



TO: Board of Regents Governance Committee
FROM: Patrick O'Rourke, Vice President, Univ. Counsel and Secretary of the Board of Regents
DATE: May 01, 2018
RE: Recommended Rescissions to Regent Policies 10.B, 10.C and 10.D

The administration is recommending to the Governance Committee and the Board of Regents that the board rescind three existing policies. These policies deal with principles of discrimination and diversity. We will first provide the text of the existing policy and explain why we believe that it's appropriate to rescind it.

Regent Policy 10.B [X]

Text of Existing Policy

RESOLVED that the University of Colorado, either as a collective entity or on behalf of its officers or employees, shall not endorse, support, or be affiliated with, in any manner whatsoever, any private club or organization which denies full participating membership or affiliation to individuals on the basis of sex, race, color, ethnic background, or national origin; and

BE IT FURTHER RESOLVED that events or activities sponsored or supported by the University of Colorado shall not be held or conducted on the premises or facilities of any private club or organization which denies membership or affiliation on the basis of sex, race, color, ethnic background, or national origin.

Last Amended: February 26, 1975

Basis of Recommendation to Rescind

Regent Policy 10.B. was passed in 1975 as a regent resolution. As a general proposition, incorporating resolutions as Board of Regents policy is disfavored because resolutions are not vetted in the same manner as policies.

Even more importantly, however, the resolution is unnecessary because of the subsequent passing in 1979 of of Colorado's public accommodations law, which provides a thorough definition of "places of public accommodation" and a broad prohibition that prohibits those entities from directly or indirectly refusing to provide services to individuals or groups on the basis of disability, race, creed, color, sex, sexual orientation, marital status, national origin, or ancestry. Because the Board of Regents has passed Regent Policy 1.C. and the University of Colorado has passed a Code of Conduct that requires the university to operate in accordance with applicable laws, this existing policy is redundant of other policy requirements.

Regent Policy 10.C [X]

Text of Existing Policy

There shall be no distinction or classification of students at the University of Colorado made on account of race, color, or creed.

After September 1, 1962, the University shall place on probation any fraternity, social organization, or other student group that is compelled by its constitution, rituals, or government to deny membership to any person because of his race, color or religion. After September 1, 1971, the University shall place on probation, any fraternity, social organization or other student group in which a condition of membership is a recommendation by a person not a student at the University, or in which any person not a student at the University may exercise a veto over such membership. During such probation, no rushing, pledging, or initiation of new members shall be permitted.

This resolution shall not apply to a student group organized in good faith for devotional purposes or for the study or propagation of a religious faith.

Last Amended: December 16, 1965

Basis of Recommendation to Rescind

The Board of Regents passed this policy in 1965. The policy, as phrased, is duplicative of existing legal requirements, both under federal laws and state laws. Discrimination on the basis of race, color, and national origin is prohibited by *Title VI of the Civil Rights Act of 1964*. This includes discrimination based on a person's limited English proficiency or English learner status; and actual or perceived shared ancestry or ethnic characteristics. Colorado state law bars state institutions of higher education from discriminating on the basis of religion.

Beyond the requirements of nondiscrimination on the basis of race, color, and religion described in this policy, discrimination on the basis of sex is prohibited by Title IX of the Education Amendments of 1972. This includes discrimination based on pregnancy, parental status, and sex stereotypes.

Discrimination against persons with disabilities is prohibited by *Section 504 of the Rehabilitation Act of 1973* and *Title II of the Americans with Disabilities Act of 1990*. This includes discrimination against individuals currently without an impairment that substantially limits of a major life activity, but who have a record of or are regarded as having a disability.

Discrimination on the basis of age is prohibited by *Age Discrimination Act of 1975*.

These civil rights laws extend to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries and museums that receive federal financial assistance.

Programs or activities that receive federal funds must provide aids, benefits or services in a nondiscriminatory manner in an environment free from discriminatory harassment that limits educational opportunities. Such aids, benefits or services may include, but are not limited to, admissions, recruitment, financial aid, academic programs, student treatment and services,

counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, and housing.

Because the Board of Regents has passed Regent Policy 1.C. and the University of Colorado has passed a Code of Conduct that requires the university to operate in accordance with applicable laws, this existing policy is redundant of other policy requirements.

Regent Policy 10.D [X]

Text of Existing Policy

RESOLVED: It is hereby declared to be the policy of the University of Colorado that whenever a University team plays another institution in any athletic event, the members of the team are to be permitted to travel together, lodge and dine together, and play together as a team, without discrimination of any kind as to any member of the team, resulting from a policy of the host institution, or of state laws, customs, or practices; and further that there shall be no discrimination of any kind when University of Colorado teams are guests at social functions arranged by the host school.

This declaration of policy shall be included in all future contracts to play other institutions and shall be a condition upon which the contract is entered into.

Last Amended: May 29, 1959

Basis of Recommendation to Rescind

Regent Policy 10.B. was passed in 1959 as a regent resolution. As a general proposition, incorporating resolutions as Board of Regents policy is disfavored because resolutions are not vetted in the same manner as policies.

As described above, this policy was passed in an era before there were laws that prohibited discrimination. Just as the other policies that are recommended for recession do not capture all of the requirements and prohibitions of federal and state nondiscrimination laws, this policy is similarly outdated.

Because the Board of Regents has passed Regent Policy 1.C. and the University of Colorado has passed a Code of Conduct that requires the university to operate in accordance with applicable laws, this existing policy is redundant of other policy requirements.