



## Know Your Rights 2025

### First Amendment: College/University Student Protests

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#### What are my rights to protest on a public college/university campus?

On campus, you have the right to engage in protected speech. This means you can wear expressive clothing, hand out flyers, collect signatures for petitions, campaign to effect change, and come together for protests, so long as:

- You are expressing yourself in a public area of campus
- Your expression doesn't substantially disrupt classes or the school's other essential functions; and
- Your expression complies with "time, place, and manner" rules that your school has established

#### What are "time, place, and manner" rules?

Public colleges and universities are allowed, within reason, to pass content-neutral rules about when, where, and how you protest.

Your school may have certain times of the day that they do not allow certain engagements in free speech. They can, for example, ban overnight camping on campus and reasonably limit protests to certain areas at certain times of day.

These rules are different inside and outside of the classroom. Inside the classroom, speech can be constrained to topics relevant to a class's stated scope and subject to rules promoting civil dialogue and learning. Faculty must satisfy scholarly norms and meet teaching excellence standards. But outside the classroom, including on social media, courts have said that First Amendment freedoms need "breathing space" to survive. With respect to student groups, a school can require that all student organizations—as a condition for recognition and receipt of school funding—be open to all students.

Not all manners of speech are protected. Certain narrowly defined categories of speech fall outside constitutional protections. Speech that constitutes obscenity, defamation, or harassment is unprotected. So is speech that is intended to incite imminent violence and lawless action, or speech that conveys a true threat of violence. The "true threats" analysis focuses on protecting a person from fear of physical harm, but not necessarily from emotional distress. A school must give equal treatment to the speech that falls in the same unprotected category. Officials could punish defamation, for instance, but they could not only punish defamation of school officials.

Your college or university may have specific rules and designated times/places on campus where you can or cannot engage in free speech activities like protesting. Context matters in determining what is reasonable or unreasonable when looking at "time, place, and manner" rules. Make sure you look for such rules and regulations for your specific campus.

Whatever the rules are, they must be applied equally to everyone and must leave open meaningful alternative channels to free expression.

### Can public colleges/universities restrict protests and free speech activities?

Public college and university officials may have legal obligations to combat discrimination and a responsibility to maintain order. But this authority can't be used to curtail free speech rights on campus or shut down a protest just because an official doesn't like the viewpoint being expressed.

In fashioning responses to campus activism, schools must not single out particular viewpoints for censorship, discipline, or disproportionate punishment. Campus officials and law enforcement generally may not:

- prohibit an event from taking place based on a concern that some attendees may react negatively or engage in illegal activity;
- punish peaceful speakers if a listener's reaction turns violent; or
- silence a peaceful speaker as an easy alternative to managing a mass event.

### Where can I protest and engage in free speech activities on my campus?

Speech is more, or less, protected depending on where you seek to express yourself. **In general, the more public an area, the better the reason the school needs to restrict your right to speak, assemble, or protest.** And in almost no circumstance can a school restrict your speech merely because it doesn't like your viewpoint.

Courts analyze whether a speech restriction is lawful using a place-based framework that begins with determining if you are in the following spaces:

- **Traditional public forums:**

- A space that has traditionally been open for public speech activities— like a park, plaza, or sidewalk. A school can restrict speech only if the restriction is tied to a significant governmental interest and not based on the speech's content. Any restriction must be "reasonable" as to "time, place, and manner," and a school must still leave open good alternatives at different times or places for protected speech.
  - IE: Depending on its reasons, a school could probably require that all demonstrations in a campus quad take place between the hours of 8am and 10pm. It could also say that you aren't allowed to block building entrances because of safety or demonstrate using amplified sound near where classes are in session. And a school could likely prevent students in dorms from hanging displays in their windows (but it couldn't only prohibit hanging Confederate or pride flags because that would be a content-based restriction, which restricts speech based on the subject matter, and viewpoint-based restriction, which restricts speech based on ideology or perspective).

- **Limited public forums:**

- A space where the government (or, here, a school) chooses to allow speech for certain groups or subjects. In such a space, officials are allowed to restrict speech based on content or subject matter, but not on the basis of viewpoint.
  - IE: A school could make a bulletin board available for advertising campus events (but prohibit signage about other matters) or it could let registered student groups borrow a room in an administrative building (but decline to let others in the community borrow it).

- **Nonpublic forums:**

- A space that is not typically available for public expression—even if it is school property or owned by the government. Speech restrictions need only be viewpoint-neutral and reasonable given how the space is intended to be used.
  - IE: A school could prohibit affixing posters to building walls not designated for expressive activity, could prescribe that only school-affiliated groups are allowed to use the internal school mail system, and could punish students for demonstrating in a private office where the public is not typically invited.

It's also important to remember that the First Amendment protects speech, not conduct. There is no First Amendment right, for example, to spray graffiti on a public building or to destroy someone else's property or physically intimidate students by blocking their movements, even if the act is done to communicate a message. Nor do free speech protections readily shield encampments or protests that substantially disrupt classes or other events like graduation ceremonies.

### **What about free speech activity on private campuses?**

Private colleges and universities are not subject to the First Amendment. However, private institutions may have policies that guarantee students some degree of free speech. Students are encouraged to review their school's policies and procedures.

### **What about counterprotesters?**

A counterprotester may not lawfully silence, or substantially disrupt, another person's protected speech. One does not have the right to a "Heckler's Veto" by, for example, blocking-off access to an event featuring a controversial speaker or chanting over the remarks of that speaker.

The law would protect, however, a counterprotestor who wants to use their speech to picket outside an event, distribute leaflets, hold up signs, or host an alternative event at another location.

### **When can a school take action at a protest?**

During a demonstration, school officials may choose to enlist campus security, campus police, or local law enforcement.

These officers should not break up a gathering if people are complying with reasonable time, place, and manner restrictions—the big exceptions are if there is a "clear and present danger of riot," a specific threat of harm to a particular person, or some other immediate threat to public safety (like the sustained shut down of a building entrance or major roadway).

If officers do give a dispersal order, they must provide actual notice of the order and allow a reasonable opportunity to comply, which includes sufficient time and an unobstructed exit path. The police may use reasonable force to break up a gathering or to arrest a person who is violating the law. What is "reasonable" depends on all the circumstances.

Just because a school administration can take action does not mean that the school should or must take such action. How a school responds is a matter of judgment and policy depending on context, and you know your institution best. Just remember the law does require schools to respond equally to the same activity irrespective of viewpoint.

### **What forms of discipline could I face?**

It depends on the situation. If you are accused of breaking school rules while protesting and charged with conduct that the law does not protect, you may face punishment through your school's disciplinary system. Penalties could include community service, restitution, probation, suspension, or expulsion.

Your university or college may also try to prohibit students from participating in extracurricular activities, holding leadership positions in student groups, or participating in a graduation ceremony. It is also possible that an administration could respond by revoking financial assistance or threatening negative character reviews.

If your school accuses you of misconduct, the school is legally required to notify you of the particular charges alleged. Familiarize yourself with your due process rights and the school's disciplinary procedures. Be sure to download and save all communications in a central place, investigate whether your school allows advisors or others to support you in the process, and be careful not to make any incriminating statements without first consulting a lawyer.

It's important to note that the First Amendment's protections apply equally regardless of a speaker's immigration status. However, noncitizens who are subject to school discipline or arrest may face unique risks that affect their visas or immigration status. You should consult with an immigration attorney about any specific concerns.

### How can I protect my privacy if I want to engage in a protest?

Depending on your school's surveillance and privacy policies, you should be mindful that you could have less privacy protection while on campus.

For instance, some public colleges and universities have surveillances technology in public areas that is available to campus law enforcement. Another example is that most institutional email accounts can be monitored and Wi-Fi networks may not be secure or private.

You should also evaluate your own privacy and location tracking settings on social media and be aware of the potential harms that can arise from bystander posts and facial recognition surveillance.

### What are my risks at a protest?

There are various safety and legal risks to protesting. These include:

- Risk of increased targeting or surveillance by law enforcement or extremist groups because of one's public profile, advocacy profile, social media presence, and presence at protest
- Risk of altercation with counterprotestors
- Risk of violence that may include people, cars, or weapons
- Risk of retaliation by riot control forces including use of chemical irritants
- Risk of retaliation by school administration

For people with various immigration statuses, risk analysis looks like this:

- **Higher Risk:**
  - People with removal orders | Personas con un orden de deportacion
  - People who have been deported before | Personas que han sido deportadas en el pasado
  - People here less than two years with no applications pending | Personas que levan menos de dos años aquí y no tienen ninguna solicitud pendiente
  - People who face inequality and discrimination based on their age, race, gender identity
- **Medium Risk:**
  - People with criminal records | Personas con antecedentes penales
  - Undocumented people not in above categories | Otras personas sin documentos
- **Lower Risk:**
  - People in removal proceedings in immigration court | Personas en los procedimientos de deportación en el corte de inmigracion
  - People with some form of status (green cards, refugee status, asylee status, etc) and no significant criminal history | Personas con estatus legal y sin antecedentes penales graves

Protesting is a well documented part of human history and, indeed, has changed the world. Please make sure to adequately understand the risk of the specific protest you are attending. Please also ensure that you weigh the risk of declining to advocate for a issue. One should consider the risks of protesting, especially people with various immigration statuses or those who might at increased risk for surveillance or targeting. Every student protestor from any community should assume some modicum of risk.

**Students should always do a risk analysis if protesting on campus. Know that this information could change.**

### When should I contact the ACLU?

- Your speech is being treated differently from speech of the opposite view
- Your speech is restricted or punished even though you think you've followed all the relevant campus rules
- You're forced to leave a lawful protest for reasons that don't seem fair or reasonable, or you're being held responsible for acts by other protesters that you did not do
- You experience aggressive "crowd control" tactics, like tear gas or rubber bullets
- Your property is taken by an official during a protest, and you are having trouble getting it back
- You experience consequences that you believe to be the result of your participation in campus speech activities