

NCTA Policy on Free Expression, Guide for Facilities Use, and Education (from BOR policy 6.4.10)

Adopted 1/2019

Introduction

The University of Nebraska honors the First Amendment of the U.S. Constitution and has long dedicated itself to the free exchange of ideas.

The purpose of this policy is to articulate, clarify and underscore that long-standing commitment in a manner that furthers both freedom of expression and the University's mission of teaching, research and public service. The first section of this policy sets forth the University's and the Board of Regents' commitment to the tenets of Free Expression; the second section provides a framework for campuses to provide what are referred to as "facilities use plans" or programs applicable to particular spaces and resources on their campuses, consistent with that commitment, the law, and the University's mission; and the final section is a mandate for education with respect to the rights surrounding the First Amendment.

Commitment to Free Expression

"Freedom of speech" and "freedom of expression" refer to one's Constitutional right to articulate and express ideas and opinions, through any means, i.e. speaking, writing, or artistic expression, without fear of government retaliation, censorship, or other sanction. The University of Nebraska is a public institution of higher education, which holds dear this right, a right that is indispensable to its ability to transmit knowledge and fundamental to the University community's pursuit to discover, explore, interpret, and question knowledge and opinions. The University greatly values the creation and maintenance of an inclusive climate in which all members of its community are welcomed and are encouraged to participate in the free expression of ideas. In as much as the search for new truths often comes forth only after bringing together differing opinions, the University aims to foster and uphold the capacity of the University community to engage in discourse and deliberation in an effective, responsible and respectful manner. This is critical to the University's mission.

As a corollary to the University's commitment to protect and promote free expression, members of the University community are expected and required to act in conformity with the underlying principles of free expression. Although members of the University community are free to comment on, criticize and contest views that others express, they must do so at a time and place, and in a manner that does not prevent, impede, or obstruct the freedom of others to also exercise their rights to express themselves. With this policy, the University is not only promoting a lively and fearless freedom of debate and deliberation, but also protecting that freedom when others attempt to restrict it. It is a careful, deliberative and nuanced balance of interests that the University must strike in order to protect this important right.

The First Amendment provides no guarantee of civility. However, as a community of educators and learners, the University places a high value on civil discourse and respect for one another. The University has an obligation to protect the dignity and security of all members of its community from those who would seek to use speech primarily to deprive others of their freedom to learn, their freedom to contribute and their freedom to participate fully in the University's mission. Therefore, the University encourages all within its community—its Board, administration, faculty and staff, students, alumni, and all who act as its ambassadors—to serve as models reflecting behavior consistent with the tenets of civil discourse. Civility defines Nebraska and our University of Nebraska community.

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As important as are the rights to debate and discuss competing ideas, the First Amendment does not protect all expression. The University will not facilitate expression in violation of the law or that poses an unreasonable threat to the safety of the University community or to the University's ability to fulfill its mission of teaching, research, and public service. Certain kinds of expression (among others), such as: speech that incites violence, fighting words, speech that defames or defrauds, speech that constitutes a genuine threat, or unlawfully discriminates, or speech that unlawfully invades privacy, is not protected speech. Acts or conduct, which threaten the safety of persons or property are not protected by the Constitution or the University.

Individuals, once provided the requisite due process, found in violation of the provisions contained herein shall be subject to review and potential discipline in accordance with the Bylaws and Policies of the Board of Regents of the University of Nebraska, corresponding to such individuals' relationship to the University community (e.g. student, faculty and staff).¹

Finally, while the principles of Academic Freedom are unique ideals possessed by the teaching profession, separate from an individual's First Amendment Rights, the University of Nebraska is clear in its commitment and faithful to the preservation of Academic Freedom. This policy is not intended to interfere with or encumber those principles. For example, according to the American Association of University Professors 1940 Statement on Academic Freedom and Tenure, teachers are entitled to freely discuss topics in the classroom, but they should be careful not to introduce controversial matters, which have no relation to the subject being taught.

Guide for Facilities Use Plans

University resources, for example, its land and buildings, its library collections, its computer networks, are to be applied first and foremost to its mission of teaching, research and public service, and therefore, such University properties are primarily dedicated to this mission, which encompasses all academic activities, student life, intercollegiate athletics, and the administrative functions that support this mission. These properties are not generally open and available to the public—they are provided to and by the University, in order that it might carry out its educational charge. The First Amendment does not mandate that the University grant the public unfettered access to its facilities. The University may elect to open certain spaces to the public without limitations, to open other spaces with limitations on use, and to maintain the non-public status of other spaces.

An individual may not materially disrupt activities conducted within the context of the University's mission. The University may reasonably regulate the time, place, and manner of expression, in accordance with the law, in order to ensure that the ordinary activities of the University are not disrupted. Such regulations must be narrowly tailored to serve significant, viewpoint-neutral interests, and cannot substantially burden more speech than necessary to protect the University's interest.

Spaces such as classrooms, where teaching takes place; or labs where research is conducted; or offices where administrative business is carried out, are not freely open to the public. There are, however, spaces within our campuses that may be opened to both members of the University community and the public for a variety of purposes, including speech and expression. Therefore, under the direction of the Chancellors and NCTA Dean, each of the campuses are to implement facilities use plans, programs and strategies on their respective campuses, along with rules and processes grounded in law and University policies, to

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designate which properties, facilities, and/or and other university resources, in whole or in part, are categorized under law as:

- “Designated Public Forums”—These are places the campus designates as open for expressive applications to all or part of the campus community, or the community at large. This might be a mall, a plaza or the sidewalks. Reasonable time, place and manner restrictions may be implemented in a viewpoint or content-neutral application.
- “Limited Public Forums”—These are places (such as a concert hall), events (such as a student panel discussion on Literature of the Plains), or other avenues for expression (such as an electronic bulletin board), which can be designated for use by a particular group and limited to particular topics or types of speech, as long as the limitations are reasonable and viewpoint-neutral.
- “Non-Public Forums” are all places and resources not otherwise categorized as Designated Public Forums and Limited Public Forums.

In none of these instances may campuses implement rules or processes which differentiate use of properties or resources, or disciplinary outcomes, based upon the viewpoint of the user.

It is not possible in this brief guide to provide specific direction with respect to the appropriateness of any regulation within any particular campus’s facilities or spaces. Each campus has unique space characteristics, distinctive mission-related needs, and therefore, proposed uses of designated forums will differ on a case-by-case basis, and further, the University expects that the plans will evolve over time to meet the needs of its mission and its community. However, in order to ensure legal and policy compliance, prior to implementation, the campus shall secure the advice and approval of the Office of the General Counsel with respect to the strategies, rules and processes contained in its facilities use plans and programs.

As part of such facilities use program implementation, each campus shall conspicuously post on its website, and in other places that provide for effective communication, a map of the facilities and spaces on their main campuses, showing the nature of the forums present on campus, along with information or directions with respect to restrictions and processes applicable to any given location. To the greatest extent possible, there shall be a single, easy-to-locate, user-friendly resource designated at each campus, for persons wishing to access information about the availability, rules and processes applicable Chapter 6. Business and Financial Management RP-231 to any given space at that campus.

Education

Last, yet of great importance, regular opportunities for the University community to educate itself about the First Amendment and this policy, as well as the existence and implementation of campus facilities use programs, are imperative. The understanding of one’s constitutional rights, and the expectations surrounding those rights, is vital to the free exchange of ideas, information, opinions and discovery. Failure to understand and learn the underpinnings and legal interpretation of the First Amendment lends itself to incivility and miscommunication. Because this exchange is so very critical to the University’s mission, it is incumbent upon the University to engage in a deliberate program of education for the University community, and beyond, with respect to the First Amendment of the U.S. Constitution and the University’s support of it.

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Adoption of this policy will prompt a review of University policies and practices throughout the University. To the extent that such other policies and practices conflict with this policy, this policy shall take precedence, and such other policies and practices shall be interpreted in a manner to resolve the conflict in favor of this policy

This document was composed following a review of the good works of many of the University's institutional colleagues and related professional organizations, along with some ideas and approaches wholly original to the University of Nebraska. The University of Nebraska wishes to recognize the efforts made by many others, which preceded the adoption of this policy, including the University of Chicago, the University of Missouri, Kansas State University, the Association of Governing Boards of Universities and Colleges, the National Association of College and University Attorneys, and the Foundation for Individual Rights in Education (FIRE), among others. Thank you.

Reference: BRUN, Minutes, 75, pp. 4-6 and 14-17 (January 25, 2018).

¹ For example, students in violation of this, or any, University policy are subject to the processes and sanctions set out in their respective campus's Student Code of Conduct; students in certain colleges are subject to separate codes of honor; all faculty and non-faculty employees are bound by their employment relationship to comply with all Board of Regents Bylaws and Policies, including this policy. Failure to comply with bylaws and policies subjects non-faculty employees to disciplinary action under the authority of the campuses' Human Resources Departments, while faculty violating bylaws and policies are governed by the review processes established pursuant to Bylaws Chapter IV. Rights and Responsibilities of the Professional Staff. Board of Regents Bylaw 4.1 on Academic Responsibility is of particular relevance.