

Oklahoma State University Policy and Procedures

**EXTRACURRICULAR USE OF UNIVERSITY FACILITIES,
AREAS FOR THE PURPOSE OF EXPRESSION**

**5-0601
UNIVERSITY
RELATIONS
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PHILOSOPHY AND SCOPE

Philosophy

1.01 A goal of the faculty, students, administration, staff, and Board of Regents, is for Oklahoma State University to be a superior educational center for the preservation, transmission, and discovery of knowledge. The wide variety of extracurricular activities at Oklahoma State University 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. Pursuant to this particular statement and based on prevailing law, existing circumstances, and current manner of operation, The Daily O'Collegian, KOSU, and cable Channel 30 are not presently subject to this policy statement.

2.02 Any University policy providing for conditions or limitations on extracurricular expression shall be consistent with the Principles and Standards stated in Section II.

2.03 The Procedural Standards in Section III apply only 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 Review Committee following consultation with University Legal Counsel, and its decision in this regard shall be final.

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 noncontroversial nature, even when they are considered to be offensive or in poor taste, shall not be curtailed.

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.

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 any costs associated with the use of a facility, area, or medium.

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. For a definition of "unprotected speech" and other terms used in this document, see Section IV.

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 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.

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 Review Committee and/or a court), 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, he/she should consult with his/her administrative supervisor(s) and the Manager of Student Activities. When a request has been granted, such action shall be final and the requestor shall be promptly notified;
- b. Ask the Manager of Student Activities 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. The Manager of Student Activities shall promptly notify the requestor and the authorized designee of his/her decision;

- c. Deny the request because it was not submitted in a timely manner. The authorized designee should take this action only if he/she 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 [See Section III(B)];
- d. Deny or limit the request based on time, place, or manner considerations [See Section III(B)];
- e. Recommend that the request be denied or limited based on content considerations [See Section III(C)].

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.

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 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 chairperson of the Campus Review Committee. The statement shall set forth the reason(s) for appealing the denial or limitation. The Committee shall hear all appeals and render a final decision no later than five working days from the filing of the appeal. Although the Committee 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 Committee 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 chairperson of the Campus Review Committee and the University President no later than six working days from the submission of the request. If the authorized designee has been granted additional time for review under Section III(A)(3)(b), 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 him/her to receive a copy of the written report and this policy statement.

9.02 Upon receipt of the recommendation, the chairperson shall convene the Committee for the purpose of 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 his/her recommendation shall be a relevant and appropriate inquiry at this hearing. The Committee shall approve or disapprove the recommendation and report its action to the University President and the requestor no later than five working days from the receipt of the recommendation. Although the Committee may, if necessary, take the full five days to render its decision, it should make every reasonable effort to reach a decision in time to allow the requestor to carry out final arrangements for the proposed expression in the event the University President ultimately decides to grant the request.

9.03 No later than three working days from notification by the Campus Review Committee of its decision, the University President shall take one of the following actions:

- a. Disapprove the recommendation of the authorized designee and direct him/her to grant the request; or
- b. Approve the recommendation of the authorized designee and initiate a proceeding in state or federal court to determine the validity of the recommended denial or limitation.

The University President shall also inform the authorized designee, the chairperson of the Campus Review Committee, and the requestor of his/her action within this same period of time. If the University President 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.

Expression

12.01 Any communication, discussion, acquisition, manifestation, representation, or indication, whether clear or unclear, ambiguous or unambiguous, of attitudes, information, ideals, beliefs, opinions, or ideas on any subject by any student, faculty, or other member of the academic community, outside speaker or act, process or instance of representation in any media. The media or expression may include but shall not be limited to speech, publications, literature or documents, art, cinema, theater or music, electronic emissions, audio or visual recording in any medium or media, or recordings in any medium or media that combine audible, visible, or other sensory expression, whether expressed, transmitted, presented, or sponsored individually or by a group.

Campus Review Committee

13.01 Composition: The committee shall be composed of two (2) faculty members, two (2) staff members and three (3) students. The two (2) faculty members shall be appointed by the Chair of the Faculty Council who shall also designate one of them as chairperson. One staff member shall be appointed by the Chair of the Staff Advisory Council and the other by the University President. Each faculty and staff member shall serve for a two-year period. The three student members shall be appointed by the President of the Student Government Association, and they shall serve for a one year period. Those responsible for appointing members shall appoint interim replacements to temporarily serve in the absence of regular members. Four members of the

Committee shall constitute a quorum, provided at least one faculty member, one staff member, and one student is part of such quorum. Only those motions which pass with a majority vote shall be considered approved by the Committee. Motions which fail to pass or on which there is a tie vote shall be considered disapproved by the Committee. The chairperson shall have the responsibility of arranging for and conducting all proceedings. A list of current membership and the designated chairperson shall be maintained by the University President. When appropriate, the Committee shall be provided administrative assistance and the services of the University's Legal Counsel.

13.02 Duties: The Committee shall convene and conduct hearings in accordance with the Procedural Standards stated in Section III. In the conduct of such hearings, the Committee shall have access to any information relevant to the issue involved and shall permit the parties to provide related additional information and oral testimony.

The Committee shall also 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 Principles and Standards stated in Section II.

Extracurricular

14.01 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:

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:

i. The violent overthrow of the government of the United States, the State of Oklahoma, or any political subdivision thereof;

ii. The willful damage or destruction, or seizure and subversion, of the institution's buildings or other property;

iii. The forcible disruption of, or interference with, the institution's regularly scheduled classes or other educational functions;

- iv. 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
- v. 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 shall be comprised of the faculty, staff, and students of Oklahoma State University. standards:

- i. Appeals to the prurient interest;
- ii. Portrays sex in a clearly offensive way; and
- iii. Using a reasonable person standard rather than the contemporary community standard, does not have serious literary, artistic, political, or scientific value.

ENABLING CLAUSE

15.01 This policy shall become effective upon approval by the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges and, insofar as Oklahoma State University is concerned, supersedes the speaker's policy adopted by the Board on December 12, 1970. In accordance with Article I of the Rules and Regulations of the Board adopted on October 13, 1967, the University President has full authority to administer the provisions of this policy statement.

Approved by the Board of Regents for Oklahoma State University: January 18, 1991