

## Policy on Use of Institutional Facilities and Grounds for Expressive Activity by Non-affiliated Parties

Contact: Vice President for Finance and Administration

Sources/Links: South Dakota Board of Regents Policies [3.2.3](#), [6.13](#), [6.13.1](#)

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### NORTHERN STATE UNIVERSITY

#### Policies and Guidelines

SUBJECT: Use of Institutional Facilities and Grounds for Expressive Activity by Non-affiliated Parties

NUMBER: 6:4

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#### 1. Purpose

The policy and procedures set forth are intended to implement the policy and procedures pertaining to the use and scheduling of institutional facilities by Non-affiliated Parties.

#### 2. Definitions

- a. Coercion: the inducement of another to perform some act under circumstances which deprives others' their exercise of free will, such as force, threats, or attempts to intimidate or badger a person into viewing, listening to, or accepting a copy of a communication; or persistently requesting or demanding the attention of a person after that person has attempted to walk away or has clearly refused to attend to the speaker's communication.
- b. Debate: a discussion involving different viewpoints in which different sides of an issue are advocated for, or presented by, differing speakers.
- c. Demonstration: any process of showing an individual or group cause by speech, example, group action, or other form of public explanation.
- d. Expressive Activity: any lawful, noncommercial verbal or written means by which one person or group communicates ideas to another, and includes peaceful assembly, protests, debate, demonstrations, speeches, distribution of literature, the carrying of signs, and the circulation of petitions.
- e. Non-affiliated Party: any person(s) who are not students, members of a student organization, employees or Guests as defined in university policy 6.3 who enter campus to engage in expressive activity.
- f. Large-Scale Events: Events that are:
  - i. Expected to attract 50 or more people, or
  - ii. Events that request the use of amplified sound, such as invited speakers, marches, parades, protests, and demonstrations.
- g. Prohibited conduct: any conduct violating state or federal law, regulation, or policy including, but not limited to, coercion, speech unprotected by the United States or South Dakota Constitution, unlawful conduct under state or federal law, rule, or policy including, but not limited to, SDBOR or University policies.

### 3. Policy

The South Dakota Board of Regents (SDBOR) and NSU recognize and support NSU as a marketplace of ideas. The primary function of a BOR institution is to discover and disseminate knowledge by means of research and teaching. Freedom of expression is vital to the shared goal of the pursuit of knowledge. Such freedom comes with a responsibility to welcome and promote this freedom for all, even in cases of disagreement or opposition, and doing so in compliance with this and other SDBOR policies, NSU policies, and applicable law.

NSU policy 6.3 supports the right of student organizations, students, employees, and their guests to speak in public and to demonstrate for or against actions and opinions with which they agree or disagree. This policy extends similar rights and responsibilities to Non-affiliated Parties desiring to come on campus to engage in expressive activity with some additional requirements. Nothing in this policy prohibits rights of student organizations, students, employees, and their guests as per NSU policy 6.3.

#### a. General Guidelines

- i. The University is committed to providing an educational, research, and service environment that is conducive to the development of each individual. As a public entity, the University provides both formal and informal forums for the expression of ideas and opinions, as long as such expression occurs within the context of federal and state law and SDBOR and University policies and does not impede pedestrian and/or vehicular traffic; disturb or interfere with normal academic, administrative, or student activities; or involve prohibited conduct.
- ii. Because NSU facilities and grounds are tax-exempt public facilities and grounds, they are not generally available for use for commercial purposes, subject to the specific exception set forth in SDBOR Policies 3.2.3 and 6.13.
- iii. NSU will not designate any outdoor area within its boundaries as a free speech zone or otherwise restrict the expressive activities for Non-affiliated Parties to particular outdoor areas within its boundaries in a manner that is inconsistent with this policy or SDBOR Policy 6:13:1.

#### b. Outdoor Areas

To facilitate robust debate and the free exchange of ideas, the outdoor areas within the boundaries of the University, constitute a designated public forum where Non-affiliated Parties may engage in expressive activity by following the procedures.

- i. Outdoor areas on campus that aren't otherwise properly restricted are generally available for Non-affiliated Parties, who are otherwise in compliance with the provisions of this policy, to engage in expressive activity without paying a fee, so long as:
  1. All applicable federal and state laws, city ordinances, and NSU and SDBOR policies are followed.
  2. Pedestrian and/or vehicular traffic is not impeded.
  3. Instructional, research, service or administrative activities of the institution are not interfered with.

4. Meetings or events sponsored or conducted by NSU, affiliated parties or other non-affiliated parties are not disrupted.
  5. The area has not been previously reserved or scheduled for a particular function.
  6. No sound amplification is used.
- ii. Expressive activities by non-affiliated parties will be limited to Monday through Friday, during the hours of 8:00 a.m. – 5:00 p.m. No expressive activity by non-affiliated parties will be permitted during the first week of each new semester, the week prior to final exams, and the week of final exams.

#### 4. Procedures

- A. Non-affiliated Parties that desire to come on to campus to engage in expressive activity must complete the [Request Form for Expressive Activity](#), at least five (5) days prior to the time at which the non-affiliated party desires to come on to campus to engage in expressive activity. Additionally, all Non-affiliated Parties engaging in expressive activity on campus must adhere to the provisions below.
  - i. A copy of the approved request form must be displayed or made immediately available upon request of NSU personnel.
  - ii. No commercial activity, which includes activities that involve the exchange of goods or services for valuable consideration and speech that relates solely to the economic interest of the speaker and audience and proposes a commercial transaction, will be permitted by non-affiliated parties engaging in expressive activity on campus.
- B. Once a request has been approved by the Vice President for Finance and Administration, the requestor will be notified and sent a copy of the approved request form.
- C. Communications and Marketing will notify NSU faculty, staff and students of approved on campus gatherings by nonaffiliated parties.
- D. Select facilities or locations on campus may also be available for use by Non-affiliated Parties at established rates available through the Vice President for Finance and Administration.
- E. Non-affiliated Parties that would like to distribute written material on campus must submit a copy of the material when submitting their [Request Form for Expressive Activity](#).
  - i. Items distributed on University property are the responsibility of the non-affiliated party, and in no way imply or suggest any relationship with, or official sanction by NSU.
  - ii. The distribution of any item that would infringe upon, or in any way violate, a legal trademark or copyright will be prohibited. Exceptions will be granted only with the expressed written consent of the trademark or copyright holder.
  - iii. No individual may be forced to take materials from a non-affiliated party engaging in an expressive activity.
- F. A request for expressive activity may be denied, and the University reserves the right to cancel or postpone any previously approved request form on one or more of the following grounds:

- i. Conflict with a pre-existing reservation or planned use of the location that would unreasonably interfere with the event.
- ii. Failure to comply with reasonable restrictions on signage, display, erection of structures, sound amplification restrictions, or other aspects of the expressive activity that would unreasonably interfere with the health or safety of persons, protection of property, access, traffic, or the peaceful, orderly operations of the campus.
- iii. Inadequate notice for purposes of providing security, facilities, or other preparations necessary for the protection of persons and property.
- iv. Failure to comply with any of the provisions of this policy.

#### G. Enforcement

- i. Non-affiliated Parties found violating SDBOR or NSU policies, included in this policy, will be subject to immediate removal from university grounds, without prior warning by campus security or other appropriate university officials and may be subject to appropriate legal action.
- ii. Students or student organizations violating this policy will be subject to disciplinary action pursuant to the Student Code of Conduct.
- iii. Employees violating this policy will be subject to disciplinary action pursuant to the applicable SDBOR and NSU policies.

#### H. Appeals

Individuals who believe that NSU violated this policy may obtain a review as follows:

1. Complete an [Facility Use Denial Appeal Form](#) and submit it to the Office of the President, Spafford Hall 202.
2. The completed appeal must be presented within five (5) working days after the alleged violation occurred.
3. The appeal must specifically state facts that, if proven, would demonstrate that:
  - a. The denial was based on an incorrect assessment of material fact, or
  - b. It involved a misinterpretation, misapplication, or violation of the requirements of an SDBOR or NSU policy. Mere conclusions, general allegations, and/or speculative statements cannot establish a factual ground for the claim that SDBOR or NSU policy has been misinterpreted, misapplied, or violated.
4. The President or designee will respond to such appeals via email within five (5) working days after receipt by the university. Should the appeal be denied, the procedure for appealing the decision will thereafter be processed as provided in SDBOR Policy 6.13.1.

### 5. Responsible Administrator

The Vice President of Finance and Administration, or designee, is responsible for the annual review of this policy and its procedures. The University President is responsible for the approval of this policy.

### 6. Source History

- Approval Date: February 5, 2024
- Approved By: President Neal Schnoor