



EXPRESSIVE ACTIVITY

Texas A&M University
Procedures, Policies, and Practices

Division of Student Affairs
Expressive Activities Committee

August 2020

U.S. CONSTITUTION

We the People
insure domestic Tranquillity, provide for the common
and our Posterity, do ordain and establish this 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 Dec. 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 14th 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)*

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



► PUBLIC UNIVERSITIES' COMMITMENT TO FREE SPEECH

Association of Public & Land-Grant Universities

- Free speech is the lifeblood of our democracy. It is the foundation of academic inquiry. And it is essential for providing a robust learning environment for an increasingly diverse student body. As public institutions, public universities are tightly held to constitutional standards for protecting speech.

Association of American Universities

- The free and open exchange of ideas and information is fundamental to the educational mission of AAU universities. The robust discussions and debates that occur at research universities have been central to the advancement of democracy, the creation of knowledge, the fostering of educational excellence, and the promotion of social progress.



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

-Tinker v. Des Moines, 393 U.S. 503 (1969)

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.*

- The U.S. 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



While we may deem some speech to be odious, disgraceful, and antithetical to our values, our campuses are and should remain places where ideas can be expressed free of disruption, intimidation, and violence.

–Association of American Universities

With a mission to advance the public interest, public universities have a responsibility to not just be outspoken advocates for free speech, but leaders in providing a forum for civil discourse and disagreement.

–Association of Public and Land-Grant Universities



► 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, 259 F. Supp. 2nd 575 (2003)

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 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)

► 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 unavailable 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

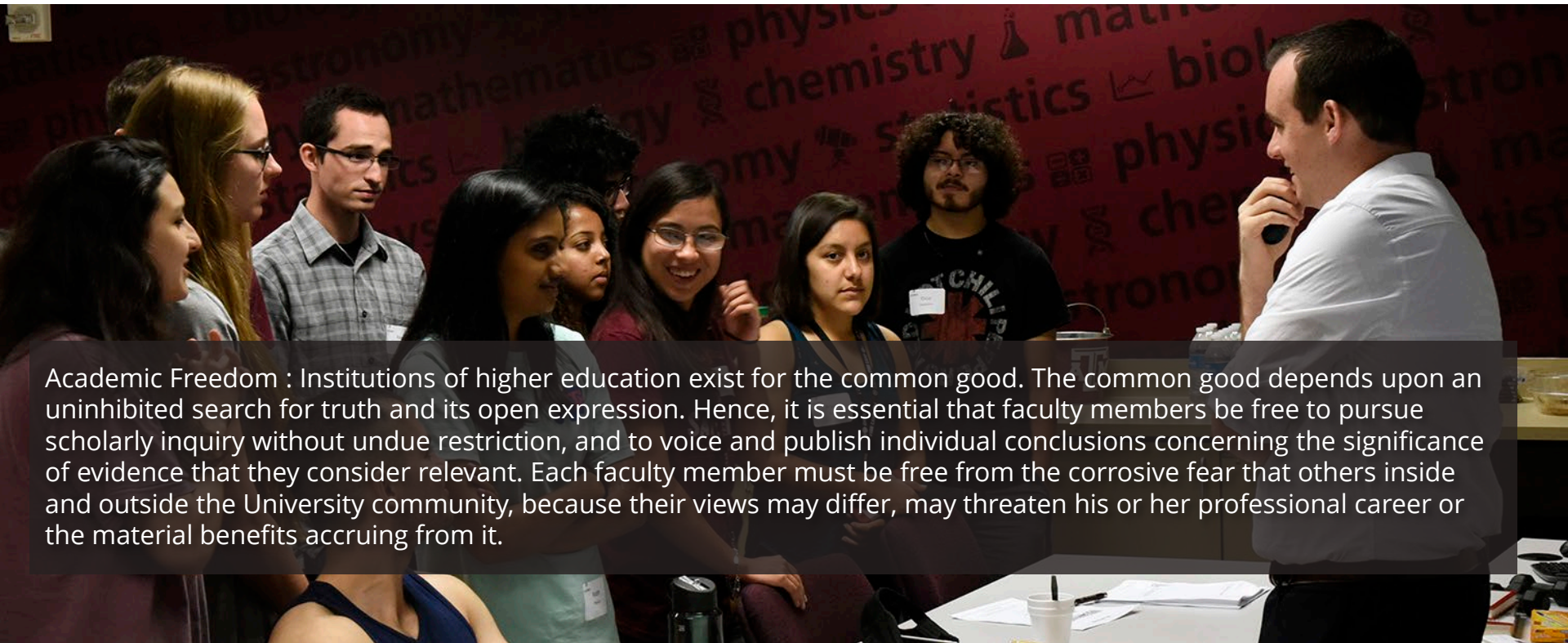
- Expressive Activity on Campus - 08.99.99.M1
- University Statement on Academic Freedom, Responsibility, Tenure, and Promotion – 12.01.99.M2
- Campus Signage – 51.99.99.M0.02
- Political Campaign Events and Partisan Political Activities on Texas A&M University Property – 07.03.01.M1
- Recognized Student Organization Sponsorship of Campaign Events – 07.03.01.M1 (4)
- 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 – Student Rules

08.99.99.M1 – UNIVERSITY RULE: EXPRESSIVE ACTIVITY ON CAMPUS

- In 2019, the 86th Texas Legislature passed Senate Bill 18, addressing the protection of campus expressive activities. This new law adds Texas Education Code Section 51.9315, which requires that each public institution of higher education “adopt a policy detailing students’ rights and responsibilities regarding expressive activities” on its campus.”
 - The new Texas A&M University rule was approved May 14, 2020.
 - Read the rule at u.tamu.edu/ExpressiveActivityRule



12.01.99.M2 – UNIVERSITY STATEMENT ON ACADEMIC FREEDOM, RESPONSIBILITY, TENURE, AND PROMOTION



Academic Freedom : Institutions of higher education exist for the common good. The common good depends upon an uninhibited search for truth and its open expression. Hence, it is essential that faculty members be free to pursue scholarly inquiry without undue restriction, and to voice and publish individual conclusions concerning the significance of evidence that they consider relevant. Each faculty member must be free from the corrosive fear that others inside and outside the University community, because their views may differ, may threaten his or her professional career or the material benefits accruing from it.

CAMPUS SIGNAGE - 51.99.M0.02 (2.2.4)

- Temporary signage may include other types of signage including, but not limited to, flyers, posters, or chalking.
 - 2.2.4.1 Flyers and posters may not be placed on structures such as light poles, street posts, trashcans, newspaper stands nor can they be placed on or in landscaping such as trees, shrubs or gardens/garden beds.
 - 2.2.4.2 Chalking is allowed only with water-soluble chalk on flat, horizontal surfaces (e.g., pedestrian sidewalks/walkways) and must be fully exposed to the rain. Chalking is not permitted on any vertical surface including, but not limited to buildings, steps, signs, statues, benches, picnic tables, and walls—including the walls of the Pedestrian Passageway and the Vehicular Passageway, both off of Wellborn Road.



UNIVERSITY STATEMENT ON ACADEMIC FREEDOM, RESPONSIBILITY, TENURE, AND PROMOTION 12.01.99.M2

Each faculty member is entitled to full freedom in the classroom in discussing the subject being taught. Within the bounds of professional behavior, faculty members also have full freedom to express disagreement with other members of the university community. Although a faculty member observes the regulations of the institution, he or she maintains the right to criticize and seek revision. Faculty members also are citizens of the nation, state, and community; therefore, when speaking, writing, or acting outside the classroom, they must be free from institutional censorship or discipline. On such occasions faculty members should make it clear that they are not speaking for the institution.



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 07.0.

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 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 (STUDENT RULES): 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 – STUDENT RULES

- 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 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 AND 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 to 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
- Follow up with communities impacted

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

► RESOURCES

Free Speech and the Right to Associate: TAMU Position Paper
tx.ag/TAMUFreeSpeechPositionPaper

Association of American Universities (AAU) Presidents and
Chancellors Reaffirm Commitment to Free Speech on Campus
tx.ag/AAUFreeSpeechStatement

Association of Public & Land-Grant Universities (APLU)
Statement on Public Universities' Commitment to Free Speech
tx.ag/APLUFreeSpeechStatement