

## ***General/Student – Speech, Expression, and Assembly***

### **Categories of Speakers and Users:**

1. *“Academic or administrative unit”* means any office or department of Bismarck State College.
2. *“Event”* means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.
3. *“Faculty member and staff member”* includes any person who is employed by Bismarck State College.
4. *“Off-campus person or organization”* means any person, organization, or business that is not an academic or administrative unit, a student, faculty, or staff organization, or a student, faculty member, or staff member.
5. *“Student”* means a person who is currently enrolled at Bismarck State College, or has been enrolled at Bismarck State College in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.
6. *“Bismarck State College person or organization”* includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an “off-campus person or organization” or a “Bismarck State College person or organization.”

### **General Definitions:**

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. "Weekday" means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Bismarck State College holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Bismarck State College holiday that deadline will be moved to the next day.
3. "Room or space" includes any room or space, indoors or outdoors, owned or controlled by the Bismarck State College.

### **General Provisions:**

1. Bismarck State College recognizes that students, staff, and faculty have a fundamental right to free speech and expression under the First Amendment to the United States Constitution and Article I, Section 4 of the North Dakota Constitution, and as a result the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations. The exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Bismarck State College.
2. Bismarck State College 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. Bismarck State College 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.
4. Bismarck State College and its faculty and employees will not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity.
5. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Bismarck State College and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
6. Bismarck State College designates the following areas as restricted or designated fora:
  - a. those areas inside buildings which have not otherwise been treated as traditional public fora;
  - b. areas within a fifty (50) foot radius from residential buildings during evening and overnight hours;
  - c. areas within a fifty (50) foot radius from academic buildings during times when classes are held in that building;
  - d. areas which must be restricted due to reasonable safety and security concerns, as designated by Bismarck State College's Safety and Security Manager;

- e. areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by Bismarck State College's Safety and Security Manager;
- f. areas within a fifty (50) foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings; and

Bismarck State College may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

- 7. 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.

### **Prohibited Items at Assemblies:**

- 1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
- 2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
- 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 Bismarck State College's Safety and Security Manager.
- 4. Open flame, unless approved in advance by Bismarck State College's Safety and Security Manager.

### **General Rules on Means of Expression:**

- 1. Disruption
  - a. 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; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.

- b. Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Bismarck State College authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgments must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.
2. Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

### **Damage to Property:**

No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the Bismarck State College or of any person who has not authorized the speaker to damage or deface their property.

### **Amplified Sound:**

1. General Rule on Amplified Sound
  - a. Bismarck State College academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from Bismarck State College's Safety and Security Manager, subject to the following restrictions.
2. Location and Times of Weekday Outdoor Amplified Sound Areas
  - a. The Bismarck State College's Safety and Security Manager may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Bismarck State College functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.

- b. Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Bismarck State College's Safety and Security Manager on a form prescribed by the Bismarck State College's Safety and Security Manager.
- c. The Bismarck State College's Safety and Security Manager may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- d. Bismarck State College persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

### 3. Amplified Sound Outdoors on Evenings and Weekends

- a. With advance permission, Bismarck State College organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- b. The Bismarck State College's Safety and Security Manager may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Bismarck State College functions and other nearby activities, and to manage environmental impact.
- c. Use of amplified sound on evenings and weekends requires advance permission from the Bismarck State College's Safety and Security Manager. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the Bismarck State College's Safety and Security Manager.
- d. If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

### 4. Amplified Sound Indoors

- a. Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the Bismarck State College's Safety and Security Manager may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

## **Public Assemblies without Amplified Sound:**

### 1. General Rule on Public Assemblies

- a. "Publicly assemble" and "public assembly" include any gathering of persons, including discussions, rallies, and demonstrations.
- b. Bismarck State College persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- c. The buildings owned or controlled by Bismarck State College are not open for demonstrations, assembly, or speech by the general public. In furtherance of the Bismarck State College's educational mission, the buildings owned or controlled by Bismarck State College are limited for open only to faculty, staff, and students and their organizations.
- d. Off-campus persons and organizations may not engage in expressive activities at the Bismarck State College except in accordance with these rules.

## 2. Reservation of Space

- a. Bismarck State College persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Bismarck State College. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of Bismarck State College's Safety and Security Manager.
- b. 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.
- c. A Bismarck State College person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the President or their designee.

## 3. Fees for Reserving Space.

- a. The Bismarck State College's Safety and Security Manager may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available at Safety and Security on request, 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 criteria used to establish the fee schedule shall be made publicly available.
- b. The Bismarck State College may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
  - c. The President or their designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
  - d. Academic and administrative units are not subject to the fee schedule.

### **Notice and Consultation:**

- 1. Bismarck State College persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- 2. Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Bismarck State College's Safety and Security Manager. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Bismarck State College's Safety and Security Manager if there is uncertainty about applicable Bismarck State College rules, the appropriateness of the planned location, or possible conflict with other events. The Bismarck State College's Safety and Security Manager can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
- 3. Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Bismarck State College's Safety and Security Manager.
- 4. Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Bismarck State College's Safety and Security Manager.
- 5. The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- 6. The notice and consultation requirements of this subchapter may be waived by the President or their designee.

## **Guest Speakers:**

### **1. Definitions**

- a. "Guest speaker" means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Bismarck State College person or organization outside of the classroom.

### **2. Who May Present**

- a. Bismarck State College persons and organizations and academic and administrative units may present guest speakers on Bismarck State College property. In the case of speakers invited by students or student organizations, advance permission from the Vice President for Student Affairs is required. Faculty organizations are required to seek advance permission from the Vice President for Academic Affairs. Staff members and staff organizations are required to seek advance permission from the Vice President for Operations/Chief Financial Officer.
- b. The requirement of advanced permission may be waived by the President or their designee.

### **3. Location and Form of Presentation**

- a. A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the President or designee.
- b. A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

### **4. Application**

- a. All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- b. A student or student organization that wishes to present a guest speaker will apply to the Vice President for Student Affairs, through a process prescribed by the Vice President for Student Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- c. A faculty member or faculty organization that wishes to present a guest speaker will apply to the Vice President for Academic Affairs through a process prescribed by the Vice President for Academic Affairs, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.



- d. A staff member or staff organization that wishes to present a guest speaker will apply to the Vice President for Operations/Chief Financial Officer through a process prescribed by the Vice President for Operations/Chief Financial Officer, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

5. Obligations of Presenting Person or Organization

- a. A Bismarck State College person or organization that presents a guest speaker must make clear that:
  - i. the person or organization, and not the Bismarck State College, invited the speaker; and
  - ii. the views expressed by the speaker are their own and do not necessarily represent the views of the Bismarck State College, the North Dakota University System, or the State of North Dakota.
- b. The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- c. Institutional funds provided to a recognized Bismarck State College organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor and College President or their designee, in consultation with the College's legal counsel.

6. Equal Treatment

- a. Guest speakers reserving space at Bismarck State College facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a Bismarck State College person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

7. Disinvitation

- a. If a Bismarck State College person or organization complies with this policy when presenting a guest speaker, Bismarck State College may not prohibit or disinvite that guest speaker based on the anticipated content or viewpoint of the guest speaker's speech, performance, presentation, or other form of expression.

**Responding to Speech, Expression, and Assembly:**

1. General Rule on Responding

- a. Bismarck State College persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.

- b. Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.
- 2. Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.
- 3. Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the Bismarck State College's Safety and Security Manager will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.
- 4. Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.

## **References:**

State Board of Higher Education Policy 605.1, Academic Freedom and Tenure; Academic Appointments.

Senate Bill No. 2320, 66<sup>th</sup> Legislative Assembly of North Dakota

## **History of This Policy:**

First policy draft approved by the Faculty Senate on August 22, 2019, the Staff Senate on August 20, 2019; reviewed by the Operations Council on August 16, 2019, and approved by the Executive Council on August 26, 2019.