

CHAPTER 15-10.4 CAMPUS FREE SPEECH POLICY

15-10.4-01. Definitions.

As used in this chapter:

1. "Constitutional time, place, and manner restrictions" means restrictions on the time, place, and manner of free speech which do not violate the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota and which are reasonable, content- and viewpoint-neutral, and narrowly tailored to satisfy a significant institutional interest, and leave open alternative channels for the communication of the information or message.
2. "Faculty" means an individual, regardless of whether the individual is compensated by an institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching, including tenured and nontenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, 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.
3. "Free speech" means speech, expression, and assemblies protected by the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota, including all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of a product or service, unless the promotion, sale, or distribution of the product or service is incidental to the exercise of free speech.
4. "Institution" means an institution under the control of the state board of higher education.
5. "Student" means an individual enrolled in at least one course offered by an institution.
6. "Student organization" means an officially recognized organization at an institution, or an organization seeking official recognition, comprised of admitted students receiving or are seeking to receive benefits through the institution.

15-10.4-02. Adoption of campus free speech policy.

The state board of higher education and each institution shall adopt a policy that:

1. Protects students' rights to free speech, assembly, and expression;
2. Permits institutions to establish and enforce reasonable and constitutional time, place, and manner restrictions on free speech, assembly, and expression;
3. 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;
4. Prohibits student-on-student discriminatory harassment consistent with the following requirements:
 - 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:
 - (1) 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
 - (2) 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;

- b. An institution may sanction or discipline student-on-student speech or expression that does not meet the definition of student-on-student harassment only when the speech or expression is not protected under the First Amendment to the United States Constitution or section 4 of article I of the Constitution of North Dakota; and
 - c. An institution may respond to student-on-student speech that is not discriminatory harassment by taking nonpunitive actions designed to promote a welcoming, inclusive environment; and
5. Complies with the following principles of free speech:
- a. 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 of 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;
 - b. An institution may not restrict students' free speech to particular areas of campus, sometimes known as "free speech zones";
 - c. An institution may not deny student activity fee funding to a student organization based on the viewpoints the student organization advocates;
 - d. 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;
 - e. 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;
 - f. An institution shall allow students, student organizations, and faculty to invite guest speakers to campus to engage in free speech regardless of the views of the guest speakers or viewpoint or content of the anticipated speech;
 - g. 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; and
 - h. 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.