

From: Christy Glenn

Sent: Wednesday, March 28, 2018 9:08 AM

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Subject: Electronic Vote Needed

Importance: High

Leadership Council Members,

Please review the attached policy change and new policy and vote by (March 29) at 4 pm. The new Freedom of Speech and Expression Policy is derived from TBR Policy 1:03:02:60 and is mandated and must be in place by March 30. We apologize for the quick turn around, but it is a requirement by the TBR.

The one change to the Student Discipline Policy is highlighted in red. **Please reply all when you cast your vote.**

My thanks,

Christy

Christy Glenn, Administrative Assistant to the President

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Category
FREEDOM OF SPEECH & EXPRESSION – 1:03:02:60
Approval
Corresponding Policy: TBR Policy 1:03:02:60 ; MSCC Policy 3:02:02:00 ; MSCC Policy 5:02:03:00
Leadership Council Approved:
Effective Date/Approved:
Revised: N/A
Responsible Party: Vice President for Student Affairs, Vice President for Academic Affairs & Executive Director for Human Resources

I. PURPOSE

This policy reflects the commitment of Motlow State Community College (MSCC) to freedom of speech and expression for all students and all faculty.

II. DEFINITIONS

- A. **Constitutional time, place, and manner restrictions** means restrictions on the time, place, and manner of free speech that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution that are reasonable, content- and viewpoint-neutral, narrowly tailored to satisfy a significant institutional interest, and leave open ample alternative channels for the communication of the information or message to its intended audience
- B. **Faculty or faculty member** means any person, whether or not the person is compensated by MSCC, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching. For purposes of this part, the term "faculty" shall include tenured and non-tenured professors, adjunct professors, visiting professors, lecturers, graduate student instructors, and those in comparable positions, however titled. For purposes of this part, the term "faculty" shall not include persons whose primary responsibilities are administrative or managerial.
- C. **Free speech** means speech, expression, or assemblies protected by the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution, verbal or written, including, but not limited to, all forms of peaceful assembly, protests, demonstrations, rallies, vigils, marches, public speaking, distribution of printed materials, carrying signs, displays, or circulating petitions. "Free speech" does not include the promotion, sale, or distribution of any product or service.
- D. **Institution** means Motlow State Community College.
- E. **Student** means:
 - a. An individual currently enrolled in a course of study at the institution; and
 - b. An organization that is comprised entirely of individuals currently enrolled in a course of study at the institution.

III. POLICY

A. General Principles

1. Students have a fundamental constitutional right to free speech.
2. The institution shall be committed to giving students the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to constitutional time, place, and manner restrictions.
3. The institution shall be committed to maintaining a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not to be suppressed because the ideas put forth are thought by some or even by most members of the institution's community to be offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.
4. It is for the institution's individual students and faculty to make judgments about ideas for themselves, and to act on those judgments not by seeking to suppress free speech, but by openly and vigorously contesting the ideas that they oppose.
5. It is not the proper role of the institution to attempt to shield individuals from free speech, including ideas and opinions they find offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed.
6. Although the institution should greatly value civility and mutual respect, concerns about civility and mutual respect shall never be used by an institution as a justification for closing off the discussion of ideas, however offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed those ideas may be to some students or faculty.
7. Although all students and all faculty are free to state their own views about and contest the views expressed on campus, and to state their own views about and contest speakers who are invited to express their views on the institution's campus, they may not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject or even loathe. To this end, the institution has a responsibility to promote a lively and fearless freedom of debate and deliberation and protect that freedom.
8. Through shared governance with its faculty, the institution may determine for itself on academic grounds who may teach, what may be taught, how it may be taught and graded, and who may be admitted to the institution as a student.
9. The institution shall be committed to providing an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, to study and to evaluate, and to gain new understanding.
10. The primary responsibility of faculty is to engage an honest, courageous, and persistent effort to search out and communicate the truth that lies in the areas of their competence.
11. Although faculty are free in the classroom to discuss subjects within areas of their competence, faculty shall be cautious in expressing personal views in the classroom and shall be careful not to introduce controversial matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided, that no faculty will face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed, and comprises a substantial portion of classroom instruction.
12. The institution shall maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students. This does not mean that those areas must be equally available to non-students.
13. The institution shall not confine students' free speech to certain areas of the campus, sometimes known as "free speech zones," or otherwise create policies implying that students' free speech is restricted to particular areas of campus.
14. The institution shall not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates.
15. The institution shall not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although the institution may maintain a policy that grants members of the college community the right to reserve certain outdoor spaces in advance.

16. An institution shall not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students, or the anticipated reaction or opposition of listeners to speech.
17. An institution shall allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers.
18. An institution shall not dis-invite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered offensive, unwise, immoral, indecent, disagreeable, conservative, liberal, traditional, radical, or wrong-headed by students, faculty, administrators, government officials, or members of the public.
19. Students do not have the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.
20. An institution is not required to fund costs associated with student speech or expression.

B. Publication of Policy

1. This policy shall be:
 - a. Published annually in the institution's student handbook and faculty handbook, whether paper or electronic;
 - b. Made available to students and faculty by way of a prominent notice on the institution's internet site other than through the electronic publication of the policy in the student handbook and faculty handbook;
 - c. Sent annually to students and employees to their institutionally-provided email address; and
 - d. Addressed by the institution in orientation programs for new students and new faculty.

C. Institution Policies

1. The institution may adopt institution policies that include measures that do not violate the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution such as:
 - a. Constitutional time, place, and manner restrictions on assemblies, speech and expression;
 - b. Reasonable and viewpoint-neutral restrictions in nonpublic forums;
 - c. Restricting the use of the institution's property to protect the free speech rights of students and faculty and preserve the use of the property for the advancement of the institution's mission;
 - d. Prohibiting or limiting speech, expression, or assemblies that are not protected by the First Amendment to the United States Constitution or Article I, Section 19 of the Tennessee Constitution; or
 - e. Content restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by faculty.



Category
Student Disciplinary Policy – Part 2 Disciplinary Offenses – 3:02:00:02
Approval
President’s Council Approved: February 23, 2016
Effective Date/Approved: February 23, 2016
Revised: January 26, 2016; editorial changes and definition for Student on Student Harassment added on March 21, 2018 IAW TBR Policy 1:03:02:60
Responsible Party: Vice President for Student Affairs

Disciplinary Offenses

1. Institutional disciplinary measures shall be imposed, through appropriate due process procedures, for conduct which adversely affects the institution’s pursuit of its educational objectives, which violates or shows a disregard for the rights of other members of the academic community, or which endangers property or persons on property owned or controlled by Motlow State Community College (MSCC).
2. MSCC adopts the following non-exclusive list of offenses for which both individuals and student organizations may be subject to disciplinary action.
 - A. **Conduct Dangerous to Self or Others:** Threatening or disruptive conduct, or attempted conduct, which poses a direct threat to the safety of others or where the student’s behavior is materially and substantially disruptive of the institution's learning environment.
 - B. **Hazing:** Hazing, as defined in T.C.A. § 49-7-123(a)(1), means any intentional or reckless act, on or off the property, of any higher education institution by an individual acting alone, or with others, which is directed against any other person(s) that endangers the mental or physical health or safety of that person(s), or which induces or coerces a person(s) to endanger such person(s) mental or physical health or safety. Hazing does not include customary athletic events or similar contests or competitions, and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization;
 - C. **Disorderly Conduct:** Any individual or group behavior which is abusive, obscene, lewd, indecent, violent, excessively noisy, disorderly, or which unreasonably disturbs institutional functions, operations, classrooms, other groups or individuals;
 - D. **Obstruction of or Interference with institutional activities or facilities:** Any intentional interference with or obstruction of any institutional, program, event, or facility (including computer facilities), including the following:
 1. Any unauthorized occupancy of facilities owned or controlled by an institution or blockage of access to or from such facilities.
 2. Interference with the right of any institution member or other authorized person to gain access to any activity, program, event or facilities sponsored or controlled by an institution;

3. Any obstruction or delay of a campus security officer, public safety officer, police officer, firefighter, EMT, or any official of the institution, or failure to comply with any emergency directive issued by such person in the performance of his or her duty;
- E. **Misuse of or Damage to Property:** Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring or unauthorized use of property belonging to another including, but not limited to:
1. any personal property,
 2. fire alarms,
 3. fire equipment,
 4. elevators,
 5. telephones,
 6. institution keys,
 7. library materials,
 8. computer equipment, and/or
 9. safety devices; and
10. any such act against property belonging to a member of the institution community or a guest of the institution;
- F. **Theft, Misappropriation, or Unauthorized Sale of Property:** Any act of theft, misappropriation, or unauthorized possession or sale of institution property or any such act against a member of the institution community or a guest of the institution;
- G. **Misuse of Documents or Identification Cards:** Any forgery, alteration of or unauthorized use of institutional documents, forms, records or identification cards, including the giving of any false information or withholding of necessary information, in connection with a student's admission, enrollment or status in the institution;
- H. **Firearms and Other Dangerous Weapons:** Any possession of or use of firearms, dangerous weapons of any kind, or replica/toy guns, e.g. BB guns, pellet guns, paintball guns, water guns, cap guns, toy knives or other items that simulate firearms or dangerous weapons;
- I. **Explosives, Fireworks, and Flammable Materials:** The unauthorized possession, ignition or detonation of any object or article which could cause damage by fire or other means to persons or property or possession of any substance which could be considered to be and used as fireworks; on MSCC campuses or property owned or controlled by the institution; at an institution-sponsored event; or on property owned or controlled by an affiliated clinical site;
- J. **Alcoholic Beverages:** The use and/or possession, distribution, sale or manufacture of alcoholic beverages or public intoxication on property owned or controlled by the institution (MSCC) or controlled by an affiliated clinical site is prohibited. This offense includes the violation of any local ordinance, state, or federal law concerning alcoholic beverages, on or off institution owned or controlled property, where an affiliated group or organization has alcoholic beverages present and available for consumption; or in violation of any term of the Motlow Drug-Free Schools Policy ([MSCC Policy 3:00:00:00](#)) pursuant to Tennessee Code Annotated § 49-7-146, MSCC is required to notify a parent of a student under age twenty-one (21) if the student "has committed a disciplinary violation" with respect to the use or possession of alcohol or a controlled substance that is a violation of any federal, state, or local law, or of any rule or policy of MSCC, except as prohibited by the Family Education Rights and Privacy Act (FERPA). The trigger for notification will be:
1. a plea of guilty to the applicable code of conduct violation; or
 2. a final finding of guilt pursuant to disciplinary procedures, including completion of an appeal
- K. **Drugs:** The unlawful use, possession, distribution, sale or manufacture of any drug or controlled substance (including but not limited to, any stimulant, depressant, narcotic, hallucinogenic drug or substances to include marijuana), being under the influence of any drug or controlled substance, or the misuse of legally prescribed or "over the counter" drugs is prohibited. This offense includes the violation

of any local ordinance, state, or federal law concerning the unlawful possession or use of drugs, on property owned or controlled by the institution, at an institution-sponsored event, on property owned or controlled by an affiliated clinical site, or in violation of any term of the Motlow Drug-Free Schools Policy ([MSCC Policy 3:00:00:00](#)) pursuant to Tennessee Code Annotated § 49-7-146, Motlow College is required to notify a parent of a student under age twenty-one (21) if the student “has committed a disciplinary violation” with respect to the use or possession of alcohol or a controlled substance that is a violation of any federal, state, or local law, or of any rule or policy of the institution, except as prohibited by the Family Education Rights and Privacy Act (FERPA). The trigger for notification will be:

1. a plea of guilty to the applicable code of conduct violation; or
2. a final finding of guilt pursuant to disciplinary procedures, including completion of an appeal.

- L. **Drug Paraphernalia:** The use or possession of equipment, products or materials that are used or intended for use in manufacturing, growing, using or distributing any drug or controlled substance. This offense includes the violation of any local ordinance, state, or federal law concerning the unlawful possession of drug paraphernalia, on or off institution owned or controlled property;
- M. **Public Intoxication:** Appearing on institution owned or controlled property or at an institutional sponsored event while under the influence of a controlled substance or of any other intoxicating substance;
- N. **Gambling:** Unlawful gambling in any form;
- O. **Financial Irresponsibility:** Failure to meet financial responsibilities to the institution promptly including, but not limited to, knowingly passing a worthless check or money order in payment to the institution;
- P. **Unacceptable Conduct in Disciplinary Proceedings:** Any conduct at any stage of an institutional disciplinary proceeding or investigation that is:
1. contemptuous,
 2. disrespectful,
 3. threatening, or
 4. disorderly, including false complaints, testimony or other evidence, and
 5. attempts to influence the impartiality of a member of a judicial body, verbal or physical harassment or intimidation of a judicial board member, complainant, respondent or witness;
- Q. **Failure to Cooperate with Institutional Officials:** Failure to comply with directions of institutional officials acting in the performance of their duties;
- R. **Violation of General Rules and Regulations:** Any violation of the general rules and regulations of the institution as published in an official institutional publication, including the intentional failure to perform any required action or the intentional performance of any prohibited action;
- S. **Attempts, Aiding and Abetting:** Any attempt to commit any of the offenses listed under this section or the aiding or abetting of the commission of any of the offenses listed under this section (an attempt to commit an offense is defined as the intention to commit the offense coupled with the taking of some action toward its commission).
1. Being present during the planning or commission of any offense listed under this section will be considered as aiding and abetting.
 2. Students who anticipate or observe an offense must remove themselves from the situation and are required to report the offense to the MSCC Office of Public Safety;
- T. **Violations of State or Federal Laws:** Any violation of state or federal laws or regulations proscribing conduct or establishing offenses, which laws and regulations are incorporated herein by reference;
- U. **Violation of Imposed Disciplinary Sanctions:** Intentional or unintentional violation of a disciplinary sanction officially imposed by an institution official or a constituted body of the institution;

- V. **Sexual Misconduct:** Offenses including acts of sexual assault, domestic violence, dating violence and/or stalking as defined in MSCC Policy [8:02:00:00](#). All matters involving allegations of sexual misconduct will be governed by the procedures set for in MSCC Policy [8:02:00:00](#);
- W. **Harassment or Retaliation:** Any act by an individual or group against another person or group in violation of TBR policies, as well as federal and/or state laws prohibiting discrimination, including, but not limited to, MSCC Policy [8:04:00:00](#), and TBR Guideline [P-080](#);
1. **Student on student harassment:** Unwelcome conduct directed toward a person that is discriminatory on a basis prohibited by federal, state, or local law and that is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.
- X. **Academic Misconduct:** Plagiarism, cheating, fabrication. For purposes of this section the following definitions apply:
1. **Plagiarism:** The adoption or reproduction of ideas, words, statements, images, or works of another person as one's own without proper attribution,
 2. **Cheating:** Using or attempting to use unauthorized materials, information, or aids in any academic exercise or test/examination. The term academic exercise includes all forms of work submitted for credit or hours,
 3. **Fabrication:** Unauthorized falsification or invention of any information or citation in an academic exercise.
- Y. **Unauthorized Duplication or Possession of Keys:** Making, causing to be made or the possession of any key for an institutional facility without proper authorization;
- Z. **Littering:** Dispersing litter in any form onto the grounds or facilities of the campus;
- AA. **Pornography:** Public display of literature, films, pictures or other materials which an average person applying contemporary community standards would find;
1. taken as a whole, appeals to the prurient interest,
 2. depicts or describes sexual conduct in a patently offensive way, and
 3. taken as a whole, lacks serious literary, artistic, political or scientific value;
- BB. **Abuse of Computer Resources and Facilities:** Misusing and/or abusing campus computer resources including, but not limited to the following:
1. Use of another person's identification to gain access to institutional computer resources,
 2. Use of institutional computer resources and facilities to violate copyright laws, including, but not limited to, the act of unauthorized distribution of copyrighted materials using institutional information technology systems,
 3. Unauthorized access to a computer or network file, including but not limited to:
 - a. altering,
 - b. using,
 - c. reading,
 - d. copying, or
 - e. deleting the file,
 4. Unauthorized transfer of a computer or network file,
 5. Use of computing resources and facilities to send abusive or obscene correspondence,
 6. Use of computing resources and facilities in a manner that interferes with normal operation of the institutional computing system,
 7. Use of computing resources and facilities to interfere with the work of another student, faculty member, or institutional official,
 8. Violation of any published information technology resources policy,

9. Unauthorized peer-to-peer file sharing;

CC. Unauthorized Access to Institutional Facilities and/or Grounds: Any unauthorized access and/or occupancy of institutional facilities and grounds is prohibited, including, but not limited to:

1. gaining access to facilities and grounds that are closed to the public,
2. being present in areas of campus that are open to limited guests only,
3. being present in academic buildings after hours without permission, and
4. being present in buildings when the student has no legitimate reason to be present;

DD. Providing False Information: Giving any false information to, or withholding necessary information from, any institutional official acting in the performance of his/her duties in connection with a student's admission, enrollment, or status in the institution;

EE. Unauthorized Surveillance: Making or causing to be made unauthorized video or photographic images of a person in a location in which that person has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian. This includes, but is not limited to:

1. taking video or photographic images in shower/locker rooms,
2. residence hall rooms, and
3. men's or women's restrooms and storing, sharing, and/or distributing of such unauthorized images by any means;

FF. Smoking Violations: Violation of any MSCC and/or TBR smoking or other tobacco use rules or policies.

GG. Violations of conduct requirements described in handbooks for specific programs of study.

3. Disciplinary action may be taken against a student for violations of the foregoing regulations which occur at or in association with enrollment at Motlow College for any academic period. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree including periods prior to or between semesters. Conduct occurring while a student is registered or enrolled at MSCC, but not discovered until after the awarding of a degree is actionable under these provisions and may result in the retroactive application of a disciplinary sanction. Should a student withdraw from the institution with disciplinary action or academic misconduct action pending, the student's record may be encumbered by the appropriate institutional office until the proceedings have been concluded.

This policy is promulgated pursuant to, and in compliance with, TBR Rule 0240-02-03-.02, Disciplinary Offenses. To the extent that a conflict exists between this policy and TBR rule, policy and/or applicable law(s), the TBR rule, policy and/or law will control. History – Adopted by TBR: 12/8/11. Effective: 1/26/16.