

WSR 24-20-079

PROPOSED RULES

BELLEVUE COLLEGE

[Filed September 27, 2024, 12:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-028.

Expedited Rule Making—Proposed notice was filed as WSR 24-13-046.

Title of Rule and Other Identifying Information: Policy 6120, Use of college facilities for expressive activity.

Hearing Location(s): On November 7, 2024, at 9:00 - 10:00 a.m., via Zoom <https://bellevuecollege.zoom.us/j/81112531610>, Meeting ID 811 1253 1610.

Date of Intended Adoption: January 7, 2025.

Submit Written Comments to: Loreen McRea Keller, 3000 Landerholm Circle S.E., A-201, Bellevue, WA 98007, email loreen.keller@bellevuecollege.edu, beginning September 18, 2024, by November 4, 2024.

Assistance for Persons with Disabilities: Contact disability resource center, TTY 425-564-6189, by November 4, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College last updated its expressive activity policy in 2005. Since then, colleges and universities around the country have faced increasing need to clarify the distinction between free speech and civil disobedience, as it relates to the safe operations of a campus.

Reasons Supporting Proposal: The purpose of a college is to foster the free exchange of ideas. This policy balances the need to provide ample opportunity for free expression on campus with the need to preserve the efficient and effective functioning of Bellevue College. In the language of First Amendment jurisprudence, that means the establishment of time, place, and manner regulations. The critical feature of such regulations is that they be content- and viewpoint-neutral. They do not distinguish between expressive activities on the basis of the messages being purveyed. Rather, they circumscribe how expressive activities can be conducted so that they do not unnecessarily interfere with the activities of other members of the campus community.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Statute Being Implemented: RCW 28B.50.140(13).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Loreen McRea Keller, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-6155; Enforcement: Vice President of Administrative Services, 3000 Landerholm Circle S.E., B-126B, Bellevue, WA 98007, 425-564-6155.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:
Is fully exempt.

September 27, 2024
Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-5491.2

Chapter 132H-142 WAC
((FIRST AMENDMENT ACTIVITIES FOR COMMUNITY COLLEGE DISTRICT VIII)) USE
OF COLLEGE PROPERTY FOR EXPRESSIVE ACTIVITY

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-010 Title. WAC 132H-142-010 through 132H-142-060 shall be known as use of ((Community College District VIII facilities by college groups and noncollege groups for first amendment activities)) college property for expressive activity.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-015 Definitions. ((For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

College facilities include all buildings, structures, grounds, office space and parking lots.) (1) "College groups" means individuals or groups who are currently enrolled students or current employees of Bellevue College, or guests of Bellevue College who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(2) "College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled, owned, rented, leased, occupied, or used land, buildings, structures, property, vehicles, equipment, office space, parking lots, and any

other property utilized by the college for any education programs and activities.

(3) "Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspective, or viewpoints.

(4) "Limited public forum" means the college is a limited public forum for noncollege groups. ((The)) Limited public forum ((does)) locations do not include college property, buildings, or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's ((facilities)) property use policy.

(5) "Noncollege groups" means individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue College and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(6) "Public use areas" means those areas of each campus that the college has chosen to open as places where noncollege groups may assemble for expressive activity protected by the first amendment, subject to reasonable time, place, or manner restrictions.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-020 Statement of purpose. Bellevue ((Community)) College ((District VIII)) is an ((educational)) institution of higher education provided and maintained by the people of the state of Washington. The college reserves its property for activities that are related to its broad educational mission. College ((facilities are)) property is reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, substantially interferes with, or otherwise disrupts the normal activities ((for and)) to which the college's ((buildings, facilities and grounds are)) property is dedicated ((and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein)). Accordingly, the college designates the outdoor common areas of the college as a limited public forum dedicated to the use of college

groups, subject to the time, place, and manner limitations and restrictions set forth in this policy.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college property. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. Bellevue College recognizes that college groups should be accorded the opportunity to utilize the property of the college to the fullest extent possible.

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for expressive activities on campus:

- Building C courtyard between building C and D extending out from the fountain for groups less than 30; and
- South courtyard, just north of Carlson Theater if over 30 participants are expected.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-030 ((Request for use of facilities.)) Time, place, and manner restrictions. ((Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the student programs office no later than twenty-four hours prior to the event along with the following information:

- (1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

~~College groups are encouraged to notify the student programs office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.~~

~~College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.~~

~~There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures for the purposes of personal habitation.~~

~~Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designed for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for noncollege groups. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.~~

~~Speech that does no more than propose a commercial transaction shall not occur in connection with the event.~~

~~College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:~~

- ~~• Such activities serve educational purposes of the college; and~~
- ~~• Such activities are under the sponsorship of a college department or office or officially chartered student club.~~

~~The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.~~

~~All fire, safety, sanitation or special regulations specified for the event are to be obeyed.~~

~~The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.~~

~~The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.~~

~~The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.~~

~~The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.~~

~~The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.~~

~~The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.))~~

(1) Subject to the regulations and requirements of this policy, groups may use the campus limited forums for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Use of audio amplifying equipment is permitted only in locations and at times that will not disrupt, or disturb, or interfere with the normal conduct of college affairs including, but not limited to, the use of classrooms, offices, libraries, and laboratories; and previously scheduled college events or activities.

(3) Groups are encouraged to notify the campus public safety department no later than 24 hours in advance of an event. However, unscheduled events are permitted so long as the event does not materially disrupt any other function occurring at the facility.

(4) All sites used for expressive activity should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean up or for the repair of damaged property.

(5) All fire, safety, sanitation, or special regulations specified for the event are to be obeyed. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(6) The event must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or property, or to college activities or events. The event must not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees to the college.

(7) The event must not substantially and materially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(8) There shall be no camping on college property. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(9) College property may not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(10) The event must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

AMENDATORY SECTION (Amending WSR 12-24-044, filed 11/29/12, effective 12/30/12)

WAC 132H-142-040 Additional requirements for noncollege groups.

The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that

more than ((five hundred)) 500 people will attend the college event or activity.

~~((College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.~~

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

- ~~Building C courtyard area for groups less than thirty; and~~
- ~~Southern courtyard, just north of Carlson Theater if over thirty participants are expected.)~~ Noncollege groups may use designated public use areas identified in this policy for expressive activity between the hours of 7:00 a.m. and 10:00 p.m.

Noncollege groups that seek to engage in expressive activity on the designated public use area(s) are encouraged to provide notice to the campus public safety office no later than 24 hours prior to the event, along with the following information solely to ensure:

- (1) The area is not otherwise scheduled; and
- (2) To give the college an opportunity to assess any security needs:
 - (a) The name, address, and telephone number of a contact person for the individual, group, entity, or organization sponsoring the event; and
 - (b) The date, time, and requested location of the event; and
 - (c) The nature and purpose of the event; and
 - (d) The estimated number of people expected to participate in the event.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-050 ~~((The role of the president in first amendment decisions.))~~ **Distribution of materials.** ~~((The president of the college may authorize first amendment activities which are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.~~

~~The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.)~~ College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. Compliance with relevant procedure(s) around posting of materials on campus is expected.

Noncollege groups may distribute materials only at the site designated for noncollege groups.

All posted materials shall be dated and posted in accordance with the manner provided at the site. Posted materials may remain posted for a duration agreed upon at time of approval, after which they will

be removed. Refer to procedures for posting materials on campus for additional detail.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-060 ((Criminal)) Trespass. ~~((Any person determined to be violating these regulations is subject to an order from the college public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.))~~ Noncollege groups who violate these rules, or whose conduct jeopardizes the health or safety of others, or whose conduct unreasonably impedes the college in pursuit of its educational mission will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the college president or designee to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave. Such persons shall be subject to arrest under the criminal trespass provisions of chapter 9A.52 RCW or Bellevue municipal ordinance.

When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person should not be barred from college property. The college president or designee shall respond in writing within 15 calendar days with a final decision of the college. Absent exceptional circumstances as determined by the college president or designee, persons shall continue to be barred from college property while an appeal is pending.

Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-142-025	First amendment activities and protection of the college mission.
WAC 132H-142-070	Posting of a bond and hold harmless statement.
WAC 132H-142-075	Trespass.