



Policy

SPEECH, EXPRESSION, AND ASSEMBLY, FACULTY & STAFF

FS.302.1

EFFECTIVE DATE: AUGUST 2019

REVISED DATE: JULY 2021

SOURCE: [SBHE Policy Manual Section 503.1](#)

General Provisions

Dakota College at Bottineau recognizes that students and faculty 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, North Dakota Century Code 15-10.4-02 and the North Dakota State Board of Higher Education (SBHE) policy 503.1 Student Free Speech and Expression and, as a result, the SBHE and institutions under its control shall ensure that students have the freedom to speak, write, listen, challenge, learn, and discuss any issue, subject to reasonable and constitutionally recognized limitations.

The procedures of Dakota College at Bottineau shall be no more limiting of student free speech and expression than ND SBHE policy 501.3 Student Free Speech and Expression.

Non-faculty staff of Dakota College at Bottineau are also free to exercise their right to free speech and expression, as set forth above, provided that such activities do not substantially interrupt or inhibit their duties, and such exercise of free speech and expression shall be subject to the Political Activities Policies of the SBHE and Dakota College at Bottineau.

Dakota College at Bottineau will not engage in viewpoint- or content-based discrimination or suppression of speech, and will, to the greatest extent possible, permit and facilitate the open discussion and debate of ideas and issues, regardless of the content of those issues.

Dakota College at Bottineau shall 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.

Student-on-Student Harassment – Dakota College at Bottineau will 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

Policy

- ii. Conduct which violates North Dakota criminal laws prohibiting harassment, stalking, menacing, criminal coercion, or similar behavior.

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.

As a general rule, Dakota College at Bottineau will not use the concept of civility or mutual respect as a basis to suppress or limit the discussion of ideas, regardless of content, except as reasonably necessary to an educational activity.

Dakota College at Bottineau and its faculty and employees shall generally not seek to shield individuals from the free speech or expression of others, except as reasonably necessary to an educational activity. Except as set forth elsewhere in this policy, the generally accessible, open, outdoor areas of the campus are traditional public fora for free speech by both Dakota College at Bottineau and off-campus persons and organizations, subject to reasonable and constitutional time, place, and manner restrictions.

Dakota College at Bottineau designates the following areas as restricted or designated forums:

- those areas inside buildings which have not otherwise been treated as traditional public fora;
- areas within a 50 foot radius from residential buildings during evening and overnight hours;
- areas within a 50 foot radius from academic buildings during times when classes are held in that building;
- areas which must be restricted due to reasonable safety and security concerns, as designated by the Campus Dean;
- areas which must be restricted to enable the flow of pedestrian or vehicle traffic, as designated by the Campus Dean;
- areas within a 50 foot radius from building entrances and exits to provide for safe and convenient ingress and egress from those buildings.

Dakota College at Bottineau may require reservations or permits for the exercise of free speech or expression, including assemblies, within these restricted or designated forums.

Dakota College at Bottineau designates the following areas as closed to free speech, expressive activity, and public assembly:

- all academic buildings/classrooms/offices
- all residence halls
- the college dining center



Policy

Categories of Speakers and Users

Academic or Administrative Unit means any office or department of Dakota College at Bottineau.

Event means something that occurs in a certain place during a particular interval of time; events include but are not limited to guest speakers, exhibits, tables, distribution of literature, signs, and public assemblies.

Faculty member and Staff member includes any person who is employed by Dakota College at Bottineau.

Off-campus person or organization means any person, organization, or business that is not an academic or administrative unit, a student faculty, or staff organization, or a student, faculty member, or staff member.

Student means a person who is currently enrolled at Dakota College at Bottineau, or has been enrolled at Dakota College at Bottineau in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows. A student may also be a faculty or staff member. Circumstances will dictate whether an individual is considered a student or faculty or staff member for the purposes of application of this policy.

Dakota College at Bottineau person or organization includes academic and administrative units, student, faculty, and staff organizations, and individual students, faculty members, and staff members; this phrase describes the most inclusive category of potential speakers on campus; every person and organization of any kind is either an “off-campus person or organization” or a “Dakota College at Bottineau person or organization.”

General Definitions

Amplified sound means sound whose volume is increased by any electric, electronic, mechanical, or motor-powered means. Shouting, group chanting, and acoustic musical instruments are exempt from this definition and are not subject to the special rules on amplified sound but are subject to general rules on disruption.

Day means an 8:00 a.m. to 5:00 p.m. calendar day, and excludes weekends, Dakota College at Bottineau holidays, and days on which regularly scheduled classes are suspended due to emergent situations. If a deadline defined in this chapter falls on a Saturday, Sunday, or Dakota College at Bottineau holiday that deadline will be moved to the next day.

Room or space includes any room or space, indoors or outdoors, owned or controlled by Dakota College at Bottineau.

Prohibited Items at Assemblies

Dangerous weapons, as defined by N.D.C.C. § 62.1-01-01(1) as any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

Firearms, except as permitted by law. See NDCC Chapter 62.1-02-05.

Body-armor or makeshift body-armor, helmets and other garments, such as sporting protective gear, that alone or in combination could be reasonably construed as weapons or body-armor, without written permission from the Campus Dean.

Open flame, unless approved in advance by the Campus Dean.

General Rules on Means of Expression**Disruption**

- No speech, expression, or assembly may be conducted in a way that disrupts or interferes with any teaching, research, administration, or other authorized activities on the campus; free and unimpeded flow of pedestrian and vehicular traffic on the campus; or signs, tables, exhibits, public assemblies, distribution of literature, guest speakers, or use of amplified sound by another person or organization acting under the rules in this chapter.
- Except in the most extreme cases, interference and disruption are unavoidably contextual. Intentional physical interference with other persons is nearly always disruptive in any context. Interfering with traffic depends on the relation between the volume of traffic and the size of the passageway left open. Disruptive noise is the most contextual of all, because it depends on the activity disrupted. Any distracting sound may disrupt a memorial service. Any sound sufficiently loud or persistent to make concentration difficult may disrupt a class or library. Occasional heckling in the speaker's pauses may not disrupt a political speech, but persistent heckling that prevents listeners from hearing the speaker does disrupt a political speech. These illustrations may be helpful, but none of them includes enough context to be taken as a rule. We cannot escape relying on the judgment and fairness of Dakota College at Bottineau authorities in particular cases. In this context where difficult enforcement judgments are unavoidable, it is especially important for administrators to remember that their judgements must not be influenced by the viewpoint of those claiming disruption or of those allegedly disrupting.

Potentially disruptive events can often proceed without disruption if participants and administrators cooperate to avoid disruption without stopping the event. In cases of marginal or

unintentional disruption, administrators should clearly state what they consider disruptive and seek voluntary compliance before stopping the event or resorting to disciplinary charges.

Damage to Property

No speech, expression, or assembly may be conducted in a way that damages, defaces, marks, discolors, or alters in any way property of the Dakota College at Bottineau or of any person who has not authorized the speaker to damage or deface their property.

Amplified Sound

General Rule on Amplified

Dakota College at Bottineau academic or administrative units and student, faculty, or staff organizations may use amplified sound on campus at designated times and locations, with advance permission from the Campus Dean, subject to the following restrictions.

Location and Times of Weekday Amplified Sound Areas

- Amplified sound is restricted to the hours of 8:00 am to 9:00 pm daily.
- Amplified sound may not be used within 100 feet of academic buildings, residence halls and the dining center.
- The Campus Dean may prescribe rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of weekday amplified sound areas, to mediate any conflict with Dakota College at Bottineau functions and other nearby activities, and to manage environmental impact. All such rules will be reasonable and nondiscriminatory.
- Student, faculty, or staff organizations or academic or administrative units wishing to use a weekday amplified sound area must reserve a particular area at a particular time. Reservations must be made with the Campus Dean on a form prescribed by the Campus Dean.
- The Campus Dean may limit the number or frequency of reservations for each student, faculty, or staff organization or academic or administrative unit to ensure reasonable access for all persons and organizations desiring to use amplified sound on weekdays.
- Dakota College at Bottineau persons and organizations using amplified sound are responsible for maintaining a passageway for pedestrians that is adequate to the volume of pedestrian traffic passing through the area.

Amplified Sound on Evenings and Weekends

- With advance permission, Dakota College at Bottineau organizations may use amplified sound in any outdoor location on campus after 5:00 pm on weekdays, and after 8:00 pm on weekends.
- The Campus Dean may prescribe reasonable and nondiscriminatory rules concerning scheduling, sound levels, the location of speakers and the direction in which they are pointed, and other rules to facilitate the use of amplified sound on evenings and weekends, to mediate any conflict with Dakota College at Bottineau functions and other nearby activities, and to manage environmental impact.

Policy

- Use of amplified sound on evenings and weekends requires advance permission from the Campus Dean. Student, faculty, or staff organizations and academic or administrative units will apply through a process prescribed by the Campus Dean.
- If amplified sound is authorized for an event on a Sunday, Monday, Tuesday, Wednesday, or Thursday evening, the sound must be turned off by midnight on the following day. If amplified sound is authorized for an event on a Friday or Saturday evening, the sound must be turned off by 1:00 am on the following day.

Amplified Sound Indoors

Amplified sound sufficient to be heard throughout the room may be used in any room in any building, but the Campus Dean may limit or prohibit sound that would be disruptive outside the room. Reservations may be required.

Public Assemblies without Amplified Sound

General Public Assemblies

- “Publicly assemble” and “public Assembly” include any gathering of persons, including discussions, rallies, and demonstrations.
- Dakota College at Bottineau persons and organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be. No advance permission is required. If the expected attendance at an event with a guest speaker is twenty-five or more people, advance notice of no less than two weeks is required.
- The buildings owned or controlled by Dakota College at Bottineau are not open for demonstrations, assembly, or speech. In furtherance of the Dakota College at Bottineau’s educational mission, the buildings owned or controlled by Dakota College at Bottineau are limited for open only to faculty, staff, and students and their organizations.
- Off-campus persons and organizations may not engage in expressive activities at the Dakota College at Bottineau except in accordance with these rules.

Reservation of Space

- Dakota College at Bottineau persons, organizations, and academic or administrative units who wish to publicly assemble in a particular room or space at a particular time may reserve the room or space. Individual faculty, staff, and students may not reserve an indoor space, except as related to an educational activity of the Dakota College at Bottineau. Off-campus persons or organizations may only reserve a particular room or space for a public assembly with the advance approval of the Campus Dean.
- Reservation requests from recognized student, faculty, and staff organizations or academic or administrative units shall receive precedence over requests from individual persons, unrecognized organizations, or any off-campus persons or organizations.
- A Dakota College at Bottineau person, organization, or academic or administrative unit with a reservation has the right to the reserved room or space for the time covered by the reservation. Any person or organization using or occupying the room or space without a

reservation must yield control of the room or space in time to permit any person, organization, or academic or administrative unit with a reservation to begin using the room or space promptly at the beginning of its reserved time. Reservations for outdoor spaces are not required but are strongly encouraged. Reservations for indoor spaces are required, although this requirement may be waived by the Campus Dean or his/her designee.

Fees for Reserving Space

- The Campus Dean may prescribe a fee schedule for reserving specified campus spaces. The schedule shall be made available at the Dean's Office on request and shall be based on the actual expenses incurred by the campus in making the space available. The schedule must not be wholly or partially based on viewpoint- or content-based criteria but may include logistic fees based on the venue, the anticipated attendance, and other non-content-based factors. The criteria used to establish the fee schedule shall be made publicly available.
- Dakota College at Bottineau may not retain funds beyond its actual expenses unless the reserving party or group charges admission to the event. The fee schedule must be applied equally to all persons or organizations, without reference to the content or viewpoint of the proposed assembly, except as otherwise governed by campus policies.
- The Campus Dean or his/her designee may waive any applicable fee for an assembly contributing to the educational mission of the institution or engaging in charitable work.
- Academic and administrative units are not subject to the fee schedule.

Notice and Consultation

- Dakota College at Bottineau persons or organizations may publicly assemble on campus in any place where, at the time of the assembly, the persons assembling are permitted to be.
- Students or student organizations planning a public assembly with a guest speaker and expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide advance notice of no less than two weeks to the Campus Dean. Students or student organizations planning smaller assemblies or large assemblies without a guest speaker are encouraged to consult the Campus Dean if there is uncertainty about applicable Dakota College at Bottineau rules, the appropriateness of the planned location, or possible conflict with other events. The Campus Dean can help the planners avoid unintended disruption or other violations that may result in subsequent discipline or subsequent interference with the assembly by campus authorities.
- Registered faculty organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Campus Dean.
- Registered staff organizations that are planning a public assembly with a guest speaker and an expected attendance of more than twenty-five participants, including potential counter-demonstrators, are required to provide notice of no less than two weeks to the Campus Dean.
- The notice and consultation requirements of this subchapter do not apply to academic or administrative units.
- The notice and consultation requirements of this subchapter may be waived by the Campus Dean or his/her designee.

Guest Speakers

“Guest speaker” means a speaker or performer who is not a student, faculty member, or staff member, but who is invited to speak by a Campus/University person or organization.

Who May Present

Dakota College at Bottineau persons and organizations and academic and administrative units may present guest speakers on Dakota College at Bottineau property. In the case of speakers invited by students or student organizations, advance permission from the Campus Dean is required. Faculty organizations are required to seek advance permission from the Campus Dean. Staff members and staff organizations are required to seek advance permission from the Campus Dean.

Location and Form of Presentation

- A guest speaker may present a speech or performance, or lead a discussion of specified duration, at a time announced in advance, in a fixed indoor location or in a fixed outdoor location approved by the Campus Dean.
- A guest speaker may not accost potential listeners who have not chosen to attend the speech, performance, or discussion.

Application

- All students, faculty members, staff members, student organizations, faculty organizations, and staff organizations that wish to present a guest speaker must apply through a prescribed process, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- A student or student organization that wishes to present a guest speaker will apply to the Campus Dean, through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- A faculty member or faculty organization that wishes to present a guest speaker will apply to the Campus Dean through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.
- A staff member or staff organization that wishes to present a guest speaker will apply to the Campus Dean through a process prescribed by the Campus Dean, at least two weeks before the scheduled event or prior to the publication of any planned advertising for the event, whichever is earlier.

Obligations of Presenting Person or Organization

- A Dakota College at Bottineau person or organization that presents a guest speaker must make clear that:
 - The person or organization, and not Dakota College at Bottineau, invited the speaker; and

Policy

- The views expressed by the speaker are their own and do not necessarily represent the views of Dakota College at Bottineau, the North Dakota University System, or the State of North Dakota.
- The person or organization that presents a guest speaker is responsible for paying any fees assessed pursuant to the schedule set forth in this policy.
- Institutional funds provided to a recognized Dakota College at Bottineau organization may not be used to pay for any costs or expenses related to the presentation of a politically-oriented guest speaker unless approved in advance by an organization's faculty advisor or the Campus Dean, in consultation with Dakota College at Bottineau's legal counsel.
- Guest speakers reserving space at Dakota College at Bottineau facilities may be subject to the same terms and conditions governing the use of the facilities for other outside groups. If a room, space, or facility is made available to any guest speaker invited by a Dakota College at Bottineau person or organization, then that room, space, or facility must be made equally available to all such speakers or groups.

Retraction of an Invitation to Speak

If a Dakota College at Bottineau person or organization complies with this policy when presenting a guest speaker, Dakota College at Bottineau 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 speaker's speech or expression.

Responding to Speech, Expression, and Assembly

General Rule on Responding

- Dakota College at Bottineau persons and organizations may respond to the speech, expression, or assembly of others, subject to all the rules herein.
- Responders may not damage or deface signs or exhibits, disrupt public assemblies, block the view of participants, or prevent speakers from being heard.

Means of response that are permitted in many locations and without advance permission or reservation, such as signs, tables, distribution of literature, and public assembly without amplified sound, may be used immediately and in any location authorized in this policy.

Means of response that require advance permission or reservation, such as banners, exhibits, and amplified sound, may be used as soon as the needed permission or reservation may be arranged. Banner space and some amplified sound areas may be unavailable on short notice because of earlier reservations, but the Campus Dean will expedite approval of exhibits and available banner space and amplified sound areas where necessary to permit appropriate response to other speech, assembly, or expression.

Means of response that are confined to authorized locations, such as banners and amplified sound, may be used only in those locations. It is not permissible to respond to amplified sound with amplified sound in the same location; similarly, if an exhibit or public assembly is in a



Policy

location where amplified sound is not permitted, it is not permissible to respond with amplified sound in that location. In either case, it is permissible to respond with amplified sound in another location and to use signs or distribution of literature to advertise the response at the other location.