

North Dakota State University

Provision: No free speech zones, guarantee of public forums

HB 1503 Language:

An institution shall maintain the generally accessible, open, outdoor areas of the institution's campus as traditional public forums for free speech by students, faculty, and invited guests, subject to reasonable time, place, and manner restrictions on free speech, assembly, and expression which are applicable to the publicly accessible outdoor areas of campus, do not violate the First Amendment to the United States Constitution or section 4 or article I of the Constitution of North Dakota, and are clear, published, reasonable, content-neutral, viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of information or a message

An institution may not restrict students' free speech to particular areas of campus, sometimes known as 'free speech zones'

Policy Redline: No Changes Necessary, Policy Already Compliant

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).¹

Provision: Spontaneous Expression

HB 1503 Language:

An institution may not establish permitting requirements prohibiting spontaneous outdoor assemblies or outdoor distribution of literature, except an institution may maintain a policy granting an individual or organization the right to reserve the exclusive use of certain outdoor spaces, and may prohibit spontaneous assemblies or distribution of literature inside reserved outdoor spaces

Policy Redline: No Changes Necessary, Policy Already Compliant

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

¹ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

exclusive use of an Open Public Forum, NDSU requires the group to obtain a reservation (See Section 6).²

...

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).

Commented [1]: The precise number of students that should trigger a reservation requirement should be different depending on the size of an institution. FIRE takes this into account on an individual institution basis.

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Most **routine** events can be approved within 48 hours, however, the **scope size and nature** 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 **the content and viewpoint neutral criteria set forth in 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.³

Provision: Distribution of literature

HB 1503 Language:

An institution may not establish permitting requirements prohibiting spontaneous outdoor assemblies or outdoor distribution of literature, except an institution may maintain a policy granting an individual or organization the right to reserve the exclusive use of certain outdoor spaces, and may prohibit spontaneous assemblies or distribution of literature inside reserved outdoor spaces

Policy Redline: **No Changes Necessary, Policy Already Compliant**

Free Speech or Free Expression - The rights to speech, expression, and assembly protected by the First Amendment to the United State 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.⁴

² <https://www.ndsu.edu/fileadmin/policy/154.pdf>

³ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

⁴ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

Provision: Protection of Faculty Speech in the Classroom

HB 1503 Language:

Protects the academic freedom and free speech rights of faculty by guaranteeing, at a minimum, no faculty member will face adverse employment action for classroom speech, unless the speech is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction

Policy Redline: **No Changes Necessary, Policy Already Compliant**

Faculty: Members of the faculty are as entitled as any other member of the community in which they live to establish membership in voluntary groups, to seek or hold public office, to interact with their elected officials, to express their opinions as individuals on public questions and to take action in accordance with their views. Cognizant of their responsibilities to their profession and to their institution, faculty accept certain obligations; they should attempt to be accurate, to exercise sound judgment and to respect the right of others to express opinions. They must make clear that their actions, statements and memberships do not necessarily reflect the views of either NDSU, or the ND University System. If there are controls to be exercised over faculty members, they are the controls of personal integrity and the judgment of their colleagues.

- a. Research and creative activities: Members of the faculty have full freedom to pursue their research and/or creative activities and to publish their results, free from ridicule, recrimination, or reprisal by colleagues, administrators, SBHE members or other government officials. They are free to involve interested students and other professionals in their University research and to pursue extramural funding to support it.
- b. Instruct: Faculty are entitled to freedom in teaching their assigned courses. That freedom includes, but is not limited to, design of pedagogical approach, selection and delivery of course content and reference materials beyond what is considered baseline in their degree program(s). Freedom further extends to conducting of class meetings and demonstrations, creating assignments and examinations to assess student performance, and assigning grades.⁵

Provision: Student-on-Student Discriminatory Harassment

HB 1503 Language:

Prohibits student-on-student discriminatory harassment consistent with the following requirements:

⁵ <https://www.ndsu.edu/fileadmin/policy/325.pdf>

- a. An institution may not enforce the student-on-student discriminatory harassment policy by disciplining or otherwise imposing any sanction on a student for a violation of the policy stemming from expression unless:
- The speech or expression 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 equal access to educational opportunities or benefits provided by the institution; or
 - The speech or expression explicitly or implicitly conditions a student's participation in an education program or activity or bases an educational decision on the student's submission to unwelcome sexual advances or requests for sexual favors;

Policy Redline:

NDSU Policy Manual: Section 156 - Discrimination, Harassment, and Retaliation
Complaint Procedures

Harassment - A form of discrimination, unwelcome oral, written, graphic, or physical conduct, based on one or more of the protected classes (see 2.1.1) of an individual (or group), that is sufficiently severe, ~~persistent, or~~ pervasive, and objectively offensive so as to ~~unreasonably interfere with effectively deny the victim-student(s) access to~~ their education, employment, or other participation in educational programs or activities ~~or that creates a working, learning, or educational program or activity environment that a reasonable person would find hostile, intimidating, or abusive.~~ Harassment may include, but is not limited to ~~when they are part of a pattern of conduct that rises to the level of the standard set forth above,~~ threats, physical contact or violence, ~~offensive jokes, insults or put-downs,~~ slurs or name calling, ~~or vandalism/graffiti, or offensive objects or pictures.~~ Petty slights, annoyances, and isolated incidents (unless very serious) typically do not rise to the level of harassment.⁶

Commented [2]: FIRE has seen countless examples of students being punished under harassment policies for insults or displaying subjectively offensive objects and pictures when these expressions were not part of a course of conduct that would satisfy the criteria of Davis v. Monroe County Bd of Education. While their inclusion here is not technically unlawful once the language we proposed is added, its inclusion invites abuse nonetheless. These phrases would not need to be deleted to be compliant with the bill, but we would strongly recommend deleting them.

Provision: Viewpoint-neutral security fees

HB 1503 Language:

An institution may not charge students or student organizations security fees based on the content of the student's or student organization's speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to the speech. Any security fees charged to a student or student organization may not exceed the actual costs incurred by the institution, and the institution shall refund any overpayment. Institutions shall set forth empirical and objective criteria for calculating security fees and shall make the criteria available to the public

⁶ <https://www.ndsu.edu/fileadmin/policy/156.pdf>.

Policy Redline:

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 ~~and shall not exceed actual costs incurred by the University. Any overpayment shall be refunded once actual costs are calculated after the event.~~ The criteria used to establish the fee schedule shall be made publicly available.⁷

Provision: No compulsory disinvitations

HB 1503 Language:

An institution may not retract or compel a student, student organization, or faculty member to retract a guest speaker's invitation to speak at the institution based on the guest speaker's viewpoints or the content of the anticipated speech

Policy Redline:

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. ~~The University shall not itself rescind, nor require or take steps to compel a student, student organization, faculty member, or other campus-affiliated host to retract, a guest speaker's invitation to speak based on that speaker's viewpoints or the expected content of the speech.~~ However, it shall not be considered shielding when employees provide information about upcoming events to the campus community.

⁷ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

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.⁸

Provision: Viewpoint-neutral student organization disbursement

HB 1503 Language:

An institution may not deny student activity fee funding to a student organization based on the viewpoints the student organization advocates

Policy Redline:

4.4. Recognition

Recognition of student organizations is granted by the Congress of Student Organizations Commission and registered in the Student Activities Office in Memorial Union. Although student organizations are independent units which exist at NDSU and are not considered agents of the University, they are expected to uphold and comply with institutional and North Dakota University System (NDUS) policies and local, state, and federal laws.

Students and student organizations are free to examine and express opinions publicly and privately. They are free to support causes by orderly means that do not disrupt regular and essential operations of the University. **Recognition and funding decisions will not be based on a student organization's point of view, no matter how controversial or unpopular. Criteria used to evaluate funding proposals, recognition and registration requests shall be applied in the same manner to all organizations, with no consideration of the viewpoints the student organization advocates.** At the same time, it should be made clear to the academic and larger community that in their public expressions or demonstrations, students or student organizations speak only for themselves.⁹

Provision: No Viewpoint Discrimination Against Student Organizations

⁸ <https://www.ndsu.edu/fileadmin/policy/154.pdf>

⁹ <https://www.ndsu.edu/fileadmin/policy/601.pdf>

HB 1503 Language:

An institution may not discriminate against a student organization with respect to a benefit available to any other student organization based on a requirement of the organization that leaders or voting members of the organization:

1. Adhere to the organization's viewpoints or sincerely held beliefs; or
2. Be committed to furthering the organization's beliefs or religious missions.

Policy Redline:

4.5 Membership

Membership in student organizations and affiliated University groups is limited to current students, faculty, and staff of NDSU.¹⁰

Student organizations may enact requirements that leaders or voting members of the organization adhere to the organization's viewpoints and demonstrate a commitment to furthering the organization's core beliefs, viewpoints, or religious missions. The University shall not deny a benefit afforded to any other student organization on the basis of the organization's viewpoints, sincerely held beliefs or membership requirements related to those viewpoints or beliefs.

¹⁰ <https://www.ndsu.edu/fileadmin/policy/601.pdf>

