

Student Free Speech and Expression

1. Definitions for Terms Used in this Section

- i. **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.
- ii. **Faculty** – An individual, regardless of whether the individual is compensated by Mayville State University, 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, 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.
- iii. **Free speech or Free Expression** – The rights to speech, expression, and assembly protected by the First Amendment to the United States Constitution or Article I, Section 4 of 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.
 - i. **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.
- iv. **Materially and Substantially Disruptive Conduct** – Conduct by an individual or group which constitutes knowing or intentional affirmative steps to limit the free speech of an individual or a group, prevents the communication of a message, or disrupts a lawful meeting, gathering, or procession through violent or obstructive behavior. Protected conduct does not constitute a material and substantial disruption.
- v. **Protected Conduct** – Free Speech or Free Expression protected by the First Amendment to the United States Constitution or Article I, Section 4 of the Constitution of North Dakota, subject to reasonable time, place, and manner restrictions, permitting requirements under institutional policies or procedures, and the reasonable safety and security needs of the institution.
- vi. **Student** – an individual enrolled at Mayville State University or in one or more courses offered by another NDUS institution that is hosted at Mayville State University. For the purposes of this Policy, a student who is acting in a paid role, such as a teaching or research assistant, is not a student for the purpose of this policy while

they are engaged in that paid work.

- vii. **Student-on-Student Harassment** – An institution may only discipline students for student-on-student harassment which meets one or more of the following criteria:
- i. (1) Unwelcome verbal, written, or physical conduct directed to another student or a specified group of students;
(2) that is lewd, obscene, defamatory, unlawful, has the purpose of causing distress, or is based on the student’s (or students’) actual or perceived personal characteristics; and either
(3a) objectively and subjectively creates a hostile or disruptive environment or substantially interferes with the student’s educational work; or
(3b) the conduct is so severe, pervasive, or objectively offensive that it is reasonably likely, based on specific and documented facts, to create a substantial disruption to the educational environment or to effectively deny a student equal access to educational opportunities or benefits provided by the institution; or
 - ii. Conduct which violates North Dakota criminal laws prohibiting harassment, stalking, menacing, criminal coercion, or similar behavior.
- viii. **Student-on-Student Discriminatory Harassment** – Speech or expression that 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 access to educational opportunities or benefits provided by the institution.
- ix. **Student Organization** – An officially recognized organization, or an organization seeking recognition by an institution, comprised of students, whether or not that organization seeks or receives institutional funds.

2. Student Free Speech and Expression

- a. Mayville State University recognizes students 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 the policies of the State Board of Higher Education. Mayville State will ensure students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally-recognized limitations.
- b. Mayville State will not engage in viewpoint- or content-based discrimination or suppression of speech and shall to the greatest extent possible permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.

- c. Mayville State will not discipline or impose sanctions on any students for harassing conduct or expression unless the speech meets the definition of either “student-on-student discriminatory harassment” or “student-on-student harassment.” Institutions may not utilize the disciplinary process to sanction or discipline student speech that constitutes protected conduct except as provided in those definitions.
 - i. Notwithstanding, Mayville State may respond to student-on-student speech or expression which does not meet these definitions by taking constructive, non-punitive actions to promote a welcoming, inclusive environment.
- d. As a general rule, Mayville State will not use the concepts of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary in the educational setting.
- e. Mayville State will generally not seek to shield individuals from the free speech or expression of others.
- f. Mayville State will control the availability of campus spaces for free speech and expressive activity as follows:
 - i. Mayville State will maintain the generally accessible, open, outdoor areas of its campus as traditional public fora for free speech by students, faculty, student organizations, and members of the public, subject to reasonable and constitutional time, place, and manner restrictions. Mayville State may require students, faculty, student organizations, and members of the public to obtain a permit to reserve the exclusive use of an outdoor space constituting a traditional public forum. Such permits may not be issued or denied based on the content of the message or viewpoint the permit requestor seeks to convey.
 - ii. Mayville State designates restricted and designated forums/fora in accordance with SBHE Policy 503.1.
- g. Mayville State will not deny student organizations funding from the student activity fee based on the viewpoints of the student organization; however, institutions may create content-neutral criteria which permit the distribution of limited funds to student organizations. Student activity fee funding may not be reduced based on outside funding received by a student organization.
- h. Mayville State will not treat a student organization differently (i.e. more favorably or more negatively) than other student organizations with respect to the provision of any right, benefit, or privilege based on a requirement in the organization’s constitution or bylaws that leaders or voting members of the organization shall (1) adhere to the organization’s viewpoints or sincerely held beliefs; or (2) be committed to furthering the organization’s viewpoint or

mission.

- i. Students, faculty, and student organizations shall be permitted to invite guest speakers or groups to campus regardless of the anticipated content or viewpoint of the speaker or group's speech or expression. Mayville State will ~~not~~ prohibit any invited speaker or group from speaking on campus, and may not retract (or pressure or require students, faculty, or a student organization to retract) an invitation to speak based on the anticipated content or viewpoint of the speech or expression.
- j. Mayville State will not impose fees on students, faculty, or student organizations, including with respect to invited guest speakers or groups, for the use of campus facilities based on the anticipated content or viewpoint of speech, expression, or the anticipated reaction thereto, but Mayville State is not required to subsidize the free speech and expression of students, faculty, or student organizations or their guests.
- k. Mayville State may impose facility use fees based on venue, anticipated attendance, and other non-content-based factors. Such fees may not exceed the actual costs incurred by the institution, and the institution must refund any overpayment. Mayville State's facility use fees are available through the Business Office and other offices on campus.
- l. Mayville State generally makes facilities available to outside groups, and such groups may guest speakers subject to the same terms and conditions governing use of the facilities for students, faculty, or student organizations.
- m. Mayville State may prohibit materially and substantially disruptive conduct.
- n. Mayville State may impose measures regarding student free speech and expression which comport with the First Amendment of the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, including, but not limited to:
 - i. Constitutional time, place, and manner restrictions on the use of traditional public fora;
 - ii. Reasonable and viewpoint-neutral restrictions on the use of restricted or designated fora;
 - iii. Prioritizing the use of institution resources and property for students, faculty, and student organizations over individuals and groups not affiliated with the institution;
 - iv. Prohibiting or limiting speech, expression, or assemblies not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of North Dakota, such as defamatory

speech, true threats, and other recognized exceptions; and

- v. Content-based restrictions reasonably related to a legitimate educational or pedagogical purpose, such as rules for behavior in the classroom.

3. Distribution of Publications, Hanging of Banners or Posters, and Chalking.

- a. Mayville State has adopted policies ~~or~~ and procedures governing the distribution of information through publications, banners and posters, or chalking. See M403.1

4. **Title IX Proceedings Exempt** –SBHE Policy 520 and Mayville State policy: M520.01 provide definitions and resources related to Title IX matters and M520.02 provides responses and institutional protocols related to Title IX complaints. Such proceedings and the contents of those proceedings are not effected by this policy.

5. **Reports of Violations of this Policy** – Individuals who believe this policy has been violated may report any violation
- any member of the President’s Cabinet, or
 - through the electronic complaint system, or
 - to the NDUS Office’s Director of Student Affairs

In the event that a report is made to the Director, he or she shall determine the appropriate institution official to address the report in consultation with the Vice Chancellor of Academic and Student Affairs.

6. Pursuant to SBHE Policy 308.2, no Mayville State University employee, officer or member of the SBHE shall retaliate against an individual for making a report under this paragraph.
- a. References: N.D. Const. Art. I, § 4; SBHE Policies 308.2, 503.1, and 520; Mayville State University Policies (M-Policy) M403.1, M503.1, M520.01, and M520.02

Adopted: October, 2021

Sponsor: Dean of Student Affairs