

ALABAMA COMMUNITY COLLEGE SYSTEM
RECOMMENDATION FOR ACTION

December 9, 2020
Date of Board Meeting Action

Action Item Number VIII.A.5
Chancellor's Recommendation
Source

ACTION ITEM TITLE

ALABAMA COMMUNITY COLLEGE SYSTEM

Recommendation Regarding Adoption of proposed Policy 224.01 as shown

RECOMMENDATION

It is recommended "That the Alabama Community College System Board of Trustees adopt proposed Policy 224.01: Expressive Activities by the Campus Community as listed below. It is further recommended "that the proposed policy take effect immediately."

FISCAL CONSIDERATION

None

RATIONALE

The purpose of the proposed policy is to, in part, ensure concise and clear guidance and to fulfill the Board of Trustees' duty as an independent Board to govern, supervise, administer, and oversee the affairs of the community and technical colleges.

Code/Statute Act 2015-125
Policy _____

Director 1 / 1
Date

Legal Counsel 1 / 1
Date

[Signature] 12/9/20
Chancellor Date

Action by Board:

12/9/20 **Approved**

Tabled

Disapproved

Amended (describe)

Additional action required

POLICY NAME:	224.01: Expressive Activities by the Campus Community
EFFECTIVE:	December 9, 2020
SUPERSEDES:	
SOURCE:	<i>Code of Alabama 16-60-111.4</i>
CROSS REFERENCE:	

Effective January 1, 2021, the Alabama Community College System Board of Trustees adopts this policy to comply with ACT 2019-396 of the Alabama Legislature.

I. Findings/Policy Statements

In accordance with ACT 2019-396 the Board of Trustees finds the following:

- A. A primary function of the Community and Technical Colleges within the Alabama Community College System is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate, and that to fulfill that function, the Colleges will strive to ensure the fullest degree possible of intellectual freedom and free expression.
- B. It is not the proper role of the Colleges to shield individuals from speech protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Constitution of Alabama of 1901, including without limitation, ideas and opinions they find unwelcome, disagreeable, or offensive.
- C. Students, administrators, faculty, and staff are free to take positions on public controversies and to engage in protected expressive activity in outdoor areas of the campus, and to spontaneously and contemporaneously assemble, speak, and distribute literature.
- D. The Colleges should support free association and shall not deny a student organization any benefit or privilege available to any other organization based on the expression of the organization, including any requirement of the organization that the leaders or members of the organization affirm and adhere to an organization's sincerely held beliefs or statement of principles, comply with the organization's standard of conduct, or further the organization's mission or purpose, as defined by the student organization.
- E. The Colleges shall strive to remain neutral, as institutions, on the public policy controversies of the day, except for administrative decisions that are essential to the day-to-day functioning of the Colleges, and the Colleges will not require students, faculty, or staff to publicly express a given view of a public controversy.
- F. The Colleges should prohibit all forms of harassment as defined in Act 2019-396, which includes expression so severe, pervasive, and objectively offensive that it effectively denies access to an educational opportunity or benefit provided by the College.

II. Speech and Expression in Outdoor Areas

- A. For purposes of this policy, the Campus Community includes a College's students, administrators, faculty, and staff, as well as the invited guests of the College and the College's recognized student organizations (including organizations seeking recognition), administrators, faculty and staff.
- B. Members of the Campus Community shall be permitted to engage in expressive activities in outdoor areas of College property with general access during regular hours of College operation, subject to the limitations described below. Expressive activities are defined as those activities protected under the First Amendment to the United States Constitution and Article I, Section 4 of the Alabama Constitution, including any lawful verbal, written or electronic communication of ideas; lawful forms of peaceful assembly, protests, and speeches; distributing literature; carrying signs; and circulating petitions.
- C. Outdoor areas where expressive activities are not allowed include areas of restricted access as identified by the College, which may include but are not limited to areas adjacent to classrooms or places of residence; athletic facilities; areas being used as outdoor classrooms or educational training; or areas where access is restricted due to operational or safety protocols, such as energy or maintenance control areas.
- D. Except for Section II.H. below, this policy does not apply to expressive activities that take place in indoor areas of College property including, but not limited to, classrooms or classroom buildings; interior hallways and breezeways; administrative buildings or offices; auditoriums; performing arts venues; events centers; and recreational facilities. Expressive activities in these areas are governed by College policies related to academic freedom, facilities use, and other applicable policies and protocols, subject to the requirement that all Colleges must be open to any speaker whom the institution's student organizations or faculty have invited. These areas may be used for official events sponsored by the College or for non-college use under Board of Trustees Policies 500.01 and 507.01.
- E. Members of the Campus Community who engage in expressive activities in permitted outdoor areas may do so freely, spontaneously, and contemporaneously as long as the conduct is lawful, in accordance with laws applicable to conduct and activities on College property, and does not materially and substantially disrupt the functioning of the College or infringe upon the rights of others to engage in expressive activities.

- F. Conduct that may materially and substantially disrupt the functioning of the College or infringe upon the rights of others to engage in expressive activities may include:
1. Obstruction of vehicular, bicycle, pedestrian, or other traffic;
 2. Obstruction of entrances or exits to buildings or driveways or impeding entry or exit from any building or parking lot or vehicular path;
 3. Violations of a state, federal or local law, regulation, or ordinance;
 4. Threats to passersby or the use of fighting words, which are words that by their mere utterance inflict violence or would tend to incite a reasonable person to violence or other breach of the peace;
 5. Following, badgering, or forcibly detaining individuals;
 6. Interference with scheduled College classes, ceremonies or events, including memorials, dedications or classroom activities, whether indoors or outdoors;
 7. Damage to property, including buildings, benches, sidewalks, fixtures, grass, shrubs, trees, flowers, or other landscaping;
 8. Use of sound amplification, including bullhorns, except within reasonable limits that will not disrupt normal College operations;
 9. Use of placards, banners, or signs that are dangerous or cause obstruction as described in subsections 1 and 2 above;
 10. Engaging in expressive activities in prohibited or restricted areas as defined in Sections II.B. and II.C. above;
 11. Any other interference with normal College operations beyond a minor, brief, or fleeting nonviolent disruption that is isolated or brief in duration;
or
 12. Any other conduct or activity not protected by the First Amendment to the United States Constitution and Article I, Section 4 of the Alabama Constitution, or other state law.

- G. Nothing herein shall be construed to limit the application of laws related to disruptions, disturbances, or interference with the Colleges and the functions of educational institutions.
- H. A College may employ police and security officers and use other security measures to ensure the safety of all participants, the Campus Community, and the public. Nothing in the policy shall prohibit the institution from charging a fee for security for events, provided that such fees may not be calculated or otherwise based on the content of the protected expressive or the anticipated reaction to the protected expressive activity. The Board of Trustees encourages Colleges to establish a security fee schedule for events that is based on factors unrelated to the content of the expressive activity, such as number of expected attendees or the time duration of the event.

Presidents may waive security fees at their discretion, but may not exercise their discretion on the basis of the content of the expressive activity or the anticipated reaction to the protected expressive activity, except in emergency situations in which there is a clear and present danger to the campus community or to the public.

Additional fees for the use of campus facilities, such as for the use of IT resources or cleanup costs, are not prohibited under this Policy, as long as such fees are not based on the content of the expressive activity.

- I. To promote a safe and effective event, individuals or groups from the Campus Community planning to engage in expressive activity that they anticipate will require the assistance of security should provide sufficient notice to the President or his/her designee, and to the Chief of Police or appropriate campus security personnel, in advance of the event. Such arrangements enable a College to ensure the event takes place in a safe and constructive manner. Each institution will determine the amount of advanced notice that will be required in order for security to be provided.
- J. Individuals or groups who engage in expressive activity in outdoor areas on College property are subject to College policies relating to the use and operation of College and campus facilities, including without limitation policies relating to firearms and weapons, alcohol, smoking, and trespass. A College may limit the possession or use of clubs, bats, weapons, open flames, or other material objects on campus property during such events.

- K. Each College shall not permit members of the Campus Community to engage in conduct that materially and substantially disrupts protected expressive activity or infringes on the right to engage in expressive activity. Any act of reprisal, interference, coercion, or restraint, by a student or employee, of protected expressive activity, violates this policy and will result in appropriate disciplinary action. Disciplinary sanctions for members of the Campus Community under the jurisdiction of the College who violate this subsection shall be handled through existing processes provided for under law and individual College policy. Each College shall ensure that it has in place appropriate disciplinary sanctions to address any such violations.
- L. Nothing in this policy shall be construed to prevent Colleges from regulating and restricting expressive activity that is not protected by the United States Constitution, the Constitution of Alabama of 1901, or state law, including, but not limited to, any of the following:
1. Violations of state or federal law, including, but not limited to, actions that damage institutional property.
 2. Expressions that a court has deemed unprotected defamation.
 3. Harassment.
 4. True threats, which are defined as statements meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
 5. An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
 6. An action that unlawfully disrupts the function or security of the institution.
 7. Any constitutional time, place, and manner restrictions for outdoor areas of campus when they are narrowly tailored to serve a significant institutional interest and when the restrictions employ clear, published, content-neutral, and viewpoint-neutral criteria, and provide for ample alternative means of expression.
- M. Complaints or questions regarding the application of this policy should be addressed by use of the ordinary complaint process at the College for students, faculty, and staff.

III. Commercial Activity on Campus

Individuals, organizations and groups, both internal and external to a College, may not conduct commercial transactions or engage in commercial speech on College property unless authorized pursuant to Board of Trustees Policy 515.01 and approved in accordance with the College's policy regarding solicitation on campus.

Commercial speech means speech in which the speaker is engaged in commerce, the intended audience is commercial or actual or potential consumers, and the content of the message is commercial. Fundraising, including political fundraising, is considered solicitation and is therefore deemed commercial speech under this policy.

IV. Policy Distribution

Colleges shall include in new student, new faculty, and new staff orientation programs a section describing this policy. Colleges shall disseminate this policy to all members of the campus community and shall make this policy available in College handbooks and on College websites.

V. Inconsistent Policies

This policy shall supersede and nullify any previous policies of the Board of Trustees or of the institutions that restrict speech on the College campuses.

This policy is not intended to supersede, nullify, or amend any policies of the Board of Trustees or the institutions that regulate the reservations and use of interior spaces on the College campuses, or that charge incidental fees for the use of such spaces.

VI. Reports

- A. The Chancellor, on behalf of the Board of Trustees, shall submit to the Governor and Legislature the adopted policy and course of action implemented to ensure compliance with Act 2019-396 within 30 days of the policy's adoption. Any changes or updates to the policy shall be submitted within 30 days after making the changes or updates.
- B. The Colleges shall prepare and submit reports to the Chancellor and Board of Trustees by August 15 for the prior 12-month period ending July 31 that include the following:
 1. The date and description of each violation of the policy.
 2. A description of the administrative handling and discipline relating to each violation.
 3. A description of substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality.
 4. Any additional assessments, criticism, commendations, or recommendations the Colleges see fit to include.

The Chancellor, on behalf of the Board of Trustees, shall compile this information into a comprehensive report that shall be displayed in a prominent location on the ACCS website by September 1 of each year. In addition, a copy of the report shall be provided to the Alabama Commission on Higher Education in order to comply with its reporting requirements under Act 2019-396.