

Expressive Activity

Texas A&M University
Procedures, Policies, & Practices

Division of Student Affairs
Expressive Activity Committee

U.S. Constitution



“Congress shall make no law . . .
abridging the freedom of speech, or of
the press; or the right of the people to
peaceably assemble . . . “

From the First Amendment to the Constitution, ratified December 15, 1791.

“. . . No State shall make or enforce
any
law which shall abridge the privileges
or immunities of citizens of the
United States . . .”

From the Fourteenth Amendment to the Constitution, ratified July 9, 1868

The Courts



Healy v. James, 408 U.S. 169 (1972).

“The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.”

Healy v. James, 408 U.S. 169 (1972).

“The college classroom with its surrounding environs is peculiarly the “marketplace of ideas,” . . .

“Healy v. James makes it clear that the mere dissemination of ideas – no matter how offensive to good taste – on a state university campus may not be shut off in the name alone of conventions of decency.”

Papish v. Board of Curators of the University of Missouri Et Al, 410 U.S. 667 (1973).

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The University's Responsibility

- Speech and assembly policies or codes should strike a delicate balance, upholding fundamental individual freedoms while safeguarding the school's academic and business operations so as to protect against negative headlines, campaigns from national advocacy organizations, and the specter of litigation.

Responding to Campus Protests, NASPA Legal Links, p. 2

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

From the Supreme Court case: Tinker v. Des Moines, 393 U.S. 503 (1969).



“The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent ...”

From the Supreme Court case: Healy v. James, 408 U.S. 169 (1972).

What is Expressive Activity

- ...the “function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger.” *Terminiello v. Chicago (1949). Fire, p.17.*
- Supreme Court has consistently held the First Amendment to protect much more than mere “words.” As the Court noted in the previously discussed case of *Cohen v. California (1971)*, the amendment protects not just speech but “communication.” (*Fire, p.28*)



Speech & Communication

- Speech has been broadly defined as expression that includes, but is not limited to, what you wear, read, say, paint, perform, believe, protest, or even silently resist.
- “Speech activities” include leafleting, picketing, symbolic acts, wearing armbands, demonstrations, speeches, forums, concerts, motion pictures, stage performances, remaining silent, and so on.

Guide to Free Speech on Campus, FIRE, p. 29

Avoid Restriction of Pure Speech

- Pure speech, which includes spoken or written words communicating the thoughts, opinions, or ideas of the speaker, receives the highest level of constitutional protection, as courts will review any content-related restriction under the strict scrutiny standard.
- Symbolic speech, which involves conveying a message through expressive conduct or imagery, is a form of pure speech. Protected pure and symbolic speech may not be prevented solely because the school believes the message may offend or upset an audience.
 - *Responding to Campus Protests, NASPA Legal Links, p. 4*



University guidelines and policies should advise students of the types of expression that will be protected, allowed with regulation, or prohibited.



Policies should be clear and content-neutral to avoid:

- Contextual or substantive permission to hold events, use space, or operate equipment.
- Lengthy or burdensome authorization processes for scheduling expressive activities.
- Heckler's Vetoes: Anticipating a disturbance is insufficient reason to restrict speech. A school must have actual evidence of imminent disruption before interfering with expression.

Responding to Campus Protests, NASPA Legal Links, p. 4

Speech Rights Are Not Absolute

A content-neutral regulation of speech on a public forum “must be narrowly tailored to serve a significant government interest and must leave open ample alternative channels of communication.”

The Supreme Court has explained that “[a] government regulation that allows arbitrary application is inherently inconsistent with a valid time, place, and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view.”

Pro Life Cougars v. University of Houston, 295 F. Supp. 2nd 575 (2003)
Dr. Dave Parrott

Time, Place, and Manner...

The U.S. Supreme Court requires that these restrictions be content-neutral, related to furthering a school's important interest, be narrowly tailored to achieve that interest, and offer alternative opportunities for speech.

- Time – Limitations on the length of the activity, frequency, hour, and date of expression
- Place – Specifying areas available for free speech requiring space reservation, and the limiting or prioritizing the categories of users for particular locations.
- Manner – Limitations to the form (not content) of the communication.

Forums on University Campuses

- The courts recognizes the existence of four categories of forums, two of which are subject to strict scrutiny (traditional public forum and designated public forum) and two of which are subject to a reasonableness standard (limited public forum and non-public forum).

Roberts v. Haragan 346 F. Supp. 2d 853 (N.D. Tex 2004)

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Traditional Public Forum

- Traditional public forums include the University's public streets, sidewalks, parks, and similar common areas. These areas are generally available for expressive activity, planned or spontaneous, for the individual or small groups (generally where a crowd of 25 or less will be present, and/or where an event is not promoted in advance, and/or when an event is not sponsored by a student organization) at any time without the need for reservation, or prior approval. (Obstructing or impeding the flow of vehicular or pedestrian traffic is prohibited.)

Designated Public Forum

- Include other parts of campus that may become temporarily available for expressive activity as designated by the university.
- These temporary locations, while in existence, should be treated similar to public streets, sidewalks, and parks in terms of access and availability for expressive activity.

Limited Public Forums

- Limited public forums have limited open access for public expression, or they may be limited to particular groups or to particular topics.
- Examples of limited public forums is when space is reserved for certain topics or speakers.

Non Public Forums

- Non public forums are areas that are not traditional public forums or designated public forums. These include areas that are not by tradition or designation forums for public communication. These forums will be restricted to use for their intended purpose and are not available for public expressive activity.
- Examples include, but are not limited to, classrooms, residence hall rooms, faculty and staff offices, academic buildings, administration buildings, medical treatment facilities, libraries, research and computer laboratories, the MSC lawn, Easterwood Airport, Brayton Fire Training School, and research facilities.

TAMU Policies & Procedures

- Political Campaign Events and Partisan Political Activities on Texas A&M University Property – 07.03.01.M1
- RECOGNIZED STUDENT ORGANIZATION SPONSORSHIP OF CAMPAIGN EVENTS - 07.03.01.M1 (4)
- Political Campaign Events and Partisan Political Activities on Texas A&M University Property – 07.03.01.M1
- Temporary Tent or Canopy Installation on Campus - 21.99.09.M0.01
- Appendix I: Disruptive Activities on Campus or Property of Educational Institutions
- Appendix XI

Political Campaign Events and Partisan Political Activities on Texas A&M University Property – 07.03.01.M1

- INSTITUTIONAL NEUTRALITY
- In order to maintain its integrity as a public institution, it is critical that Texas A&M maintain neutrality in regard to any partisan political activity. Texas A&M University cannot endorse, support or promote any political candidate (either incumbents or new office seekers, members of their staffs, or their campaign representatives) or any partisan political activity. Further, it is the intent and expectation of Texas A&M University that all faculty, staff, and students avoid any behavior that could reasonably be interpreted as official University endorsement, support, or promotion of political candidates or partisan political activities. Nothing in these rules should be construed to limit the right or ability of any member of the University community to express personal opinions or to exercise his or her right to engage in political activities outside his or her official capacity or affiliation with the University, within the limits of the TAMUS Ethics Policy 07.01.

Recognized Student Organization Sponsorship of Campaign Events 07.03.01.M1 (4)

- In the spirit of maintaining a “marketplace of ideas,” [officially recognized student organizations may sponsor partisan political activities or events on campus in accordance with all applicable University rules as set forth in the Texas A&M University Student Rules.](#) In sponsoring a partisan political activity on campus, a recognized student organization or group of organizations must be responsible for communicating and collaborating with appropriate university officials about the event and cannot delegate any responsibility for the event to non-student organizations unless mutually agreed upon by appropriate university officials, the sponsoring organization, and the office of the Vice President for Student Affairs.

Temporary Tent or Canopy Installation on Campus - 21.99.09.M0.01

1.1

Tents are limited to appropriate outdoor areas as determined by the University. Tents may never be erected on the MSC Lawn, the Chapel Grounds, Bonfire Memorial, Rudder Statue Area or Cain Park, with the exception of the 30-foot wide area that runs along and adjacent to Parking Lot 39. Other areas such as the Simpson Drill Field, Duncan Field, Corps Quad, Athletic Fields, recreation fields and other similarly designated University sites are restricted and require prior approval. The set-up for tents varies according to its use and the site-specific guidelines.

Temporary Tent or Canopy Installation on Campus

- 1.1.2 Tents erected for use other than private reunions or picnic activities (unless required based on size, enclosure, etc. - see tent guidelines) shall conform to this SAP and be permitted and inspected as required by the general tent guidelines located on the Environmental Health and Safety website - <http://ehsd.tamu.edu>.
- 1.1.3 Overnight occupancy of tents is not allowed except for special events that are exclusively student events and approved in advance by the Office of the Vice President for Student Affairs or a designee. For these types of events, tents must be removed no later than four hours after the event is finalized. Special events that are exclusively student events must be sponsored by a university department or a student organization and a risk management plan must be completed.

Appendix I: Disruptive Activities on Campus or Property of Educational Institutions

Disruptive activity means:

1. Obstruction or restraining the passage of persons in an exit, entrance or hallway of any building;
2. Seizing control of any building or portion of a building for the purpose of interfering with any university-authorized activity;
3. Preventing or attempting to prevent by force or violence or the threat of force or violence, any lawful assembly authorized by the university;
4. Disrupting by force or violence or the threat of force or violence, a lawful assembly in progress; or
5. Obstructing or restraining the passage of any person at an exit or entrance to the university or property or attempting to prevent by force or violence or the threat of force or violence the ingress or egress of any persons to or from said property.

Appendix I

- A lawful assembly is disrupted when any person in attendance is rendered incapable of participating in the assembly due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur.
- This section shall not be construed to infringe upon any right of free speech or expression guaranteed by the Constitution of the United States or the State of Texas.

Appendix I: Subchapter of the Texas Education Code

E-1. Section 51.231-51.244 Texas Education Code

51.231. Definition of Periods of Disruption

For purposes of this subchapter, a period of disruption is any period in which it reasonably appears that there is a threat of destruction to institutional property, injury to human life on the campus or facility, or a threat of willful disruption of the orderly operation of the campus or facility.

51.232. Identification of Persons on Campus

(a) During periods of disruption, as determined by the chief administrative officer of a state-supported institution of higher education, the chief administrative officer, or an officer or employee of the institution designated by him to maintain order on the campus or facility of the institution, may require that any person on the campus or facility present evidence of his identification, or if the person is a student or employee of the institution, his student or employee official institutional identification card, or other evidence of his relationship with the institution.

(b) If any person refuses or fails upon request to present evidence of his identification, or if the person is a student or employee of the institution, his student or employee official identification card, or other evidence of his relationship with the institution, and if it reasonably appears that the person has no legitimate reason to be on the campus or facility, the person may be ejected from the campus or facility.

Appendix XI

Texas A&M Rules on Freedom of Expression

- The university will protect the rights of freedom of speech, expression, petition and peaceful assembly as set forth in the U.S. Constitution. Texas A&M University maintains its right to regulate reasonable time, place and manner restrictions concerning acts of expression and dissent.

Scheduling Facilities & Grounds

- Reservable Free Speech at TAMU
- Rudder Fountain Area, Lawrence Sullivan Ross Statue Area, and the West Mall Area are reservable free speech areas and will be reserved at the request of students and non-students for expressive activity.



Responding to Civil Discourse

- Recognize the challenges of civil discourse
- Build relationships through communication with all parties/stakeholders
- Established role definition and coordination
- Hiring and training with an emphasis on responding on civil discourse and de-escalating situations
- Communicating with protesters prior to, during, and after the event
- Tempered response from Police and Administrators during demonstrations/events
- Documenting activity during demonstrations
- Timely post event review
- Implementation of recommendations and follow up

*Adapted from Response to Protest on UC
Campuses Report 2012*

Practices to Consider

- Uniform reservable space form
- Website that explains how to reserve space for demonstrations on campus
- Available proctor list and comprehensive reservable space list
- Campus Incident Response Team
- Dedicated training and coordination of front line faculty, staff, and Police
- Establish a communication diagram to ensure all necessary stakeholders receive information in a uniform and timely manner