

# **Ball State University**

## **Non-Commercial Expressive Activity and Assembly on University Property**

*Please direct questions about this policy to the Vice President for Student Affairs*

Ball State University (the “University”) values the constitutional rights to engage in free speech and to assemble for peaceful purposes. Expressive activities may take many forms, and the freedom to engage in expressive activities foster the robust exchange of ideas essential to academic and social growth. The University must also preserve its Campus and Facilities for their teaching, learning, research, and administrative purposes while providing a safe Campus environment and preserving the Campus aesthetic.

This policy outlines the University’s regulations regarding Non-Commercial expressive activity and assembly on the University’s Campus or in University Facilities. It sets forth reasonable time, place, and manner regulations that apply to all students, employees, visitors, and other individuals while on Campus.

This policy does not replace, but supplements, applicable federal, state, and local laws and regulations.

Regulations governing Commercial activity on Campus appear in the *Commercial Activity on University Property* policy.

### **1. Definitions**

- 1.1. Campus:** All Facilities and land owned, leased, or under the control of the University.
- 1.2. Campus Reservationist:** The University employee who reserves space in a particular building or outdoor space. Recognized Student Organizations typically will go through the Student Center Facilities Coordinator regardless of the venue. Other persons typically will reserve space through a different employee (e.g., the Director of Emens Auditorium and Pruis Hall, the Special Events Manager for Sports Facilities Management, or the Facilities Accounting/Space Coordinator for buildings and/or outdoor space not served by an assigned reservationist).
- 1.3. Commercial:** When referring to expressive conduct, “Commercial” means expressive conduct that (1) proposes a commercial transaction, (2) serves an economic motivation by advertising a product or service, or (3) serves an economic motivation by promoting a company, product, or service’s brand awareness or brand loyalty.
- 1.4. Distribution Activity:** Giving out printed materials, goods, or services without requesting, directly or indirectly, a donation or other consideration in return.
- 1.5. Facilities:** All buildings, other structures (e.g., parking garages, stadium, light posts, statues), or defined outdoor spaces (e.g., University Green, the North Quad, LaFollette Field, vendor tables at the Scramble Light, Noyer Bowl) owned, leased, or under the control of the University.
- 1.6. Non-Affiliated Persons:** Any person, organization, or other entity that is not a University-Affiliated Person.

- 1.7. **Non-Commercial:** When referring to expressive conduct, “Non-Commercial” means all expressive conduct that is not Commercial.
- 1.8. **Recognized Student Organization:** A student organization properly registered and recognized by the Office of Student Life.
- 1.9. **University:** Ball State University, inclusive of its University Departments.
- 1.10. **University-Affiliated Persons:** All students, faculty, employees, or agents of the University.
- 1.11. **University Department:** A Ball State University school, college, department, unit, institute, center, or officially recognized affiliated entity.

## 2. **Prohibited Expressive Activities**

Some forms of expressive activity, or conduct having an expressive component, are not constitutionally protected. The following expressive activities are prohibited on Campus and in University Facilities:

- 2.1. Violations of state or federal law
- 2.2. Physical damage to or defacement of Campus or University Facilities
- 2.3. A true threat, which is a statement meant by the speaker to communicate a serious expression of intent to commit an act of unlawful violence against a particular individual or particular group of individuals
- 2.4. Expression directed to inciting or producing imminent lawless action and likely to incite or produce such action
- 2.5. A false statement of fact creating a clear and present danger by raising an alarm of imminent physical danger
- 2.6. Expression determined by a court to be defamation
- 2.7. Harassment, which may take two forms:
  - 2.7.1. Speech or conduct that is (1) unwelcome and (2) directed toward a person (3) on the basis of that person’s membership or perceived membership in a protected class (4) that is so severe, pervasive, and objectively offensive that (5) it effectively deprives the victim of access to the educational opportunities or other benefits provided by the University.
  - 2.7.2. Speech or conduct explicitly or implicitly conditioning a person’s participation in a University program or activity on, or basing an educational decision on, the person’s submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.

- 2.8. An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.

### **3. Time, Place, and Manner Regulations**

Consistent with applicable state and federal law, the University generally permits both University-Affiliated Persons and Non-Affiliated Persons to engage in Non-Commercial expressive activity on Campus subject to the reasonable time, place, and manner regulations listed below. Only the Vice President for Student Affairs, or designee, may grant an exception to these time, place, and manner regulations if such an exception would not be injurious to public health and safety. Any exception granted will be in a viewpoint neutral manner.

- 3.1. No person or group may interfere with the free flow of vehicular, bicycle, or pedestrian traffic on Campus or in any University Facility.
- 3.2. No person or group may block entrances to or exits from, or otherwise interfere with the free flow of traffic into and out of, University Facilities.
- 3.3. No person or group may disrupt teaching, research, administration, disciplinary procedures, or any other University functions.
- 3.4. Assemblies, protests, or other demonstrations are prohibited in the following locations:
  - 3.4.1. Within 50 feet of any building having a classroom, laboratory, library, or similar instructional or research space
  - 3.4.2. Within 50 feet of any indoor or outdoor experiential-learning Facility
  - 3.4.3. Within 50 feet of any building having a computer lab
  - 3.4.4. Within 50 feet of any building having a testing or tutoring center
  - 3.4.5. Within 50 feet of any building having an administrative office
  - 3.4.6. Within 50 feet of any residence hall or family apartment

Assemblers, protesters, or demonstrators who refuse to vacate any of the locations listed in this subsection upon request may be subject to suspension and/or arrest under applicable laws.
- 3.5. Expressive activities that are audible from inside a residence hall or family apartment are prohibited between the hours of 11:00 p.m. and 9:00 a.m. Sunday through Thursday and between 1:00 a.m. to 10:00 a.m. on Friday and Saturday. Expressive activities that are audible from inside a residence hall or family apartment are prohibited all day during finals week each semester.
- 3.6. Amplification equipment may be used on Campus only with prior approval of the Campus Reservationist. Requests should be initiated through the Campus Reservationist

at least three business days prior to the event. Requests will be granted only if the proposed use complies with the following restrictions.

**3.6.1.** Use of amplification equipment is prohibited if the amplified sound is audible from inside any classroom, library, laboratory, or similar instructional or research space during scheduled instructional hours. Requests to use amplification equipment must explain why the requesting party believes its proposed use will not violate this restriction.

**3.6.2.** The University may control the volume and direction of sound amplification if noise levels are interfering with a previously scheduled event or University function.

Use of amplification equipment without the approval required under this subsection, or an approved use that violates the restrictions in this subsection, is prohibited.

**3.7.** Distribution Activity is permitted on Campus if it does not violate any other provision in this policy and subject to the following regulations.

**3.7.1.** Recognized Student Organizations and University Departments and may reserve tables for Distribution Activity based on availability through the Campus Reservationist.

**3.7.2.** Non-Affiliated Persons may not reserve tables for Distribution Activity and may not bring tables onto Campus except as permitted under Section 3.18.

**3.8.** University-Affiliated Persons are permitted to post materials on bulletin boards and outdoor kiosks on Campus, unless the bulletin board or outdoor kiosk is designated for University purposes. To avoid damage and to assist with the overall aesthetic of the Campus, materials may not be posted or otherwise attached to any other University property. Materials advertising events that have passed, that cover more than ten percent of an entire bulletin board or outdoor kiosk, or that violate this provision or any University policy may be subject to immediate removal. In addition, all postings on outdoor kiosks are removed at the end of each academic year. Non-Affiliated Persons may not post materials on Campus.

**3.9.** No person or group may prevent any University official or employee from carrying out the official or employee's job duties.

**3.10.** No person may access nonpublic areas of Campus, or of any University Facility, without authorization. Non-public areas include, but are not limited to, classrooms, laboratories, libraries, faculty and administrative offices, and recreational facilities.

**3.11.** Access to University residence halls and family apartments is limited to residents and their escorted guests (subject to any Housing and Residence Life policies) and to individuals conducting official University business.

**3.12.** No person may camp or lodge on Campus other than in Facilities designated by the University for overnight lodging.

- 3.13.** No person may climb up or rappel down any University Facility or Campus structure without authorization.
- 3.14.** No person may erect any temporary or permanent structure or sign on Campus unless directed to by the University. Handheld signs are permitted only if they do not violate any other provision in this policy.
- 3.15.** No person may scratch, scrape, stain, tape, graffiti, paint, chalk, or otherwise mark a University building or other structure. Chalking is allowed only on campus sidewalks or walkways that can be easily washed away by rain and that will not cause lasting or permanent damage. Chalking is not allowed on any brick pavers, on steps or stairs attached to or leading toward any buildings, under any covered area (where the chalk will not be washed away by rainfall), or within 10 feet of any door or building entrance. Only water-soluble stick chalk (sidewalk chalk) is allowed. No spray chalk, chalk markers, paints, or similar products may be used.
- 3.16** The University Facilities listed below have dedicated purposes and require a reservation (and may require payment of rental fees) for any other uses. Information about reserving University Facilities may be obtained by contacting the Campus Reservationist.
  - 3.16.1.** Alumni Center
  - 3.16.2.** All Athletic Facilities
  - 3.16.3.** Recreation Services
  - 3.16.4.** Emens Auditorium and Pruis Hall
  - 3.16.5.** L.A. Pittenger Student Center
  - 3.16.6.** Residence Halls Multipurpose Rooms
  - 3.16.7.** Multicultural Center Multipurpose Room and Conference Room
  - 3.16.8.** University Dining (The Atrium)
  - 3.16.9.** Brown Family Amphitheater and Lawn
- 3.17.** The University is a tax-exempt state educational institution. In order to maintain this status, the University may not participate or intervene in any political campaign or permit its resources to be used in a manner that suggests institutional support for any political party or candidate. To protect the University's tax-exempt status, the University must regulate political activity on Campus. Political activity is permitted on Campus to the same extent other Non-Commercial expressive activity is permitted under this policy and subject to the following regulations.
  - 3.17.1.** University students, faculty, and staff who participate in political activities, support candidates, or become candidates for public office must do so in their

individual capacity without using the University's name or trademarks or otherwise implying University support for any political party or candidate.

**3.17.2.** No University funds or resources, including information-technology systems like University email, may be used to support any partisan political activity. University funds and resources may be used to support non-partisan voter-education and voter-registration activities. Those activities must be conducted in an unbiased manner that neither favors nor opposes a particular candidate or political party.

**3.17.3.** Political parties or organizations may rent University Facilities for meeting purposes on the same terms as other Non-Affiliated Persons and subject to the limitations in this subsection.

**3.17.4.** Political fundraising is not permitted on campus.

**3.18.** Non-Affiliated Persons may engage in Non-Commercial expressive activity, including Distribution Activity, using tables, booths, or other apparatus between 7:00 a.m. and 11:00 p.m. in an area designated by the University for Commercial or Non-Commercial expressive activity during the seven calendar days preceding the fall and spring semesters, the seven days preceding the first summer session, and the first day of the fall and spring semesters and first summer session.

**3.18.1.** Space during this approved period is available on a first-come, first-served basis by registering with the Student Center Campus Reservationist at any time during the eight-week period preceding the desired use.

**3.18.2.** The University will impose rental fees in a content-neutral manner.

#### **4. Sanctions**

The University may sanction individuals or groups who violate this policy, including engaging in conduct that materially and substantially disrupts the protected expressive activity of another employee, student, student organization, or contractor of the University. Possible sanctions include:

- 4.1.** Immediate cessation of the expressive activity;
- 4.2.** Removal from Campus;
- 4.3.** Suspension of the sponsoring individual or group from hosting, or participating in, future events on Campus;
- 4.4.** Placing a Recognized Student Organization on probation or withdrawing recognition;
- 4.5.** Assessment of costs for expenses or damages incurred by the University;
- 4.6.** Suspension or revocation of scheduling privileges;
- 4.7.** Disciplinary action up to and including dismissal from the University; and/or

**4.8.** If applicable, criminal liability.

Any questions concerning the interpretation or application of this policy shall be submitted to the designee of the Vice President for Student Affairs. The question shall be submitted in writing by the person affected and must set forth all facts and other information that the person believes to be relevant to the resolution of the question. The Vice President for Student Affairs or a designee may conduct such investigation of the circumstances involved as deemed desirable and shall render a decision in writing. Any person who is informed that the person's conduct violates this policy shall immediately cease the violation. An appeal may be taken from the interpretive decision made under this paragraph.

**5. Appeals**

Appeals may be taken under this policy subject to the following procedures:

- 5.1.** University actions may be appealed under this policy as follows.
  - 5.1.1.** Any sanction issued under this policy may be appealed to the Vice President of Student Affairs or a designee.
  - 5.1.2.** Interpretive decisions issued under Section 4 of this policy may be appealed to the Vice President of Student Affairs or a designee.
  - 5.1.3.** The removal of any content from University information-technology systems under the Information Technology Users' Privileges and Responsibilities policy may be appealed to the Vice President for Information Technology and Chief Information Officer.
- 5.2.** Any appeal must be submitted in writing within ten (10) business days after the challenged sanction was imposed or the challenged interpretive decision was issued.
- 5.3.** The written appeal must include the name(s) and address(es) of the individual(s) or group(s) that received the challenged sanction or interpretive decision, the nature of the action being appealed, and the grounds for the appeal.
- 5.4.** Review of the appeal shall include the following:
  - 5.4.1.** The materials submitted by the appellant;
  - 5.4.2.** The basis or grounds for the University action, and any related information; and
  - 5.4.3.** Any additional information requested by the University official or designee deciding the appeal.
- 5.5.** A final decision on the appeal shall be issued in writing within five (5) business days after the date the written appeal is filed, unless there is good cause for delay. The person filing the appeal will be notified in writing of any delays.

## **6. Amendment**

This policy may be amended, added to, or revoked, in whole or in part, by the President of the University as the President from time to time may deem appropriate. Any such amendment, addition, or revocation shall be effective as determined by the President and does not require approval by the Board of Trustees unless the action is inconsistent with any then-existing policy of the Board of Trustees.

## **7. Disclaimer**

In making its Campus available for use under this policy, the University assumes no obligation or responsibility for the activities of any Non-Affiliated Person or any University-Affiliated Person engaged in expression on Campus. The University reminds all users to review and comply with applicable laws, including those concerning safety, libel, slander, defamation, and obscenity.

*Adopted May 6, 2022*

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