



Handling Campus Protests: Key Points for Colleges and Universities to Consider and 7 Tips for Your Protest Policy

Insights

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As protests erupt across college campuses, educational institutions are grappling with how to handle escalating situations and balance important interests like free speech and student safety. Colleges and universities are under enormous pressure to resolve the unrest – but even as spring semesters wind down, there appears to be no clear path forward. While campus protests present difficult line-drawing questions, the basic legal framework and other considerations can help guide your institution if tensions arise on your campus. We'll give you the key points to consider and seven tips for crafting a protest policy.

Free Speech Rights: Public vs. Private Universities

The First Amendment to the U.S. Constitution limits the federal government's ability to restrict speech – including protests – under certain circumstances. Those same limits are imposed on state and local governments. Here's how the First Amendment applies to colleges and universities:

- **Public schools** are considered arms of government and therefore must respect protestors' free speech rights. But those rights are not absolute. For example, public schools – to protect campus safety and order – may sometimes impose rules on the time, place, and manner of protests if those rules are reasonable, content-neutral, and leave other channels open to communicate the message.
- **Private schools** are not bound by the First Amendment. They can restrict speech and protests in ways that their public counterparts cannot. But many private schools choose to abide by free speech principles to promote civil discourse and academic freedom. In addition, state or local rules might grant protestors broader protections. For example, California's "[Leonard Law](#)" prohibits non-religious private universities from making or enforcing rules that discipline students based solely on speech or conduct that is protected from governmental restrictions under by the First Amendment.

Antidiscrimination Laws

Even when schools are compelled or otherwise choose to respect free speech rights, they must balance that with their obligation to protect students from discrimination and harassment. Civil rights laws can apply to both private and public schools. For example, Title VI of the Civil Rights Act

protects individuals from discrimination or harassment based on race, color, or national origin in programs or activities that receive federal financial assistance. And states and localities in your jurisdiction may have their own applicable anti-discrimination laws.

Finally, colleges and universities have to be careful with their own policies. If you have promised freedom of expression in your promotional materials, then you will be obligated to provide what you promised.

But where do you draw the line between protected speech and harassment? This tends to be a legal gray area and depends on the specific facts at hand. The U.S. Department of Education issued a “Dear Colleague” letter last year after campus tensions and hate crimes began to rise. It clarified that harassing conduct under Title VI “can be verbal or physical and need not be directed at a particular individual” and creates a hostile environment if it is objectively offensive and “so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.” You should work with your legal counsel if you believe conduct on your campus has crossed or is approaching this line.

Other Considerations

Beyond the legal implications, colleges and universities should consider other factors when handling campus protests.

Campus Identity

What is the identity or character of your institution? How your school prepares and ultimately responds to a protest should be reflective of the values it claims and the type of student it intends to cultivate. Does your school stress compassion? Does it value intellect above all? Do you place focus on personal integrity and community service? By using your school’s identity to frame your plan for a protest, your actions and reactions will be authentic to your institution.

Public Attention

Regardless of whether your school is public or private, any restriction on protests or disciplinary action on protesters can very quickly attract substantial negative attention from both mainstream media and social media. To lower the risk of outside scrutiny and unwanted attention for your school and faculty, you should think carefully before putting out overly broad statements. This can include, for example, a statement that any involvement in a school protest will automatically lead to suspension. You’ll also want to take disciplinary action only when the behavior is truly disruptive.

How a Protest Policy Can Help

No school is immune from a campus protest. Today’s students can mobilize quickly and, especially in the current climate, many are prepared for intense clashes and unafraid of confrontation. Your

school can benefit from proactively thinking about these issues and establishing clear policies.

A protest policy can help your institution:

- create a roadmap for handling issues related to campus protests, enabling you to respond quickly and fairly;
- distance itself from the views of students or outsiders who are using school facilities to express ideas that do not reflect the school's identity;
- end activities that interfere with your operations or create safety risks for your campus;
- protect the rights of your students and faculty; and
- promote civil discourse and academic freedom.

The key is crafting a policy that can balance of all these important – and often competing – interests.

7 Tips for Higher Ed Policies on Campus Protests

If a protest policy is right for your college or university, here are seven tips to keep in mind:

1. Set the Tone

A protest policy is a great opportunity to establish your campus identity and encourage free expression while making it clear that some conduct – such as actual or threatened violence – will never be tolerated.

2. Plan for the Worst

Brainstorm some worst-case scenarios and play them out under your school's policy to determine whether it would be effective, and how you might control your campus identity if the situation cannot be prevented.

3. Keep it Neutral

Public colleges and universities must ensure that their protest policies are content-neutral so that they do not infringe upon free speech rights. This means that your policies cannot single out only certain viewpoints for censorship or discipline. Private colleges and universities have more leeway here but may want to consider viewpoint neutrality in their policies to promote academic freedom and civil discourse.

4. Enforce it Consistently

On a similar note, you will want to ensure that your protest policy is enforced consistently so that no particular viewpoint is targeted or disproportionately punished.

5. Define the Scope

What is the extent of the activities you want your policy to cover? Do you want to address lower-risk actions, such as students placing flyers around campus, as well as higher-risk actions, such as student picketing, encampments, and other occupations of school facilities?

6. Detail Your Response Plan

Your policy can provide procedures for how your institution will respond to obstructive or disruptive demonstrations. The procedures might begin a tiered warning system and end with police involvement as a last resort.

7. Prepare Your Communication Strategy

Campus protests and the way you respond to them can result in negative reporting, both internally and externally. If your institution comes under fire, you will need to be ready with a communication plan. Our [Crisis Communications and Strategy Practice Group](#) can assist immediately to quickly minimize business risks and mitigate reputational damage.

Conclusion

Fisher Phillips will continue to monitor any further developments in this area as they occur, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions about how to handle campus protests or about implementing a protest policy, please contact your Fisher Phillips attorney, the authors of this Insight, or [any member of our Education team](#) or [Higher Education team](#) for more information.

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