

North Dakota State University

Policy Manual

SECTION 154

FREEDOM OF SPEECH, EXPRESSION, AND ASSEMBLY

SOURCE: President's Office

1. Introduction

1.1. North Dakota State University 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 providing 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.

2. Definitions

- 2.1. Amplified sound – means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound, but are subject to general rules on disruption.
- 2.2. 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.
- 2.3. 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.

- 2.4. Disruptive Conduct – Any act that: unreasonably interferes with the rights of others to peaceably assemble or to exercise the right of free speech or expression; impedes the flow of pedestrian and/or vehicular traffic; disrupts the normal functioning of the University; damages property; or endangers health or safety.
- 2.5. Employee - means 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.
- 2.6. Free Speech or Free Expression – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or 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.
- 2.7. Protected Conduct – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or 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.
- 2.8. Student – an individual enrolled in one or more courses at NDSU.
- 2.9. Student Organization – An organization recognized or seeking recognition by NDSU’s Congress of Student Organizations, 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 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, encourage that all such discussions take place in an atmosphere of mutual respect, free from racism, sexism, and other forms of bias.
- 3.3. 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.
- 3.4. 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.

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 utilize amplified sound or 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 are restricted from 10 am-10 pm and closed from 10 pm-10 am. Any sound production must not constitute Disruptive Conduct;

4.2.3. Areas surrounding academic buildings are closed during times when classes are held in that building and restricted when not in session. Any sound production must not constitute Disruptive Conduct;

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. Public Assemblies and Guest Speakers

5.1. Any public assembly or guest speaker taking place in an Open Public Forum with an expected attendance of more than 25 participants, including counter-demonstrators, requires a reservation (See Section 6).

5.2. Any public assembly or guest speaker taking place in an Open Public Forum utilizing Amplified Sound requires a reservation (See Section 6).

5.3. When organizing a public assembly taking place in an Open Public Forum with an expected attendance less than 25 participants, including counter-demonstrators, or without the use of Amplified Sound, 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 the normal functioning of the University.

5.4. Reservations for public assemblies and Guest Speakers are not required for academic or administrative units.

6. Reservation of Space and Fees

To further the effectiveness of an event, protest, assembly, or demonstration, organizers are encouraged to make advance arrangements with the Dean of Students Office. Advance notification enables the University to assist in the event taking place in a constructive and peaceful manner. Additionally, with appropriate advance notice, the appropriate administration representative (e.g., student group advisor, University Police, etc.) 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 event does not disrupt the normal functioning of the University.

6.1. Most routine events can be approved within 48 hours, however, the scope of an event may impact how long it takes to process a request. The Dean of Students Office will determine whether an event can be executed as requested and in accordance with this policy. To request a reservation of space, NDSU requires organizers to submit a Free Speech Event Registration form to the Dean of Students Office. Some events may also 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.

6.2. 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.

6.3. 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.

6.4. Fees - The University may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available on request, by the area responsible for a particular space or venue, and shall be based on 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, historical protest activity at events of similar 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.

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

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

7. Prohibited Items at Events Covered by this Policy

7.1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1).

7.2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.

7.3. 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).

7.4. Open flame, unless approved in advance by appropriate campus official(s).

8. Distribution of Literature and Chalking

8.1. Commercial Literature may be distributed in designated public forums only:

8.1.1. At University events where the commercial activity has been pre-approved;

8.1.2. 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;

8.1.3. Through publications such as The Spectrum student newspaper, whose distribution on campus is pre-approved; and

8.1.4. In the Free Speech 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).

8.2. Chalking is only allowed for Residence Hall Move-in and NDSU Homecoming with permission from Facilities Management.

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