

F.9.1.1 (Procedure) Protected Expression on Campus-Students' Rights and Responsibilities

Responsible Department: Vice Chancellor for Student Success

Based on Board Policy: F.9.1 - Protected Expression on Campus-Students' Rights and Responsibilities

Board Approved: 7-28-20

Last Amended:

The College District and its colleges recognize that the freedom of speech and expression and right to peaceful assembly are fundamental rights and central to their educational mission. This procedure constitutes the "policy" required by Section 51.9315(f) of the Texas Education Code to detail students' rights and responsibilities regarding expressive activities. Consistent with Section 51.9315(f), the common outdoor areas of the Alamo Colleges and other College District buildings are deemed traditional public forums, subject to reasonable restrictions of time, place, and manner of expressive activity.

I. Definitions.

1. "Alamo College" means Northeast Lakeview College, Northwest Vista College, Palo Alto College, San Antonio College, or St. Philip's College, all of which are the institutions of higher education of the Alamo Community College District.
2. "Benefit" includes:
 - (a) Recognition by or registration with an Alamo College;
 - (b) The use of an Alamo College's or College District's facilities for meetings or speaking purposes;
 - (c) The use of channels of communication controlled by an Alamo College or the College District;
 - (d) Funding sources made generally available to student organizations by an Alamo College or the College District. *Tex. Educ. Code § 51.9315(a)(1)*.
3. "College community" means students, faculty members and employed staff of an Alamo College."
4. "Expressive activities" means any speech or expressive conduct protected by the First Amendment to the United States Constitution or by Article 1, Section 8, Texas Constitution and includes assemblies, protests, the distribution of written materials, the carrying of signs, and the circulation of petitions. The term does not include commercial speech. *Tex. Educ. Code § 51.9315(a)(2)*.
5. "Freedom of speech" under the U.S. Constitution: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the rights of the people peaceably to assemble, and to petition the government for a redress of grievances. *U.S. Constitution, Amendment 1*.

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6. "Freedom of speech" under the Texas Constitution: "Freedom of Speech and Press; Libel. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. *Texas Constitution, Article 1, Section 8.*
7. "Student" means a person who is currently enrolled at one or more of the Alamo Colleges, or has been enrolled at one or more of the Alamo Colleges in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows.
8. "Student organization" includes any organization that is composed mostly of students enrolled at an Alamo College and that receives a benefit from the college, as defined below. *Tex. Educ. Code § 51.9315(a)(4).*

II. General Rules.

1. Freedom of speech and assembly are central to the mission of institutions of higher education, such as each of the Alamo Colleges. *Tex. Educ. Code § 51.9315(b)(1).*
2. All common outdoor areas of the Alamo Colleges campuses are deemed traditional public forums. *Tex. Educ. Code § 51.9315(c)(1).*
3. Any person shall be permitted to engage freely in expressive activities in those common outdoor areas of the Alamo Colleges campuses so long as the person's conduct:
 - (a) Is not unlawful; and
 - (b) Does not materially and substantially disrupt the functioning of an Alamo College or the College District. *Tex. Educ. Code § 51.9315(c)(2).*
4. Notwithstanding (2) and (3) above, the College District exercises its right as provided by the Texas Education Code to impose reasonable restrictions on the time, place, and manner of expressive activities in the common outdoor areas of the Alamo Colleges campuses which:
 - (a) Are narrowly tailored to serve a significant institutional interest;
 - (b) Employ clear, published, content-neutral and viewpoint-neutral criteria;
 - (c) Provide for ample alternative means of expression; and

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(d) Allow members of the college community to assemble or distribute written material without a permit or other permission from an Alamo College. *Tex. Educ. Code § 51.9315(d)(1-4).*

The reasonable restrictions are imposed to preserve the educational mission of the colleges and maintain order so that the functioning or safety of the colleges or College District is not materially and substantially disrupted. *Tex. Educ. Code § 51.9315(b)(1) and (c)(2)(B).*

III. Reasonable Restrictions.

Reasonable restrictions on the time, place, and manner of expressive activities in the common outdoor areas of the Alamo Colleges campuses include the following:

1. A person intending to engage in expressive activity on campus, whether individually or on behalf of an organization or group is encouraged but not required to reserve a space or area in advance on a form, attached as Appendix A, with the Student Life Office of the college where the expressive activity is to take place. The purpose of reserving a space in a common outdoor area is to ensure no conflict with scheduled activities and accommodate the expressive activity in terms of expected size of the participants and audience and need for campus security. If the requested common outdoor area for conducting expressive activity is not available, an alternative common outdoor area will be offered. The form does not constitute a permit or other permission to assemble or distribute written material from the College District or a College. *Tex. Educ. Code § 51.9315(d)(4).*
2. Expressive activities in the common outdoor areas must be conducted and concluded when the College District and its colleges are open for business operations and classes are in session. Exceptions may be granted by the college Vice President for Student Success (VPSS) or designee or College President.
3. Expressive activity in the common outdoor areas (a) must not obstruct passageways, doorways, ramps for the disabled, loading docks, parking spaces, pedestrian or vehicular traffic; (b) must not be extended into the buildings, hallways, classrooms, laboratories, or stairwells; (c) must not be conducted within a ten-foot clearance around entrances or the perimeter of a college building, and (d) must not be conducted through or the use of sound amplifying devices. Shouting, group chanting, and acoustic musical instruments are excluded from the latter but are subject to the general rules on material and substantial disruption. Open flames are prohibited. Persons conducting expressive activities are not permitted to hang signs or banners on campus buildings, landscaping, hardscape, or trees.
4. The person(s) conducting the expressive activity, whether individually or on behalf of an organization or group, are required (a) to clean up after the expressive activity ends, including

F.9.1.1 (Procedure) Protected Expression on Campus-Students' Rights and Responsibilities

Responsible Department: Vice Chancellor for Student Success

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by picking up literature abandoned, left behind or discarded by them or others; and (b) to furnish any tables, chairs, or other items required for an expressive activity.

5. The display or distribution of obscene materials as defined in § 43.21 in the Texas Penal Code is prohibited at the Alamo Colleges. "Obscene" means material or a performance that:
 - (a) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;
 - (b) depicts or describes:
 - (i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or
 - (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
 - (c) taken as a whole, lacks serious literary, artistic, political, and scientific value. *Tex. Penal Code § 43.21(a)(1)(A),(B)(i)(ii)(C)*.

"Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three-dimensional obscene device. *Tex. Penal Code § 43.21(a)(2)*.

"Performance" means a play, motion picture, dance, or other exhibition performed before an audience. *Tex. Penal Code § 43.21(a)(3)*. "Patently offensive" means so offensive on its face as to affront current community standards of decency. *Tex. Penal Code § 43.21(a)(4)*.

"Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same. *Tex. Penal Code § 43.21(a)(5)*.

"Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale. *Tex. Penal Code § 43.21(a)(6)*. "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs. *Tex. Penal Code § 43.21(a)(7)*.

6. A person commits the offense of display or distribution of obscene materials under Texas Penal Code § 43.21 if he intentionally or knowingly displays or distributes an obscene photograph,

F.9.1.1 (Procedure) Protected Expression on Campus-Students' Rights and Responsibilities

Responsible Department: Vice Chancellor for Student Success

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drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution. *Tex. Penal Code § 43.22(a)*. An offense under Texas Penal Code § 43.22(a) is a class C misdemeanor. A person who display or distributes obscene materials during an expressive activity may be detained or charged by campus police and taken to the county magistrate's office for booking.

7. Conduct that would be considered a criminal offense under the Texas Penal Code is prohibited at all times, including at or during an expressive activity. *Texas. Educ. Code § 51.201*. This includes trespassing on the grounds of the College District or any of the Alamo Colleges and damaging or defacing any of the buildings, statues, monuments, memorials, trees, shrubs, grasses, or flowers on the grounds of any of the College District or College campuses. *Texas Educ. Code § 51.204(b)(1)(2)*.
8. The open or unlicensed carrying or use of a weapon as defined by the Texas Penal Code is prohibited in the outdoor common areas, including at or during an expressive activity. *Texas Penal Code §§ 46.02, 46.03*. Under the Texas Penal Code, a weapon includes a club, firearm, explosive weapon, hoax bomb, tire deflation device, and knife that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument. *Texas Penal Code §§ 46.01, 46.05*.
9. Members of the college community are allowed to assemble or distribute written material without a permit or other permission from an Alamo College in the common outdoor areas. *Tex. Educ. Code § 51.9315(d)(4)*.

IV. Students' Rights and Responsibilities

1. The General Rules above do not limit the right of student expression at other campus locations or prohibit a faculty member from maintaining order in the classroom. *Tex. Educ. Code § 51.9315(e)(1-2)*.
2. Subject to the reasonable restrictions stated above, any person may engage in expressive activities on campus, including by responding to the expressive activities of others. *Tex. Educ. Code § 51.9315(f)(1)(A)*. Students, student organizations, faculty members, staff members, and members of the public have the right to assemble, speak, and attempt to attract the attention of others as provided above, and likewise have the corresponding right to listen to the speech of others and accept written communications of speech or to ignore the speech of others and refuse written communications of speech.

F.9.1.1 (Procedure) Protected Expression on Campus-Students' Rights and Responsibilities

Responsible Department: Vice Chancellor for Student Success

Based on Board Policy: F.9.1 - Protected Expression on Campus-Students' Rights and Responsibilities

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3. Student organizations and faculty may invite speakers to speak on campus, but the college has the right to approve a speaker on campus when a fee is to be charged for use of the institution's facilities for the purposes of engaging in expressive activities or the speaker is required to be compensated. *Tex. Educ. Code § 51.9315(f)(1)(B) and (h)*. Speaker approval must be sought from the college Vice President for College Services (VPCS), including if a contract with the speaker is involved, the speaker or organizer requires compensation, indoor space for the speaker's presentation is sought, and/or the charging of a facility use fee is to be determined. Faculty, students, and student organizations do not have the authority to execute contracts or agreements that bind a college or College District.
4. 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, a college or the College District:
 - (a) May consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as:
 - (1) the proposed venue and the expected size of the audience;
 - (2) any anticipated need for campus security;
 - (3) any necessary accommodations; and
 - (4) any relevant history of compliance or noncompliance by the requesting student organization or faculty member with this procedure and any other relevant policies and procedures. *Tex. Educ. Code § 51.9315(h)(1)(A-D)*.
 - (b) May not consider any anticipated controversy related to the event. *Tex. Educ. Code § 51.9315(f)(2)*.
 - (c) Should consult Board Procedure C.1.3.3 on Facilities Use and Fees.
5. A college may not take action against a student organization or deny the organization any benefit generally available to other student organizations at any of the Alamo Colleges or the College District on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization. *Tex. Educ. Code § 51.9315(g)*.

V. Grievance Procedure per *Tex. Educ. Code § 51.9315(d)(1-3)*.

1. It is considered a violation of this procedure and its policy, and any corresponding policy and procedure for employees, for a student or employee, including a faculty member, to unduly interfere with the expressive activities of others. Written complaints of such conduct may be submitted to the college VPSS within five (5) business days of the expressive activity on a form attached hereto as Appendix B.

F.9.1.1 (Procedure) Protected Expression on Campus-Students' Rights and Responsibilities

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2. Within five (5) business days of receiving the complaint, the College VPSS or designee will (a) acknowledge the complaint to the complainant and the date it was received; (b) notify the person(s) alleged to be the violator(s) of the specific allegations and that the complaint will be investigated; and (c) assign a team to investigate the complaint and render a written report with facts found based on a preponderance of the evidence. The team will consist of one faculty, one staff, and may include a student. The assignment must be documented in writing and a copy of the complaint must be provided to the investigative team. The College VPSS shall also notify the College District Legal Office that a complaint was filed.
3. The investigative team will commence a confidential investigation within five (5) business days of assignment by interviewing the complainant and persons who are alleged to have committed the violation individually or collectively with others. The persons who are alleged to have violated this procedure and its policy shall be provided a copy of the complaint and given an opportunity to explain and provide their side of the story.
4. Within ten (10) days from the date the investigative team is assigned the complaint, the investigative team will render a report in a recommended format with facts found based on a preponderance of the evidence and provide the report to the VPSS who will determine within ten (10) business days whether the procedure and policy were violated and recommend disciplinary sanctions. A violation of this procedure by a student also is a violation of any applicable provision of the Student Code of Conduct. A disciplinary sanction against a student must be appropriate under the Student Code of Conduct. The severity of the interference and harm caused should be considered. If a violator is an employee, the VPSS will consult with Human Resources for approval of recommended discipline. No sanctions or discipline may be imposed on a student or employee until after the appeal period has expired.
5. The VPSS will provide written notification of the determination decision and any recommended disciplinary sanctions to the complainant and the persons charged with violating the procedure and its policy. The written notification must state the violation determination and that the imposition of any discipline may be appealed to the College President within five (5) business days of the VPSS notification. If the VPSS notification is sent by mail, then the appeal must be submitted to the College President within eight (8) business days.
6. Within five (5) business days of receiving the appeal, the College President will acknowledge the appeal to the parties and schedule a meeting to hear the appeal within 10 business days of receiving it. Within five (5) business days of hearing the appeal, the College President will render a written decision, affirming the College VPSS' decision in whole or in part and accepting, modifying or not accepting the recommended sanctions and discipline. The decision of the College President is final.

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Responsible Department: Vice Chancellor for Student Success

Based on Board Policy: F.9.1 - Protected Expression on Campus-Students' Rights and Responsibilities

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7. This grievance procedure is an internal administrative proceeding. The parties and VPSS or College President may agree in writing to a mutual resolution of the complaint or extensions of time at any time.

VI. Enforcement.

The Alamo Colleges Police Department (ACPD) is authorized to enforce the criminal laws of the State of Texas and is charged with maintaining the peace, order, and safety of a college campus. ACPD may act if expressive activity becomes unlawful or materially and substantially disrupts the academic or administrative functioning of an Alamo College or the College District. ACPD may act if the expressive activity becomes a breach of the peace, compromises safety or order on campus, or involves a behavior or activity prohibited by the Texas Penal Code, including damage to campus property. Student Life, Administration, or ACPD may act if a reasonable restriction in this procedure is being violated. ACPD is authorized to request and obtain identification from a person on campus, and the person is required to comply. ACPD is authorized to exclude persons from campus. *Texas Educ. Code § 51.209.*

VII. Required Actions Per *Tex. Educ. Code § 51.9315(f), (i), (j-k)*

1. This procedure and its policy at F.8.1 are required to be approved by a majority vote of the Board of Trustees before final adoption. *Tex. Educ. Code § 51.9315(f)(1)(4).*
2. After final adoption by the Board, this procedure and its policy are required:
 - (a) To be posted on the College District website by including them in the Board Policies and on each Colleges' website; *Tex. Educ. Code § 51.9315(f)(1)(4) and (i);* and
 - (b) To also be made available to students enrolled at any of the Alamo Colleges by including them in college student handbooks and providing a copy of the procedure and its policy to students during orientation. *Tex. Educ. Code § 51.9315(i)(1-3).*
3. The College District in collaboration with each college shall develop materials, programs, and procedures to ensure that the employees responsible for educating or disciplining students understand the requirements of Section 51.9315 of the Texas Education Code and all policies and procedures adopted in accordance with the statute. *Tex. Educ. Code § 51.9315(j).*
4. Not later than December 1, 2020, the College District shall prepare, post on its website, and submit to the governor and members of the Texas Legislature a report regarding the implementation of the requirements of Section 51.9315 of the Texas Education Code within the College District and among the colleges. *Tex. Educ. Code § 51.9315(k).*

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Responsible Department: Vice Chancellor for Student Success

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Legal References:

Tex. Educ. Code § 51.9315

TACC Policy Reference Manual: FLA (LEGAL)-Student Expression and Use of Facilities