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

Prohibited Acts

An officer or employee of the state or of a political subdivision of the state, including a college district, who is acting or purporting to act in an official capacity may not, because of a person's race, religion, color, sex, or national origin:

1. Refuse to permit the person to use facilities open to the public and owned, operated, or managed by or on behalf of the state or of a political subdivision of the state;
2. Refuse to permit the person to participate in a program owned, operated, or managed by or on behalf of the state or of a political subdivision of the state;
3. Refuse to grant a benefit to the person; or
4. Impose an unreasonable burden on the person.

Civ. Prac. & Rem. Code 106.001(a)

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 chan-

	nels are available. <u>Perry Educ. Ass'n v. Perry Local Educators' Ass'n</u>, 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. <u>Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.</u>, 473 U.S. 788 (1985). Once designated, an institution may enforce reasonable time, place, and manner restrictions. <u>Widmar v. Vincent</u>, 454 U.S. 263 (1981). Any content limitations are subject to the strict scrutiny standard described above. <u>Chiu v. Plano Indep. School Dist.</u>, 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. <u>Christian Legal Society v. Martinez</u>, 130 S.Ct. 2971 (2010); <u>Rosenberger v. Rector & Visitors of Univ. of Va.</u>, 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 forum. The government may impose reasonable time, place, and manner restrictions, as long as these restrictions do not relate to the content of the expression. <u>Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.</u>, 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. <u>Justice for All v. Faulkner</u>, 410 F.3d 760 (5th Cir. 2005); <u>Chiu v. Plano Indep. School Dist.</u>, 260 F.3d 330 (5th Cir. 2001)
Nonpublic Forum	If an institution has not opened a public forum, it remains a "nonpublic 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. <u>Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.</u>, 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. <u>Papish v. Bd. of Curators</u>, 410 U.S. 667 (1973); <u>Healy v. James</u>, 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 United States 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)

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)*

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. *Education Code 51.9315(g)*

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)*

Fees for Use

The governing board of each junior college district shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, use, or availability of all or any of its property, buildings, structures, activities, operations, or facilities, in such amounts and in such manner as may be determined by such board. *Education Code 130.123(c)*

**Facilities as Polling
Places**

The entity, including a college district, that owns or controls a public building shall make the building available for use as a polling place in any election that covers territory in which the building is located. If more than one authority requests the use of the building for the same day and simultaneous use is impractical, the entity that owns or controls the building shall determine which authority may use the building. *Election Code 43.031(c)*

No charge, including a charge for personnel, utilities, or other expenses incurred before or after regular business hours, may be

made for the use of a public building for a polling place if the day of the election is a day on which the building is normally open for business. If the day of an election is a day on which the building is not normally open for business, a charge may be made only for reimbursement of the actual expenses resulting from use of the building in the election. *Election Code 43.033(a)*

Electioneering

“Electioneering” includes the posting, use, or distribution of political signs or literature. The term does not include the distribution of a notice of a party convention authorized under Election Code 172.1114. *Election Code 61.003(b)(1), 85.036(f)(2)*

During the Regular Voting Period

A person commits an offense if, during the voting period and within 100 feet of an outside door through which a voter may enter the building in which a polling place is located, the person loiters or electioneers for or against any candidate, measure, or political party.

The entity that owns or controls a public building being used as a polling place may not, at any time during the voting period, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.

Election Code 61.003(a)-(a-1)

During Early Voting

During the time an early voting polling place is open for the conduct of early voting, a person may not electioneer for or against any candidate, measure, or political party in or within 100 feet of an outside door through which a voter may enter the building or structure in which the early voting polling place is located. A person commits an offense if the person electioneers in violation of this provision.

The entity that owns or controls a public building being used as an early voting polling place may not, at any time during the early voting period, prohibit electioneering on the building's premises outside of the area described above, but may enact reasonable regulations concerning the time, place, and manner of electioneering.

Election Code 85.036(a)-(b), (d)

Political Party Conventions

No charge may be made for the use of a public building for a precinct, county, or senatorial district convention except for reimbursement for the actual expenses resulting from use of the building for the convention. The reimbursing authority is entitled to an itemized statement of expenses before making remittance. A person commits an offense if the person assesses a charge for the use of a public building for a precinct, county, or senatorial district convention in violation of this provision. *Election Code 174.0631*

Use by Religious Organizations

An institution of higher education, including a college district, may allow a religious organization to use the institution's facilities to host religious worship, services, sermons, or assemblies only if:

1. The use of the facilities does not interfere with the institution's primary educational mission;
2. The religious organization provides the fair market rental value or reimbursement for utilities, security, and other costs related to the use of the facilities as determined by the institution or the institution's governing board, unless waived by the institution or the institution's governing board;
3. The religious organization agrees to be held liable for any damages that occur in the organization's use of the facilities;
4. The religious organization is subject to the same rental terms for the use of the facilities that a nonreligious organization would be subjected to for that use; and
5. Any additional requirements imposed by other law for the use of the facilities are satisfied.

This section may not be construed to require an institution of higher education to allow a religious organization to use the institution's facilities for religious purposes if the institution elects not to do so.

Education Code 51.984(b), (d)

Sanctions Prohibited

A state agency, political subdivision, or other governmental entity may not impose a penalty or sanction on or deny funding to an institution of higher education based on the institution's decision to allow a religious organization to use the institution's facilities in the manner described above.

A state agency, political subdivision, school district, or other governmental entity may not impose a penalty or sanction on or deny funding to a school district or open-enrollment charter school based on the district's or school's decision to allow a religious organization to use the district's or school's facilities in the manner provided by Education Code 11.173(a).

Education Code 11.173(c), 51.984(c)

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 es-

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*

Search and Rescue Dogs

"Search and rescue dogs" mean canines that are trained or being trained to assist a nationally recognized search and rescue agency in search and rescue activities. *Health and Safety Code 785.001(4)*

Public Facility

The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog admittance to the facility. The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog's handler admittance to the facility because of the presence of the handler's search and rescue dog. The discrimination prohibited by this section includes:

1. Refusing to allow a search and rescue dog or the dog's handler to use or be admitted to a public facility;
2. A ruse or subterfuge calculated to prevent or discourage a search and rescue dog or the dog's handler from using or being admitted to a public facility; and
3. Failing to make a reasonable accommodation in a policy, practice, or procedure to allow a search and rescue dog or the dog's handler to be admitted to a public facility.

Health and Safety Code 785.002(a)-(b), (d)

Transportation

The owner, manager, or operator of a common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within this state, or an employee or other agent of the owner, manager, or operator, may not:

1. Refuse to accept as a passenger a search and rescue dog or the dog's handler; or
2. Require the dog's handler to pay an additional fare because of the search and rescue dog.

Health and Safety Code 785.002(c)

Housing

A search and rescue dog's handler is entitled to full and equal access, in the same manner as other members of the general public,

to all housing accommodations offered for rent, lease, or compensation in this state, subject to any condition or limitation established by law that applies to all persons, except that the handler may not be required to pay an extra fee or charge or security deposit for the search and rescue dog. *Health and Safety Code 785.002(f)*

Handler	“Handler” means a person who handles a search and rescue dog and who is certified by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency. <i>Health and Safety Code 785.001(1)</i>
Credentials	A person may ask a search and rescue dog handler to display proof that the handler is a person with a certification issued by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency. <i>Health and Safety Code 785.005</i>
Responsibilities	A handler who accompanies a search and rescue dog shall keep the dog properly harnessed or leashed. A person may maintain a cause of action against a dog’s handler for personal injury, property damage, or death resulting from the failure of the dog’s handler to properly harness or leash the dog under the same law applicable to other causes brought for the redress of injuries caused by animals. The handler of a search and rescue dog is liable for any property damage caused by the search and rescue dog to a public facility or to housing accommodations. <i>Health and Safety Code 785.004(a)-(b)</i>
Policy	A policy relating to the use of a public facility by a designated class of persons from the general public may not prohibit the use of the particular public facility by a search and rescue dog or the dog’s handler. <i>Health and Safety Code 785.002(e)</i>
Penalty	A person who violates Health and Safety Code 785.002 commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$300 or more than \$1,000. It is a defense to prosecution that the actor requested the search and rescue dog handler’s credentials under Health and Safety Code 785.005 and the handler failed to provide the actor with the credentials. <i>Health and Safety Code 785.003</i>