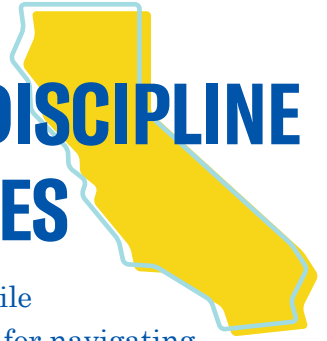


CAMPUS PROTESTS & MORE: STUDENT DISCIPLINE AT CALIFORNIA COLLEGES & UNIVERSITIES



If you are a college or university student and are accused of breaking school rules while protesting or for some other reason, you may face discipline. This guide provides tips for navigating your school’s disciplinary system. School policies can vary, so it’s important to understand your campus rules. Public institutions have different rules than private ones.

Due Process

Colleges and universities have to follow their policies in student discipline cases. They must also abide by the United States and California Constitutions.

If you’re facing serious discipline like suspension or expulsion, you have the right to a fair and transparent process. This is called due process. But due process isn’t one-size-fits-all. It depends on the situation.

There are two levels of due process:

- **FIRST LEVEL:** Your school must notify you of the charges and explain why you are being disciplined. You must have a chance to explain or challenge the accusations. After investigating, the school must tell you if it’s considering suspension or expulsion.
- **SECOND LEVEL:** If you disagree with the potential suspension or expulsion, the school typically must hold a hearing before suspending or expelling you.

Notice Requires a Description of the Charges and Evidence Against You

If your school accuses you of misconduct, it must notify you of the specific charges. Ask for written notice including a description of the evidence or facts, and the maximum possible punishment you could face.

EXAMPLE: *If your school accuses you of damaging school property, ask for evidence, including any costs associated with the damage.*

Opportunity To Be Heard: Right to an Impartial Hearing

Generally, if you’re facing suspension or expulsion, you must be given a hearing to explain or contest the charges before you can be suspended or expelled. Hearing requirements vary depending on the seriousness of the charges and the severity of the potential punishment. Information about this process should be in your notice of charges or in your school’s student handbook or code of conduct.

EXAMPLE: *If there’s doubt about the credibility of a key witness, you have a right to a hearing. You are entitled to examine the evidence against you, hear live witness testimony, and cross-examine witnesses.*

However, a school can place you on “interim suspension” before a hearing if it considers you to be a threat to public safety or likely to cause a substantial disruption to essential campus activities. If this happens, your school must give you notice of the charges and a hearing as soon as possible. Be sure to ask about the duration of the interim suspension and why the school thinks it is necessary.

Your school’s policies and procedures should outline the grounds for an interim suspension and the process for getting your case heard.

Practical Tips on Hearings and Appeals

Many schools will require you to represent yourself at a hearing. But some do allow you to bring an attorney (at your own expense) or someone you trust from the school community. Even if you aren’t allowed a lawyer, try to get legal advice ahead of time and plan your statements. Preparation is crucial especially if you may also be facing related criminal charges. Remember, your public statements could be used against you in a criminal case.

If you believe the proceedings were unfair, consider filing a timely appeal. If you don't, you could forfeit that right. If your school doesn't have a formal appeal process, consider writing to your school's president or chancellor to appeal your case.

Voluntary Resolution or Settlement

Your school may want to resolve or settle your disciplinary case by offering you an informal or "voluntary" resolution. This could mean accepting a lesser penalty. Your decision should depend on the strength of the school's case and your comfort with what they're proposing. If possible, review the proposal with an advisor or lawyer before agreeing to it.

Viewpoint Discrimination Prohibited

A school cannot punish your speech or limit your rights on campus just because it disagrees with your speech. This is known as viewpoint discrimination, and it's illegal.

If you believe your school is punishing you for engaging in protected speech, raise this concern at every stage of the disciplinary process.

Withdrawal of Consent to Remain on School Property

Under California Penal Code section 626.4, a school can "withdraw consent" for you to remain on campus if it believes that you deliberately created a disturbance which disrupted its orderly operations.

If you receive this notice, you can be barred from campus for up to 14 days. Remaining on or returning to campus could result in misdemeanor charges, a fine of up to \$500, or both.

Typically, the president or head of the school issues the 626.4 Notice, but they can designate someone else. That person has to give a written report to the head of the school as soon as possible—including an explanation for why you should be banned. The head of the school has 24 hours to approve the notice. If no approval is given within that time frame, the notice is void and you can return to campus.

PRACTICAL TIP: *If you receive a 626.4 Notice, request a hearing in writing within 14 days. Specify the address where you want the hearing notice sent. Your school must give you a hearing within 7 days of receiving your request.*

In some situations, a school may bar you from campus without first giving you a hearing if the head of the school has reasonably found that your continued presence poses a substantial and material threat of significant injury to others or property.

PRACTICAL TIP: *Although both an interim suspension and a 626.4 Notice can temporarily remove you from campus, they involve different due process procedures.*

If the administration finds that you no longer pose a significant threat, you must be allowed to return. No matter what, the administration can't ban you for more than 14 days from the initial notice of withdrawal.

Student Discipline at Private Colleges and Universities

Private colleges and universities are not subject to the same constitutional requirements as public schools. However, they must still give students a meaningful opportunity to be heard, depending on the situation.

The same free speech protections that apply at public colleges and universities also apply at California's private colleges and universities because of a state statute known as the Leonard Law. Under this law, private schools cannot discipline students for conduct that would be protected by the First Amendment if it occurred off campus.

RESOURCES

THE ACLU OF NORTHERN CALIFORNIA does not typically represent individuals in the student disciplinary process, but we are committed to challenging systemic due process failures that infringe upon students' fundamental free speech rights.

Learn more about our work or contact us here: www.aclunc.org or (415) 621-2488.

See ACLU NorCal's Free Speech at California Colleges & Universities at www.aclunc.org/KYR-Campus-Speech

The following organizations may also be able to assist:

NATIONAL LAWYERS GUILD

www.nlgsf.org and www.nlg.org/los-angeles

CENTER FOR PROTEST LAW AND LITIGATION

www.protestlaw.org

FOUNDATION FOR INDIVIDUAL RIGHT AND EXPRESSION (FIRE)

www.thefire.org

THE RUCKUS SOCIETY: www.ruckus.org



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