



# FIRE

Foundation for Individual  
Rights and Expression

July 10, 2023

President Sheila K. Gestring  
University of South Dakota  
414 E. Clark Street  
Vermillion, South Dakota 57069

*Sent via Electronic Mail to [president@usd.edu](mailto:president@usd.edu)*

Dear President Gestring:

I write to you today from the Foundation for Individual Rights and Expression (FIRE)<sup>1</sup> regarding the University of South Dakota's (USD's) policy for posting written materials on campus.

Each month, FIRE designates as Speech Code of the Month a college or university policy that restricts students' speech rights.<sup>2</sup> For July 2023, we have selected USD's "Poster and Advertising Policy,"<sup>3</sup> which earns FIRE's "yellow light" rating, awarded to policies that could too easily be applied to restrict freedom of expression.<sup>4</sup>

Namely, the policy states that all signs to be posted in the Muenster Center "must display the name of the Officially Recognized Organization that is sponsoring the promoted activity" and be approved in advance by the Student Center staff. (The policy further states that posting on "Community Events Boards" must also comply with these requirements.) This presents four separate concerns from a free speech perspective.

First, by indicating that students may only post written materials on campus if they are posting information about "promoted activit[ies]," the policy excludes all other postings.

---

<sup>1</sup> FIRE is a nonpartisan nonprofit dedicated to defending freedom of speech, expression, and conscience, and other individual rights on campus.

<sup>2</sup> Last month, FIRE highlighted Wheaton College's posting policy, which contradicts its promises of free expression: [thefire.org/news/wheaton-college-speech-code-violates-chicago-statement-principles](https://thefire.org/news/wheaton-college-speech-code-violates-chicago-statement-principles).

<sup>3</sup> *Poster and Advertising Policy*, UNIV. OF SOUTH DAKOTA (Sept. 9, 2019), <https://www.usd.edu/-/media/Project/USD/DotEdu/Policies/Facilities-and-Safety/3006-Poster-and-Advertising.pdf?rev=d0561d5fce3f4682b2df38e42544e00a&hash=A6028853C55B6B06724E062405452C87>.

<sup>4</sup> FIRE rates universities as "red light," "yellow light," or "green light" institutions based on the extent to which their written policies restrict student expression. A full explanation of FIRE's speech code rating system is available at [thefire.org/spotlight/using-the-spotlight-database](https://thefire.org/spotlight/using-the-spotlight-database).

Without areas for general postings, students would be unable to post an informational poster about recycling, a poster expressing support for Ukraine, or a poster honoring the campus's emergency responders, since none of those posters would be associated with activities.

Second, by requiring that all posters are approved in advance, the policy prevents students from posting spontaneously, which may be critical to responding to recent or still-unfolding events. If, for example, students wish to post information about how to contact one's representative about a particular upcoming vote, that information could be outdated by the time the poster is approved.

Third, the policy also requires all posters to be sponsored by an "Officially Recognized Organization," meaning individual students, or those who belong to a group that has not yet gained recognition, may not post anywhere on campus. This requirement would, for example, prevent students who are looking to form a new student organization from posting information about the potential club and attracting prospective members. Further, while it may be reasonable to reserve certain areas for posting by student organizations, this avenue for expression must not be entirely closed off to individual students.

Last, by requiring that the sponsoring organization's name appear on all posters, the policy prevents students from posting anonymous materials or materials that use a pseudonym. As a result, this policy could be used to punish protected speech, and could have a chilling effect on the speech of students who feel they can only express their thoughts anonymously, which is typically protected under First Amendment standards.<sup>5</sup>

To the extent that these regulations apply only to advertisements of events, requiring advance approval, sponsorship by a student organization, and attribution may all be reasonable. However, individual students and groups alike must have the opportunity to post anonymous written materials pertaining to topics other than events in at least some designated areas of the campus.

We would be pleased to work with your office directly to develop a posting policy that meets the university's reasonable aesthetic and logistical concerns without infringing on protected expression. We often work with administrators to provide specific recommendations to existing policy and review drafts to ensure the policy will meet First Amendment standards.

The posting policy at Radford University, for example, allows all individuals who are affiliated with the university to use "general use bulletin boards . . . as means to communicate information about activities, events, and notices of interest to the

---

<sup>5</sup> See *Talley v. California*, 362 U.S. 60, 64 (1960); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 342 (1995).

University community.”<sup>6</sup> While designated “special use bulletin boards” require advance approval from the department maintaining that board, individuals may place materials on general use bulletin boards without seeking advance approval. Further, Radford’s policy only requires “[f]lyers publicizing or advertising events” to display the sponsor’s name and contact information.<sup>7</sup>

For another example, the University of North Carolina School of the Arts designates certain bulletin boards as “General Purpose” boards, which may be used “for commercial purposes, informational purposes, or for solicitation of charitable contributions, and may be used by any person or group, without prior approval.”<sup>8</sup>

Revising USD’s policy would not only support students’ First Amendment rights, it would also pave the way for USD to earn FIRE’s highest distinction for regulations on student speech: our overall “green light” rating.

**At present, the Poster and Advertising Policy is the only policy at USD that earns a yellow light rating for placing restrictions that could too easily be applied to restrict protected speech.** As a result, if you were to revise this single policy, USD would earn an overall green light rating from FIRE, joining just 62 schools across the country that currently earn this rating. It would also become the first in the state of South Dakota to do so.

Thank you for your attention to these concerns. **We respectfully request a response no later than close of business on July 24, 2023. If we do not receive a response by that time, we will highlight this policy on our website as our July “Speech Code of the Month.”** We’d be pleased to work with your administration to revise this policy, and you can reach me at any time at 215-717-3473 or at [mary.griffin@thefire.org](mailto:mary.griffin@thefire.org) to discuss.

Sincerely,



Mary Griffin  
Senior Program Officer, Policy Reform

cc: AJ Franken, General Counsel

---

<sup>6</sup> *Posting, Chalking, and Distribution of Informational Materials Policy*, RADFORD UNIV. (Aug. 5, 2022), [https://www.radford.edu/content/dam/departments/administrative/policies/StudentAffairsPoliciesandProcedures/SA-PO-1302\\_PostingandChalking.pdf](https://www.radford.edu/content/dam/departments/administrative/policies/StudentAffairsPoliciesandProcedures/SA-PO-1302_PostingandChalking.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> *Bulletin Boards and Disseminated Materials*, UNIV. OF NORTH CAROLINA SCHOOL OF THE ARTS (Dec. 6, 2019), <https://www.unca.edu/policy-manual/400-facilities/403-bulletin-boards-disseminated-materials.aspx>.