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## 3.63 – Freedom of Expression

### Policy Details

**Responsible Executive:** President

**Responsible Administrator:** Campus Presidents

**Scope:** NMSU System

**Last Updated:** 10/21/2015

### PART 1: PURPOSE

The purpose of this policy is to recognize, respect, and encourage the free exchange of ideas through written, spoken, and other forms of expression, including the right to peaceful assembly, as guaranteed by the First Amendment to the U.S. Constitution and the New Mexico Constitution. Furthermore, this policy clarifies application throughout the NMSU system by identifying the distinct types of forums, as well as to describe the reasonable restrictions, if any, which may be imposed in order to protect the university's teaching, research and service operations, and student activities from significant disruption and interference.

### PART 2: SCOPE

This policy applies to all people, and throughout the NMSU system (at all campuses, facilities and other real property under the operation and control of the NMSU Board of Regents, to include university sponsored events off-premises). Commercial solicitation is not covered by this policy and is governed by [ARP 14.92](#).

### PART 3: POLICY ADMINISTRATOR

The President at each campus shall have primary responsibility for the administration of this policy, on behalf of the NMSU Board of Regents. Parties responsible for implementing and applying this policy also include, but are not limited to:

- A. Provost and Chief Academic Officer
- B. Deans of the Colleges and Libraries and Graduate School
- C. Dean of Students, including the Office of Student Involvement and Leadership Programs
- D. Associate Vice President of Facilities and Services
- E. Director of Athletics
- F. Director of Housing and Campus Life
- G. Director of Special Events
- H. Manager or Building Monitor within any university facility

### PART 4: DEFINITIONS

For purposes of administering this policy, the following definitions apply:

- A. **Affix** means to stick, to anchor, or to fasten to something else, regardless of whether or not it leaves a mark or causes damage.
- B. **Commercial Speech** is Speech that proposes a commercial transaction; the audience consists of prospective consumers, and the content of the message is business related in character.
- C. **Content Neutral** means without regard to the viewpoint or message. Content Neutral restrictions are those based on reasonable time, place, and manner rather than the content or viewpoint of the message.
- D. **Forum** is a term used by the U.S. Supreme Court to help describe the extent to which Content Neutral restrictions on free expression may legally be applied. **The three types described in this policy are:** traditional open public forum; limited public forum and non-public forum. These terms apply not only to physical areas, but also to electronic communication and websites. The type of forum will be determined by the nature of the space being used, its traditional usage, official designations, and the circumstances relating to the nature of an event or function taking place in that location. **For example**, if a normally public forum were reserved for a specific event (following applicable university procedures) that might convert the location to a limited or non-public forum during the event for which it was reserved; conversely, areas

such as special collections within the university are typically non-public forums, but may become limited public forums for certain special events.

- E. **Social Media** means computer- mediated tools that allow people to create, share, or exchange information, ideas, videos, and pictures in virtual communities and networks.
- F. **Speech** is written, spoken, and other forms of expression of thoughts, ideas, or positions, generally related to issues of public interest.
- G. **University Premises**, sometimes referred to simply as “campus,” means all campuses, facilities, land, buildings, or other indoor or outside space owned, leased or otherwise under the operational control of NMSU. University owned property leased to other entities and not under the operational control of NMSU are not considered University Premises for purposes of this policy.
- H. **Unprotected Speech** means Speech that is not afforded First Amendment protection, such as Commercial Speech that is false or misleading. Other examples include fighting words, child pornography, defamation, and libel.

## **PART 5: POLICY STATEMENTS**

New Mexico State University aspires to be an intellectually open campus. Free exchange of ideas is a reflection of the university's public land-grant heritage, interest in diverse points of view, and commitment to excellence in education and research. NMSU encourages free expression and peaceful assembly, provided they do not disrupt the university missions or functions. The type of Forum, described below, will determine the level of restriction, if any, which may be imposed on free expression activities within the Forum. Restrictions must be Content Neutral, typically geared to time, place and manner. The type of Forum for a given location may vary, based on the circumstances relating to the nature of an event or function scheduled to occur at the location.

- A. **Public Forums** are areas that traditionally have been open to the public, such as parks, sidewalks, and lobbies as well as other areas that become public Forums by university designation. Free expression and civil discourse are encouraged in public Forums, and any regulation of expression within a public Forum must be narrowly tailored to serve a compelling state interest.
- B. **Limited Public Forums** are areas open to the public or a segment thereof (including through the purchase of admission), but where there is a specific purpose. The necessities of confining a Forum to the limited and legitimate purpose for which it was created may justify some limitations that are narrowly tailored to allow the event or activity to continue and/or achieve its intended purpose. Any limitations must be consistent with the spirit of this policy. Legitimate limitations include subject matter and classification of participants (students, student government representatives, faculty, etc.). Limitations must be reasonably related to a definite and substantial university interest. Any limitations must be Content Neutral, and aimed solely at reducing or preventing disruption to the activity that would cause a definite and measurable interruption to the intended purpose, or protecting other clearly compelling university interests (e.g., public safety). If a limited public Forum serves more than one purpose, the university may prioritize the purposes for which it may be used, e.g. a campus auditorium may give priority to theater productions. Expression within a limited public Forum is permitted consistent with the Procedural Guidelines administered by the Office of Campus Activities.
- C. **Non-Public Forums** are areas not open to the general public and where expression by those permitted to be there may be reasonably limited, in a Content Neutral manner, to that which is compatible with the purpose and nature of the location. (Examples include faculty and administrative offices, classrooms, residence hall rooms, and archive and special collections of libraries.)
- D. **Disruption of university functions or activities:** Regardless of the type of Forum, free expression activities and events shall not materially or unreasonably interfere with the education, research, public service, and outreach missions of the university, office operations, or sleep of residents.
- E. **Modes of Free Expression:** The university recognizes that there are many different modes of free expression, including distribution and posting of literature; group Speech activities such as rallies, parades and demonstrations; electronic sound amplification, chalk, symbolic Speech (e.g. nudity, fire, and/or weapons); and electronic communication. The limitations described in the Procedural Guidelines pertaining to the various types of expression are intended to safeguard personal safety and the university's missions, and not to hamper freedom of expression. See Part 6.
- F. **Respect for Rights of Others**
  - 1. **Prohibition of Third Party Interference with Right to Free Expression:** Except as provided elsewhere in this policy, university employees, students, and other members of the public shall not interfere with the rights of freedom of expression by others permitted by this policy. Alleged violations of rights afforded by the U.S. and N.M. Constitutions, recognized by this policy, will be taken seriously and investigated promptly and objectively.
  - 2. **Retaliation Prohibited:** Retaliation against individuals who have exercised the rights granted by the First Amendment, recognized through this policy, is strictly prohibited. Any such claim should be reported immediately to an appropriate university official to register a complaint. Generally, the Office of the Dean of Students and the Office of Human Resource Services-Employee and Labor Relations administer student and employee grievances,

respectively. Such claims will be taken seriously, investigated independently, and if substantiated, will be grounds for corrective or disciplinary action, appropriate to the circumstances.

**G. Respect for University Property and Functions:** In exercising the right of free expression and peaceful assembly, individuals must also accept the responsibility of following the laws related to the safety of people and property. Outdoor and indoor activities must follow all applicable fire codes and other local, state, and federal laws. See Part 6, regarding Procedural Guidelines, which may clarify limitations intended to safeguard missions and personal safety, and not to hamper free expression.

**H. Interface with other laws and regulations:** There is inherent tension that exists between competing public policies affecting individual rights. A detailed examination of statutes and regulations which protect individuals from sexual harassment, discrimination, hostile environment and other discriminatory conduct is beyond the scope of this Freedom of Expression policy. This policy is not intended to insulate persons from accountability for their actions if their conduct discriminates, harasses or otherwise creates a hostile environment based on any class protected by federal and state anti-discrimination laws. (See Also [ARP 3.25 – Discrimination, Harassment and Sexual Misconduct on Campus](#)). Nothing in this policy is intended to provide a defense in any action against a third party by an alleged victim of defamation, libel, slander, invasion of privacy, assault, or any other civil or administrative claim.

**I. Dispute Resolution:** The successful implementation of this policy will depend upon the university community's education and engagement, including but not limited to understanding which types of planned activities require advance permission, and what to do if an event or expressive activity is questioned. The Procedural Guidelines (See Part 6) provide some hypothetical scenarios within the Frequently Asked Questions (FAQ's) to provide guidance about how this policy should be applied. Because time will often be of the essence when issues arise involving this policy, the informal methods listed below are available to supervisors, students, employees and members of the public in order that individuals may seek a policy clarification or interpretation in advance, in order to resolve issues in a mutually professional and amicable manner, rather than through more adversarial grievance or litigation methods. These methods include and are not limited to:

1. A single point person will be designated by each NMSU campus president to serve as the liaison between members of the university community and/or the public and the Policy Administrators listed under Part 3, in order to resolve issues expeditiously.
2. Individuals may request clarification of the policy or the Procedural Guidelines by contacting the designated point person. The designated point person will promptly respond to acknowledge the inquiry, and as appropriate or needed, may consult with any of the Policy Administrators prior to providing an interpretation to the individual.
3. If the individual(s) wishes to appeal the interpretation provided by the designated point person, such notification must be given to the point person either in writing or via email. The point person will then call a meeting of the Policy Administrators (or any subset, depending upon availability) and the individual(s) as soon as practicable, which meeting may be conducted telephonically or electronically. The decision of the Policy Administrators will be rendered within one working day of the meeting and communicated to the individual via email or other contact information supplied by the individual.
4. Students and employees also have recourse to file grievances against those who they feel may have restricted their rights under this policy, and shall follow the applicable student or employee grievance policy if the above steps have not resolved the dispute.

#### **J. Sanctions**

1. **Individual Consequences for Conduct Not Protected by Constitution or This Policy:** Nothing in [RPM 3.63](#) or these corresponding rules and procedures protects expressive activities which:
  - a. constitute criminal, defamatory, or discriminatory misconduct;
  - b. contain true threats of violence or imminent harm; or
  - c. seek to incite, or intentionally incite, a fight.

Individuals engaging in such conduct may face criminal prosecution, civil lawsuit, and/or disciplinary action. (For example, see [ARP 16.21](#); [RPM 3.25](#); [ARP 10.50](#), [ARP 10.10](#)). Neither [RPM 3.63](#), nor these corresponding rules and procedures, provide a defense to individual liability for such prohibited conduct.

2. **Disclaimer of Liability:** NMSU shall not be liable for any injuries to participants or third parties caused by individuals or groups engaging in freedom of expression activities.
3. **Damage or Injury:** If property damage or personal injury occurs, individuals or groups determined to be responsible may be subject to appropriate administrative, civil, or criminal action, for the purpose of covering the university's costs associated with the damages. Additionally, while generally NMSU wishes to facilitate free discussion, nothing in [RPM 3.63](#) nor these corresponding rules and procedures is intended to eliminate any rights of persons to pursue any legal remedies they may have under local, state, or federal law.
4. **Unattended or abandoned materials:** Materials used for free expression activities (literature, signage, etc.) shall not be left unattended. Any items that are left unattended for more than thirty (30) minutes may be removed by the university at the owner's expense. Signage promoting or providing directions to an event are allowed on the preceding day for a morning event or on the day of an afternoon or evening event, will not be considered to have been left

unattended, and shall be removed by the event organizers at the conclusion of the event. Permission for posting or leaving of materials outside of the above restrictions may be granted on a case-by-case basis by the Office of Student Involvement and Leadership Programs.

## **PART 6: PROCEDURAL GUIDELINES**

To facilitate the implementation, administration and enforcement of this policy, the policy administrators identified above may develop and issue supplemental Procedural Guidelines consistent with this policy, which may include protocols, FAQ's, forms, flowcharts, etc.. The Procedural Guidelines utilized in the application or enforcement of this policy shall be outlined below in this Section, and may be posted at an appropriate NMSU website, and linked from this section. With the approval from the policy administrators, other related reference material relating to freedom of expression, anti-discrimination laws, hate crimes, etc. may also be listed below or linked from this Section.

Pursuant to authority granted in [RPM 1.10](#) and consistent with [RPM 3.63](#), Section F. the Procedural Guidelines issued September 3, 2015 are hereby merged into this [replicated] rule:

### **A. Introduction and Overview**

These Procedural Guidelines are issued to facilitate the implementation and consistent administration and enforcement of [RPM 3.63](#), as revised by the Board of Regents on July 21, 2015. See Also Frequently Asked Questions (FAQs) posted at <https://studentlife.nmsu.edu/Home/freedom-of-expression-faqs.html>. Certain types of free expression activities may require a permit in advance from the university's Office of Student Involvement and Leadership Programs; these are indicated in **bold** font throughout the guidelines-See Part VI below for the process to obtain a permit.

The policy administrators may continue to develop and issue additional or amended guidelines, consistent with [RPM 3.63](#). These guidelines consist of the following sections:

1. Introduction and Overview
2. Restrictions on Expression for Special Situations
3. Modes of Free Expression
4. Respect for University Property and Functions
5. Sanctions
6. Role of the Office of Student Involvement and Leadership Programs
7. Dispute Resolution—See [RPM 3.63](#), Section Part 5 subsection E

### **B. Restrictions on Expression for Special Situations**

Individuals who voluntarily join certain organizations, such as the university police department, ROTC, athletic teams, and confidential research projects, may be subject to additional restrictions on their freedom of expression related to those functions, based upon their knowing and voluntary waiver of their rights consistent with the program needs/directives.

### **C. Modes of Free Expression**

1. **Distribution and Posting of Literature and Signs:** Individuals or groups may petition, distribute non-commercial written material, hand out newspapers, or conduct Speech acts.
  - a. Literature may be distributed hand-to-hand, through the use of tables, or by posting on designated bulletin boards and kiosks.
  - b. In-person distribution must be done without the touching of another person.
  - c. Signage promoting or providing direction to an event does not require a permit, provided the signage is posted no more than 24 hours prior to the event and is removed no later than 24 hours the day following the event. **Signage for longer periods of time require a permit.**
  - d. **Materials shall not be Affixed to any part of a university building or structure without a permit** from the Office of Student Involvement and Leadership Programs.
  - e. Posting on traffic signs, power poles, trees, landscaping, or automobiles belonging to others is not allowed.
  - f. Tables are allowed as long as the tables do not unreasonably interfere with pedestrian traffic, to include blocking ingress or egress. Individuals who have reserved a table through the Office of Student Involvement and Leadership Programs will be given priority.
2. **Group Speech Activities, Including Rallies, Parades and Demonstrations:**
  - a. Any group Speech activity, regardless of the number of expected participants, may be coordinated through the Office of Student Involvement and Leadership Programs at the discretion of the organizers.
  - b. When planned activities are likely to draw 250 participants or more, notification to the Office of Student Involvement and Leadership Programs is required.
  - c. When planned activities necessitate road or parking lot closures or detours, or deny others access to or reasonable use of NMSU property, a permit is required.

3. **Political Activities:** Political activities must be conducted in a manner that does not imply the university officially endorses or supports a particular candidate or position.
4. **Electronic Sound Amplification:**
  - a. The use of electronic sound amplification equipment without a permit is authorized in the open lots to the east of the Pan American Center and Aggie Memorial Stadium, the Corbett Center Outdoor Stage, and the Miller Field Gates area off Espina Street, from: *8:00 a.m. to 7:00 p.m., Sunday through Thursday; and 8:00 a.m. to midnight on Friday and Saturday*
  - b. Sound amplification equipment may be allowed at other times and in other locations with a permit obtained from the Office of Student Involvement and Leadership Programs.
5. **Use of Chalk:** Chalk may be used on university premises as long as it is restricted to exterior concrete walkways. All chalk used must be of a temporary or removable nature. The university's maintenance schedules relating to university facilities will not be deferred to protect chalk.
6. **Symbolic Expression Requiring a Permit:** An individual or group who plans free expression activities that involve fire, weapons, or nudity must first obtain a permit from the Office of Student Involvement and Leadership Programs. The permit requirement is not intended to impede symbolic expression, but to protect the safety of the university community and property and to ensure compliance with applicable laws. For other types of symbolic expression that an individual or group believes might generate a safety concern, advance notice to the Office of Student Involvement and Leadership Programs or to the University Police Department is encouraged.
7. **Electronic Communication (e.g, Email, Social Media):** Similar to public spaces, electronic communication may fall within a public, limited public, or non-public Forum. The protections set forth in [RPM 3.63](#) and these corresponding rules and procedures extend to electronic communication, with similar limitations. Where a site owned, operated, or otherwise controlled by NMSU is limited to certain members or subject matters, speakers must be authorized participants whose communications are germane to the stated subject matter. With regard to communications using electronic and other media, speakers should be aware of federal, state and university anti-discrimination laws and policies, and NMSU's obligation to enforce such laws and policies. *See, for example:* Title IX (20 U.S.C. §1681 *et seq.* and 34 C.F.R. § 106.1 *et seq.*); Title VII (42 U.S.C. §2000e *et seq.*, *as amended*; and NMSU Policies 3.25 (Discrimination, Harassment and Sexual Misconduct on Campus); 2.35.1.1.1 (Acceptable Use); and 3.99 (Prohibition of Hazing and Hostile Misconduct).

#### **D. Respect for University Property and Functions**

1. Expressive activities in any type of public Forum shall not:
  - a. Unreasonably obstruct vehicular or pedestrian traffic;
  - b. Restrict public access to the entrances or exits to buildings and facilities;
  - c. Permanently occupy land areas;
  - d. Unreasonably interfere with or disrupt classes, university academic or administrative operations, including scheduled events;
  - e. Cause damage to buildings, utilities, or landscaping;
  - f. Erect structures that are dangerous or cannot be easily dismantled and removed;
  - g. Cause injury or damage to persons or property;
  - h. Litter or stake on University Premises contrary to [RPM 3.63](#) and these corresponding rules and procedures;
  - i. Affix materials to buildings or other structures without a permit granted by the Office of Student Involvement and Leadership Programs.
2. If there is doubt about whether expressive conduct violates the above, university officials should take effort to resolve the doubt in favor freedom of expression. Such resolution should be based on indicia of measurable disruption, damage or other clear violation, and in accordance with the standards outlined for the distinct types of Forums outlined in [RPM 3.63](#), Sections E. 1. E. 2, and E. 3.

#### **E. Sanctions**

Any person determined to have violated [RPM 3.63](#) or its supplemental rules and procedures may be subject to any of the following sanctions. The sanction(s) will be commensurate with the seriousness of the violation, and the listing below is not intended to imply that the sanction needs to be imposed in a progressive nor sequential manner.

1. Non-punitive measures, such as an educational or administrative requirement designed to bring conduct in compliance with [RPM 3.63](#) or corresponding rules and procedures;
2. Being asked to cease and desist or to relocate by appropriate university employees acting within the scope of their duties or the police;
3. Being ordered to leave the premises or property owned or controlled by the university by the person in charge of the property or by the police;
4. Applicable institutional disciplinary proceedings for students, faculty, staff or others, as appropriate;
5. Prosecution for violation of local, state or federal law;

6. Restriction of future use of, or access to, the university campus;
7. Reimbursement for damages.

## **F. Role of the Office of Student Involvement and Leadership Programs**

The Office of Student Involvement and Leadership Programs, located in Room 205 of Corbett Center, coordinates competing requests for use of campus equipment or facilities, and considers requests for permits made pursuant to [RPM 3.63](#) and these corresponding rules and procedures. Such consideration will be Content Neutral, and permission shall be granted or denied consistent with the standards for the distinct types of Forums described in [RPM 3.63](#), Sections E.1., E.2., and E.3. Permit requests will be reviewed and granted in a fair and consistent manner, in accordance with the standard protocols of the office.

1. **Advance Notice Encouraged:** Notice in writing to the Office of Student Involvement and Leadership Programs about a planned activity or event is encouraged, even if a permit is not required, particularly if an action or event involves reserving a table or location on campus, a potential safety issue (group expression), or other unusual prop. Advance notice provides the Office of Student Involvement and Leadership Programs the opportunity to resolve competing requests (e.g. first come first serve basis for use of some facilities), and also the opportunity to inform and coordinate as needed amongst potentially affected students or staff, offices and university facilities.
2. **Advance Notification Required:** Written notification in advance of a planned activity likely to draw 250 or more participants is required in order that the Police Department and other potentially affected units may make necessary accommodations.
3. **Permit Required- STEPS TO OBTAIN PERMIT:**
  - a. To obtain an Activity Registration Form, go to: <https://studentlife.nmsu.edu/crimson-connection/index.html> and follow those procedures.
  - b. If the form indicates that the request relates to a community college or other University Premises, then the Office of Student Involvement and Leadership Programs will coordinate with the appropriate official(s) from the community college.
  - c. The Office of Student Involvement and Leadership Programs will attempt to notify the requestor within two business days regarding the status of the request, if it has not been returned as granted.
  - d. If the request is granted, the requestor will receive a copy of the signed, approved Activity Registration Form (also referred to herein as "permit").
  - e. At the actual event, a copy of the permit should be able to be produced, upon request.
  - f. If the request is denied, the requestor will receive a short statement of the basis of the denial; if the requestor is not satisfied, the Dispute Resolution process outlined in [RPM 3.63](#), Section E. 9. will apply.

## **G. Dispute Resolution**

See Part 5 subsection I. above.

## **Related**

### **Cross-Reference:**

[Incidents, Concerns, and Complaints Reporting](#)

[RPM 1.10 - NMSU System Policies and Procedures](#)

[RPM 3.25 - Equal Opportunity and Prohibition of Unlawful Discrimination](#)

[RPM 3.63 - Freedom of Expression](#)

[ARP 3.25 - Discrimination, Harassment and Sexual Misconduct on Campus](#)

[ARP 10.10 - Staff Disciplinary Action/Involuntary Termination](#)

[ARP 10.50 - Faculty Alleged Misconduct Investigation, Discipline, and Appeals Processes](#)

[ARP 14.92 - Sales and Solicitation](#)

[ARP 16.21 - Restricted/Prohibited Access to Campus](#)

### **See also:**

[ARP 3.80 - Prohibition of Hazing and Hostile Misconduct](#)

[ARP 15.11 - Acceptable Use of ICT Equipment and Resources](#)

[Procedural Guidelines Policy 3.63 - Freedom of Expression](#)

### **Revision History:**

2017 Recompilation

10/21/2015 former Policy 3.63 replicated by Board of Regents as initial Rule 3.63, incorporating Procedural Guidelines

07/21/2015 Policies 3.63 and 3.86 revised as Policy 3.63 approved by Board of Regents, with 09/04/2015 effective date

