

Title: <b>Practice Relating to Public Access and Freedom of Expression</b>
Related Policy and Procedure: Policy 253
Department Responsible: Campus Life
Related A.R.S. §15-1861-1869; §15-1866
Last Revised 10.11.2018



### **A. PURPOSE OF THIS PRACTICE**

The purpose of this practice is to regulate Public Access and Freedom of Expression reasonably for the AWC campus in order to ensure that the campus is available primarily for AWC students, faculty and staff for educational purposes.

### **B. DEFINITIONS**

For the purpose of this procedure:

1. **“Breach of the Peace” means seriously disruptive behavior as prohibited by Arizona’s “disorderly conduct” statute (A.R.S. §13-2904), including, but not limited to, committing acts of violence, making unreasonable noise; engaging in protracted disruptive behavior to prevent a lawful meeting, gathering, or procession; and refusing to obey a lawful order to disperse.**
2. **“College” means Arizona Western College.**
3. **“College Authorized Activity” means an activity by any individual, group, or organization that has been permitted to take place on College Property an authorized college representative but is not organized, initiated, aided, or supervised by the College’s administration or official organizations.**
4. **“College Community” means, collectively, all persons employed by, volunteering for, enrolled in classes at, or visiting the College or attending any College Sponsored Activity.**
5. **“College Property” means any campus, building, or grounds owned, leased, operated, or controlled by the College, as well as any structures, improvements, or equipment thereon.**
6. **“College Sponsored Activity” means any event, activity, or endeavor officially sanctioned by the College, on- or off-campus College Property, that is organized, initiated, aided, or supervised by the College’s administration or official organizations**
7. **“Commercial Speech” means all non-College advertising, marketing, sales, purchases, or agreements for the sale or purchase of goods or services, and all non-College solicitations of gifts of money or other goods or services by a person, groups of persons, or other entity, including charitable organizations. Commercial Speech is not Public Expression for purposes of this policy.**
8. **“Content Neutral” means without regard to the substance or subject matter of the Public Expression or to the viewpoint(s) expressed therein.**
9. **“Employee” means any person employed by the College on a full-time, part-time, temporary, or regular basis or directly engaged in the performance of work under the provision of a contract with the College. This definition does not include unpaid Volunteers.**
10. **“Fighting Words” means verbal or nonverbal Speech that, by its very utterance or other method of communication, based on reasonable and commonly accepted community standards, 1) inflicts injury on a person to whom it is addressed (including, but not limited to, seriously abusive or insulting epithets of a personal nature addressed to a specific individual), or 2) is reasonably likely to provoke immediate physical retaliation by the person to whom it is spoken, or 3) is intended to incite or encourage others hearing the speech to commit an imminent Breach of the Peace, act of vandalism, or act of violence against the speaker or against someone else.**

11. “**Gratuitous Violence**” means real or simulated graphic, realistic visual depictions of brutal acts of physical harm or cruelty to or the infliction of brutal physical harm or cruelty upon humans, animals, or human- or animal-like creatures and, taken as a whole, lacks discernable literary, artistic, political, or scientific value.

12. “**Harassment**” means unwelcome Speech or conduct directed toward a specific individual that a reasonable person in the individual’s position would perceive as being so severe, persistent, or pervasive as to deny or substantially disrupt the individual’s ability to fully participate in or benefit from Ordinary College Operations or a College Sponsored Activity.

13. “**Heckler’s Veto**” means completely preventing or attempting to completely prevent a speaker from speaking or from being heard by others through persistent, suppressive, and overwhelming boos, chants, shouted comments, or other intentional disruptions. A Heckler’s Veto does not include isolated or intermittent vocal disagreement or heckling, even if it is loud, disrespectful, or briefly disruptive.

14. “**Obscenity**” means Speech or other expression in any medium that a reasonable person applying contemporary community standards would find appeals or is intended to appeal primarily to prurient interests, depicts or describes sexual conduct in a blatantly graphic or patently offensive way, and, taken as a whole, lacks discernable literary, artistic, political, or scientific value.

15. “**Ordinary College Operations**” means all day-to-day business and other functions of the College, including, but not limited to, academic instruction, administrative services, performance of employment responsibilities, facilities maintenance and grounds keeping, creative activity, community events, campus safety and security, and the maintenance of a College-wide environment that is open, accessible, and welcoming to the College Community

16. “**Posted**” means affixed to or deposited on College Property by any means.

17. “**Prohibited Discrimination**” means the unjust, prejudicial, or less favorable treatment of a person or group of persons based on actual or perceived protected characteristics or status in violation of state, federal, or municipal law, or College policy.

“**Public Area**” means an outdoor area that is generally open to the public during the College’s regular hours of operation and accessible by a public road or walkway without the need to enter or pass through a building or enclosed space. Public Areas do not include the interiors of College buildings or enclosed outdoor spaces, such as building atriums or athletic fields.

19. “**Public Expression**” means all Speech – excluding Breaches of the Peace, Commercial Speech, Fighting Words, Gratuitous Violence, Harassment, Heckler’s Veto, Obscenity, Prohibited Discrimination, or True Threats – conducted in a Public Area, including, but not limited to, protests, demonstrations, rallies, speeches, forums, the distribution of posters or leaflets, and the collection of signatures for petitions, and includes all activities related to an individual’s right to peacefully assemble and/or petition the government for a redress of grievances.

20. “**Public Posting**” means any written or printed material that is placed on College Property in a Public Area or affixed to any structure on College Property in a Public Area.

21. “**Reserved Area**” means a Public Area that has been reserved and scheduled in advance by a specific individual or group for a particular activity in accordance with applicable College policy.

22. “**Speech**” means communication through any means, including, but not limited to, spoken or printed words or symbols, expressive gestures or utterances, symbolic actions, artistic expression, or forbearance from any of the foregoing (*e.g.*, intentional silence or non-participation in expressive actions).

**23. “Student” means any person currently enrolled in courses at the College on either a full-time or part-time basis, as well as any person currently registered for or participating in continuing-education classes through the College.**

**24. “Student Organization” means an organization composed primarily of students which has received recognition according to College policies and procedures through the campus Student Life Office.**

**25. “True Threat” means Speech in any medium that the speaker intends to communicate a serious expression of an intent to commit an act of unlawful violence against a specific person or group of persons.**

**26. “Visitor” means any person physically present on College Property or in attendance at a College Sponsored Activity who is not a current Student, Employee, or authorized Volunteer.**

**27. “Volunteer” means any individual who is not an Employee or Student of the College, and is authorized by the College to perform and voluntarily performs services for the College without promise, expectation, or receipt of compensation, future employment, or other tangible benefit, including academic credit. A Volunteer is not an Employee of the College for any purpose.**

### **C. GENERAL PRINCIPLES**

1. The College will at all times maintain a Content Neutral position in the application and enforcement of this policy.

2. As an institution of higher education, the College is dedicated to the principle that a free exchange of ideas is fundamental to the pursuit and dissemination of knowledge. To that end, the College is committed to protecting every member of the College Community’s right to speak, write, listen to, explore, and debate competing ideas.

3. In any higher-education environment, including here at the College, it is normal for the ideas of various members of a college community to often differ and sometimes conflict. Although the College values highly the principles of civility and mutual respect, it is not the proper role of an institution of higher education to attempt to shield members of the College Community from ideas and opinions they may find unwelcome, disrespectful, upsetting, or even deeply offensive. Concerns about civility and mutual respect do not justify closing off discussion of any ideas or opinions, no matter how disagreeable or offensive they may be to some or even most members of the College Community.

4. The College is committed fully to the fundamental tenet of higher education that the appropriate response to false, offensive, or even abhorrent Speech is not to prohibit it or hide from it, but to respond to and challenge it with more Speech.

5. Although members of the College Community are free to criticize and contest the views expressed by others, they may not deny, materially obstruct, or otherwise improperly interfere with others’ freedom to express views with which they disagree or which they find offensive or even loathsome.

6. The freedom to express ideas does not mean members of the College Community may exercise that freedom in ways that are incompatible with Ordinary College Operations or the rights of other members of the College Community, including their right to a full and equal opportunity to pursue their education, to a College environment free from impermissible or Prohibited Discrimination and Harassment, to access the resources available at the College, and to express their own opinions and beliefs.

7. The College may restrict Public Expression that violates state, federal, or local law; defames a specific person; or

Constitutes a Breach of the Peace, Commercial Speech, Fighting Words, Gratuitous Violence, Harassment, a Heckler’s Veto, Obscenity, Prohibited Discrimination, or a True Threat; or otherwise disrupts Ordinary College Operations, College Sponsored Activities, or College Authorized Activities.

8. The College may place reasonable, Content Neutral regulations on the time, place, and manner of Public Expression to ensure it does not disrupt Ordinary College Functions, College Sponsored Activities, or College Authorized Activities.

9. The fact that Public Expression activity occurs on College Property does not imply and should not be construed as implying approval or endorsement by the College of any viewpoint or message expressed during the activity.

#### **D. LOCATION OF PUBLIC EXPRESSION**

1. Any Public Area on College Property may be used for Public Expression consistent with this practice, including on a spontaneous basis, provided the Public Area has not already been reserved for use at that same time, subject to reasonable time, manner, and place restrictions (see Section 4, below).

##### 2. Reserving Public Areas for Public Expression

- a. Reservations are not required to use Public Areas for Public Expression activities
- b. The College recommends individuals or groups who wish to engage in Public Expression activities that are anticipated or likely to involve or attract large numbers of people, or that will involve special equipment (*e.g.*, stages or platforms, chairs, sound amplification) consult with the College's Student Life Office regarding the most appropriate Public Areas to accommodate those activities and reserve those Public Areas in advance.
- c. Individuals or groups who wish to engage in planned Public Expression activities may reserve a particular Public Area in advance by submitting a written "Public Access and Freedom of Expression Form" as follows:
  - i. At least two (2) business days before the anticipated date of the Public Expression activity, although the College strongly encourages the submission of reservations as early as possible;
  - ii. To the Dean of Students when Public Expression activities are to be conducted at one of the College's campuses;
- d. Reservation submissions will be processed on a first-come-first-served, Content-Neutral basis and may be denied at the College's discretion under one or more of the following circumstances:
- e. The Public Expression activity conflicts with scheduled College Sponsored Activities or College Authorized Activities;
- f. The Public Area in question has already been reserved by another individual or group;
- g. The Public Expression activity for which the reservation is sought does not conform to reasonable time, place, and manner restrictions set forth by the College;
- h. The individual or group submitting the reservation has a prior history with the College of engaging in Public Expression activities that are harmful or injurious to members of the College Community, damaging to or the cause of excessive littering on College Property, excessively disruptive to Ordinary College Operations, or that otherwise violate College policy or do not conform to the College's time, place, and manner restrictions.
- i. Individuals and groups submitting reservations will be notified within one (1) business day if their reservations are confirmed or have been denied.
- j. If a reservation submission is denied, the College will provide a timely written explanation for the denial and make reasonable efforts to work with the individual or group whose reservation was denied to modify the reservation submission to facilitate its approval.

3. The College reserves the right to cancel any Public Area reservation or terminate any Public Expression activity already in progress if anyone participating in the Public Expression activity engages in any conduct prohibited by this policy (see Section 8 below), by state or federal law, or municipal ordinance.

#### 4. Appeals

a. An appeal of the denial or cancellation of a reservation submission or of a decision to terminate Public Expression activity may be submitted to the Vice President of Student Services within five (5) business days of the date of the denial, cancellation, or termination.

b. Consideration of appeals shall be limited to questions of whether a misapplication of this policy or other College policies or procedures resulted in the denial or cancellation of a reservation submission or the decision to terminate Public Expression activity. The Vice President of Student Services or his/her designee will not review or otherwise second-guess decisions of the Dean of Students regarding Public Expression or this policy on any other basis.

c. Appeals must be in writing and state the following:

i. The name of the individual bringing the appeal (the "Appellant") and whether he or she is bringing it on behalf of a particular group;

ii. A summary of the facts leading to the denial, cancellation, or termination, including the date, time, and location of the Public Expression activity, as well as a description of the Public Expression in which the Appellant engaged or intended to engage;

iii. The basis why the Appellant believes this Procedure or other specific College policy or procedure was misapplied, and

iv. The relief the Appellant is requesting.

d. A copy of the Appeal must be delivered to the Vice President of Student Services or his/her designee and to the Dean of Students whose decision is being appealed (the "Appellee").

e. The Appellee may submit a written response to the appeal within one (1) business day. Copies of the Appellee's response must be delivered to the Vice President of Student Services or his/her designee and to the Appellant.

f. Appeals pursuant to this policy will be decided and the Appellant notified of the decision within ten (10) business days of the College's receipt of the appeal.

#### **E. TIME, PLACE, AND MANNER RESTRICTIONS**

1. Reasonable time, place, and manner restrictions may be imposed on Public Expression activities to achieve a compelling College interest, including, but not limited to, ensuring Ordinary College Functions are not disrupted and to protect the safety and security of the College Community and College Property.

2. Time, place, and manner restrictions shall be determined by the Coordinator of Student Leadership and Activities or his/her designee on a case-by-case basis, sometimes in consultation with the College's police department or risk management department.

3. All time, place, and manner restrictions shall be the least restrictive means necessary to achieve the compelling College interest and must not effectively stop or prevent spontaneous Public Expression and to maximize opportunities and alternative channels for Public Expression.

4. Any time, place, and manner restrictions on Public Expression shall be Content Neutral.

5. In the event the College deems it necessary to restrict Public Expression, the College will nevertheless, to the maximum extent practicable, propose and provide alternate opportunities for such Public Expression.

6. The College reserves the right to require any form of Public Expression that a reasonable person applying contemporary community standards would find offensive including themes or depictions of graphic violence, explicit human sexual acts, or explicit human nudity (but does not otherwise constitute Gratuitous Violence or Obscenity); regardless of its artistic, scientific, or academic value; be conducted or displayed at a time, in a place, and/or in a manner designed to decrease the likelihood that members of the College Community (*e.g.*, minor children) will unintentionally encounter the Public Expression.

#### **F. AFTER-HOURS PUBLIC EXPRESSION ON COLLEGE PROPERTY**

College Property, including all non-public and Public Areas, may not be used for Public Expression activities from 7:00 p.m. until 7:00 a.m., seven (7) days per week, excluding Public Expression associated with Ordinary College Operations or College Sponsored Activities, without the express written permission of the Vice President of Student Services or his/her designee.

#### **G. INVITED SPEAKERS**

1. Public Areas on College Property shall be open to speakers invited by Students, Student Organizations, and College faculty to engage in Public Expression at the College.

2. The College shall make reasonable efforts to address the safety of persons engaged in Public Expression on College Property, including invited speakers and persons attending invited speakers' events.

3. The College may charge a reasonable fee for the provision of security services at Public Expression events involving invited speakers, provided security fees are charged uniformly and are in no way based on or influenced by the content of the Speech of the invited speaker or of the person or group who invited the speaker.

#### **H. AMPLIFIED SOUND**

The College reserves the right to restrict or prohibit the use of amplified sound during Public Expression activities at times when amplified sound is reasonably likely to interfere or disrupt Ordinary College Operations, College Sponsored Activities, or non-amplified College Authorized Activities.

#### **I. CONTEMPORANEOUS COUNTER-PROTESTS AND COUNTER-DEMONSTRATIONS**

1. Protests, demonstrations, or other Public Expression activities may attract or invite other forms of Public Expression in response, including, but not limited to, contemporaneous counter-protests and counter-demonstrations.

2. The College will, to the maximum extent possible, treat individuals and groups engaging contemporaneously in Public Expression and in counter-Public Expression equally in accordance with this Procedure.

3. To preserve the health and safety of the College Community and to prevent damage to College Property, the College reserves the right to place mutual time, place, and manner restrictions on Public Expression activities and contemporaneous counter-Public Expression activities, including, but not limited to, requiring that activities be conducted a reasonable distance from each other, not to exceed the distance minimally necessary to maintain safety and order.

#### **J. PROHIBITED CONDUCT**

1. The College expressly prohibits any conduct, regardless of any association it may have with legitimate Public Expression activity, if the conduct

a. Adversely affects or directly threatens to adversely affect the health or safety of members of the College Community or their opportunity to enjoy College programs and College Sponsored Activities, or

b. Materially disrupts Ordinary College Operations.

2. Specific conduct prohibited by this policy includes, but is not limited to, the following:

- a. Causing physical injury or harm to a person;
- b. Directing threats at individuals or specific groups of persons or attempting to intimidate them in a manner that would cause a reasonable person to fear for his or her own safety;
- c. Obstructing sidewalks, vehicular roadways, or building entrances and exits;
- d. Excluding or ejecting members of the College Community from a Public Area because of the content of their Public Expression;
- e. Engaging in a Breach of the Peace, Fighting Words, Gratuitous Violence, Harassment, a Heckler's Veto, Obscenity, Prohibited Discrimination, or a True Threat;
- f. Removing or obscuring Public Postings bearing an official stamp from the College (see Section K below);
- g. Damaging or threatening to damage College Property;
- h. Causing excessive and unreasonable littering or soiling of College Property;
- i. Remaining on College Property after receiving lawful notice to depart;
- j. Stating or implying, directly or indirectly, that any Public Expression activity or viewpoint of an individual or group on College Property is that of the College or is endorsed, supported, or approved by the College.

#### **K. COMMERCIAL SPEECH**

1. The College is not required to permit any Commercial Speech on College Property and may restrict Commercial Speech on the basis of its content.

2. Any Commercial Speech on College Property is prohibited without the express consent of the Coordinator of Student Leadership and Activities or his/her designee. Approved Commercial Speech would not involve any type of solicitation and would be permitted only to improve community connection and educate students on resources.

3. Designated coordinators shall be responsible for ensuring that any Commercial Speech on their respective College Properties is consistent with College policies, procedures, and institutional values, as well as in compliance with applicable state and federal law.

4. Designated coordinators may, at their discretion, decline to permit any Commercial Speech.

#### **L. PUBLIC POSTINGS**

Public Postings – including, but not limited to, posters, flyers, leaflets, notices, and other printed materials, regardless of any Public Expression content – may be Posted on College Property only in designated areas.

1. Postings with Content Neutral basis and will not be withheld unless the Public Posting constitutes a Breach of the Peace, Fighting Words, Gratuitous Violence, Harassment, Obscenity, Prohibited Discrimination, or a True Threat.

#### **M. ANONYMOUS EXPRESSION**

1. Choosing to speak anonymously does not absolve members of the College Community of responsibility for their Public Expression or other speech, and anonymous Public Expression must comply with this practice and all other applicable College policies and procedures, as well as applicable state and federal laws and municipal ordinance.

2. Anonymous Public Postings that do not comply with the College's Public Posting procedures may be removed at any time by any person.

#### **N. VIOLATIONS**

1. Any individual who violates this Practice may be removed and/or trespassed from College Property or a College Sponsored Activity and/or denied the ability to reserve Public Areas of the College for future Public Expression activities.

2. Any violation of this Practice by a College Student or Employee that also constitutes a separate violation of College policy may be subject to additional applicable sanctions pursuant to the Student Code of Conduct or Guidelines for Staff, respectively.

3. In all disciplinary proceedings involving students, including proceedings involving expressive conduct, a student is entitled to a disciplinary hearing under the Student Code of Conduct that include, at a minimum, all of the following:

- a. the right to receive advanced written notice of the allegations;
- b. the right to review the evidence in support of the allegations;
- c. the right to confront witnesses who testify against the student;
- d. the right to present a defense;
- e. the right to call witnesses;
- f. a decision by an impartial person or panel
- g. the right to appeal;
- h. if either a suspension of more than thirty days or expulsion is a potential consequence of a disciplinary proceeding under this section, the right to active assistance of counsel.

4. Any violation of this Practice that also constitutes a violation of federal, state, or local law may also subject an individual or group to additional sanctions, including criminal arrest, prosecution, and/or civil penalties.

#### **O. COMPLAINTS**

1. Any member of the College Community who feels his or her right to Public Expression has been violated or that this Practice has not been followed or has been misapplied may contact the College's Campus Life Office to submit a complaint to The Dean of Students.

2. In addition to pursuing the College's complaint process, members of the College community also have the right to file, and do not need to exhaust the College's complaint process before filing, legal claims regarding First Amendment violations, including with outside agencies, such the following:

United States Department of Education  
Office of Civil Rights (OCR)  
1244 Speer Blvd., Suite 310  
Denver, CO 80204-3582  
Phone: (303) 844-5695  
Fax: (303) 844-4303  
Email: [OCR.Denver@ed.edu](mailto:OCR.Denver@ed.edu)

United States Equal Employment Opportunity Commission  
3300 N. Central Avenue, Suite 690  
Phoenix, AZ 85012-2504  
Phone: (602) 640-5000  
Phone: (800) 669-4000  
TTY: (800) 669-6820  
Fax: (602) 640-5071

Office of the Arizona Attorney General  
Civil Rights Division (ACRD)



40 North Central Ave., Suite 1200  
Phoenix, AZ 85004  
Phone: (602)-514-7500.