

OSU INSTITUTE OF TECHNOLOGY  
POLICY & PROCEDURES

<b>Extracurricular Use of Campus Facilities or Areas for the Purpose of Expression</b>	<b>3-033 FISCAL SERVICES November 2013</b>
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POLICY

Philosophy

- 1.01 A goal of the faculty, students, administration, staff, and Board of Regents, is for OSU Institute of Technology (OSUIT) to be a superior educational center for the preservation, transmission, and discovery of knowledge. The wide variety of extracurricular activities at OSUIT represents one way this goal is achieved. Therefore, these activities are an integral part of the total educational mission of the university.
- 1.02 In fulfilling this mission, the university must recognize and protect free inquiry and free expression as indispensable components of the critical examination of philosophies and ideas. Given the unique mission of educational institutions in a democratic society, this inquiry should be more open and vigorous and should consequently have greater protection than in society at large, provided that such inquiry does not infringe upon the rights of others. Commitment to free inquiry and expression creates a strong presumption against prohibition of expression based upon its content. This philosophy is intended to apply to all forms of expression occurring at the university and any uncertainty regarding the application or operation of this policy statement shall be resolved in a manner consistent with this philosophy.

Scope

- 2.01 This policy statement shall be applicable only to the extracurricular use of any university-controlled facility, area, or medium used as a forum generally open to members of the university community and others for the purpose of expression.
- 2.02 Any university policy providing for conditions or limitations on extracurricular expression shall be consistent with the Procedural Standards.
- 2.03 The Procedural Standards apply to scheduling the extracurricular use of university-controlled facilities or areas for the purpose of expression.
- 2.04 Any question regarding the applicability of this policy statement shall be resolved by the campus administration following consultation with University Legal Counsel, and its decision in this regard shall be final.

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PRINCIPLES AND STANDARDS

In General

- 3.01 The freedoms of expression and assembly as guaranteed by the first and fourteenth amendments of the United States Constitution shall be enjoyed by all members of the academic community. Free discussion of subjects of either controversial or non-controversial nature shall not be curtailed, even when they are considered to be offensive or in poor taste.
- 3.02 Although our Constitution establishes a sweeping commitment to these freedoms, it is well recognized that there is no absolute right to assemble or to receive or present expression. As described below, permissible limitations include only those based on reasonable time, place, or manner requirements and, in extremely rare circumstances, those based on content.
- 3.03 The fact that certain content-based limitations on expression have been established as legally permissible does not create an obligation or responsibility on the university or any of its officials or employees to exercise any form of limitation or control of expression. Rather, because of its educational mission, it is the responsibility of the university and its officials to actively encourage free and open inquiry by avoiding and resisting limitations of expression.

Time, Place, or Manner Considerations

- 4.01 Expression may be limited or restricted with respect to time, place, or manner only as provided for in this policy statement and other related statements of policy such as the Statement of Student Rights and Responsibilities. Such limitations shall be narrowly tailored to serve a significant interest (such as avoiding disruption of regular classes, avoiding the scheduling of two events at the same time in the same facility, and the protection of the public order) and to assure compliance with applicable local, state, and federal laws. Any limitations must be both reasonable and content-neutral, the latter term meaning that they shall be applied without regard to the content of the expression for the purpose of the assembly. At no time will the visitor be allowed to set up within twenty-five yards of a building, parking lot or thoroughfare.
- 4.02 Limitations may include requiring (a) scheduling and planning with the appropriate authorized designee, (b) restricting or prohibiting the use of certain areas, (c) limiting certain forms of expression in specific areas, and (d) reimbursing the university for any costs associated with the use of a facility, area, or medium.
- A. *Available Locations:* 1) grassy area immediately west of Workforce Oklahoma Building, 2), the grassy area immediately west of the Allied Health Sciences building or 3) grassy area south of Noble Center. Regardless of location, individuals should not interfere with or block sidewalk or vehicular traffic.

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- B. *Required Scheduling:* Schedule with the Director of the Student Union and Auxiliary Services, or their designee, with the following information: name, address, contact telephone number, email address (optional), date and time requested for the event, and purpose for use.
- C. *Sound Amplification:* Devices which amplify sound, including megaphones, microphones, amplifiers, speakers and all similar devices may not be used unless approved in advance.

Content Considerations

- 5.01 The First Amendment of the Constitution protects and guarantees freedom of speech by prohibiting any law which would serve to deny or limit expression. Through the Fourteenth Amendment, this prohibition is extended to all actions of state government, including those of publicly-supported universities. Accordingly, expression may not be denied or limited, based upon content, unless it is determined in a state or federal court proceeding that such speech or expression is not protected by the Constitution.
- 5.02 Denials or limitations of expression based upon content are not required by the Constitution or any law. Indeed, such content-based regulation is presumed to be constitutionally invalid by the United States Supreme Court. Accordingly, in determining whether to deny or limit expression based on its content, the university should be guided by its commitment to the educational mission of the institution.

Disclaimer Regarding Expression

- 6.01 Given the wide diversity of expression that occurs at higher education institutions, the use of any university-controlled facility, area, or medium for any expression shall not constitute or suggest endorsement of the content of that expression, or any proponent thereof, by the Board of Regents, the university, its administration, staff, faculty, student body, or any individual member of these constituencies.
- 6.02 Presenters of expression shall assume full responsibility for any violation of the law they commit while on university property.

PROCEDURAL STANDARDS FOR SCHEDULING UNIVERSITY AREAS OR FACILITIES FOR EXTRACURRICULAR EXPRESSION

Requests for the Use of a Scheduled University Facility or Area

- 7.01 The extracurricular use of any scheduled university-controlled facility or area for the purpose of expression shall be preceded by a request made to an authorized designee. A request shall contain the name of the requestor and how he/she can be contacted; the proposed date, time, and location for the contemplated activity; the expected size of the audience; the topic(s) or subject(s) to be addressed; and any other information which may be necessary to accommodate the needs associated with the activity.

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- 7.02 The request should be made as far in advance as possible to provide for adequate review and orderly scheduling of facilities or areas. The amount of time required for review of a request will vary depending on the nature of the request. Barring extraordinary circumstances (e.g. extensive safety and security arrangements or review by the campus administration); review should normally be completed within a few hours or days. If the authorized designee determines that additional time is required for review, he/she should ask the requestor to specify the latest date by which a final response is necessary. This date is important so that the total review and decision process may be completed in sufficient time to allow the requestor to make final arrangements for the proposed expression in the event the request is granted.
- 7.03 As promptly as possible, but not later than six working days from the receipt of a request for the purpose of calculating the expiration of time deadlines specified in this policy statement, weekends, official university holidays, and the day that a request, recommendation, or report is received are not counted. For example, if a request is received on Monday, the authorized designee must take one of the specified actions no later than Tuesday of the following week in order to meet the six-day deadline; the authorized designee must take one of the following actions:
- A. Grant the request. This will be the routine action taken on the vast majority of requests. The authorized designee should work with the requestor in preparing or revising a request so that it may be granted. If the authorized designee has any question about whether to grant the request, they should consult with their administrative supervisor(s). When a request has been granted, such action shall be final and the requestor shall be promptly notified.
  - B. Ask the campus administration for a specific additional period of time to continue review of the request. An extension of time will be granted only if it is warranted and will permit a final response on the request to be reached in time to allow the requestor to carry out final arrangements for the proposed expression in the event the request is granted. The authorized designee shall promptly notify the requestor that a request for an additional period of time has been submitted and shall keep the requestor informed of any decisions made regarding the requested use.
  - C. Deny the request because it was not submitted in a timely manner. The authorized designee should take this action only if they can document that the time between the filing of the request and the date by which a final response is necessary is so short that adequate review and action cannot be reasonably completed by the university;
  - D. Deny or limit the request based on time, place, or manner considerations;
  - E. Recommend that the request be denied or limited based on content considerations.

If the authorized designee fails to take one of the above actions within six working days of submission of the request, the request shall be deemed granted.

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- 7.04 No final arrangements or advertising shall be made for the proposed expression prior to the granting of the request for the use of the facility or area.

Limitations Based Upon Time, Place, or Manner Considerations

- 8.01 If a request is denied or limited based on time, place, or manner considerations or for failure to submit a timely request, the requestor shall be promptly informed of such a decision. A written statement of the reasons for the denial or limitation shall be provided upon request.
- 8.02 The requestor may appeal denials or limitations by filing a written statement with the campus administration. The statement shall set forth the reason(s) for appealing the denial or limitation. The campus administration shall hear appeals and render a final decision no later than five working days from the filing of the appeal. Although the campus administration may, if necessary, take the full five days to render a decision, it should make every reasonable effort to reach its decision in time to allow the requestor to carry out final arrangements for the proposed expression in the event the campus administration reverses the authorized designee and grants the request.

Denials or Limitations Based Upon Content Considerations

- 9.01 An authorized designee may recommend that a request be denied or limited on the basis of content only if it is determined, after appropriate inquiry (including consultation with University Legal Counsel) that the proposed expression is unprotected. In determining whether to make such a recommendation, full and adequate consideration should be given to the educational mission of the university and its officials to actively encourage free and open inquiry by avoiding and resisting limitations of expression. Any such recommendation, and the reasons upon which it is based, shall be stated in writing and delivered to the offices of the appropriate administration no later than six working days from the submission of the request. If the authorized designee has been granted additional time for review, such recommendation shall be delivered no later than the last day of the extension period. The authorized designee shall also inform the requestor of the recommendation within the same time period and make arrangements for them to receive a copy of the written report and this policy statement.
- 9.02 Upon receipt of the recommendation, the campus administration will review the recommendation and may schedule a hearing. At this hearing, the authorized designee shall have the burden of establishing that the proposed expression is unprotected. The requestor shall have the right to appear at the hearing to present oral and written arguments against the recommendation. The extent to which the authorized designee was guided by the educational mission of the university in arriving at their recommendation shall be a relevant and appropriate inquiry at this hearing. The campus administration shall approve or disapprove the recommendation and report its action to the appropriate university officials and the requestor no later than five working days from the receipt of the recommendation. Although the campus administration, if necessary, may take the full five days to render its decision, it should make every reasonable effort to reach a

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decision in time to allow the requestor to carry out final arrangements for the proposed expression.

- 9.03 No later than three working days from notification by the authorized designee of its decision, the campus administration shall take one of the following actions:
- A. Disapprove the recommendation of the authorized designee and direct them to grant the request; or
  - B. Approve the recommendation of the authorized designee and may initiate a proceeding in state or federal court to determine the validity of the recommended denial or limitation if deemed appropriate.

The campus administration shall also inform the authorized designee and the requestor of his/her action within this same period of time. If the campus administration approves the recommendation but fails to initiate a court proceeding within the three-day period, the request shall be deemed granted.

- 9.04 If the court determines that the recommended denial or limitation would not be valid, then the request shall be granted. Alternatively, a determination that the recommendation is valid shall result in the request being denied or limited.

#### Disclaimers

- 10.01 Organizations or individuals not affiliated or connected with the university shall contact the authorized designee for the purpose of requesting the use of any university facility or area. Such requests shall be governed by this policy and other relevant regulations.

#### DEFINITIONS

##### Authorized Designee

- 11.01 The person or persons who have the authority to schedule the use of a particular campus facility or area.

##### Responsibilities of the Designee

- 12.01 The campus administration and the designee shall be responsible for resolving issues concerning the applicability of this policy and to recommend changes in other policies and procedures to bring them into compliance with the Principals and Standards stated.

##### Extracurricular

- 13.01 The following are currently recognized by the United States Supreme Court as categories of speech or expression which are unprotected and can be barred or limited:

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- A. Clear and Present Danger - Preparing a group for imminent lawless action, and steeling it to such action, as opposed to the abstract teaching of the moral propriety or even moral necessity for a resort to force and violence; AND there must not only be advocacy to action but also reasonable apprehension of imminent danger to the essential functions and purposes of the university. Such imminent lawless action shall include the following:
1. The violent overthrow of the government of the United States, the State of Oklahoma, or any political subdivision thereof;
  2. The willful damage or destruction, or seizure and subversion, of the institution's buildings or other property;
  3. The forcible disruption of, or interference with, the institution's regularly scheduled classes or other educational functions;
  4. The physical harm, coercion, intimidation, or other invasion of lawful rights of the Board of Regents, institutional officials, faculty members, staff members, or students; or
  5. Other campus disorder of violent nature.
- B. Fighting Words - Words which by their very utterance inflict injury or are likely to incite an immediate breach of the peace. Personally abusive words that, when spoken to ordinary persons, are inherently likely to incite immediate physical retaliation.
- C. Obscenity - A description or depiction of sexual conduct that, taken as a whole, by the average person, applying contemporary community standards (the "community" shall be comprised of the faculty, staff, and students of OSUIT):
1. Appeals to the prurient interest;
  2. Portrays sex in a clearly offensive way; and/or
  3. Using a reasonable person standard rather than the contemporary community standard does not have serious literary, artistic, political, or scientific value.

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