

Constitutionally Protected Speech

**Report to the
Virginia General Assembly**

of the

Virginia Military Institute

1 December 2018



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VIRGINIA MILITARY INSTITUTE

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27 November 2018

Division of Legislative Automated Systems (DLAS)
Pocahontas Building, 5th Floor
900 East Main Street, Suite W528
Richmond, Virginia 23219

Attention: Legislative Documents and Reports Processing

This letter serves to transmit the report from the Virginia Military Institute on its policies related to constitutionally protected speech under the First Amendment of the United States Constitution, thereby certifying that the Institute has complied with Subsection C of 23.1-401.1.

The enabling authority for this report is [Code of Virginia - § 23.1-401.1 \(D.\)](#)

Attached are:

- Two General Orders that comprise the Institute's policies related to constitutionally protected speech:
 - General Order 72 includes the Institute's policies related to constitutionally protected speech and the process for reporting incidents of disruption of such speech.
 - General Order 79 stipulates that, except as otherwise permitted by the First Amendment of the United States Constitution, VMI will not abridge the freedom of invited guests to speak on Post.
- Two pages from the VMI Cadet Blue Book that addresses the training cadets received at the beginning of AY 2018-2019 with respect to this policy (training conducted 27 August – 31 August).
- An email from the Human Resources Office notifying employees responsible for the education and training of cadets of the change to General Order 72.

There have been no complaints filed in a court of law against VMI or any employee for alleged violations of the First Amendment to the Constitution of the United States.



For any questions on this report, contact Brigadier General Dallas Clark, Deputy Superintendent for Finance, Administration and Support, at 540.464.7321 or clarkdb@vmi.edu.

Respectfully submitted,

A handwritten signature in black ink that reads "Dallas B. Clark". The signature is written in a cursive style with a large, looping initial 'D'.

Dallas B. Clark
Brigadier General
Deputy Superintendent for Finance,
Administration and Support

VIRGINIA MILITARY
INSTITUTE Lexington, Virginia

GENERAL ORDER)
NUMBER 72)

13 November 2018

FACILITIES UTILIZATION, EVENTS, and SPEECH

1. **Purpose:** The purpose of this policy is to establish standard procedures and guidelines for event scheduling and use of Institute property to ensure requests are properly reviewed and coordinated and any necessary safety and security precautions are implemented. VMI is committed to free speech and expression and to the use of its facilities and spaces to enhance the cultural experience of its cadets, employees, and members of the local community. VMI recognizes, however, that such events can raise significant safety and security concerns. Further, VMI's unique and demanding educational and training environment requires the availability of VMI facilities for use by employees and cadets in a manner and at times that may differ from other institutions of higher education. To ensure safety and security while protecting the constitutional rights of those who desire to organize or participate in events and other gatherings, VMI will enforce the following reasonable time, place, and manner restrictions and rules for events on Post. This policy will be applied and enforced in a view point-neutral manner.
2. **Scope:** This policy applies to the use of Institute property for events and other gatherings by VMI cadets, employees, the alumni agencies, the George C. Marshall Foundation, and non-affiliated individuals.
3. **Definitions:**
 - a. **Event:** An occurrence at a given location for some defined period of time including a planned gathering of 15 or more persons and excluding Institute-sponsored routine academic, military and cadet training, and athletic activities.
 - b. **Institute event:** An event organized, requested, scheduled, and supervised by one or more VMI cadets or employees and in furtherance of the educational or training mission of the Institute, or organized, requested, scheduled, and supervised by the VMI Alumni Agencies or the George C. Marshall Foundation.
 - c. **Institute property:** Any property owned, leased, or controlled by Virginia Military Institute. On-Post Institute property includes, but is not limited to, barracks or any structure designed for cadet housing, academic buildings, administrative office buildings, support buildings, military training facilities, athletic facilities, dining facilities, parade ground, faculty and staff housing, green space, roadways, sidewalks, and parking lots. Off-Post Institute property includes, but is not limited to, Stonewall Jackson House, Davidson-Tucker House, Hinty Hall, New Market Battlefield and the Virginia Museum of the Civil War, McKethan Park, Lackey Park, Chessie Nature Trail, and property leased by VMI.
 - d. **Non-affiliated event:** Any event or gathering organized, requested, scheduled, or supervised by non-affiliated individuals.
 - e. **Non-affiliated individual:** Any individual other than currently enrolled cadets and VMI employees, and employees of the VMI Alumni Agencies and the George C. Marshall Foundation.

- f. **Non-Institute event:** An event organized, requested, scheduled, or supervised by one or more non-affiliated individuals or organized, requested, scheduled, or supervised by VMI cadets or employees, the VMI Alumni Agencies, or the George C. Marshall Foundation that is not in furtherance of the educational or training mission of the Institute.

4. Speech and Expressive Activity:

- a. VMI shall not abridge the constitutional freedom of any individual, including cadets, employees, and invited guests, to speak on Post, except as otherwise permitted by the First Amendment.
- b. Certain categories of speech are not protected by the First Amendment including, but not limited to:
 - i. True threats meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals;
 - ii. Harassment on the basis of sex, race, or other status prohibited by General Order 16 that is unwelcome and sufficiently severe, persistent or pervasive, and objectively offensive that it interferes with, limits, or denies the ability of an individual to participate in or benefit from the Institute's educational programs, services, opportunities, or the individual's employment access, benefits, or opportunities;
 - iii. Words that by their very utterance can lead to injury or tend to incite and immediate breach of the peace ("fighting words");
 - iv. Words that intentionally and effectively provoke a crowd to immediately carry out violent and unlawful action;
 - v. Obscenity;
 - vi. Defamation;
 - vii. Speech that substantially disrupts or interferes with Institute operations;
 - viii. The suppression of otherwise unlawful speech in order to appease disruptive, hostile, or threatening members of an audience ("heckler's veto"); and
 - ix. Statements made by VMI employees pursuant to official duties.
- c. VMI prohibits certain speech of cadets in accordance with the Cadet Blue Book as necessary to achieve training or disciplinary objectives. In addition, cadets are subject to the General Policies and restrictions of the VMI Honor Code.
- d. Speech of cadets and employees may be addressed in other Institute policies and regulations to include General Order 71 (Social Media), General Order 79 (Distinguished Visitor and Speaker Policy), the Faculty Handbook, the Administrative and Professional Faculty Handbook, and the Institute Regulations.
- e. Cadets and employees should attempt to address any incidents of disruption of speech on an individual basis. If such attempts are not successful, reports of disruption of speech may be made to any institute official and through the following channels:
 - i. Cadets report to the Cadet Equity Association or the Inspector General, 212 Carroll Hall, 540-464-7072;
 - ii. Employees report to the Inspector General, 212 Carroll Hall, 540-464-7072.

iii. Non-affiliated individuals, as defined above, report to the Inspector General, 212 Carroll Hall, 540-464-7072.

5. **Prohibited Activities:** All events at VMI must comply with applicable Virginia and federal laws in addition to VMI regulations and policies including General Order 16, *Discrimination, Harassment, Sexual Misconduct, and Retaliation*, General Order 50, *Acceptable Use of VMI Information Systems*, and VMI's regulation prohibiting weapons, 8 VAC 100-10-20. No event may involve the provision of child care services to attendees. Alcohol is prohibited at most events in accordance with General Order 2, *VMI Alcohol and Controlled Substances Policy*. The VMI Police Department ("Post Police") enforces the criminal laws of the Commonwealth on Institute property to include, but not limited to, Va. Code § 18.2-127 Injuries to churches, church property, cemeteries, burial grounds, etc.; penalty; Va. Code § 18.2-404 Obstructing free passage of others; Va. Code § 18.2-405 What constitutes a riot; punishment; Va. Code § 18.2-406 What constitutes an unlawful assembly; punishment; Va. Code § 18.2-415 Disorderly conduct in public places; Va. Code § 18.2-423.01 Burning object on property of another or a highway or other public place with intent to intimidate; penalty.
6. **Institute Event:** VMI cadets and employees must submit requests for events to the Deputy Chief of Staff at least 60 calendar days in advance of the scheduled event. If a request is submitted less than 60 calendar days before the scheduled event, the Deputy Chief of Staff may disapprove it due to non-compliance with this policy. An Institute event request must include the following information:
 1. Purpose of the event
 2. Name, email, and phone number of the requestor
 3. Institute property requested for the event
 4. Start Date/Time requested
 5. End Date/Time requested
 6. Estimated number of attendees
 7. Estimated number of vehicles anticipated for the event
 8. Type of transportation being used to enter and exit event location
 9. Special needs/handicapped support requirements
 10. Cadet or employee support requested
 11. Law enforcement/EMT support requested

The Deputy Chief of Staff will coordinate scheduling, verify that the requested event is an authorized activity for the requested property, and ensure that all support agencies (Physical Plant, Auxiliary Service, Post Police) have adequate time and resources to support the event, to include set-up and recovery from the event.

The Deputy Chief of Staff has the discretion to direct a safety and security assessment as described in Paragraph 6(D) below, and to direct appropriate safety and security measures for the event to include, but not be limited to; adjusting the venue, date, and/or time of the event; providing additional law enforcement support; imposing controls or security check points; limiting vehicular access; and creating buffer zones around the venue.

The Deputy Chief of Staff is the final approval authority for Institute events. Once approved,

the event will be placed on the Institute calendar.

7. Non-Institute Event:

- a. Non-affiliated individuals must submit a facility use request available from the VMI Physical Plant (<http://www.vmi.edu/about/offices-a-z/physical-plant/facility-use-request/>) at least 60 calendar days in advance of the scheduled event. VMI cadets and employees, the VMI Alumni Agencies, and the George C. Marshall Foundation seeking approval for an event that is not in furtherance of the educational or training mission of the Institute also must submit a facilities use request at least 60 calendar days in advance of the scheduled event. If a request is submitted less than 60 calendar days before the scheduled event, the Deputy Chief of Staff may disapprove the event due to non-compliance with this policy. A non-Institute event request must include the following information:
 1. Purpose of the event
 2. Name, email, and phone number of the requestor
 3. Facility requested for the event
 4. Start Date/Time requested
 5. End Date/Time requested
 6. Estimated number of attendees
 7. Estimated number of vehicles anticipated for the event
 8. Type of transportation being used to enter and exit event location
 9. Special needs/handicapped support requirements
 10. Cadet or employee support requested
 11. Law enforcement/EMT support requested
 12. VMI Employee Point of Contact
- b. The Deputy Chief of Staff will coordinate scheduling, verify that the requested event is an authorized activity for the requested property, and ensure that all support agencies (Physical Plant, Auxiliary Service, Post Police) have adequate time and resources to support the event, to include set-up and recovery from the event. Institute property may be made available for use for a non-Institute event provided the area is not needed by the Institute at that time and use for the non-Institute event does not disrupt Institute business or activities. **Priority for the use of Institute property will be given to the departments of the Institute including the Reserve Officers' Training Corps detachments at the Institute.**
- c. Major events. A non-Institute event will be classified as a major event if one or more of the following criteria apply:
 1. Over 75 individuals are expected to attend;
 2. The event is likely to significantly affect Institute safety and security, based on assessment by the Post Police;
 3. The event is likely to significantly affect Institute services (including roads, parking, dining services);
 4. The event has a substantial likelihood of interfering with Institute functions or activities;
 5. The event involves elected officials or candidates for public office;
 6. The event is a dance or a concert;
 7. The event will include the sale or consumption of alcohol; or
 8. Outdoor amplified sound is requested.

The Deputy Chief of Staff will determine if a requested non-Institute event is a major event without regard for the content or viewpoints anticipated to be expressed during the event. All major events will be subject to the safety and security assessment and requirements in Paragraph 6(D), the insurance requirements in Paragraph 6(F), the Facilities Use Agreement and fees requirements in Paragraph 6(G), and the coordination meeting requirements in Paragraph 6(H), and may be subject to other fees and requirements.

d. **Safety and Security Assessment.**

A safety and security assessment is required for major events and may be required, at the discretion of the Deputy Chief of Staff, for other events. The Post Police will assess safety and security needs based on objective and credible evidence of specific risks, and not on the viewpoints or opinions of the non-affiliated individuals requesting the event. Such assessment may include, but is not limited to: (a) the requested location for the event; (b) the estimated number of participants; (c) the time of day and the day of the week the event is planned to take place; (d) the proximity of the event to other activities or locations that may interfere, obstruct, or lessen the effectiveness of the safety and security measures being implemented; (e) the resources needed to secure the event; (f) the anticipated weather conditions; (g) the estimated duration of the event; and (h) similar viewpoint-neutral considerations relevant to an assessment of safety and security needs.

The Post Police will make safety and security recommendations that, in the Post Police's professional judgment, will address safety and security threats identified through the assessment described above. The goals of such recommendations will be to minimize risks to the health and safety of the event participants and members of the VMI community and to protect the exercise of free expression by the event sponsors and participants. Recommended safety and security measures may include, but are not limited to, adjusting the venue, date, or time of the event; providing additional law enforcement support; imposing controls or security checkpoints; limiting vehicular access; and creating buffer zones around the venue.

e. **Approval/Denial.**

The Deputy Chief of Staff is approval authority for non-Institute events. A request for a non-Institute event may be denied for the following reasons: (1) non-compliance with this policy; (2) the requested venue is unavailable due to use by cadets or employees or another non-affiliated event; (3) the planned date of the event is during a VMI administrative holiday period or holiday weekend; (4) it reasonably appears that the event will present an unreasonable danger to the health and safety of the VMI community; (5) the event is of such nature or duration that it cannot be reasonably accommodated without interfering with or disrupting VMI educational, athletic, or training activities; (6) the event will entail a gathering taking place in front of the barracks or other on-Post housing; (7) the requested venue is for an area in excess of the reasonable needs of the requesting individuals or organization; (8) the event will unreasonably interfere with traffic or cadet formations; (9) the requesting individuals or organization previously violated this policy or the terms of a Facility Use Agreement in the past 24 months; (10) the requested event is scheduled between the hours of 11:00 pm and 7:00 am; (11) the requested event will unreasonably or unnecessarily obstruct

the free passage of persons to and from or within the VMI Post in violation of Virginia Code § 18.2-404; or (12) the requested event will involve the possession, carrying, or storage of a weapon in violation of 8 VAC 100-10-20.

Denial of requests for non-Institute events may be appealed to the Chief of Staff, who is the final decision authority.

f. Insurance.

The organizers of all approved non-Institute events classified as major events shall be required to obtain within fifteen business days of the event general liability coverage of not less than one million dollars (\$1,000,000) per occurrence naming VIRGINIA MILITARY INSTITUTE and COMMONWEALTH OF VIRGINIA as additional insureds. Failure to provide a Certificate of Insurance documenting coverage consistent with this requirement within fifteen business days of the event will result in cancellation of the event. The Deputy Chief of Staff has the discretion to waive this requirement for major events based on the safety and security assessment, and to impose this requirement for other events.

g. Facilities Use Agreement, fees, and guidelines.

A Facilities Use Agreement will be required for all non-Institute events. VMI assesses a facility fee for all non-Institute events. The current fee structure is included in the VMI Operating Budget available on the VMI website. Facility fees cover use of the facility only and do not include related support costs such as facility oversight, specialized trainers/training, custodial, maintenance and other support. Related support that is required will be calculated at established rates and included in the Facilities Use Agreement. In addition, organizers of major events must agree to reimburse additional costs of the event based on the safety and security assessment of the VMI Police. Fees will be based on standard rates for VMI Police personnel, associated equipment, and other resources deemed necessary for the event and not based on concerns that the subject matter of the event or the viewpoints, opinions, or anticipated speech of the individuals participating in the event might provoke disturbances or response costs required by such disturbances.

The Facilities Use Agreement will include the agreement of the organizers of the non-Institute event to (i) use reasonable care to prevent damage to Institute property and to leave Institute property in the same condition as before the event; (ii) not film or photograph VMI employees or cadets without prior written permission from the individuals depicted; (iii) not state or imply any endorsement by VMI of the activities of the organization or individuals organizing or supervising the event; (iv) indemnify and hold harmless VMI and its employees, board of visitors, officers, and assigns from any loss, damages, costs, and expenses resulting from breach of the Facilities Use Agreement; (v) submit to search for contraband, weapons, drugs, alcohol, and other illegal and prohibited materials; and (vi) any other provisions deemed necessary given the specific circumstances of the non-Institute event.

The Facilities Use Agreement will further include explicit agreement by the organizers of the non-Institute event not to engage in any of the following prohibited activities:

1. Wearing of riot style clothing or gear;

2. Covering the entire face of any participant in the event;
3. Disrupting or interfering with cadets who are traversing Institute property or seeking ingress and egress from Institute buildings and property;
4. Coercing, intimidating, or harassing any other person with physical contact, light, odor, or noise;
5. Congregating or processing on the parade ground and streets on Institute property rather than the sidewalks;
6. Entering Institute property with weapons in violation of 8 VAC 100-10-20 or any item that could be used as a weapon (e.g. bats, clubs, torches, poles);
7. Entering Institute property with open flame or an open flame device unless approved by the Institute Fire Officer in conjunction with the State Fire Marshal's Office;
8. Entering Institute property with animals other than trained service animals;
9. Placing objects within three (3) feet of statues or memorials on Institute property, to include: the statues of Francis Smith, Stonewall Jackson, George C. Marshall, George Washington, and David; the memorial to Jonathan Daniels and the Daniels Courtyard; and the burial site at the Virginia Mourning Her Dead monument and at New Market;
10. Holding events or congregating within 150 feet of barracks; and
11. Crossing police lines, perimeters, or barricades or obstructing law enforcement activities of the Post Police.

Failure to execute a Facilities Use Agreement and to pay the required fees within fifteen business days of the event will result in cancellation of the event.

h. Coordination meeting.

A coordination meeting will be scheduled with the Deputy Chief of Staff or his designee and the requestor of the non-Institute event at a minimum of 15 business days prior to the event date. Such meeting will include a discussion of the safety and security assessment, if required, and any safety and security recommendations.

i. Termination of event.

A non-Institute event may be terminated for (i) violation of state or federal law or VMI policy, including this policy and those detailed in Section 4, above, by participants in the event; (ii) violation of the terms of the Facilities Use Agreement; (iii) damage to Institute property; (iv) an imminent threat to safety or property arising during the event; (v) obstruction to cadet and employee access to Institute property caused by the event; (vi) substantial disruption of Institute educational and training activities; or (vii) grounds that would have justified denial of the event under Section 6(E), above.

- 8. Spontaneous Events by Non-affiliated Individuals.** A spontaneous event is an unplanned or unannounced coming together of non-affiliated individuals which may occur in response to unforeseen circumstances or occurrences of immediate and obvious importance or other gathering of non-affiliated individuals for which non-Institute event approval was not obtained. Spontaneous events may be terminated for (i) violation of state or federal law or VMI policy, including this policy and those detailed in Section 4, above; (ii) engaging in the prohibited activities in Section 6(G), above; (iii) damage to Institute property; (iv) an imminent threat to safety or property arising during the event; (v) obstruction to cadet and employee access to Institute property caused by the event; (vi) substantial disruption of

Institute educational and training activities; or (vii) grounds that would have justified denial of the event under Section 6(E), above.

FOR THE SUPERINTENDENT:

James P. Inman, Colonel,
US Army (Ret.)
Chief of Staff

DIST: E
OPR: Chief of Staff

VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 79)

13 November 2018

DISTINGUISHED VISITOR AND SPEAKER POLICY

1. **Purpose:** The purpose of this policy is to establish standard procedures and guidelines for invitation and approval of distinguished guests and speakers.
2. **Scope:** Distinguished visitors as defined by this policy include, but are not limited to, members of the United States Congress, state legislators, state government officials from the cabinet or deputy level, federal government or agency officials from the cabinet or deputy level, ambassadors, general officers and flag officers in the Armed Forces, and candidates for public office. Speakers as defined by this policy include any individual other than VMI employees or currently enrolled cadets who makes a scheduled address or remarks at any location on Post. This policy will be applied equally and without regard to political affiliation of a distinguished visitor or speaker. Except as otherwise permitted by the First Amendment of the United States Constitution, VMI will not abridge the freedom of invited guests to speak on Post.
3. **Request Requirements:**
 - A. **Distinguished visitors:** Prior to any distinguished guest visit, the requestor must gain approval from the respective department head, then the Superintendent's Office through the Chief of Staff or Deputy Chief of Staff. If the distinguished guest visit will be associated with an event on Post, then the requirements of General Order 72 will apply. All approval requests must include:
 1. Name of distinguished visitor & date of visit
 2. The VMI employee point of contact including name, email, and phone number;
 3. The nature of the visit and length/duration;
 4. Schedule of events--including any possible tours of barracks or Post;
 5. Facilities requested for any event with the distinguished visitor;
 6. Estimated number of individuals attending;
 7. Estimated number of vehicles on Post, as a result of the visit and any event with the distinguished visitor;
 8. Special needs/handicapped support requirements;
 9. Whether a courtesy visit with the Superintendent is needed or desired; and
 10. Support requirements, including law enforcement/EMT
 - B. **Speakers:** All requests for speakers and events associated with speakers, whether organized by an employee or cadet or a non-affiliated individual, must be submitted to the Deputy Chief of Staff in accordance with the requirements of General Order 72, Facilities Utilization, Events, and Speech at least 60 days in advance of the planned speaking event. Requests for speakers from academic departments must be submitted to

the Dean's Office using the Academic Scheduling Request form prior to seeking approval through the Deputy Chief of Staff.

C. If the distinguished visitor or speaker is not a U.S. citizen or permanent resident, the Comptroller's Office must be notified at the time of the request for approval to ensure compliance with regulations pertaining to visas and payments or reimbursements.

4. Coordination: Visits by speakers and distinguished guests must be scheduled in accordance with the operating rules of the Institute Schedule as prescribed in General Order 1. All speakers and visits by distinguished guests will be coordinated by the Office of the Chief of Staff including scheduling, verifying that any event associated with a speaker or distinguished guest is an authorized activity for the requested location, and ensuring that all support agencies (Physical Plant, Auxiliary Services, Post Police) have adequate time and resources to support the event, to include set-up and recovery from the event.

5. Contracts and Expenses.

A. Upon receiving a request for a speaker to be sponsored by the Institute, the Office of the Chief of Staff will notify Procurement Services to prepare a contract. The Institute will not enter a contract or reimburse expenses for a speaker invited by cadets or a cadet organization, the Alumni Agencies, or a non-affiliated individual or organization. Speaker contracts will be one of the following two types:

1. No-fee contract. If a speaker does not request a speaking fee, then a no-fee contract is required to document the services and expenses to be covered by the Institute, including travel and lodging. If the sponsoring department decides after execution of the no-fee contract to pay the speaker an honorarium, such honorarium must be approved by Procurement Services prior to submission of the Receiving Report/Request for Reimbursement to the Comptroller's Office. A request for payment of an honorarium must reach the Comptroller's Office no later than two weeks prior to the speaker's event and must include evidence of Procurement Services approval and a copy of the speaker contract. A payment to a speaker can be considered an honorarium only if the speaker has signed a no-fee contract documenting an intent to donate his or her services.
2. For-fee contract. An established fee or fee suggested by a speaker is not an honorarium payment. Such fees will be detailed in a for-fee contract along with expenses to be covered by the Institute, including travel and lodging.

B. Travel and lodging. The sponsoring department shall submit an Authorization for Official Institute Travel form listing any travel expenses of the speaker to be covered by the Institute and the source of funding. State travel regulations apply. Air travel shall be arranged by the sponsoring department through VMI travel agents. Lodging arrangements also shall be made by the sponsoring department for direct billing to the Institute. As lodging on Post is limited, most speakers who require overnight accommodations will stay off Post. All requests for reimbursement of speaker travel expenses must be submitted on the State Travel Expense Reimbursement Voucher and signed by the speaker.

- C. Regardless of whether the speaker has a no-fee or a for-fee contract, speakers receiving any form of compensation including travel expenses must submit a W-9 (or W-8BEN for foreign speakers) form to the Comptroller's Office in accordance with Internal Revenue Service regulations before the speaker contract can be executed.
6. **Audience and Compensatory Time:** The department head, cadet organization, or non-affiliated individual or organization planning the speaker event is responsible for assuring any guest speaker an adequate audience. If a speaking event is significantly related to the subject of an academic course, the instructor may, with the permission of the department head, substitute attendance at the speaker event for attendance at a scheduled class meeting, with the understanding that attendance at the speaker event will be checked. Mandating cadet attendance at an evening speaking event requires an instructor to grant compensatory class time, which should occur preferably within one week before or after the required speaker event but not to exceed two weeks before or after the speaker event.
7. Questions concerning whether or not any proposed distinguished visitor or speaker meets the criteria in this policy may be directed to the Chief of Staff.

FOR THE SUPERINTENDENT:

James P. Inman
Colonel, US Army (Ret.)
Chief of Staff

DIST: E

OPR: Chief of Staff, Protocol

CHAPTER 29 – Speech

SUMMARY

- **VMI does not abridge constitutionally protected speech**
- **The 1st Amendment does not protect all types of speech**
- **Cadets are not to harass, slander or demean others via social media Apps**
- **It is a violation of VMI policy to disseminate photos or other images of an individual without consent**
- **Cadets are responsible for the content of the pictures that they post and / or in which they are depicted in on social media**

1. **CONSTITUTIONALLY PROTECTED SPEECH:** Except as otherwise permitted by the First Amendment, VMI does not abridge the constitutional freedom of any individual, including enrolled cadets, faculty and other employees, and invited guests to speak on campus. (Virginia Code §23.1-401.1)
2. **NON-PROTECTED SPEECH:** The First Amendment does not protect all types of speech, as detailed in General Order 72, “Facilities Utilization, Events, and Speech.” Following are some examples of speech that is not protected by the First Amendment.
 - a. **Fighting words-Speech that inflames others and / or is likely to incite physical retaliation is prohibited.** Language meant to incite others into breaking the law; including speech intended to incite violence or to encourage others to commit illegal acts is likewise prohibited.
 - b. **Obscenity- Salacious sexually charged language, language depicting issues considered patently offensive based on contemporary community standards and that lacks serious literary, scientific or artistic value is not protected.**
 - c. **Libel and slander-The First Amendment does not protect individuals from facing penalties for defaming another person through written or verbal communication.**
 - d. **Crimes involving speech-Speech used to commit a crime, such as sexual exploitation, perjury, extortion, or harassment is not protected.**
 - (1) **Sexual exploitation:**
 - (a) **Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not meet the definition of sexual assault.**
 - (b) **Sexual exploitation includes prostituting another person, non-consensual visual or audio recording of sexual activity, non-consensual distribution of photos or other images of an individual’s sexual activity or intimate body parts with intent to embarrass such individual.**
 - (c) **Refer to General Order 16, “Discrimination, Harassment, Sexual Misconduct, and Retaliation” for additional information on sexual exploitation.**
 - (2) **Recently, anonymous apps have been used as a vehicle through which cadets harass others:**
 - (a) **The Superintendent’s Statement on Equity at VMI (General Order 13) states that the VMI Community and the Corps is expected to maintain “a culture of civility and mutual respect... The daily activities in the administration, the faculty and the Corps shall be conducted in a manner that meets the highest standards for the equitable treatment of every individual.”**
 - (b) **Anonymous targeting by members of the Corps of others via social media apps such as Jodel is abhorrent and counter to the ethos of our community.**
 - (c) **Any cadet found to be bullying, targeting or otherwise harassing another individual via social media apps will be sanctioned through either the VMI Class System or Commandant of Cadets.**
 - (d) **Refer to General Order 71, “Use of Social Media” for additional information.**
 - e. **Threats – Speech constituting a threat toward another that places the target of such speech in**

McKemy, Amy I

From: Parella, Richard A, Jr., 'Rich'
Sent: Friday, November 16, 2018 1:05 PM
Subject: General Order 72 Update

To all employees -

In accordance with Virginia Code § 23.1-401.1, VMI has updated General Order 72 Facilities Utilization, Events, and Speech to include policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech. Please review General Order 72 for additional details.

**** Dissemination of this email is approved by the Deputy Superintendent for Finance, Administration and Support ****

Richard Parella, SPHR, SHRM-CP
Human Resources Director
Virginia Military Institute
Office: 540-464-7322
parellara@vmi.edu

§ 23.1-401.1. Constitutionally protected speech; policies, materials, and reports; report.

A. Except as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus.

B. Each public institution of higher education shall establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech.

C. Each public institution of higher education shall develop materials on the policies established pursuant to subsection B and notify any employee who is responsible for the discipline or education of enrolled students of such materials.

D. Each public institution of higher education shall develop, post on its website in a searchable, publicly accessible, and conspicuous manner, and submit to the Governor and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than December 1 of each year a report on the institution's compliance with the provisions of this section that includes:

1. A copy of the institution's policies as described in subsection B and materials on such policies as described in subsection C;

2. Certification that the institution has complied with subsection C; and

3. A copy of any complaint filed in a court of law since December 1 of the preceding year to initiate a lawsuit against the institution or an employee of the institution in his official capacity for an alleged violation of the First Amendment to the United States Constitution.

E. Each public institution of higher education shall submit to the Governor and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health a copy of any complaint filed in a court of law to initiate a lawsuit against the institution or an employee of the institution in his official capacity for an alleged violation of the First Amendment to the United States Constitution no later than 30 days after such complaint is served.

2018, c. [751](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.