

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

### Introduction

Bismarck State College, (BSC), 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. BSC 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, BSC 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, BSC 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 BSC’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 property owned or controlled by BSC for exercising the rights of free speech and assembly.

### Categories of Speakers and Users:

**Academic or administrative unit** means any office or department of Bismarck State College.

**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.”

**Employee-Faculty member and staff member** means any person acting on behalf of Bismarck State College in an official capacity, temporarily or permanently, with or without compensation. The term does not include an independent contractor.

**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.

**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.

**Student** means an individual enrolled in one or more courses at BSC 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.

**Student Organization** means an organization recognized or seeking recognition by BSC's Congress of Student Organizations.

## General Definitions:

- **Publicly assemble and public assembly** include any gathering of persons, including discussions, rallies, and demonstrations.
- **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.
- **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.
- **Classroom activities** means any activity relating to the class in which it is taking place and contained inside the classroom.
- **Commercial Speech** is the promotion, sale, or distribution of a product or service. For the purposes of this policy, commercial speech does not include the incidental promotion, sale, or distribution of a product as part of the exercise of non-commercial speech.
- **Constitutional Time, Place, and Manner Restrictions** are 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.
- **Disruptive Conduct** means 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.

- **Event** means something that occurs on BSC Campus; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies. BSC Campus is defined as:
  - a. BSC Main Campus
  - b. Mandan Campus
    1. Lineworkers Campus
    2. Mechanical Maintenance Campus
- **Open Public Forum** are those areas which are designed for the exercise of free speech or expression or which have traditionally been open to the exercise of free speech or expressive activity, unless otherwise restricted.
- **Restricted Forum** are those areas events are not permitted.
- **Room or space** includes any room or space, indoors or outdoors, owned or controlled by Bismarck State College.
- **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.

### **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.

### **Free Speech Areas:**

1. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are open public forums for free speech by both Bismarck State College and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.
2. Bismarck State College designates the following areas as restricted forums:
  - a. those areas inside buildings which have not otherwise been treated as traditional public forums;
  - b. areas within a fifty (50) foot radius from residential buildings are restricted from 10 am-10 pm and closed from 10 pm-10 am. Any sound production must not constitute Disruptive Conduct;
  - 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, 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.

### **Public Assemblies and Guest Speakers:**

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.
2. Any public assembly or guest speaker taking place in an Open Public Forum utilizing Amplified Sound requires a reservation.
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 Safety and Security Manager. The Safety and Security Manager will assist in the event taking place in an effective and safe manner that does not disrupt the normal functioning of the College.

4. Reservations for public assemblies and Guest Speakers are not required for academic or administrative units engaged in classroom activities.

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

1. Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1)
2. Firearms, except as permitted by law. See N.D.C.C. § 62.1-02-05.
3. Body-armor or makeshift body-armor, helmets, masks, hood or other device that covers, hides or attempts to conceal any portion of an individual's identity, and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as 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 policy.
  - 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 Bismarck State College or of any person who has not authorized the speaker to damage or deface their property.

### **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 Safety and Security Office. Advance notification enables the College 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, College 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 College.

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 Safety and Security Office will determine whether an event can be executed as requested and in accordance with this policy. To request a reservation of space, BSC requires organizers to submit a Free Speech Event Registration form to the Safety and Security 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.
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.
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.

**Fees:**

- a. The College 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 Campus Safety and Security Office. The criteria used to establish the fee schedule shall be made publicly available.
- b. The College may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
- c. Academic and administrative units are not subject to the fee schedule.

**Distribution of Literature**

For distribution of literature refer to the General policy – Solicitations and Posting Materials

**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

NDSU Policy Manual Section 154.8, Freedom of Speech, Expression and Assembly

**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; reviewed by Campus Council on February 10, 2021 and approved by the Executive Council on March 18, 2021.

Revisions - Revised policy approved by Faculty Senate on November 5, 2020.