

## **Policy 1121 Public Expression on Campus**

**Date of Current Revision: May 2019**

**Primary Responsible Officer: Director, Public Safety**

**Secondary Responsible Officers: Director, Madison Union, and  
Director, University Recreation Center**

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### **1. PURPOSE**

The university encourages civic engagement, including vigorous and civil discourse and debate on topics of public interest, both on and off campus. Civil discourse is an important life skill and part of engaged learning, community engagement and civic engagement. The university's mission to be the national model of the engaged university is fundamentally supported by these activities. Nothing is more central to the concept of engagement in the higher education setting than free expression and civil discourse.

As public citizens, all members of the campus community have rights guaranteed them under the United States Constitution, including the rights of freedom of speech and freedom of assembly. Closely related to freedom of speech, the university, its faculty and students have academic freedom rights. The academic freedom rights of faculty members are set forth in the [Faculty Handbook, section III.A.2.a](#). Students' rights to academic freedom are set forth in [Academic Affairs Policy 12](#).

The primary mission of the university is to create an environment for learning, educational activities, and intellectual pursuits of its students and faculty. Many parts of university property are open to the public, but the institution's physical grounds and facilities exist to serve this educational mission for the campus community, and the mission must remain paramount.

The safety and security of the campus environment is the responsibility of the university. The university reserves the right to respond appropriately to any behavior by any individual that interferes with its primary mission, or interferes with the safety and security of the campus environment or the campus community. As a public institution of higher education, the university will encourage and protect the free and open exchange of ideas in a manner consistent with the requirements of the U.S. Constitution.

This policy is designed to set out the university's obligations to protect the rights of public exercise of freedom of expression and freedom of assembly on campus, as well as the constitutionally defined parameters of those rights.

The university's encouragement of civil discourse is not an invitation to disrupt the safe and orderly operation of the campus, threaten members of the university community, or incite violence, and the university reserves the right to sanction those who fail or refuse to abide by the institution's reasonable and content-neutral time, place and manner regulations. To protect free expression of others on campus, the university has the authority and obligation to enforce rules that restrict and sanction those who seek to significantly interrupt, shut down, or interfere with the expression of others. Additionally, the university reserves the right to respond appropriately to behavior that is not protected speech as defined under law and this policy.

### **2. AUTHORITY**

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the president.

## STATE OR FEDERAL STATUTE AND/OR REGULATION

The First Amendment of the United States Constitution prohibits the government and its representatives from abridging the freedom of expression and assembly of any individual. The Virginia General Assembly has defined all outdoor areas on campus as protected places for the civil exchange of ideas by students. See Code of Virginia 23.1-401. It has also prohibited the institution from abridging the constitutional freedom of expression of the university's enrolled students, faculty and other employees, and invited guests. See Code of Virginia 23.1-401.1. 3.

### 3. DEFINITIONS

#### **Academic Freedom**

The liberty to pursue, discuss, study, research, discover, question, critique, and teach relevant knowledge, ideas and theory, in accordance with the standards of the academic profession and academic disciplines.

#### **Campus**

All property owned or controlled by the university.

#### **Civil Discourse**

Robust, honest, frank and constructive dialogue and deliberation that seeks to advance the public interest.

#### **Commercial Speech**

Expression or activity which does no more than propose a commercial transaction, and is related solely to the economic interests of the speaker or actor and his or her audience.

#### **Controlled Spaces**

For the purposes of this policy, controlled spaces are defined as any buildings or indoor areas owned or controlled by the university, and any outdoor areas owned or controlled by the university that have limitations on use or access (e.g., practice fields, stadiums, farm, tennis courts, gated lots, etc.). Physical areas of campus open to the public (i.e., streets, lawns, green spaces, walkways, public parking lots) with no limitations on access are not controlled spaces under this policy.

#### **Defamation**

Any intentionally false communication, either written or spoken, that tends to harm the reputation of another to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

#### **Expression**

In this policy, "expression" includes "speech," and generally the words are used interchangeably. Nonverbal gestures, actions and visual depictions that are meant to communicate a message are also forms of expression.

#### **Fraud**

A false representation of a present, material fact, made intentionally and knowingly with intent to mislead, with reasonable reliance by the party misled, resulting in damage to that party .

#### **Harassment**

For the purposes of this policy, harassment is conduct that is unwelcome, discriminatory on the basis of a protected classification, and directed to an individual or group, and is so severe, pervasive, and objectively offensive that it effectively bars or significantly interferes with the individual's or group's access to an educational opportunity or benefit.

**Hazing**

Recklessly or intentionally endangering the health or safety of a student or students, or to inflict bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body, regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.

**Intellectual Property Rights Infringement**

The improper use of a patent, copyrighted or trademarked material without permission, without notice, and without contracting with the owner for payment of a royalty.

**Obscenity or Pornography**

Words, actions or images which an average person, applying contemporary community standards, would find, taken as a whole, appeal to the prurient interest, or depict or describe, in a patently offensive way, sexual conduct, and which, taken as a whole, lack serious literary, artistic, political, or scientific value.

**Privacy Rights Infringement**

Actions that impede the right of an individual to lead his or her life in a manner that is reasonably secluded from public scrutiny.

**Protected Speech**

For the purposes of this policy, speech and other forms of expression that are protected under federal and state law. As defined by constitutional law, protected speech does include mere insults, vulgarity, and hateful or offensive expression under the law and under this policy, even if it irritates, annoys, outrages or angers those who hear or perceive it. Protected speech includes nonverbal expressive activity, but does not include destruction of property or behavior that disrupts the safe and orderly operation of the university. Unauthorized commercial speech or activity is not protected speech under the terms of this policy. Protected speech does not include threats, harassment, obscenity, pornography, defamation, fraud, or infringement of the intellectual property or privacy rights of others. Protected speech does not include hazing or providing false or misleading information to university officials, or behavior which otherwise violates university policy.

**Speech**

In this policy, the words "speech" and "expression" are used interchangeably.

**Threat**

An expression of the intent to commit an act of unlawful violence against another person or group of people made directly to that person or group.

**4. APPLICABILITY**

This policy applies to all employees of the university, including instructional faculty, administrative and professional faculty, wage and classified staff; to all students; to all affiliates, alumni, volunteers, business representatives, contractors and others having legitimate business on university property; and to all visitors and invited guests to the university. It applies to all areas of the campus and all real property owned or controlled by the university.

**5. POLICY**

5.1. In classes and instructional activities, students and faculty are encouraged to engage in free speech and exercise their academic freedom rights through civil discourse concerning the subject matter covered by the course. In outdoor areas on campus other than controlled spaces, university community members and members of the public are encouraged to exercise their constitutionally protected rights of free

expression and freedom of assembly, subject only to reasonable, content-neutral time, place and manner regulations.

5.2. Faculty members and employees are public citizens, and have constitutionally protected rights of expression. The university supports the academic freedom of its faculty. Faculty members' rights are set out in the Faculty Handbook <https://jmu.edu/facultyhandbook/iii-policies-procedures/a-rights.shtml#IIIA2>. Academic freedom applies to all faculty members engaged in educational activities. Academic freedom has corresponding responsibilities, and the university is responsible for evaluating and addressing faculty job performance and conduct.

5.3. Students are public citizens, and have rights of constitutionally protected expression. The university supports the academic freedom of its students. Students' rights are outlined in the Student Handbook: <https://www.jmu.edu/osarp/handbook/OSARP/student-rights.shtml>. Students are bound by policies and rules of the institution, and the institution is responsible for evaluating and addressing student academic performance and conduct.

5.4. Speakers who are invited to make presentations on campus by the institution are public citizens, and while they are on campus, they are guests, and are bound by the terms of university policy and agreements concerning their invitations to speak. To reserve facilities for lectures, institutes, workshops, conferences, guest speakers and other programs, members of the university community should make arrangements in advance by contacting the appropriate university scheduling authority. The university will not use the content or viewpoint of an invited speaker's presentation to withhold or withdraw an invitation to make a presentation on campus.

5.5. The university will enforce appropriate, reasonable, and narrowly tailored time, place and manner regulations on expression and assembly as set out in this policy and other university policies without reference to the content of the speech or the participants in the assembly. These regulations serve the university's responsibility to maintain the safety and orderly operation of its property, people, and mission. Specifically:

- a. Buildings and controlled spaces on campus are reserved for the mission and operation of the institution.
- b. Blocking access to and egress from any university facility, building and controlled space is prohibited.
- c. Blocking vehicular or foot traffic on roadways and walkways is prohibited.
- d. Noise levels that interfere with university functions, business operations, educational activities and the quiet enjoyment of residence halls are prohibited, as are the use of loudspeakers, bullhorns, and other amplification devices at all times without specific permission granted by the institution.
- e. No postings, writings, markings, banners, images, symbols or signs of any kind may be placed on or affixed to the outside of buildings, doors, windows, walls, posts, trees, plants, trash or recycling containers, newsstands, vehicles, or any other campus physical features. Postings on university bulletin boards are subject to Policy [3104](#) - Bulletin Board Use & Posting Public Notices. Leaving leaflets or papers on cars, in outdoor locations on campus, or in buildings, is prohibited (Policy [3104](#)). Chalking of walkways and streets is prohibited, except as allowed under Student Conduct policy [J36-107](#). Writing or marking on walkways, streets, buildings or any other university property with paint or any other substance but chalk is prohibited.
- f. No individual or group may significantly interrupt, shut down, or interfere with the speech or peaceable assembly of others. This includes persistent heckling, shouting down, or blocking views that prohibit another person's speech or expression from being heard or observed by others. It also includes removing or defacing other individuals' or groups' approved postings. It is up to the University Police or other law enforcement officials to determine when the interruption or interference is significant enough to warrant intervention.

- g. All individuals participating in or observing a demonstration or peaceful assembly must comply with requests of University Police and other law enforcement officials. This specifically includes an order to disperse or to cease attempts to interfere with the speech or peaceable assembly of others.
- h. The university may prohibit or shut down an assembly, demonstration, or speaker in circumstances where it determines that the safe and orderly operation of the university will be disrupted by the event, based on the facts known to the institution at the time. If an event is prohibited or shut down by the institution for safety or operational reasons, the university will attempt to provide an opportunity for the speaker or group to reschedule, or to provide alternative space for the event, if possible. The university will not censor or punish any public, constitutionally protected expression simply because a person or group finds it offensive. The university may prohibit, stop or impose sanctions for conduct that is not protected under this policy or the law, whether or not such conduct disrupts the safe and orderly operation of the institution.

5.6. University employees have professional and job-related responsibilities and are bound by university policy when operating within the context of their employment. This includes the responsibility to abide by all rules concerning an employee's expression on behalf of the institution, and to identify when the employee is speaking as a private citizen, rather than on behalf of the institution (Policy [1508](#)).

## **6. PROCEDURES**

6.1. Some specific non-controlled outdoor spaces may be reserved for exclusive use, as indicated in Madison Union (<https://info.jmu.edu/madisonunion/in-madison-union/patios-and-outdoor-spaces/>) and UREC (<https://www.jmu.edu/recreation/facilities/rentals/outdoor-rec.shtml>) procedures. Advance notice is required to reserve specific non-controlled outdoor space for the exclusive use of an individual or group, and members of the public or non-university groups must make such reservations through the sponsorship of a university office or recognized student organization.

6.2. Individual students, non-university-related individuals and organizations may rent space for a speaker to make a presentation on campus, as provided in the university rules for rental of university space.

6.3. Any individual or group whose constitutionally-protected speech on campus has been disrupted under the terms of section 5.5.f. may file a report of such an incident with the office of the appropriate vice president overseeing the activity, event, or venue. The university may sanction any person who is found to have disrupted the expression of an individual or group under the terms of this policy.

6.4. Annually by December 1, the Legal Services Office will report to the Governor and General Assembly any lawsuits initiated against the institution or an employee of the institution, based on an alleged violation of the First Amendment to the United States Constitution, and such report will be updated within 30 days of any new complaint.

## **7. RESPONSIBILITIES**

The Office of Public Safety is responsible for enforcement of this policy, and will determine appropriate responses to activity on campus concerning the appropriate time, place and manner regulations developed under this policy for expression and assembly on campus.

Offices who control the reservation of specific non-controlled outdoor spaces, such as UREC and Madison Unions, will enforce the procedures for such reservations.

The Legal Services Office is responsible for making the annual report and any updates as set out in 6.4 herein to the Governor and the General Assembly.

The vice presidents are responsible for receiving reports of disruption of the speech of any individual or group on campus for those activities, events, and venues they oversee.

Employees, students, and all other members of the university community are responsible for compliance with all obligations under this policy and all other university policies and procedures, and are required to cooperate with the institution in the application of this policy.

Students are responsible for compliance with all student policies, faculty members are responsible for faculty policies, and staff are responsible for compliance with staff policies.

Visitors to campus are responsible for compliance with all university policies while on campus.

## **8. SANCTIONS**

Sanctions for violation of this policy will be commensurate with the severity and/or frequency of the offense and may include termination of employment, dismissal of a student, removal of affiliate or volunteer status, and/or banning an individual from university property. Criminal behavior on university property will result in arrest and prosecution, and the enforcement of the criminal laws of the Commonwealth of Virginia and this policy are within the discretion of the Office of Public Safety.

## **9. EXCLUSIONS**

Expression and assembly not located on university property or using public media are not covered by this policy.

## **10. INTERPRETATION**

The authority to interpret this policy rests with the president and is generally delegated to the director of public safety.

Previous Version: November 2018

Approved by the President: November 2018