

UofA
UNIVERSITY OF ARKANSAS SYSTEM

Office of the President

August 10, 2023

The Honorable Terry Rice, Senate Chairman
The Honorable Jeff Wardlaw, House Chairman
Arkansas Legislative Council
1 Capitol Mall
Little Rock AR 72201

Dear Senator Rice and Representative Wardlaw:

During the 2019 legislative session, the General Assembly passed Act 184, known as the FORUM Act, Ark. Code Ann. 6-60-1001 et seq., regarding free speech in outdoor areas of a campus. In a September 30, 2019, letter, I outlined the “course of action implemented to ensure compliance” on behalf of the campuses, units and divisions of the University of Arkansas System required by Ark. Code Ann. 6-60-1008. The actions taken, at that time, included amendments to Board of Trustees and Systemwide Policies and Procedures concerning the use of university facilities; new model policy on free expression in outdoor areas of a campus, and a training session for campus administrators. The FORUM Act further required any changes or updates be provided to the Governor and Legislative Council within thirty (30) days.

The passage of Act 614 of 2023, which addressed free expression in indoor areas of a campus, has necessitated a few updates to the System’s model policy referenced above. For example, expansion of the definition of “campus forum”; narrow limitations to prevent the disruption of a previously scheduled or otherwise reserved activity; disregard of a campus policy regarding compliance with state and federal discrimination and harassment laws, or the productive and efficient operation of the instructional or work environment; ability to prohibit, limit, or restrict expression not protected by the First Amendment or Article 2, Section 6 of the Arkansas Constitution; impose reasonable time, place and manner restrictions consistent with Act 614; and the addition of a grievance procedure. Training sessions with campus administrators to review the requirements of Act 614 and edits to the model free expression policy were conducted on July 11 and 19.

A copy of the revised policy is enclosed. As I wrote in 2019, free speech has always been a vital part of the educational experience at the University of Arkansas, and our campuses are committed to complying with Acts 184 and 614 of the 2019 and 2023 sessions of the General Assembly.

Sincerely,



Donald R. Bobbitt
President & Charles E. Scharlau Presidential Leadership Chair

c: Marty Garrity, Director, Bureau of Legislative Research

Enclosure

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University of Arkansas, Fayetteville / University of Arkansas at Little Rock / University of Arkansas at Pine Bluff
University of Arkansas for Medical Sciences / University of Arkansas at Monticello / Division of Agriculture / Criminal Justice Institute
Arkansas Archeological Survey / Phillips Community College of the University of Arkansas / University of Arkansas Community College at Hope-Texarkana
University of Arkansas Community College at Batesville / Cossatot Community College of the University of Arkansas
University of Arkansas Community College at Morrilton / University of Arkansas at Fort Smith
University of Arkansas – Pulaski Technical College / University of Arkansas Community College at Rich Mountain
Arkansas School for Mathematics, Sciences and the Arts / University of Arkansas Clinton School of Public Service / University of Arkansas Grantham

POLICY ON FREE SPEECH AND EXPRESSIVE ACTIVITIES

I. Policy Statement

The University recognizes the important role of intellectual freedom and free expression on campus, and it seeks to further the advancement of knowledge by means of research and discovery, teaching, and vigorous discussion of ideas. Students, faculty, and staff are free to discuss matters to the extent consistent with the First Amendment to the U.S. Constitution; Article 2, Section 6 of the Arkansas Constitution; state and federal statutes and regulations; and the reasonable, content-neutral restrictions set forth in this policy and other University and campus policies.

The University recognizes that individuals or groups may be opposed to certain expressive activities or speakers. Disagreement with different opinions is acceptable; however, the use of violence (including threats of violence and unlawful harassment), violations of law, and violations of University policy are not consistent with creating an environment in which ideas can be discussed openly. An individual or group wishing to protest an expressive activity on campus is subject to the same standards as presenters. On-campus protests and demonstrations that materially and substantially infringe upon the rights of others to engage in or listen to expressive activity are not permitted.

This policy describes the rights of members of the campus community to engage in expressive activities and provides for procedures and restrictions that are intended to protect the interests of the University and the campus community. To the extent any part of this policy conflicts with an applicable law or constitutional provision, then the relevant law or constitutional provision shall control. Such laws and provisions include the First Amendment to the U.S. Constitution; Article 2, Section 6, of the Arkansas Constitution; Act 184 of 2019 (Ark. Code Ann. § 6-60-1001 *et seq.*); and Act 614 of 2023 (Ark. Code Ann. § 6-60-1401 *et seq.*).

II. Definitions

A. “Expression” means any lawful verbal or written means by which an individual may communicate an idea to another individual.

B. “Campus Forum” means (1) an outdoor area of campus (as defined below) or (2) any non-academic and publicly open portion of a facility that this state-supported institution of higher education has traditionally made available to members of the campus community for expressive purposes. [Some campuses may specifically designate their “student union” as an indoor area that meets this definition].

C. "Member of the Campus Community" means an enrolled student, an administrator, faculty member, staff member, registered student organization, a group seeking official recognition as a registered student organization, or an invited guest of any of the foregoing persons or groups.

D. "Large-Scale Event" means (1) an event that involves the use of amplified sound; (2) an event that involves the placement of a stage, carts, vehicles, trailers, or multiple tables; or (3) a parade, demonstration, or similar planned event that: (a) can reasonably be expected to attract 50 or more people, including participants and spectators or (b) can reasonably be expected to require additional security, crowd control, or other substantial University resources. A Large-Scale Event does not include a spontaneous, contemporaneous assembly of members of the campus community.

E. "Non-Member of the Campus Community" or "Non-Member" means all persons, groups, clubs, or other organizations that do not come within the definition of "Member."

F. "Registered Student Organization" or "RSO" means an organization (including a club) comprised of University students that is registered with the campus office of student involvement and leadership.

G. "Outdoor Area of Campus" means the generally accessible outside areas of the campus of a state-supported institution of higher education where members of the campus community are commonly allowed, including grassy areas, walkways, and other similar common areas. "Outdoor Area of Campus" does not include outdoor areas where access by the majority of the campus community is restricted.

H. "Student" means any person who is enrolled on a full-time or part-time basis at this institution.

III. Applicability of Other Policies

This Policy shall, wherever possible, be construed in a manner that is consistent with other University and campus policies. Those policies may include (but are not limited to) the following:

A. Facilities Use

The utilization of campus facilities is generally governed by Board of Trustees Policy 705.1, University of Arkansas Systemwide Policies and Procedures 715.1, and applicable campus policies on facilities use.

B. Academic Freedom

This Policy shall not be interpreted as limiting, expanding, or otherwise affecting the rights and obligations of faculty as set forth in Board of Trustees Policy 405.1.

IV. Time, Place, and Manner Guidelines

The University shall not restrict the expression of a member of the Campus Community in a Campus Forum based on (1) the viewpoint of the expression or (2) reaction or opposition from listeners to or observers of the expression. A Campus Forum may be used for expressive activities so long as they meet the following requirements:

1. A member of the Campus Community may not disrupt a previously scheduled or otherwise reserved activity.
2. An expressive activity must not violate local ordinances, state laws, federal laws, this policy, or another University policy regarding:
 - a. Compliance with state and federal laws on discrimination and harassment; or
 - b. The productive and efficient operation of an instructional or work environment.
3. The duration of the expressive activity may be limited to a reasonable period of time, based on the type of event and the resources required to manage it.
4. There shall be no obstruction of entrances or exits to buildings, driveways, parking lots, or other campus locations.
5. An expressive activity must not disrupt vehicular traffic, pedestrian traffic, or scheduled University programs or events. A speaker's use of walkways or other common areas may not block the free passage of others or impede the regular operation of the University.
6. An expressive activity must not create unreasonable safety risks.
7. There shall be no alteration, modification, defacement, or destruction to University-owned or University-leased property.
8. Expressive activities are subject to any campus policies on the permissible posting of signage, use of chalk, or other alterations to University structures.

9. The erection of tents or any temporary structures must be inspected for safety and approved by the [insert title of appropriate University administrator]. Construction of other structures is not permitted.

10. The location for the expressive activity must be left in its original condition at the conclusion of the event, and individuals are responsible for ensuring that any trash or litter is properly discarded. Any person or entity that causes damage to University-owned or controlled property will be responsible for paying any charges necessary to return the property to its original state. Similarly, reasonable cleaning charges may be assessed.

11. Amplification equipment such as loudspeakers are allowed only with prior permission from the [insert title of appropriate University administrator]. Such requests will be evaluated for the potential disruption of regular University activities or processes.

12. Expression that is obscene, defamatory, or consists of fighting words or threats of physical harm, incites imminent lawless action, or is otherwise not entitled to First Amendment protection is not permitted.

13. Except as provided in other University policies, University property may not be used for the purpose of promoting a commercial enterprise or raising money for projects not connected with a University activity.

14. By making a reservation or using a University space for expressive activity, the organizer agrees to be financially responsible for all costs associated with the use of the space—including (but not limited to) security costs related to invited participants, clean up, and repair of damage to University property. Moreover, if warranted by the nature of the event, the University may require a requestor to obtain appropriate liability or other insurance coverage and/or to indemnify the University, its officials, and employees for any claims pertaining to the use of University grounds.

15. Only official academic and administrative units of the University, University-related foundations and the University alumni association, and registered student organizations with approval of their faculty advisor, are allowed to reserve outdoor spaces during “dead days,” any official final examination periods, or the dates of any Official University Commencement activities.

16. Unless officially authorized to do so, no person engaging in expressive activity may represent or give the impression that the person or organization is speaking on behalf of the University, including through the use of the University name, marks, images, or logos. Communications regarding an event may factually

state a university location for an event, but shall not state or imply University sponsorship or endorsement of an event unless it is in fact conducted by the University.

17. First priority for use of Campus Forums shall go to the University's academic and administrative units, and the University reserves the right to modify or cancel reservations accordingly. All uses of the University's indoor and outdoor spaces remain subordinate to the University's right to use them at any time to advance the mission of the institution.

18. Event organizers, including for spontaneous and contemporaneous events, shall make available accurate contact and event information to University officials to enable communications regarding compliance with University policies, including as necessary regarding event security and crowd control arrangements.

V. Expressive Forums and Reservation Requirements

A. Use of Campus Forums

Members of the Campus Community are encouraged to make a reservation to engage in an expressive activity at a Campus Forum at least 3 days in advance of any planned use. Members of the Campus Community must make a reservation for any Large-Scale Event and receive prior approval from the [insert title of appropriate University administrator] at least 3 days in advance of any planned use of a Campus Forum. Members of the Campus Community may, however, spontaneously and contemporaneously assemble, speak, and distribute literature at Campus Forums without receiving prior approval, but otherwise subject to the provisions of this policy.

Non-Members of the Campus Community must make a reservation and receive prior approval from the [insert title of appropriate University administrator] at least 3 days in advance of any planned use of an Outdoor Area of Campus. Non-Members of the Campus Community may not use indoor areas unless authorized pursuant to the campus policy on facilities use.

B. Reservation Preference

In instances in which prior permission from the University is not required, persons are still encouraged to contact the [insert title of appropriate University administrator] for scheduling purposes to minimize possible conflicts. Persons with a reserved space will have priority over any other persons seeking to use the area during the scheduled time period for an expressive activity.

C. Reservation Requirement for Other Locations

There are certain additional locations on campus, including certain indoor facilities, that may be made temporarily available to Members or Non-Members of the Campus Community for assemblies, debates, or other expressive activities as designated by the University. Examples of such locations vary by campus but may include building foyers and auditoriums. The use of such locations may entail security concerns, scheduling conflicts, or resource constraints. Where allowed, persons desiring to use such locations may request a reservation pursuant to facility-specific policies. [A list of such reservable facilities is available at [____insert hyperlink here_____]. Approval of reservations may be conditioned on acceptable security arrangements, insurance, or payment of fees.

Other locations on campus are typically restricted for their intended purpose and cannot be reserved for expressive activities. Examples of such locations vary by campus but generally include the following: libraries, the hallways and classrooms in academic buildings, dormitory rooms, faculty and staff offices, administration buildings, medical treatment facilities, research and computer labs, and athletic fields and facilities.

D. Registered Student Organizations, Organized Demonstrations, and Large-Scale Events

The right of freedom of expression includes organized demonstrations. At the same time, this right does not allow individuals to materially disrupt the University's operations or endanger the safety of others. Accordingly, Large-Scale Events must receive prior approval from the [insert title of appropriate University administrator] at least 3 days in advance of the event or activity.¹

The University will work with the requesting person to either approve the request or find a suitable time and location. To ensure safety on campus, the University may require the requesting party to provide a parade route, hire security, ensure ingress and egress to facilities, or take other steps to maintain the safety of campus. Demonstrations and protests are not permitted in buildings. All participants must follow applicable laws and policies.

This policy does not designate all publicly accessible outdoor locations on campus or any indoor location as a traditional public forum, regardless of whether it is a Campus Forum under this policy.

E. Denials and Revocations

¹ Students' use of a single table, cart, booth, or similar structure that does not exceed three feet by six feet (3' x 6') is permitted without a reservation so long as the time, place, and manner guidelines are followed.

A denial or revocation of permission to engage in an expressive activity shall generally be based on a reason set forth in this policy or other applicable policies of the Board of Trustees or University of Arkansas System. However, no policy can address every possible activity or situation that may occur on University property, and the University reserves the right to address such situations as circumstances warrant.

Any decision to deny a reservation for a Campus Forum shall be promptly communicated in writing to the requester and shall set forth the basis of the denial. Any such denial must be based on clear, viewpoint-neutral criteria. Anyone aggrieved by the application of these rules or an alleged abridgment of free speech on campus may submit a written grievance within 10 days to the decision [insert title of someone of a higher rank than the person who denied the request initially, such as VC for Student Affairs] or designee.

VI. Sanctions and Enforcement

Violations of this policy by Members of the Campus Community may result in review and sanctions under applicable University policies and procedures, including, but not limited to, the campus code of student conduct, employee handbooks, and campus nondiscrimination policies. Violations of this policy by other persons may result in removal from campus or arrest. Members and Non-Members of the Campus Community may also lose their privileges to use campus grounds and facilities in the future, in addition to criminal sanctions. Any criminal proceedings are separate from the University's sanctions. The University will enforce this policy in a content-neutral manner.