
Note: For additional legally referenced material relating to this subject matter, see DAA(LEGAL). For information on student expression on campus, see FLA. For information on community expression on campus, see GD.

First Amendment

A governmental entity, including a college district, shall take no action respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the board for a redress of grievances. *U.S. Const. Amend. I, XIV*

College district employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to the employee's official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

Garcetti v. Ceballos, 547 U.S. 410 (2006); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) [See also GD]

**Academic Freedom
Exception**

Expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by the U.S. Supreme Court's customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analyses we conduct today would apply in the same manner to a case through speech related to scholarship or teaching. *Garcetti v. Ceballos*, 547 U.S. 410 (2006)

Academic Boycotts

An institution of higher education, including a college district, may not implement an academic boycott of a foreign country, as described by Education Code 51.987. [See EJC] *Education Code 51.987(b)-(c)*

**Protected
Expression on
Campus Under State
Law**

"Expressive activities" means any speech or expressive conduct protected by the First Amendment to the U.S. Constitution or by Texas Constitution Article I, Section 8, and includes assemblies, protests, speeches, the distribution of written material, the carrying of signs, and the circulation of petitions. The term does not include:

1. Commercial speech;
2. Defamation;
3. Unlawful harassment;

4. Incitement to imminent unlawful activity;
5. Obscenity; or
6. Threats to engage in unlawful activity.

Education Code 51.9315(a)(2)

Policy Required

Each institution of higher education shall adopt a policy detailing rights and responsibilities regarding expressive activities at the institution. The policy must:

1. Allow members of the university community to, subject to reasonable restrictions adopted under Education Code 51.9315(d), engage in expressive activities on campus, including by responding to the expressive activities of others, and student organizations and faculty to, subject to item 2b(2), below, and Education Code 51.9315(h), invite speakers to speak on campus;
2. Prohibit:
 - a. Using a device to amplify sound while engaging in expressive activities on campus during class hours that:
 - (1) Intimidate others;
 - (2) Interfere with campus operations; or
 - (3) Interfere with an institution employee's or a peace officer's lawful performance of a duty;
 - b. During the last two weeks of a semester or term, engaging in expressive activities:
 - (1) In the common outdoor areas of the institution's campus in a manner that materially and substantially disrupts the functioning of the institution;
 - (2) By inviting speakers to speak on campus;
 - (3) By using a device to amplify sound; or
 - (4) By using drums or other percussive instruments;
 - c. Camping or erecting tents or other living accommodations on campus;
 - d. Wearing a disguise or other means of concealing a person's identity while engaging in expressive activities on campus with the intent to:
 - (1) Obstruct the enforcement of the institution's rules or the law by avoiding identification;

- (2) Intimidate others; or
- (3) Interfere with an institution employee's or a peace officer's lawful performance of a duty;
- e. Lowering the institution's flag of the United States or of this state with the intent to raise the flag of another nation or a flag representing an organization or group of people; and
- f. Engaging in expressive activities on campus between the hours of 10:00 p.m. and 8:00 a.m.;
- 3. Establish disciplinary sanctions for students, student organizations, or employees who unduly interfere with the expressive activities of others on campus or violate an institution policy or state law;
- 4. Include a grievance procedure for addressing complaints of a violation of this section;
- 5. Require students enrolled at or employees of the institution to present proof of identity and status at the institution on request by an institution official on the institution's campus engaging in an official duty;
- 6. Be approved by a majority vote of the institution's governing board before final adoption; and
- 7. Be posted on the institution's internet website.

Nothing in Education Code 51.9315 limits the authority of an institution of higher education to adopt rules differentiating between the rights of students and employees to engage in expressive activities on campus and those of persons not affiliated with the institution.

Education Code 51.9315(f), (k)

**Common Outdoor
Areas**

An institution of higher education, including a college district, shall permit students enrolled at and employees of the institution to engage in expressive activities in the common outdoor areas of the institution's campus freely, as long as the expressive activity is not unlawful, and does not materially and substantially disrupt the functioning of the institution. *Education Code 51.9315(c)*

***Time, Place, and
Manner
Restrictions***

An institution of higher education may adopt a policy that imposes reasonable restrictions on the time, place, and manner of expressive activities of students enrolled at and employees of the institution in the common outdoor areas of the institution's campus if those restrictions:

1. Are narrowly tailored to serve a significant institutional interest;
2. Employ clear, published, content-neutral, and viewpoint-neutral criteria;
3. Provide for ample alternative means of expression; and
4. Allow members of the university community to assemble or distribute written material without a permit or other permission from the institution.

Education Code 51.9315(d)

Exception

Education Code 51.9315(c) and (d) do not limit the right of student expression at other campus locations or prohibit faculty members from maintaining order in the classroom. *Education Code 51.9315(e)*

Designated Public
Forums

The governing board of an institution of higher education shall designate the areas on the institution's campus that are public forums, consistent with the First Amendment to the U.S. Constitution and Texas Constitution Article I, Section 8. *Education Code 51.9315(d-1)*

Approval of
Speaker or
Determination of
Fee

In determining whether to approve a speaker to speak on campus or in determining the amount of a fee to be charged for use of the institution's facilities for purposes of engaging in expressive activities, an institution of higher education:

1. May consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:
 - a. The proposed venue and the expected size of the audience;
 - b. Any anticipated need for campus security;
 - c. Any necessary accommodations; and
 - d. Any relevant history of compliance or noncompliance by the requesting student organization or faculty member with the institution's policy adopted under Education Code 51.9315(f) and any other relevant policies; and
2. May not consider any anticipated controversy related to the event.

Education Code 51.9315(h)

Employee
Awareness

Each institution of higher education shall develop materials, programs, and procedures to ensure that the institution's employees

responsible for educating or disciplining students understand the requirements of this section and all policies adopted by the institution in accordance with this section. *Education Code 51.9315(j)*

Publication

Each institution of higher education shall make the institution's policies adopted in accordance with this section available to students enrolled at and employees of the institution by including the policies in the institution's student handbook and personnel handbook, providing a copy of each policy to students during the institution's freshman or transfer student orientation, and posting the policies on the institution's internet website. *Education Code 51.9315(i)*

Harmony with Law

Nothing in this section may be construed to limit or infringe on a person's right to freedom of speech or expression protected by the First Amendment to the U.S. Constitution or by Texas Constitution Article I, Section 8. *Education Code 51.9315(l)*

Religious Services

This state or a political subdivision of this state, including a college district, may not enact, adopt, or issue a statute, order, proclamation, decision, or rule that prohibits or limits religious services, including religious services conducted in churches, congregations, and places of worship, in this state by a religious organization established to support and serve the propagation of a sincerely held religious belief. *Tex. Const. Art. I, Sec. 6-a*

Places of Worship

A government agency, including a college district, or public official may not issue an order that closes or has the effect of closing places of worship in this state or in a geographic area of this state. "Place of worship" means a building or grounds where religious activities are conducted. *Civ. Prac. & Rem. Code 110.001(a), .0031*