
Note: For additional legally referenced material relating to this subject matter, see FA(LEGAL). For information on employee expression on campus, see DGC. For information on community expression on campus, see GD. For use of the college district's mail system, see CHE.

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*

Forum Analysis

Traditional Public Forum

A "traditional public forum" includes locations, such as sidewalks and parks, where members of the public have historically been permitted to gather and speak on any topic. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985). An institution's property is not a traditional public forum, with the exception of sidewalks, streets, and parks that are indistinguishable from surrounding city property. *Widmar v. Vincent*, 454 U.S. 263 (1981); *Brister v. Faulkner*, 214 F.3d 675 (2000)

If an institution's property is deemed a traditional public forum, the entity may exclude particular content if that entity can assert a compelling governmental interest that is narrowly tailored to address that interest, a standard referred to as the "strict scrutiny" standard. The institution can also enforce viewpoint-neutral time, place, and manner restrictions to meet a compelling governmental interest if a sufficient number of alternative communication channels are available. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983)

Designated Public Forum

A "designated public forum" is a forum that a college or university intentionally opens to the general public to discuss matters of public concern. *Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.*, 473 U.S. 788 (1985). Once designated, an institution may enforce reasonable time, place, and manner restrictions. *Widmar v. Vincent*, 454 U.S. 263 (1981). Any content limitations are subject to the strict scrutiny standard described above. *Chiu v. Plano Indep. School Dist.*, 260 F.3d 330 (5th Cir. 2001)

Limited Public Forum

A "limited public forum" is a forum that an institution opens to a particular group of speakers or for discussion regarding a particular topic. *Christian Legal Society v. Martinez*, 130 S.Ct. 2971 (2010); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995). Within a limited public forum, limits on expression must be viewpoint-neutral and reasonable in light of the purpose of the fo-

rum. The government may impose reasonable time, place, and manner restrictions, as long as these restrictions do not relate to the content of the expression. Cornelius v. NAACP Legal Def. and Educ. Fund, Inc., 473 U.S. 788 (1985)

To distinguish between a designated public forum and a limited public forum, courts consider two factors: (1) the intent of the institution regarding the forum, and (2) the forum's nature and compatibility with particular speech. Justice for All v. Faulkner, 410 F.3d 760 (5th Cir. 2005); Chiu v. Plano Indep. School Dist., 260 F.3d 330 (5th Cir. 2001)

Nonpublic Forum

If an institution has not opened a public forum, it remains a "non-public forum." Although limits on expression must be reasonable and viewpoint neutral even within a nonpublic forum, an institution will have greater discretion to control the content of speech within such a forum. Cornelius v. NAACP Legal Def. and Educ. Fund, Inc., 473 U.S. 788 (1985)

Time, Place, and
Manner Restrictions

The mere dissemination of ideas on the campus of an institution of higher education may not be restricted on the basis of conventions of decency, regardless of how offensive those ideas are to good taste. However, an institution has the authority to enforce reasonable regulations as to the time, place, and manner of speech and its dissemination. Papish v. Bd. of Curators, 410 U.S. 667 (1973); Healy v. James, 408 U.S. 169 (1972)

**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 this section 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)

STUDENT RIGHTS AND RESPONSIBILITIES
STUDENT EXPRESSION AND USE OF COLLEGE FACILITIES

FLA
(LEGAL)

<i>Exception</i>	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. <i>Education Code 51.9315(e)</i>
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. <i>Education Code 51.9315(d-1)</i>
Discrimination Prohibited	An institution of higher education may not take action against a student organization or deny the organization any benefit generally available to other student organizations at the institution on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization. <i>Education Code 51.9315(g)</i>
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. <i>Education Code 51.9315(h)</i>
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. <i>Education Code 51.9315(j)</i>
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*