Virginia's Community Colleges

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POLICY ON EXPRESSIVE ACTIVITY
Frequently Asked Questions for Administrators

1. What is included in the definitions of speech and other expressive activity?[1]

The term "expressive activity" includes:

- Meetings and other group activities of students and student organizations;
- Speeches, performances, demonstrations, rallies, vigils, and other events;
- Distributions of literature, such as leafleting and pamphleting; and
- Any other expression protected by the First Amendment to the U.S. Constitution.

2. What kind of speech is protected by the First Amendment?

The U.S. Constitution protects most speech, with very limited exceptions. Protected speech can be profane, vulgar, offensive, inappropriate, or uncivil. Therefore, a public college cannot ban speech just because it is against the college's ideals or preferences.

Outdoor spaces are venues for free expression by students and student organizations. In outdoor spaces, students, student organizations, and their guests are not required to give notice before engaging in expressive activity. Colleges may, however, place reasonable time, place, and manner restrictions on such speech, but the restrictions must be content-neutral, narrowly tailored to serve a significant governmental interest, and allow ample alternative channels for communication.

Similar protections apply to certain indoor venues, such as auditoriums, when those areas are used by students, student organizations, or employees in the manner in which they have been established. In these places, colleges may restrict speech if such restrictions apply equally to everyone and are content and viewpoint neutral. College administrators may not restrict speech just because the speech or speaker is unpopular or unpleasant. Restrictions should not be based on the possible reaction to such speech. Certain indoor places, such as administrative offices,

[1] Throughout this FAQ, the words "speech" and "expressive activity" may be used interchangeably.

hallways, libraries, and classrooms may be designated as areas that are not available for expressive activity.

3. When may a college interrupt outdoor spontaneous expressive activity?

The best practice is to assume that speech is protected and may not be limited or stopped as long as the speaker does not engage in any of the following conduct:

- block access to campus buildings or otherwise interfere with the learning or work environment;
- obstruct traffic (vehicles or pedestrians);
- construct or occupy camping tents;
- substantially disrupt previously scheduled campus events;
- disrupt or physically interfere with the speech by any speaker or the observation thereof;
- create unsanitary conditions;
- remain on campus after the college or campus is closed;
- substantially disrupt college operations or violate or hinder the rights of others;
- break the law; or
- create a threat to public safety, according to the college's police or security department.

Additionally, the First Amendment does not protect speech that is designed to incite or produce imminent lawless action or that is likely to incite or produce such action. Other types of unprotected speech include true threats and harassment in limited circumstances. A true threat is a serious expression of an intent to commit an act of unlawful violence against a particular individual or group of individuals. Unprotected harassment is behavior that is so severe, pervasive, and objectively offensive that it hinders the student's access to an educational opportunity or benefit.

4. What is the procedure for allowing students or employees to reserve campus facilities for expressive activity?

a. Request submission

The college can state, in advance, that certain spaces cannot be reserved for speech activities. Common examples include libraries, offices, and classrooms during instructional hours. Any other

restrictions on expressive activities that occur in indoor facilities must apply equally to everyone and not depend on the content or viewpoint of the expression, or the possible reaction to the expression. The college should list which spaces it has designated as unavailable for expressive activity. For facilities that can be reserved, students, student organizations, and employees should submit requests to reserve the space to [the designated college administrator]. Spaces are reserved on a first-come-first served basis.

b. Timing

Colleges usually cannot require more than 24-hour advance notice unless the event requires advanced planning to ensure campus safety or sufficient logistical support. Colleges may encourage members of the campus community to submit requests as soon as possible. Spaces should be reserved on a first-come-first served basis.

c. Denials

When assessing a request for a facility that is available to reserve for expressive activity, administrators must not consider the content, viewpoint, or possible reaction to the content or viewpoint of the speaker. Any reasons for denial must be content neutral. Students and student organizations cannot be denied access because ideas may be considered offensive, even to a large portion of a college's students and faculty.

The college can deny an expressive activity request for the following reasons:

- The venue is an indoor facility that has been designated as unavailable for expressive activity.
- The venue is an indoor facility, and the request is in conflict with any restrictions the college has placed on the facility. For example, a restriction could be that the indoor facility is unavailable on the weekends, or the college has limited the facility for certain uses.
- The venue has been reserved already at the time requested.
- The size of the anticipated crowd is too large for the space.
- The activity would substantially disrupt another event occurring in close proximity.
- The activity would substantially disrupt college operations.
- The activity is a clear and present threat to campus safety.
- The activity occurs during college exam periods.

- The activity is against the law.

d. Responsibility for the space

Colleges should inform students, student organizations, and employees that they are responsible for maintaining the facility and will be responsible for clean-up and any damage to the facility.

e. Fees

If the college imposes an associated fee for use, clean-up, equipment, security, etc., the rules must apply equally and not be based on content or viewpoint. Policies concerning security fees must be content and viewpoint neutral and cannot be based on an anticipated reaction to the expressive activity. Whatever the college decides, any security (or other) fee provision should have objective standards for calculation.

5. What if a person or organization wants to reserve campus space and is not a student or employee?

The college can set some limits by requiring outside speakers to be sponsored by the college itself or by a student or recognized student organization. The college also may restrict the areas on campus where outside speakers may speak and require pre-registration for speech activities on a first-come, first serve basis. However, these limits must apply equally to all outside speakers. Please contact the Office of System Counsel if you have additional questions.

If the college rents facilities to the general public, the individuals or groups who rent the facility need not be sponsored by the college or student organization. The expressive activity policy does not apply in such cases.

6. Is the college required to have indoor areas available for spontaneous expressive activities?

No. The college is not required to have any indoor areas designated for spontaneous speech activities. However, if the college chooses to create one (or more) indoor areas for expressive activity, college officials must post that the area is available for students, student organizations, and guests of student organizations for such use. Such an area must be available for all students

and student organizations, regardless of the expression content or viewpoint or the possible reaction to that expression.

7. What action(s) should the college take if it receives a report of a disruption of protected speech?

Certainly, if there are safety concerns, call security or law enforcement. Whenever possible, the college should take steps to safely stop the disruption and allow the expressive activity to continue. Otherwise, please contact the Office of System Counsel for guidance at (804) 819-4432.