

## Alcohol and Controlled Substances

### Policy Statement

Mayville State University prohibits the unlawful or unauthorized manufacture, distribution, dispensation, possession, use, or sale of alcoholic beverages, controlled substances, and illegal drugs. This prohibition applies even if the North Dakota Department of Public Health has issued a certificate of registration permitting the individual to possess a limited amount of marijuana for medical purposes; medical marijuana cards do not authorize persons to use medical marijuana on campus property or at University-sponsored or hosted events. The impairment by alcohol or drugs of any student or employee while participating in an academic function, or of employees when reporting for work or engaging in work – during normal work hours or other times when required to be at work – is also prohibited. Employees and students are required to abide by all federal and state laws, local ordinances, State Board of Higher Education policies, and other related requirements regarding the consumption or possession of alcoholic beverages, controlled substances, and illegal drugs.

### Reason for Policy

Mayville State University is responsible for maintaining alcohol and drug policies in compliance with federal and state laws including, but not limited to, the Jeanne Clery Act, the Drug Free Workplace Act, the Drug-Free Schools and Communities Act, and the North Dakota Century Code, and in compliance with State Board of Higher Education policies 615 and 918.

#### 1. Definitions:

- a) Academic Function. A University-sponsored activity related to a student's or employee's purpose, role, or other qualified involvement at the University.
- b) Alcoholic beverages. Any substance suitable for consumption by human beings, except prescription drugs or over-the-counter medications, which contains one-half of one percent or more of alcohol by volume. Powdered alcohol is included as a form of prohibited alcoholic beverages.
- c) C.F.R., or the Code of Federal Regulations. The codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States.
- d) Clery Act, or the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. A federal law requiring all institutions of higher education participating in the federal student financial aid program to disclose information about crime on their campuses and in the surrounding communities.
- e) *Code of Student Rights and Responsibilities and Student Disciplinary Process (Code)*. A University document articulating the University's authority and the responsibility to establish policies necessary for the general business of the institution and outlining Prohibited Conduct and the Student Discipline Process used to address alleged student misconduct.
- f) Controlled substance. Any drug, substance, or immediate precursor listed in the Controlled Substances Act [21 U.S.C. 801 et seq., as amended] or identified in NDCC Chapter 19-03.1 as amended. The term does not include distilled spirits, wine, malt beverages, or tobacco.
- g) Drug. Substances recognized in NDCC Chapter 19-03.1 as amended or 20 USC sec. 321 et seq., as amended, as drugs in the official United States Pharmacopeia, National Formulary, or Homeopathic Pharmacopeia of the United States, or any supplement to any of them; substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; substances (other than food) intended to affect the structure or any function of the body of individuals or animals;

and substances intended for use as a component of any article noted above. See also Controlled Substance.

- h) EAP or Employee Assistance Program – Program providing access to a variety of services, including alcohol and drug dependence services, to all benefited employees and their immediate family members (spouse and/or dependent children living in the same household as the employee or dependent children attending a college or university).
- i) Emergency Contact. At the time of application for admission [*for students who apply to live in the residence halls* – and at the time of application for housing and at the time of check-in to a residence hall for purposes of the “Missing Student” protocol], students are requested to provide a parent or other emergency contact information. This information is stored in the University student information system.
- j) Employee. All full-time, part-time, temporary and/or non-benefited employees including but not limited to staff and faculty (e.g., professor, associate professor, assistant professor, instructor, tenured, non-tenured, etc.).
- k) FAFSA, or the Free Application for Federal Student Aid. A form completed by current and prospective college students (undergraduate and graduate) in the United States to determine their eligibility for student financial aid.
- l) Family Educational Rights and Privacy Act, or FERPA – Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
- m) Hearing Officer. An individual who determines, at an informal conference or student conduct hearing, whether a student or student organization has violated the *Code of Student Rights and Responsibilities and Student Discipline Process*, and who impose sanctions when a violation is determined.
- n) Illegal Drug. A controlled substance as identified in the Controlled Substances Act [21 U.S.C. 801 et seq. as amended] but does not include a substance that is legally possessed or used under the supervision of a licensed healthcare professional, except medical marijuana, or that is legally possessed or used under any other authority under that Act or under any other provision of federal law. Medical marijuana permitted by NDCC 19-24 is still considered a controlled substance and is a violation of federal law.
- o) Illegal Use of Drugs and Other Substances. The use of drugs, including the possession or distribution of which, when the drug is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq. as amended] and/or NDCC. Such term does not include the use of a drug taken under supervision by a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of federal or state law.
- p) Impairment. Under the influence of alcohol and/or legal (including prescription medication) or illegal drugs, if such impairment or influence adversely affects the employee's work performance, the safety of the employee or others, or creates an unnecessary risk for the University.
- q) Medical Marijuana. Three ounces or less of usable marijuana (dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations) used to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patient's debilitating medical condition.
- r) NDCC, or the North Dakota Century Code – Codification of the latest versions of state law as of the date of their enactment.
- s) Prescription Drug. A drug as defined in the Federal Food, Drug, and Cosmetic Act and under which definition its label is required to bear the statement, "Caution: Federal law prohibits dispensing without prescription" or "Rx Only."
- t) SBHE. State Board of Higher Education

- u) Substance Abuse. The illegal use or abuse of drugs, including substances listed in schedules I through V of the Controlled Substances Act [21 U.S.C. 801 et seq. as amended]; the abuse of inhalants; or the use of alcohol, tobacco, or other related product as such use is prohibited by federal, state, or local law.
- v) USC, or the United States Code – Codification by subject matter of the general and permanent laws of the United States.

### **2.01 Prohibited Acts: General, and Exceptions**

- A. The possession, sale, dispensation, use, or consumption of alcoholic beverages upon land or in buildings owned by Mayville State University is prohibited, except as provided by this subsection.
  - a) This policy does not apply to family housing, married student housing, faculty housing, full-time staff billeted in approved university apartments, or off-campus guest housing.
  - b) Alcoholic beverages may be permitted, subject to applicable state and local laws and ordinances, at events in facilities or upon land owned by the institution pursuant to a permit signed by the President or his/her designee. The permit must describe the nature of the event and the date(s), time(s) and place where consumption of alcoholic beverages is permitted. The permit may be for a single event or for events occurring periodically at the designated place during a period of not more than one year. Events where alcohol is served and approved by the President also require the following additional stipulations:
    - 1) Events sponsored by the university or the Mayville State University Foundation and which are intended to be fund raisers to directly benefit the institution will be permitted and alcohol may be served or sold as long as a third party with an appropriate liquor license is utilized.
    - 2) Any group that is not directly affiliated with the university who wishes to rent or utilize a campus facility. Such prospective renter must provide proof of liability insurance prior to final approval. An event at which alcohol will be sold, requires that the renter arrange for a third party with an appropriate liquor license to actually sell the alcohol. In these cases, the third party with the liquor license must also provide proof of liability insurance for the specific event prior to approval.
    - 3) Events hosted by a renter at which alcohol will be sold, will also be required to hire adequate security officers to monitor access to alcohol. These security officers must meet city ordinance and/or state law requirements.
    - 4) The university does not intend to compete with private businesses in the area. The rental of university facilities by an individual or group not affiliated with the institution, and at which alcohol will be served or sold will be approved only after the renter has satisfactorily verified that they have been unable to secure other, adequate facilities in the community.
    - 5) With events such as wedding receptions, dinners, or dances there is an expectation that food will be served and the renter will be required to utilize MSU Food Services for all food items.
    - 6) See Football Tailgating Policy, M1993.
- B. Alcoholic beverages may not be purchased with public funds.
- C. Marijuana Use or Possession on Campus: the use or possession of marijuana, including medical marijuana used or possessed under Chapter 19-24 of the North Dakota Century Code, is strictly prohibited on campus. Any such use or possession is a violation of this policy and the *Code of Student Rights and Responsibilities and Student Discipline Process*.

- D. Mayville State University identifies as a Drug Free School (see M615). Mayville State's Drug Free Schools and Community Policy reads, in part:

As a condition of their employment or enrollment at Mayville State University, a student or employee will not engage in the unlawful manufacture, distribution, possession, or use of a controlled substance nor engage in the unlawful possession, distribution, or use of alcohol on university property or as part of any university activity during the period of employment or enrollment. Furthermore, any employee or student at Mayville State University agrees to obey federal, state, and local laws relating to the unlawful possession or distribution of illicit drugs and alcohol, and to abide by sanctions which the institution may impose for violations of its standards of conduct, up to and including termination or suspension. If an employee or student is convicted of an alcohol or drug related offense occurring on campus, he/she must notify the institution within five days of such a conviction. In addition, federal law mandates that Mayville State must communicate information regarding the conviction of a student or employee for a drug or alcohol related offense which occurs on-campus to the appropriate federal agency within ten days.

## **2.02 Expectations, Prohibited Acts: Employees, and Consequences**

- A. A safe and productive alcohol- and drug-free workplace is achieved through cooperation and shared responsibility. The University as a whole, employees, and unit supervisors all have important roles in contribution to such a workplace.
- B. Employees of the institution shall not come to work or be at work, during normal work hours or other times when required to be at work, while under the influence of alcoholic beverages or when impaired as a result of the unlawful use of a controlled substance.
- C. Any employee violating this policy is subject to discipline up to and including termination.
- D. In addition, employees are encouraged to:
1. Be concerned about working in a safe environment;
  2. Not report to work or be subject to duty while their ability to perform job duties is impaired due to on- or off-duty use of alcohol or drugs;
  3. Support fellow workers in seeking help;
  4. Use the Employee Assistance Program; and
  5. Report dangerous behavior to their supervisor.

It is the supervisor's responsibility to:

1. Remind employees of the University's Alcohol and drug policy;
  2. Observe employee performance;
  3. Investigate reports of dangerous practices;
  4. Document negative changes and problems in performance;
  5. Counsel employees as to expected performance improvement;
  6. Refer benefited employees to the Employee Assistance Program;
  7. Suggest non-benefited employees seek help through a community assistance program; and
  8. Clearly state consequences of policy violations.
- E. Mayville State University recognizes alcohol and drug abuse and addiction are treatable illnesses and encourages employees to seek help if they are concerned they or a family member may have a drug and/or alcohol problem. Assistance for the treatment for substance use disorders (e.g., alcohol dependence, alcohol abuse, alcoholism, drug abuse, etc.) may be covered by the EAP and/or through the employee benefit plan.

### 2.03 Expectations, Prohibited Acts: Students, and Consequences

- A. Mayville State prohibits the “Unauthorized Use of Alcoholic Beverages, includ[ing] the possession, distribution, sale and or solicitation of, or consumption of, alcoholic beverages except during events or in circumstances authorized by University Officials; and/or the failure to comply with state or University regulations regarding the use or sale of alcoholic beverages”<sup>1</sup>
- B. NDCC § 5-01 indicates “an individual under twenty-one years of age may not manufacture or attempt to manufacture, purchase or attempt to purchase, consume or have recently consumed other than during a religious service, be under the influence of, be in possession of, or furnish money to any individual for the purchase of an alcoholic beverage.”
- C. The Residence Hall Handbook<sup>2</sup> defines and prohibits certain alcohol-related behaviors, including but not limited to:
- party rooms: (“a room in which for or more persons are present and having alcohol present”);
  - alcohol/drug advertisement: (“Posters and other items advertising alcohol/drugs” in “public areas”... “windows or on residence hall doors.”)
  - alcohol containers: (“Alcohol containers, full or empty”)
- D. Mayville State prohibits “the possession, distribution, sale, and/or solicitation of, or consumption of (a) prescription drugs except those proscribed to the person carrying same; (b) illegal drugs or controlled substances; or (c) other intoxicants and/or (d) paraphernalia for the consumption of such intoxicants, or the (e) possession of household or common items which the Hearing Officer determines was intended by the Responding Student to be used or trafficked as an intoxicant(s) (e.g., spray paint used for huffing).”<sup>3</sup>
- E. Mayville State University expects its students to act in a mature and responsible manner. Respect for the rights of others, openness to new and challenging ideas, civility and courtesy are examples of this expectation.

*The Code of Student Rights and Responsibilities and Student Disciplinary Process (Code)* is published such that students are provided a general notice of prohibited conduct. The *Code* should be read broadly and is not designed to define misconduct in exhaustive terms.

Students who allegedly violate the *Code*, Residence Hall Handbook, Sexual Misconduct and Title IX Policy and Procedure, or other university policies may become subject to disciplinary action.

Students may be accountable to both civil authorities and to Mayville State University for conduct, which constitutes violations of local, state, federal laws, the *Code*, and/or other university policies.<sup>4</sup>

<sup>1</sup> [Code of Student Rights and Responsibilities and Student Conduct Process, Prohibited Conduct, Alcohol and Drugs, 4.01](#)

<sup>22</sup> [http://www.mayvillestate.edu/index.php/download\\_file/view/708/2486/373/](http://www.mayvillestate.edu/index.php/download_file/view/708/2486/373/) (Residence Hall Handbook)

<sup>33</sup> [Code of Student Rights and Responsibilities and Student Conduct Process, Prohibited Conduct, Alcohol and Drugs, 4.02](#)

<sup>4</sup> [Code of Student Rights and Responsibilities and Student Conduct Process, Student Discipline Process](#)

- F. Upon receipt of information regarding a violation of the *Code of Student Rights and Responsibilities and Student Conduct Process*, the University may initiate the Student Discipline Process. Students found in violation of University policy face sanctions, which may include: Censure, Disciplinary Probation, Deferred Suspension, Suspension, Dismissal, Educational community service, User Fee(s) or Fines, Referral, Restitution, Housing Ban, or Other Sanctions.
- G. Student eligibility for Federal Financial Aid (U.S.) can be effected by one's conviction for a drug-related offense. When a person completes the FAFSA form, that person is asked about past conviction(s) for a drug-related offense occurring while that person was receiving federal student aid. If such a conviction is indicated, the applicant is provided a worksheet to determine whether the conviction effects eligibility for federal student aid.

A person who is convicted of a drug-related offense after submitting a FAFSA form might lose eligibility for federal student aid and might be liable for returning any financial aid received during a period of ineligibility.

A student whose eligibility for federal student aid has been suspended due to a drug conviction can regain eligibility early by successfully completing an approved drug rehabilitation program or by passing two unannounced drug tests administered by an approved drug rehabilitation program. These programs are not administered by Mayville State University.

Also see <https://studentaid.ed.gov/sa/eligibility#criminal-convictions>

- H. Incapacitation – Alcohol or other Drugs  
Residents or others who become incapacitated as a result of drinking, drug usage, or a medical condition will receive proper emergency medical care when staff members become aware of their condition, EMS will be notified immediately.
- Residents or others will be financially responsible for the costs of this medical care including ambulance and/or hospitalization costs.
- I. Immunity from Prosecution, or “Medical Amnesty.” Local law enforcement and the University respect and abide by the medical amnesty laws for drug and alcohol related emergencies expressed at North Dakota Century Codes §05-01-08(6) and §19-03.1-23.4:

§5-01-08(6). An individual under twenty-one years of age is immune from criminal prosecution under this section if that individual contacted law enforcement or emergency medical services and reported that another individual under twenty-one years of age was in need of medical assistance due to alcohol consumption, provided assistance to the individual in need of medical assistance until assistance arrived and remained on the scene, or was the individual in need of medical assistance and cooperated with medical assistance and law enforcement personnel on the scene. The maximum number of individuals that may be immune for any one occurrence is five individuals.

§19-03.1-23.4. Overdose prevention and immunity. An individual is immune from criminal prosecution ... if in good faith that individual seeks medical assistance for another individual in need of emergency medical assistance due to a drug overdose. To receive immunity under this section, the individual receiving immunity must have remained on the scene until assistance arrived, cooperated with the medical treatment of the reported drug overdosed individual, and the overdosed individual must have

been in a condition a layperson would reasonably believe to be a drug overdose requiring immediate medical assistance. Neither the individual who experiences a drug-related overdose and is in need of emergency medical assistance nor the cooperating individual seeking medical assistance may be charged or prosecuted for the criminal offenses listed in this section or for the sharing of controlled substances among those present. Immunity from prosecution under this section does not apply unless the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for emergency medical assistance. Good faith does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or during a lawful search.

The University will not take disciplinary action against a student who calls for or who receives medical attention due to alcohol or other drug use such that medical assistance is needed or sought. The University may require compliance with educational initiatives related to the overdose that created the situation.

- J. Citations. Except as noted above, incapacitated students who are in violation of local, state or federal laws concerning alcohol and other drugs are subject to citation and/or arrest for relevant violation of law.
- K. Notifications
  - a) According to North Dakota Century Code § 5-01-05.1, "If a person is hospitalized for detox purposes, law enforcement or campus security personnel must notify the emergency contact."
  - b) Parental Notification: If a student has been found Responsible for multiple alcohol- or drug-related offenses under the Code or campus policies, or if it is determined that that the student's health and safety is endangered because of his/her use of alcohol or other substances, the University reserves the right to notify the student's parents of these facts and concerns. This notification may occur even if the student is 21 or older. The Director of Student Life will determine if such parental notification is to be made after consideration of each case and documentation of any such offenses. This process for parental notification is specifically allowed under federal law and is in accordance with the 1998 amendments to the Family Educational Rights and Privacy Act (FERPA).

### 3. Expectations of the University

- A. Mayville State will make all good faith efforts to have and to maintain an alcohol- and drug-free workplace and study environment.
- B. Student Life, academic departments with disciplinary responsibility for Public Health information, and others are encouraged to develop marketing, communications, advertising, and educational campaigns designed to promote the responsible use of alcohol and to inform persons on campus about the concerns of illegal and other drug use.
- C. Communicating the University's alcohol and controlled substances policy to all individuals is critical to its success. To ensure all employees are aware of their role in supporting our alcohol- and drug-free workplace, all employees will receive a summary of the alcohol and drug policy and a Web link to access the complete policy document during the annual notification of policies.
- D. Publication of this document and the use of its contents, in whole or in part and in different formats.

The Drug-Free Schools and Campuses Regulations (34 C.F.R) of the Drug-Free Schools and Communities Act (DFSCA) require an Institution of Higher Education (IHE) such as

Mayville State University to “certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs or alcohol by all students and employees on school premises or as a part of any of its activities” as well as distribute the program to all employees and students. The publication of this document demonstrates Mayville State’s compliance with Education Department General Administrative Regulations (EDGAR) Part 86.100, Subpart B.

E. Confidentiality

For employees:

All information received by the organization through the drug-free workplace program is confidential communication. NDCC section 44-04-18.1 provides: "Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee."

For students:

Student Conduct Files are deemed educational records and are maintained separately from any other academic or official file at the University by the Director of Student Life. Generally, information from the files is not released without the written consent of the Student. However, certain information may be provided without a student’s prior consent to individuals within the University who have a legitimate legal or educational interest in obtaining it, and to individuals outside the University under certain circumstances. (Please refer to the federal Family Educational Rights and Privacy Act of 1974, as amended)<sup>5</sup>

Access to this information in all cases is limited to those who have a legitimate need-to-know in compliance with relevant laws and management policies.

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**Sponsored by: Director of Student Life, Vice President for Student Affairs**

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<sup>5</sup> Code, Part XIII