

# Expressive Activity; Free Speech

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1260

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Policy Manager

[Dean of Students](#)

## Temporary / Emergency Policy

Note: This policy was adopted on November 30, 2022 under the temporary / emergency policymaking provisions of the University's [Policy on Policies](#). It will revert on March 30, 2023.

Information about this policy change, and any proposals for further policymaking, can be accessed at the University Policy website. Students and employees may submit comments on those proposals through the Proposed Policy Change Comment Form, which is accessible through the site.

## 1260.1 Policy Statement

- A. **Statement.** All persons within the United States enjoy the right to think freely, discuss or debate any idea, speak and publish their views and opinions, participate in religious or conscience observances, and freely assemble or associate with others of their choice. It is the policy of Wright State University to respect those rights within constitutionally-permissible limitations, as set forth in this Policy.
- B. **Scope; Exceptions.** Section 1260.3 of this Policy does not apply to course-related speech or expressive activity in the classroom.
- C. **Principles of Free Speech:** In accordance with Ohio Revised Code 3345.0215, Wright State University affirms the following principles of free speech, which are the public policy of the state:
  1. Students have a fundamental constitutional right to free speech.
  2. A state institution of higher education shall be committed to giving students broad latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to this Policy.
  3. A state institution of higher education shall be committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be offensive,

unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.

4. It is for a state institution of higher education's individual students and faculty to make judgments about ideas for themselves, and to act on those judgments not by seeking to suppress free speech, but by openly and vigorously contesting the ideas that they oppose.
5. It is not the proper role of a state institution of higher education to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.
6. Although a state institution of higher education should greatly value civility and mutual respect, concerns about civility and mutual respect shall never be used by an institution as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty.
7. Although all students and all faculty are free to state their own views about and contest the views expressed on campus, and to state their own views about and contest speakers who are invited to express their views on the campus of a state institution of higher education, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To this end, a state institution of higher education has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom.
8. A state institution of higher education shall be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study and to evaluate, and to gain new understanding
9. The primary responsibility of faculty is to engage in an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competence.

## **1260.2 Restrictions on Expressive Activity**

- A. **Unprotected Speech.** The University reserves authority to prohibit or restrict speech and expressive conduct that is not constitutionally protected. By way of example, unprotected speech may include speech or expressive conduct that is: obscene (but not merely sexual), “fighting words,” “true threats,” fraudulent, defamatory, advocating imminent lawlessness, and unlawful harassment. Speech may be constitutionally protected even though it is (or may be considered by some to be extreme, indecent, offensive (including “hate speech”), controversial, “wrong,” sexual, or even shocking.
- B. **Protected Speech Restrictions.** When necessary to serve a significant institutional interest, the University may institute reasonable, viewpoint-neutral restrictions or requirements upon otherwise protected speech or expressive conduct. Those measures are permissible only when enforced according to clear, published, viewpoint- and content-neutral criteria, and provide ample alternative means for speech or expressive conduct,

and allow for students and employees of the University to engage in spontaneous / contemporaneous assembly and distribution of literature. The following is a non-exhaustive list of speech and expressive conduct restrictions or requirements that may be constitutionally acceptable:

- Viewpoint-neutral limitations on the time, place, and manner of speech or expressive conduct. Example: the University may restrict the use of bonfires during assemblies.
  - Viewpoint-neutral limitations on the speech or expressive conduct that is permitted in nonpublic forums. Example: the University may prohibit speech or expressive activity within administrative offices.
  - Viewpoint-neutral limitations on the use of University property, when instituted for the purpose of protecting the free speech or expressive conduct rights of others. Example: the University may close a particular area to public speech or expressive conduct when the area has been reserved for the speech or expressive conduct of a particular person or entity.
  - Viewpoint-neutral limitations on the use of University property, when instituted for the purpose of preserving the property's availability for official University activities. Example: the University may prohibit public speech or expressive activity in classrooms that are being used for instruction.
  - Limitations on otherwise protected speech or expressive conduct that are reasonable, viewpoint-neutral, and related to legitimate pedagogical purposes. Example: the University (or individual faculty members) may adopt classroom rules against speaking out-of-turn, or prohibiting speech or discussions that are not germane to the subject of instruction. (But otherwise germane and constitutionally protected statements, ideas, or discussions may not be prohibited in the classroom merely because they may be unpopular, controversial, and so forth.)
- C. **Prior Consultation with Counsel.** University personnel will consult with the Office of General Counsel before restricting speech or expressive activity except in the case of a legitimate emergency involving an immediate threat of physical harm to a person, or substantial damage to property. Faculty are encouraged to consult with counsel before instituting classroom rules pursuant to the preceding section, but are not required to do so unless the rule (or its application) is new or unusual.

## 1260.3 Expressive Conduct on University Premises

### A. Official Use of University Surplus Premises.

“University Premises” means all University premises (including grounds, lots, buildings, facilities, and other spaces). University Premises are principally dedicated for use by the University for purposes related to the University’s mission (“official use”). Official use takes precedence over any and all other proposed uses of University Premises.

“Surplus Premises” means University Premises that are not in-use or reserved for use for teaching, service, research, and administrative services, or excluded under Section C. University Premises are available to students, registered student groups, employees, officially-recognized

employee groups, and academic or administrative departments of the University, without charge and on a space-available, first-come-first-served basis for events and activities that advance the University's mission. Such use shall also constitute "official use." (Example: hosting student group meetings, speeches by officially invited guests of a department, and official student activities, and so forth.) A student organization activity or event that is approved by the Office of Student Involvement and Leadership (or other departments within the Office of Student Affairs) constitutes "official use" under this Section. The Campus Recreation Department is responsible for scheduling all University premises, and official use of University premises requires a space reservation.

#### **B. Unofficial Use of University Outdoor Public Areas.**

When not in-use or reserved for use for official purposes, all publicly-accessible outdoor areas of the University (excluding athletic facilities) are publicly available, without charge and during daylight hours, on a space-available and first-come-first-served basis, for noncommercial speech and expressive conduct. Speech and expressive activity that occurs within one hundred feet of a residential housing unit, classroom, or office, shall occur at no more than a conversational volume.

#### **C. Exceptions.**

University Premises that are in constant (though not necessarily uninterrupted) use (e.g. offices), rented by or rented-out by the University (e.g. the Nutter Center), not publicly accessible (e.g. mechanical areas, rooftops), or that by their nature not safe or appropriate for public use (e.g. laboratories, equipment storage rooms) will not be made available except for official purposes.

University Premises may not be reserved or used for fundraising activities (excluding University-approved fundraisers conducted by student organizations); gambling; food service; or storage.

#### **D. Reservations and Permits.**

##### **1. Reservations.**

Space reservations are required for all official use of Surplus Premises, but not Unofficial Use of University Outdoor Public Areas. Space reservations are available from the Campus Recreation Department.

##### **2. Permits.**

In addition to a space reservation, a permit is required if a user wishes to reserve particular space, or reserve space for their exclusive use. Additionally, a permit is required if (a.) the sponsor anticipates or should anticipate an audience of more than fifty people, (b.) sound amplification will be used, (c.) the sponsor wishes to cordon-off or fence-in the space, (d.) the event involves set-up or tear-down, including seating, platforms/stages, lighting, A/V equipment, or

electronic/mechanical equipment, or (e.) the event involves a large display (more than 100 lbs). There is no charge for a permit. Permit applications must be submitted to the Campus Recreation Department. Applications filed at least thirty days in advance of an event will be processed at least one week before the event. Applications filed less than thirty days in advance of an event will be processed expeditiously and in good faith, but processing is not guaranteed before the start of the event. Permits will be processed and issued/refused without regard to the viewpoint of the applicant.

#### **E. Rules.**

When University premises are used under this Section, the following rules will be observed:

- **Security Fee.** The University does not charge a security fee to students or student groups based exclusively on the content of their expression or that of their invited guest, or upon the anticipated reaction to the student's / guest's expression.
- **Duration.** Events must begin and end during the operating hours of the facility in which they occur (or during daylight hours, for publicly-accessible outdoor areas). Camping and overnight occupancy are prohibited except for events organized by the Office of Student Involvement and Leadership.
- **Reservations and requests for particular space** will be honored when reasonable and space is available. The University may re-assign space when the preferred space is not available (or becomes unavailable) or if the University determines the requested space is inappropriate for the actual or expected audience (e.g. the requester anticipates an audience of 1,000, when there is no legitimate basis to anticipate that size crowd).
- **Food.** Food must be prepared and served by the University's designated food service vendor, except for food served at pot-luck style meals, and commercially-prepared and individually packaged refreshments (which cannot be sold).
- **Alcohol, Tobacco, and Drugs.** Alcohol may only be served by the University's designated food service vendor (if at all). Tobacco and illegal drugs are prohibited.
- **Parking.** Event sponsors and attendees must observe all University traffic and parking rules, and state laws.
- **Fire and Pyrotechnics.** Fire and pyrotechnics require a permit and prior approval (on the basis of safety) of the University's Facilities and Public Safety Departments. Sponsors are responsible for obtaining all legally required inspections, permits, and authorizations.
- **Disruptions.** Events may not unreasonably interfere with or disrupt official activities or the operations of the University.
- **Equipment.** Generators and electrical equipment are not permitted unless a permit has been issued. Equipment is subject to prior approval (on the basis of safety) of the University's Facilities Department.

## **1260.4 Commercial Activities**

### **A. Commercial Rentals.**

Section 1260.3 (above) does not apply to University Premises that are rented-out by the University for the purpose of generating revenue ("commercial rentals"). The terms of any

commercial rental are within the University's discretion, provided that they are selected on the basis of viewpoint-neutral criteria. University personnel will consult with the Facilities Department, Campus Recreation Department, and the Office of General Counsel before entering into any arrangement for commercial rental of University Premises.

### **B. Commercial Activities.**

Except as provided in this Section, or elsewhere in University Policy, commercial activity is prohibited across the University's campuses, including within Surplus Premises made available under Section 1260.3 above. This prohibition does not apply in the case of:

- *University Business Associates.* Commercial activity by a party with which the University has an official business relationship. Example: food service in dining areas, sales in the bookstore.
- *Student Organization Fundraisers.* Non-profit fundraising activities conducted by registered student organizations or academic units. (Example: "Black Wall Street" event sponsored by the Black Students' Association, art sale sponsored by the fine arts program, performances sponsored by the performing arts.) The Office of the Dean of Students reserves the authority to limit the number, duration, location, and type/manner of student organization fundraisers under this policy.
- *Official Events.* Approved commercial activity conducted by persons/entities invited to the University for that purpose. (Example: local restaurant/business tables at April Craze; food trucks at Fall Fest.)
- *Commercial Rentals.* Approved commercial activity conducted by a lessee/licensee during a commercial rental. (Example: A promoter selling event tickets or merchandise while renting the Nutter Center for the event.)

## **1260.5 Free Speech and Harassment**

Ohio Revised Code § 3345.0212 requires each public university to adopt a policy on harassment that is consistent with and adheres strictly to the definition of harassment in Ohio Revised Code § 3345.0211. The University's commitment to freedom of expression does not extend to harassment. Under § 3345.0211, "Harassment" is defined as conduct and/or expressive activity that meets each of the following elements:

- Not protected by the First Amendment to the United States Constitution, or Article I, Sections 3 (Right to Assemble) and 5 (Freedom of Speech; of the Press; of Libels) of the Ohio Constitution; and
- Unwelcome; and
- So severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the individual's educational program or activity.

Harassment may occur in-person, in writing, or by telecommunication. It is conduct that occurs on University property (property that the University owns, leases, or controls), at a University-sponsored event, and in connection with a recognized University program or activity.

## **1260.6 Free Speech Complaints and Resolutions.**

### **A. Complaint and Resolution Process.**

Any student, student group, or employee may submit a written complaint about an alleged violation of this Policy by a University employee, which may include a penalty imposed on a student's grade for an assignment or coursework that is unrelated to ordinary academic standards of substance and relevance, including any legitimate pedagogical concerns, and is instead based on the content of the student's otherwise constitutionally-protected speech or expressive conduct.

### **B. Filing A Complaint.**

Complaints must be written and submitted through the University's EthicsPoint system at <https://secure.ethicspoint.com/domain/media/en/gui/43847/index.html>, or 1-855-353-3783. The University will investigate any complaint that satisfies the following conditions:

- The complainant is a student, student group (filed on behalf of the group by a member of its leadership team or official advisor), or employee; and
- The complainant gives their name, and indicates a willingness to participate in the investigation and hearing process; and
- The allegations, if true, constitute a violation of this Policy; and
- The complaint is filed within 120 days of the alleged policy violation.

The University may investigate, but is under no obligation to investigate, complaints that do not meet each of the foregoing criteria.

### **C. Referral and Investigation.**

Complaints will be forwarded to the University's Director of Compliance. The Director (or designee) will promptly review each complaint to determine the criteria above are satisfied, and may conduct an informal inquiry to gather information necessary to make that determination. If any of the criteria above are not satisfied, the Director (or designee) may either initiate an investigation or dismiss the complaint. If a complaint is dismissed, the Director will notify the complainant in-writing.

If the Director (or designee) determines that further investigation is appropriate, the Director will conduct the investigation or appoint an employee to do so. The investigation will be conducted in accordance with written protocol adopted by the Director. The protocol will conform to the requirements of state law and, if applicable, to the provisions of any collective bargaining agreement.

Absent extraordinary circumstances, an investigation will conclude within ninety days after the filing of a complaint.

### **D. Resolution.**

Upon receipt of the investigator's final report of investigation, the Director will provide the complainant and the respondent with the report and offer the complainant and the respondent an opportunity for a hearing. If the complainant requests a hearing, the Director will appoint a single hearing officer or a hearing panel to preside at the hearing. The hearing will be conducted in accordance with written protocol adopted by the Director. The protocol will conform to the requirements of state law and, if applicable, to the provisions of any collective bargaining agreement. Absent extraordinary circumstances, the hearing officer or panel will produce a written report within fourteen days after the hearing concludes.

If the outcome of the hearing is a finding that the complaint is not substantiated by the evidence, the Director will notify the complainant and respondent, and close the complaint as "not substantiated."

If the outcome of the hearing is a finding that the complaint is substantiated by the evidence, the Director or hearing officer or panel will additionally make recommendations for corrective action. The Director will promptly forward the complaint, the investigative report, the hearing officer/panel's findings and recommendations, and other pertinent papers to the Board of Trustees.

At any time prior the Board's action, the complainant and respondent may resolve a complaint informally and to their mutual satisfaction. A private resolution will not preclude the University from taking appropriate action.