

POLICY & PROCEDURE MANUAL

North Dakota State College of Science

NOTE: This policy has not been approved by the NDUS office as required in SBHE policy 503.1 (section 8). Review requested July 27, 2021.

Policy 501.01

Free Speech Policy

Source: NDSCS President

Applies to: All NDSCS Students, Employees, and Visitors

1. Introduction

1.1. NDSCS recognizes the fundamental right of its students to free speech and expression under the First Amendment to the United States Constitution and the North Dakota Constitution. NDSCS is committed to ensuring that students and employees have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. As part of this commitment, NDSCS is dedicated to promoting free speech and expression while providing a safe and non-discriminatory College community that supports diversity of thought and people.

The goal of this Policy is to articulate the spaces available for exercising the rights of Free Speech and Expression, to communicate the parameters of any such expressive activity, to ensure the safety of the College community, and to minimize disruption to NDSCS's educational mission.

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 NDSCS 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 who is tasked with providing scholarship, instruction, 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 1, 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 1, 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 NDSCS.

2.7. Student – an individual enrolled in one or more academic credits at NDSCS, or has been enrolled at NDSCS in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student who is acting in a paid role, is not a student for the purpose of this policy while they are engaged in that paid work.

2.8. Student-on-Student Harassment – NDSCS 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 substantially creates a hostile or disruptive environment or substantially interferes with the student’s educational work; or

(4) the conduct is so severe, pervasive, or objectively offensive that it is reasonable 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 officially recognized organization, or an organization seeking recognition by the College, comprised of students, whether or not that organization seeks or receives institutional funds.

3. General Provisions

- 3.1. NDSCS 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. NDSCS 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. NDSCS 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. NDSCS 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. NDSCS 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.” NDSCS 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, NDSCS 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. NDSCS 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. NDSCS does, however, encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.
- 3.6. NDSCS 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, NDSCS is reliant on the judgment and fairness of College 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. NDSCS 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. NDSCS 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 NDSCS'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, NDSCS requires the group to obtain a reservation (See Section 5).
- 4.2. **Designated Public Forums** – NDSCS 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 5):
- 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 a.m. – 10 p.m. (reservations will not be granted from 10 p.m. – 10 a.m.);
 - 4.2.3. Areas surrounding academic buildings during times when academic instruction is occurring within that building;
 - 4.2.4. Areas which must be restricted due to reasonable safety and security concerns, as designated by Executive Director of Student and Residential Life or designee;
 - 4.2.5. Areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as determined by Executive Director of Student and Residential Life or designee.
- 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 a public assembly, organizers are encouraged to make advance arrangements. Advance logistical planning could increase the visibility of the event and enables the College to support the assembly taking place in a constructive and peaceful manner. Please consult with NDSCS Student Life about how to plan and make advance arrangements.

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 with the Student Life Office. The Student Life Office will assist in the event taking place in an effective and safe manner that does not disrupt the normal functioning of the College.
- 5.1.2. For non-open fora locations reservations must be requested and approved. Organizers are required to complete and submit a reservation form to the Customer Service Desk at NDSCS Wahpeton or Front Desk at NDSCS Fargo. The form should be submitted three working days in advance of the event. The reservation of indoor space may require the submission of a Facility Use Agreement. With appropriate advance notice, the Executive Director for Student and Residential Life or designee will engage with participants during the event to help ensure that the event is effective and safe, and to assist organizers in seeing that the demonstration does not disrupt the normal operation of the College.
- 5.1.3. If multiple requests are made for the same space during the same time, reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- 5.1.4. 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.
- 5.1.5. NDSCS may make facilities available to guest speakers or groups invited by College representatives, and may subject guest speakers or groups to the same terms and conditions governing use of the facilities for other outside groups. If NDSCS chooses to make facilities available to guest speakers or groups invited by College representatives, those facilities must be made equally available to all such speakers and groups.
- 5.1.6. NDSCS may prohibit materially and substantially disruptive conduct.

5.2. Rental Fees

- 5.2.1. NDSCS 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 Customer Service Desk at NDSCS Wahpeton and Front Desk at NDSCS Fargo may prescribe a fee schedule for use of specified College spaces. The schedule shall be made available at these locations,

and shall be based on the actual expenses incurred by the College in making the space available.

- 5.2.2. The rental fee 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 criteria used to establish the fee schedule shall be made publicly available.
- 5.2.3. The Executive Director of Student and Residential Life or their designee may waive any applicable fee for an assembly contributing to the educational mission of the College or engaging in charitable work.
- 5.2.4. Academic and administrative units are not typically subject to the rental 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).

Where to obtain additional information:

Students: Contact the Student Life Department at 701-671-2404 or the Vice President for Student Affairs at 701-671-2627

Employees: Contact your supervisor and/or call the Human Resources office at 701-671-2903 (e-mail: ndscs.hr@ndscs.edu)

Approved by:



NDSCS President

7/27/2021
Date