

North Dakota State University

Policy Manual

SECTION 154

FREEDOM OF SPEECH, EXPRESSION, AND ASSEMBLY

SOURCE: NDSU President
SBHE

1. Introduction

1.1. NDSU recognizes and supports the fundamental right of its students and others to free speech and expression under the First Amendment to the United States Constitution and the North Dakota Constitution. NDSU values and encourages the free exchange of ideas while maintaining the safety of the campus community and the orderly operations of the institution. To that end, NDSU is committed to ensuring the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. As part of this commitment, NDSU is dedicated to promoting free speech and expression while cultivating a safe and non-discriminatory campus climate that supports diversity of thought and people.

This policy defines the spaces available for exercising the rights of free speech and expression and communicates the parameters of any such expressive activity, to protect the safety of campus, and to minimize disruption to NDSU's educational mission. This policy establishes certain standards of conduct that must be observed by demonstrators and groups and applies to all individuals while using University property for exercising the rights of free speech and assembly. This policy is based off North Dakota University System Policy 503.1.

2. Definitions

2.1. Constitutional Time, Place, and Manner Restrictions – Restrictions on free speech which are content-neutral, narrowly tailored to serve a significant interest, and leave open alternative methods of communicating the message in question.

2.2. Employee - Any person acting on behalf of NDSU in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.

2.3. Faculty – An individual, regardless of whether the individual is compensated by an institution, regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, and those in comparable positions. “Faculty” does not mean an individual whose primary responsibilities are administrative or managerial, unless the individual also teaches at least one credit-hour.

2.4. Free Speech or Free Expression – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota. Such rights include, but are not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils,

marches, public speaking, distribution of printed materials, the display of signs or banners, or the circulation of petitions. For the purposes of this policy, “free speech” or “free expression” is not intended to include Commercial Speech.

2.4.1. Commercial Speech – The promotion, sale, or distribution of a product or service. For the purposes of this section, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.

2.5. Materially and Substantially Disruptive Conduct – Conduct by an individual or group which constitutes knowing or intentional affirmative steps to limit the free speech of an individual or group, prevents the communication of a message, or disrupts a lawful meeting, gathering, or procession through violent or obstructive behavior. Protected conduct does not constitute a material and substantial disruption.

2.6. Protected Conduct – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota, subject to reasonable time, place, and manner restrictions; reservation requirements under institutional policies or procedures; and the reasonable safety and security needs of NDSU.

2.7. Student – An individual enrolled in one or more course credits at NDSU. A student who is acting in a paid role, such as a graduate student instructor or teaching assistant, is not a student for the purpose of this policy while they are engaged in that paid work.

2.8. Student-on-Student Harassment – NDSU may only discipline students for student-on-student harassment which meets one or more of the following criteria:

2.8.1. (1) Unwelcome verbal, written, or physical conduct directed to another student or a specified group of students; and

(2) behavior that is lewd, obscene, defamatory, unlawful, has the purpose of causing distress, or is based on actual or perceived personal characteristics; and either

(3) objectively or subjectively creates a hostile or disruptive environment or substantially interferes with the student’s educational work; or

(4) the conduct is so severe, pervasive, and objectively offensive that it is reasonably likely, based on specific and documented facts, to create a substantial disruption to the educational environment or to effectively deny a student equal access to educational opportunities or benefits provided by the institution; or,

2.8.2. Conduct which violates North Dakota criminal laws prohibiting harassment, stalking, menacing, criminal coercion, or similar behavior.

2.9. Student-on-Student Discriminatory Harassment – Speech or expression that is unwelcome, targets the victim on a basis protected under federal, state, or local law, and is so severe, pervasive, and objectively offensive that a student effectively is denied access to educational opportunities or benefits provided by the institution.

2.10. Student Organization – An organization officially recognized or seeking recognition by NDSU’s Congress of Student Organizations, comprised of students, whether or not that organization seeks or receives institutional funds.

3. General Provisions

3.1.NDSU will not engage in viewpoint or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.

3.2.NDSU students, faculty, staff, and student organizations will be permitted to invite guest speakers or groups to campus regardless of the anticipated content or viewpoint of the speaker or group. NDSU may not prohibit any invited speaker or group from speaking on campus, and may not retract (or pressure/require the parties listed above to retract) an invitation to speak based on the anticipated content or viewpoint of the speech or expression.

3.3.NDSU may impose measures regarding free speech and expression which comport with the First Amendment of the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, including, but not limited to:

3.3.1.Constitutional time, place, manner restrictions on the use of traditional public fora;

3.3.2.Reasonable and viewpoint-neutral restrictions on the use of restricted or designated fora;

3.3.3.Prioritizing the use of institution resources and property for students, faculty, staff, and student organizations over individuals and groups not affiliated with the institution;

3.3.4.Prohibiting or limiting speech, expression, or assemblies not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, such as defamatory speech, true threats, and other recognized exceptions; and

3.3.5.Content-based restrictions reasonably related to a legitimate educational or pedagogical purpose, such as rules for behavior in the classroom.

3.4.NDSU will not discipline or impose sanctions on any student for harassing conduct or expression unless the speech meets the definition of either “student-on-student discriminatory harassment” or “student-on-student harassment.” NDSU may not utilize the disciplinary process to sanction or discipline student speech that constitutes protected conduct except as provided in those definitions.

3.4.1.Notwithstanding, NDSU may respond to speech or expression which does not meet these definitions by taking constructive, non-punitive actions to promote a welcoming, inclusive environment.

3.5.NDSU will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity. NDSU does, however, strongly encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.

3.6.NDSU and its employees shall generally not seek to shield individuals from the free speech or free expression of others. However, it shall not be considered shielding when employees provide information about upcoming events to the campus community.

3.7.No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities

on the campus. Nor may such speech, expression, or assembly be conducted in a way that interferes with the rights of others to free speech and free expression. Due to the contextual nature of disruptive conduct, NDSU is reliant on the judgment and fairness of University employees and authorities in determining what constitutes disruptive conduct. Such judgment must be content neutral and focused on the disruptive nature of the conduct and not the message of the disruption. Disruptive conduct is prohibited.

3.8.NDSU may not deny student organizations funding from the student activity fee based on the viewpoints of the student organization; however, institutions may create content-neutral criteria which permit the distribution of limited funds to student organizations. Student activity fee funding may not be reduced based on outside funding received by a student organization.

3.9.NDSU may not treat one student organization differently than others with respect to the provision of any right, benefit, or privilege based on a requirement in the organization's constitution or bylaws that leaders or voting members of the organization shall (1) adhere to the organization's viewpoints or sincerely held beliefs; or (2) be committed to furthering the organization's viewpoint or mission.

4. Free Speech Areas

4.1.Open Public Forums - The generally accessible, open, outdoor areas of NDSU's campus are considered open forums for free speech, subject to reasonable and constitutional time, place, and manner restrictions. If a group desires to have exclusive use of an open public forum, NDSU requires the group to obtain a reservation (See Section 6).

4.2.Designated Public Forums – NDSU has identified the following areas as restricted or designated forums. Utilization of these areas for free speech or expressive activity requires a reservation (See Section 6):

4.2.1. Areas inside buildings which have been identified as areas which may be rented or reserved.

4.2.2. Areas surrounding residential buildings from 10 am-10 pm (reservations for areas surrounding residential buildings are not available from 10 pm-10 am).

4.2.3. Areas surrounding academic buildings are closed during times when classes are held in that building and restricted when not in session.

4.2.4. Areas which must be restricted due to reasonable safety and security concerns, as designated by appropriate campus official(s).

4.2.5. Areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as determined by appropriate campus official(s).

4.3.Closed Forums – Unless otherwise identified in this Policy, all other areas of campus are considered closed forums. closed forums are those areas which are not designed for the exercise of free speech or expression or which have traditionally not been open to the exercise of free speech or expressive activity.

5. Reservation of Space and Fees for Public Assemblies

To further the effectiveness of an event, protest, assembly, or demonstration, organizers are encouraged to make advance arrangements. Advance logistical planning increases visibility of the event and enables the University to assist in the event taking place in a constructive

and peaceful manner. Please consult the Dean of Student website for information about how to plan and make reservations.

5.1. Reservations and Facility Usage

5.1.1. When organizing a public assembly taking place in an open public forum, organizers are encouraged to consult the Dean of Students Office. The Dean of Students Office will assist in the event taking place in an effective and safe manner that does not disrupt normal functioning of the University.

5.1.2. Reservations for public assemblies and guest speakers are not required for academic or administrative units.

5.1.3. Some events may require the submission of a Facility Use Agreement and/or coordination with specific buildings, offices, or departments.

Reservations must be made following the process in place for each particular space. Most routine events can be approved within two business days; however, the scope of an event may impact how long it takes to process a reservation request.

5.1.4. A reservation is required if an event requires/desires exclusive use of an open public forum. If multiple requests are made for the same space during the same time, reservation requests will be processed in the order in which they were received.

5.1.5. A space reservation affords the group the right to the reserved space for the time covered by the reservation. Any person or organization using or occupying the reserved space without a reservation must yield control of the reserved space in time to allow for the reservation and any time that may be needed to setup the space for the reservation.

5.1.6. NDSU may make facilities available to guest speakers or groups invited by campus representatives, and may subject such guest speakers or groups to the same terms and conditions governing use of the facilities for other outside groups. If NDSU chooses to make facilities available to guest speakers or groups invited by campus representatives, those facilities must be made equally available to all such speakers or groups.

5.1.7. NDSU may prohibit materially and substantially disruptive conduct.

5.2. Fees

5.2.1. NDSU may not impose fees based on anticipated content or reaction thereto, but is not required to subsidize the free speech and expression of students, faculty, staff, student organizations, or their guests. The University may prescribe a fee schedule for use of specified campus spaces. The schedule shall be made available, by the area responsible for a particular space or venue, and shall not exceed the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria, but may include security and logistic fees based on the venue, the anticipated attendance, and other content-neutral factors. The cost of security will be set by the University Police and Safety Office. The criteria used to establish the fee schedule shall be made publicly available.

5.2.2. The University may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.

5.2.3. Academic and administrative units are not subject to the fee schedule.

6. Prohibited Items at Events Covered by this Policy

- 6.1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1).
- 6.2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
- 6.3. Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from appropriate campus official(s).
- 6.4. Open flame, unless approved in advance by appropriate campus official(s).

7. Distribution of Literature and Chalking

- 7.1. Commercial literature may be distributed in designated public forums only:
 - 7.1.1. At University events where the commercial activity has been pre-approved;
 - 7.1.2. On University-approved bulletin boards per building's policy/guidance for use of bulletin boards. All other commercial solicitations are prohibited, unless authorized under and pursuant to NDSU Policy 150 and 700;
 - 7.1.3. Through publications such as The Spectrum student newspaper, whose distribution on campus is pre-approved; and
 - 7.1.4. A public literature rack and contact tables in the main level of Memorial Union (contact tables are available through reservation in the Memorial Union and a fee is charged to off-campus entities).
- 7.2. Chalking is prohibited on NDSU property.

HISTORY:

New July 1990
Amended July 2001
Amended December 2002
Amended April 2005
Amended November 2005
Amended October 2007
Housekeeping September 2015
Housekeeping August 25, 2017
Amended October 29, 2018
Amended August 23, 2019
Amended August 18, 2021
Amended September 13, 2021
Amended March 1, 2022