

# MAINE COMMUNITY COLLEGE SYSTEM

## GENERAL ADMINISTRATION Section 210

### **SUBJECT: FREE SPEECH AND ORDERLY OPERATIONS**

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**PURPOSE: To establish a policy and procedures that balance individual rights of speech with legitimate institutional interests**

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#### **A. Introduction**

Public colleges occupy a unique place in our society. They are institutions of higher learning dedicated to the discovery and dissemination of knowledge and, in that capacity, they assign a high priority to the freedom of speech. At the same time, public colleges are governmental entities and they must balance that important freedom with other legitimate goals and objectives, including the maintenance of a safe, lawful and orderly environment.

As an instrumentality of the State of Maine, the MCCS is committed to its constitutional obligations to respect rights of expression. As an institution of higher learning, the MCCS embraces academic freedom and the open exchange of diverse ideas, and is committed to its priority educational objectives of teaching, learning and student success. Finally, as an institution accessible to the public, the MCCS accepts the responsibilities that relate to the relatively open nature of some of its campuses and facilities.

#### **B. Interpretation**

This policy establishes general principles governing rights of speech and expression at MCCS colleges. It makes no effort to articulate every principle of law, or to anticipate and address the innumerable factual situations, likely to confront our colleges. Nonetheless, the guidance and rules set forth here are meaningful and important. They are not, however, intended, nor shall they be interpreted, to expand or diminish any legal right of expression or any legal right of regulation accorded by law or contract.

#### **C. Policy Statement**

The MCCS highly values the free exchange of ideas. The MCCS also respects its obligation to maintain a safe, lawful and orderly environment. The primary objective of the MCCS is student educational success, and persons exercising their rights of expression and assembly must conduct their activities in a manner that does not unduly interfere with normal operations and conforms to reasonable regulations regarding time, place and manner.

## **D. Types of Speech Forums**

In determining which MCCS grounds and facilities may be used for certain expressive activities, MCCS employs the standard “forum” analysis widely used in American higher education. Subject to nuanced details and exceptions too numerous to set forth here, these different forums may be summarized as follows.

### **1. Public Forum**

A public forum is public property that has been traditionally available and used for assembly or debate. Examples would include streets, parks, and lawn areas. A college may limit speech activity in such locations only if the limitation furthers a compelling college interest and is narrowly drawn to achieve that interest. Reasonable regulations on the time, place and manner of speech in public forums are permissible in a public forum if the regulations are content-neutral, are narrowly tailored to serve a significant interest, and provide ample alternative locations for the activity.

### **2. Designated Forum**

A designated forum is an area that does not qualify as a public forum but has been affirmatively identified by a college to allow certain speech activities. An example might be an auditorium or lobby of a college building. In designating such locations, a college may also designate certain limits on the forum (these are called “limited designated forums”). For example, a college may designate a certain forum as being available only for internal but not external (or vice versa) persons or groups. Once an area is designated as regular or limited forum, a college is not required to continue that forum indefinitely. But for so long as the designation applies, the college is bound by the rights and limits it has so designated. If the forum is designated without any such limits, then the same standards applicable to a public forum apply: Reasonable time, place and manner regulations are permissible, but content-based prohibitions must be narrowly drawn to further a compelling college interest.

### **3. Non-Public Forum**

A non-public forum is an area other than a public or designated forum. Examples include many college facilities, such as classrooms, residence hall rooms, faculty and staff offices, academic buildings, administration buildings, libraries and computer labs. These locations may be restricted to use for their intended purposes and are not available for public speech activity.

## **E. Policy on Speech Forums**

In those areas of operation that by law constitute traditional public forums, the M CCS respects the relatively broad right of public speech required by law. In those areas of operation that by law constitute designated or non-public forums, the M CCS reserves the authority to impose all limitations permitted by law.

To these ends, each college of the M CCS shall recognize any area of operation that by law constitutes a public forum. Each college may also identify additional designated public forums in which public speech may be permitted if the college so chooses. Finally, each college shall recognize any other area that does not constitute a public or designated forum as a non-public forum in which public speech is not permitted.

## **F. Time, Place and Manner Regulations and Practices**

The M CCS respects the right of individuals and associations to communicate the lawfully protected content of their expressions. The M CCS reserves the authority it may exercise by law to impose regulations and/or develop practices that reasonably limit the time, place and manner in which such acts of expression and/or assembly may occur. Each college may adopt reasonable time, place and manner regulations or practices governing the use of its public, designated and non-public forums. Such regulations or practices may require, for example, timely notice to the college of the intended activity; reasonable limitations on the timing, duration, manner and location of such activity; and payment of a reasonable fee.

## **G. General Rules**

In addition to rules that may be reasonably adopted by a college under section F above, the following regulations shall apply:

### **1. Unlawful Expression**

The M CCS does not permit expression that is not protected by law. Such expression includes, but is not limited to, defamation, incitement to unlawful conduct, imminent threats of actual violence or harm, obscenity, fighting words, gross disobedience of legitimate rules, copyright or trademark violation, criminal or civil harassment, sexual harassment, trespass, false advertising, and use of public resources to promote partisan political activities.

### **2. Maintaining Orderly Operations**

No person may engage in expressive conduct that has the effect of disrupting or preventing the orderly conduct of the M CCS mission, program, function or activity; blocking the legitimate activity of any person on the M CCS campus or in any M CCS building; constituting or inciting a violation of law; impeding or blocking the flow of pedestrian or vehicular traffic; or likely leading to an unsafe or unhealthy condition.

**3. Priority to the M CCS Community Members**

Students, employees and organizations affiliated with the M CCS shall have preferential and prioritized access to M CCS grounds and facilities over those persons not so affiliated with the M CCS.

**4. Solicitations**

Solicitation may occur only in accordance with the lawful procedures and regulations adopted by a college. For purposes of this policy, “solicitation” means any commercial or non-commercial attempt by an individual or group to promote the sale, use or service of a particular product or organization.

**5. Sound Amplification Systems**

Use of any sound amplification system or device is prohibited on M CCS property except as authorized by appropriate authorities.

**6. Distribution of Written Material**

Literature, fliers, brochures, information sheets and like printed promotional material may be distributed on M CCS property only as follows:

**a. Posters, Signs and Postings**

Such material may be posted upon information boards and in those other areas designated by a college, and by means consistent with the college’s time, place and manner regulations or practices. Except where otherwise specifically authorized, such materials may not be affixed to automobiles, trees, poles, doors, benches, sidewalks, walls, windows, ceilings, trash receptacles, streets, signs, steps, grounds, fixtures or any other equipment or surface.

**b. Leaflets and Handouts**

Such material may be distributed to interested persons in public forums and those areas designated by the college for this activity, and by means consistent with the college’s time, place and manner regulations or practices. All other such distribution is prohibited.

**H. Speech with Content Offensive to Others**

One purpose of the First Amendment is to protect earnest debates on challenging subjects. Because this is especially true where people hold strongly held personal, social or religious views, the First Amendment may in some instances limit the authority of entities like the M CCS to prevent or punish statements that some may regard as offensive. Such statements could include those that offend or annoy, or that disparage another person’s race, ethnicity or other personal attribute. Although the M CCS does not condone slurs or epithets because they do not

contribute substantive content or further serious pedagogical interests, the M CCS recognizes established constitutional limitations upon its ability to sanction all speech that simply offends or annoys.

Nonetheless, the M CCS reserves all authority not so limited. And in all instances, including those instances where M CCS authority may be so limited, the M CCS recognizes the opportunity to exercise its own speech rights. The M CCS does so in part here by expressly embracing two institutional values. First, all members of its college communities have a voluntary educational opportunity to understand the difference between substantive ideas and personal disparagement. And second, such persons have a voluntary ethical obligation to respect that difference by striving for expression whose purpose is more meaningful than insult, and whose effect is more meaningful than insolence. The M CCS embraces these values even if in some instances they cannot be enforced as rules.

## **I. Rental of Facilities**

No portion of this policy is intended, nor shall it be interpreted, to diminish the authority of the M CCS and its colleges to impose reasonable terms and conditions in renting its facilities. Such terms and conditions may include, for example, payment of a fee, proof of adequate insurance and a commitment to defend and indemnify the M CCS.

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REFERENCES: U.S. Const. Amend. I; Me. Const. Art. I, §4; 20-A M.R.S.A. §12706 (1)

DATE ADOPTED: June 24, 2009

DATE(S) AMENDED: June 23, 2010; January 22, 2020