to let him know if Johnson continued his statements that they reacted to in the first place.	Hi All, To follow-up on the request made below, I had a meeting today with Jacob and spoke with him about the points you raised without referring to anyone specifically. As an outcome, we agreed that he will focus on his studies and minimize his social interactions. I told him that that there would be a zero-tolerance approach going forward, which, if not complied with, would result in a meeting with Dean Chorazy. I am pretty confident that he will comply, but if you have any reason to believe otherwise, based on his statements or actions in the future, feel free to let me know. That does not mean that he can't interact with you at all, but it does mean that he is to refrain from making statements perceived as harassing or offensive. Dr. O'Shaughnessy
9/29/21 2:16 PM	O'Shaughnessy authored an email to Thorne and Chorazy stating that he had met with Johnson; he had talked to him about the concerns of his peers; attached the email he had sent him that summarized their conversation; and had notified the students of the conversation and his hope that this will end the issue raised by them.	Hi Peter and Maggie, As a follow-up to this email, I met with Jacob today and expressed the concerns that his peers brought up. I am attaching an email I then sent to him that summarizes our conversation. I also sent an email back to the students who brought this up - also attached. Jacob took my comments in a mature way, thankfully, and I do think that he is now going to keep his comments to himself. Thanks Patrick
9/29/21 2:48 PM	O'Shaughnessy received a response from Thorne thanking him for handling the situation and suggested that O'Shaughnessy's email back to Johnson was appropriate regarding consequences.	Patrick: Thank you for handling this sticky issue so well. Your follow-up letter to the student was appropriately straightforward regarding consequences. I truly hope that this resolves the matter. I will be holding listening sessions with the OEH students and will be attentive to how the students are feeling. Thanks, Peter
9/29/21 4:33 PM	O'Shaughnessy followed-up with communications to Nonnenmann and Peters by forwarding to them the email he had sent Johnson.	FYI Attached is the summary of my conversation with Jacob today
9/30/21 10:42 AM	O'Shaughnessy received a short email from Student B in response to his email to the students of 2:10 PM the previous day thanking him for keeping her updated and her appreciation.	Thank you for keeping me updated, I really appreciate it. I will see you in class on Monday! Have a great weekend!
	No further email communications, phone calls or conversations on this issue occurred after this final email from Student B.	NA

## Summary of Interviews

O'Shaughnessy performs multiple roles in the Department of Occupational and Environmental Health. The roles applicable to this complaint include those of instructor, faculty advisor, and Director of Graduate Studies (DGS). This complaint filed against O'Shaughnessy, Chorazy and Thorne involves the requirement to maintain a conducive academic environment for all students; addressing potential harassment; and allowing for free speech.

O'Shaughnessy's actions were shaped by his attempt to resolve the students concerns at the lowest level possible, avoiding an escalation of the situation. However, in doing so, O'Shaughnessy neglected to thoroughly investigate and review UI policies prior to taking action. O'Shaughnessy stated multiple times

in the interview that he did not have adequate training on the professional ethics and responsibility policy, central to the complaint. However, all UI administrators and faculty are expected to be aware of all policies in the University Operations Manual and also receive annual notification of these policies.

While O'Shaughnessy's rationale for his actions could be deemed admirable and from the perspective of his advisor role, an opportunity to avoid Johnson continuing to the point of harassment, he made two significant errors. First, O'Shaughnessy did not thoroughly gather data about the conversation and what the students identified as homophobic, targeted, and threatening environment. Second, O'Shaughnessy's actions after the conversation with Johnson, stating future consequences and zero tolerance overstepped and interfered with his freedom of speech.

The conversation O'Shaughnessy held with Johnson was premature. At the time of the conversation, the information received by O'Shaughnessy was hearsay and assumptions from the students. More examination to determine if the assumed actions were harassment or freedom of expression should have occurred. Also, investigating more about why the students suggested targeting and a hostile environment and/or determine if there was evidence for potential harassment should have taken place prior to the response to Johnson. It is important to note that both Chorazy and Thorne supported the conversation O'Shaughnessy planned to have with Johnson. Although in the interviews Chorazy did suggest that she was not in favor of the consequences stated in the email to Johnson, Thorne remained in support of O'Shaughnessy's actions.

It should be noted that although there was not a formal investigation, O'Shaughnessy did provide Johnson the opportunity to provide his perspective. O'Shaughnessy's actions were guided by his intent to address informally between the students to prevent escalation to a formal charge against Johnson. O'Shaughnessy inquired with Johnson as to why the students would say what they had in the email. Johnson acknowledged his strong values and perhaps said things to make them uncomfortable. Johnson apologized and O'Shaughnessy felt the situation was resolved.

It is also important to note that nothing suggests that Johnson's comments were directed toward any student in particular. And, even though students may have been made to feel uncomfortable or have been offended by Johnson's language, the freedom of speech policy statement specifically allows for ideas and opinions the individual finds unwelcome, disagreeable, or even offensive. Assumptions were made by the students that Student B was targeted and assumptions were made by Student A that all the students involved felt this was a hostile learning environment. Johnson's comment about immorality was his belief. Student A stated an assumption that Johnson was homophobic. All these assumptions should have been explored prior to the conversation with Johnson. O'Shaughnessy's primary responsibility was to find out whether there was evidence of harassment or if this was a matter of free speech.

The comments received by O'Shaughnessy from Student A on behalf of all students involved did not constitute harassment. Again, there was not enough evidence to conclude without talking further to the students that this was approaching the level of harassment. Our position is that O'Shaughnessy should have talked further with the students, determined that this was not harassment, rather a matter of free speech, and used the opportunity to educate the students about protecting free speech and intellectual exchange. He could have also provided them with knowledge about the harassment policy and when to know it becomes harassment or harassment may be of concern.

Both Thorne and Chorazy favored O'Shaughnessy's plan to speak to Johnson about his behavior. Therefore, both Thorne and Chorazy violated policy as well. Although Chorazy did suggest that O'Shaughnessy did not have all of the details necessary to move forward, both Chorazy and Thorne could have halted the planned meeting with Johnson, and investigated the free speech policy, determining it would have been inappropriate to talk with Johnson. The steps that O'Shaughnessy took to resolve this, contacting Thorne as DEO and Chorazy as ADAA were appropriate. However, O'Shaughnessy really did not follow the advice of Chorazy who suggested more information was needed. O'Shaughnessy needed more input prior to meeting with Johnson, including additional attempts to contact the Office of Institutional Equity, and sending his follow-up email regarding future consequences, such as asking others to review drafts, etc., and should have taken time to review all applicable policies.

## Analysis

### Applicable Policies

UI Operations Manual III-Chapter 15: 15.2(f) The Professional Ethics and Academic Responsibility policy, Responsibilities to Students includes the following provisions (bolding added):

*Every student is entitled to the same intellectual freedom which the faculty member enjoys. The faculty member must respect that freedom. **Restraints must not be imposed upon the student's search for or consideration of diverse or contrary opinion. More positively, the faculty member has an obligation to protect the student's freedom to learn, especially when that freedom is threatened by repressive or disruptive action. The classroom must remain a place where free and open discussion of all content and issues relevant to a course can take place.** While students remain responsible for learning class material and completion of course requirements, faculty should respect reasonable decisions by students, based on their exercise of their own intellectual freedom, not to attend part or all of a particular class session.*

UI Operations Manual III-Chapter 16: 16.4(a)4 Ethics and Responsibilities, Professional Conduct includes the following provisions (bolding added):

*Professional Conduct. Staff members will conscientiously and professionally fulfill their assigned responsibilities relative to faculty, students, colleagues, customers, and clients. They will meet reasonable standards of work quality and quantity, as established by their supervisor. They will act with honesty and integrity in all matters related to their employment. When fulfilling workplace responsibilities in supervision of other staff, supervisors will demonstrate professional conduct through both instruction and example. All staff will support intellectual freedom among all members of the University. For example:*

**(4) Where appropriate, staff will promote and protect diversity of opinion in the workplace, in support of intellectual freedom.**

Policy Manual 4.2, Board of Regents, State of Iowa: 4.2 Freedom of Expression, Policy Statement

*The Board of Regents is committed to the principles of free expression embodied in the First Amendment to the United States Constitution and Article 1, Section 7 of the Constitution of the State of Iowa. The Board recognizes that the primary mission of the institutions of higher education under its jurisdiction is the promotion of teaching, research, and scholarship. In support of this mission, the institutions of*

higher education under the jurisdiction of the Board of Regents must provide ample opportunity for members of the campus community to engage in the free exchange of ideas.

The Board's fundamental commitment is to the principle that **debate or deliberation must not be suppressed merely because the viewpoints presented are considered by some or even most members of the campus community to be unwelcome, disagreeable, or offensive.** In order to maintain an environment that fosters the free exchange of ideas, the universities must not restrict the expression of viewpoints in violation of the First Amendment to the United States Constitution. It is not the responsibility of the universities to shield individual members of the campus community from viewpoints they may find unwelcome, disagreeable, or offensive. Rather, it is the responsibility of individual members of the campus community to make these determinations for themselves and to respond, not by seeking to suppress speech, but to openly and vigorously debate those viewpoints that they oppose.

A. Guiding Principles

- i. The primary function of the Regent universities is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the universities must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the First Amendment to the Constitution of the United States.
- ii. **It is not the proper role of the Regent universities to shield individuals from speech protected by the First Amendment to the Constitution of the United States, which may include ideas and opinions the individual finds unwelcome, disagreeable, or even offensive.**
- iii. It is the proper role of the Regent universities to encourage diversity of thoughts, ideas, and opinions and to encourage, within the bounds of the First Amendment to the Constitution of the United States, the peaceful, respectful, and safe exercise of First Amendment rights.
- iv. Students, faculty, and staff have the freedom to discuss any problem that presents itself, assemble, and engage in spontaneous expressive activity on campus, within the bounds of established principles of the First Amendment to the Constitution of the United States, and subject to reasonable time, place, and manner restrictions that are consistent with established First Amendment principles.

UI Operations Manual III-Chapter 14: 14.1(b) and 14.2(e) Anti-Harassment includes the following provisions (bolding added):

*The purpose of this policy is to prevent harassment within The University of Iowa community and to provide a process for addressing all forms of harassment if and when it occurs. The University of Iowa is committed to maintaining an environment that recognizes the inherent worth and dignity of every person, and that fosters tolerance, sensitivity, understanding, and mutual respect. This commitment requires that the highest value be placed on the use of reason and that any harassment in the University community be renounced as repugnant and inimical to its goals. Harassment destroys the mutual trust that binds members of the community in their pursuit of truth.*

**The University also is committed strongly to academic freedom and freedom of expression. In upholding these ideals, the University will be guided by the following principles:**

- a. *The primary function of the University of Iowa is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. To fulfill this function, the University of Iowa must strive to ensure the fullest degree of intellectual freedom and free expression allowed under the First Amendment to the Constitution of the United States.*
- b. ***It is not the proper role of the University of Iowa to shield individuals from speech protected by the First Amendment to the Constitution of the United States, which may include ideas and opinions an individual finds unwelcome, disagreeable, or even offensive.***
- c. *It is the proper role of the University of Iowa to encourage diversity of thoughts, ideas, and opinions and to encourage, within the bounds of the First Amendment to the Constitution of the United States, the peaceful, respectful, and safe exercise of First Amendment rights.*
- d. *Faculty, staff, and students have the freedom to discuss any problem that presents itself, assemble, and engage in spontaneous expressive activity on campus, within the bounds of established principles of the First Amendment to the Constitution of the United States, and subject to reasonable time, place, and manner restrictions, as defined in this Operations Manual, that are consistent with established First Amendment principles.*

See also [Free Speech at Iowa](#).

*This policy addresses harassment in all forms based on any classification covered by law and/or [II-3 Human Rights](#) (with the exception of sexual harassment, which is addressed in [II-4 Sexual Harassment and Sexual Misconduct](#)), as well as harassment based on other factors as set forth in this policy.*

#### 14.2 Policy

*Harassment of any member of the University community is prohibited.*

- e. ***Definition of harassment. "Harassment" means intentional conduct, including speech, directed toward an identifiable person or persons that***
  - ***threatens serious harm and is directed or likely directed to provoke imminent unlawful actions; or***
  - ***is sufficiently severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with work or educational opportunities or benefits, including, without limitation, on-campus living or participation in a University activity on or off campus***

*See Iowa Code [261H.3.5](#): "This chapter shall not be interpreted as preventing public institutions of higher education from prohibiting, limiting, or restricting expression that the first amendment to the Constitution of the United States does not protect, including but not limited to a threat of serious harm and expression directed or likely directed to provoke imminent unlawful actions; or from prohibiting harassment, including but not limited to expression which is so severe, pervasive, and subjectively and objectively offensive that the expression unreasonably interferes with an individual's access to educational opportunities or benefits provided by a public institution of higher education."*

#### Conclusion

Given the above factual findings, the investigators conclude that O'Shaughnessy's conduct violated university policy, 15.2f, in that he imposed restraints on free speech without evidence that the interactions were the definition of harassment "... intentional conduct, including speech, directed toward an identifiable

person or persons that threatens serious harm and is directed or likely directed to provoke imminent unlawful actions; or is sufficiently severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with work or educational opportunities or benefits, including, without limitation, on-campus living or participation in a University activity on or off campus.”

Given the above factual findings, that investigators conclude that Thorne’s conduct violated university policy, 15.2f and 16.4a, in that he supported imposing restraints on free speech without evidence that the interactions were the definition of harassment “... intentional conduct, including speech, directed toward an identifiable person or persons that threatens serious harm and is directed or likely directed to provoke imminent unlawful actions; or is sufficiently severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with work or educational opportunities or benefits, including, without limitation, on-campus living or participation in a University activity on or off campus.”

Given the above factual findings, that investigators conclude that Chorazy’s conduct violated university policy, 15.2f and 16.4a, in that she supported imposing restraints on free speech without evidence that the interactions were the definition of harassment “... intentional conduct, including speech, directed toward an identifiable person or persons that threatens serious harm and is directed or likely directed to provoke imminent unlawful actions; or is sufficiently severe, pervasive, and subjectively and objectively offensive that it unreasonably interferes with work or educational opportunities or benefits, including, without limitation, on-campus living or participation in a University activity on or off campus.”