

Law, Policy, and Student Organizations: What RSO Advisors Need to Know

John W. Murry, Jr., Ed.D. & J.D.
Associate Professor of Higher Education

Advisor Development Series
March 13, 2013

Constitutional Landscape of Association Rights of Student Organizations in Public Colleges and Universities



First Amendment Rights of Students in Public Colleges and Universities

- In public universities, the First Amendment, in part, protects students rights:
 1. To engage in free speech or expression
 2. To engage in the free exercise of religion
 3. To peacefully assemble
- The right of “*association*” is not among the enumerate rights of the First Amendment.

Right of Student Association

- The U.S. Supreme Court in 1925 acknowledged that “*association*” is a constitutional right.
- The Court has concluded that freedom of association is a necessary right to foster free expression of public and private issues.



Students' Associational Rights

Students' associational rights in public universities contain two basic aspects:

1. The *right to associate into groups* (to form student organizations) and
2. The *right to be recognized by the university*, when the institution has a policy of recognizing student groups

Student Responsibilities to Gain Official University Recognition

With recognition goes the responsibility of the student organization to adhere to reasonable campus regulations and agreement to abide by applicable and federal, state, and local laws.



Constitutional Limitations on a Public University's Decision on Recognition

- The U.S. Supreme Court has noted on numerous occasions that a public institution's decision whether to recognize or not recognize a student group must be:
 1. Any restrictions must be reasonable
 - and
 2. The decision must be viewpoint neutral

Current Legal Context After CLS

After the U.S. Supreme Court's decision in *Christian Legal Society v. Hastings College of Law*, 130 S.Ct. 2971 (2010), two points can be made:

1. An "all-comers" policy used for recognition of a student organization to become an RSO is a viewpoint neutral condition and does not violate the First Amendment.

2. We do not know if the U.S. Supreme Court would find other types of RSO recognition policy approaches constitutional, such as:

- (a) Categorical nondiscrimination policies
- (b) Exemption-based nondiscrimination policies

Key Viewpoint Neutrality Areas of Concern for Public Universities

1. Religion
2. Sex – Sexual Orientation (LGBT)
3. Social Values/Issues
4. Political Viewpoints



The Right of Association at the University of Arkansas



University of Arkansas Statement on Freedom of Association and Inquiry

"Students are free to form and/or join any association that interests them. Students are free to examine and discuss, individually and collectively, all questions of interest to them, including questions relating to University actions or policies. They may express opinions on such subjects both publicly and privately."

UA Division of Student Affairs Student Handbook

UA Definition of Student Organizations

Student Organizations at the UA ... are

- (1) composed entirely of University students;
- (2) entirely responsible for the conduct of various sponsored activities, as well as the daily affairs of the group.



Registered Student Organizations at the UA



RSO Benefits

1. Use University facilities.
2. Be listed in University publications, websites and newsletters.
3. Use the University name in publicity and press releases.
4. Use University logos and trademarks.
5. Apply for and expend University funds as distributed through the Associated Student Government.
6. Apply for and occupy office space in a University building.
7. Participate in university programs as an organization.
8. Participate in any information fairs.
9. Apply for University recognition for organizational achievement.

Registered Student Organizations v. Department-Based Organizations

RSOs

1. The organization is distinct and separate from any department and UA
2. They make their own decisions separate and apart from any department or the UA (their decisions and actions are their own)
3. They maintain their own funds (agency funds)
4. They are subject to some UA rules and regulations

Department Organizations

1. The organization is a distinct part of the department and UA
2. The department/UA oversees the organization
3. The department/UA controls any funds and expenditures must go through UA approval process
4. They are subject to **ALL** pertinent rules and regulations of their department and the UA

The Office of Student Activities Approach to RSO Advisors and Students

- Facilitator (Between UA & RSOs)
- Advocates for advisors and RSOs (lobbyist)
- Resource provider (information; policy, rules and procedures interpretation)
- Risk management and programming advice

THEY ARE NOT THE RSO POLICE!!!!!!

Legal Liability and RSO Advisors at the University of Arkansas



RSOs are Not Part of the University of Arkansas

Recognize

- You are not covered by any UA policy of insurance or Arkansas state immunity statutes while serving in the capacity as RSO advisor nor are your students. Each RSO is responsible for its own actions.
- Probably for most of us serving as a RSO advisor is not part of our assigned job duties
- Generally, UA General Counsel cannot represent you as a RSO advisor or your members.

Risk Management

- There is no way to completely eliminate risk and legal liability associated with an activity or event, there are ways to reduce risk and provide a safer environment.
- Use a risk management assessment form to identify specific risks involved in the event or activity. See RSO website: http://osa.uark.edu/Risk_Matrix.pdf
- Consider all risks: physical risks, liability risks (alcohol, travel, minors), policy/procedure risks, and reputational risks.

Some Risk Management Tools

- Check on your own liability insurance coverage.
- For all events and activities use a "risk management" matrix to identify potential risks and develop a plan of action.
- Assume a 'worst case scenario' and prepare for it in order to reduce likelihood of it occurring
- Use liability waivers, if applicable. Also, outline specific nature of risks associated with an event and have students sign acknowledging they are assuming the inherent risks.
- Require training of officers and members.
- Hiring a third party vendor or contractor.
- Get advice from the Office of Student Activities.

Policies all RSO Advisors at the UA Should Understand and Monitor



UA Non-Discrimination Policy Approach for RSOs

"That it is the policy of the University of Arkansas, ... to prohibit discrimination on the basis of age, disability, ethnic origin, marital status, race, religion, gender, or sexual orientation, or any other grounds prohibited by federal or state law or University policy. Accordingly, no student may be excluded from membership or leadership in a registered student organization on the basis of his or her age, disability, ethnic origin, marital status, race, gender (unless exempt under Title IX), religion, or sexual orientation, provided, however, that registered student organizations may limit their membership and leadership to students who, upon individual inquiry, affirm that they support the organization's religious, political, or other legally protected views, consistent with the First Amendment."

All University funded events of any RSO must be open to all students regardless of age, disability, ethnic origin, marital status, race, religion, gender, or sexual orientation. This includes events funded through university departments or student activity fees including, but not limited to the ASG fee and the University Programs Fee.

UA Non-discrimination Policy

Prevention of Non-Discrimination

- Advisors have a responsibility to ensure that their RSO does not violate the UA policy on non-discrimination
 - Be familiar with your organization’s purposes and beliefs, and membership/leadership requirements
 - Know about events and functions (on and off campus)
 - Attend meetings – know what is going on

Provide Oversight on Your RSO’s Bank Account

- Recognize that RSO funds are held in an “agency” account, which is different from a UA fund account
- Make sure you have access to view account fund and provide oversight as advisor over cash management
- Make sure that officers with check-writing access understand UA policies:
 - Checks can’t be written for “cash”
 - Checks can’t be written to on-campus vendors
 - Checks \$300 and over require receipts or invoice attached
 - Checks of any amount to UA faculty and staff requires a receipt

Know what to do if a UA Department wants to Financially Support Your RSO Event or Activity

- UA departments can financial help support a RSO event/activity if the department has a legitimate interest (e.g., a professional RSO in an academic department).
- If a department does help financially, the department should pay for an expense directly related to the event or activity (they can claim a legitimate, state-approved expense to pay).
- Departments can’t make “donations” to RSOs.

Check on RSO’s Use of ASG Funds from Student Activity Fees

- Make sure that your officers know the rules on uses and restrictions of funds allocated by ASG.
 - Review the latest ASG Standing Rules Document.
- Remind your officers that any RSO events funded by ASG with student activity fees must be open and available to all UA students.
- Your RSO can’t engage in any fund raising efforts at events sponsored using ASG fund, but can before the date of the event.

Help Protect Your RSO from Commercial Solicitation

- In general, the UA Commercial Solicitation Policy prohibits private commercial business activities on University premises.
- Outside businesses should not approach your RSO to invite themselves to campus or to offer money, products, or event sponsorship in return for access to your organization. Have your officers or members notify you if this happens, and report the incident to the RSO Office.
- It may be permissible, in limited situations, for your RSO to have a commercial business attend a meeting if it will fulfill a legitimate need of your group (Check first with the RSO Office).

Do Not Enter into Contracts with Community Organizations

- Neither you as advisor or your officers have the “authority” to enter into contracts (*Don’t sign contracts!*).
 - You could potentially face individual liability!
- Always seek advise from the RSO Office or UA Business Affairs (Purchasing) on contracts or other legal documents.
- UA General Counsel’s office can’t review RSO contracts or other legal documents.

Provide Oversight of Your RSO's Fundraising Activities

- RSOs may raise money for their organization through fundraisers, they must complete a notification form.
- Funds may be raised for the RSO or for a charity, but not for individual personal gain.
- RSO must keep accounting records of all fundraising activities.
- All funds raised must be deposited in your RSO's bank account within 2 weeks.

Use of UA Trademarks and Logos by RSOs

- As a benefit of registration, RSO's can utilize University of Arkansas trademarks (including the Razorback, "Hogs," and "University of Arkansas") on printed materials, novelty items, shirts, etc., that are intended primarily for internal purposes (promotion to the campus community, etc.).
- RSO's cannot use trademarks on RSO websites, Facebook pages, etc., or in fundraising letters.

Alcohol and Off-Campus Social Events

- Any registered student organization that sponsors a social event away from campus is obligated to adhere to all local and state laws. It is the responsibility of the RSO to institute measures to assure that minors do not consume alcoholic beverages at off-campus social events.
- Definitely consider risk management options whenever alcohol is consumed at social events of your RSO.

Some Important "Do's" Guidelines in Advising RSOs



RSO Advisor Do's Guidelines

- Do develop and communicate clear expectations about the organization and your role as an RSO advisor each year.
- Do know the group's constitution and review any changes before they are submitted.
- Do be knowledgeable about, and comply with all federal, state, local laws, and campus policies and procedures. Make sure your officers and members know the same.

- Do make sure you are aware of all events and activities your RSO has planned. Consider potential risks and with your officers develop a risk management plan.
- Do be involved in event and activity planning.
- Do be visible to group members and attend all group meetings and events if possible.
- Do develop a strong working relationship with the officers of your RSO and get to know your members. Earn their trust.
- Do carefully review on at least a monthly basis your group's financial records, examine the account on line. Know about All receipts and expenditures.

- **Do examine the budget and plans for each new academic year. Make it a requirement that you see all proposals presented to ASG for student fee monies.**
- **Do be aware of officer elections and addition and selection of new members (non-discrimination).**
- **Do serve as a resource person for your RSO as to federal, state, and local laws and university policies and procedures.**

- **Do be available in emergency situations, make sure your officers have your contact numbers and you have a current update membership roster.**
- **Do work closely with the Office of Student Activities and the RSO Office in particular and encourage your officers to do the same.**
- **Do develop within your RSO the culture to “do things right” and “do the right thing.”**