

FREE SPEECH STUDENTS & COLLEGE CAMPUSES



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Know Your Rights: Free Speech at California Universities and Colleges

Across California, college and university students are coming together to protest for peace and justice. No matter our religion or background, we all deserve a life of safety and freedom for ourselves and our families. Student-led protests and advocacy for our common humanity and collective safety are inspiring countless others to take action in California, across the U.S., and all over the world.

Since 1992, California's Leonard Law requires all private universities and colleges to protect their students' right to free speech. Under this law, students who attend private and public institutions in California have the same First Amendment rights. California is the only state with these free speech protections for students at private institutions.

Our know-your-rights guidance can help California students learn what you can say and do under the First Amendment. This fact sheet also provides guidance on when others' statements and actions towards you are unacceptable under the law.



No matter if you attend a private or public institution in California, you are protected by the First Amendment and have a right to free speech.

As a California Student, What Can I Say on Campus?

The First Amendment guarantees several rights to people in the U.S., including the right to free speech.

The right to free speech applies only to speech that the Constitution identifies as protected speech. Under the Leonard Law, no California college or university can discipline a student because of the content of their protected speech. Protected speech includes:

- Unpopular, offensive, even abhorrent speech, including political, racist, sexist or hate speech, such as
 - Racist speech made by Klu Klux Klan member (Bradenburg v. Ohio 1969)
 - Burning the American flag (Texas v. Johnson 1989)
 - Hate speech that does not arise to the level of persistent and substantial harassment (R.A.V. v. City of St. Paul 1992; Davis v. Monroe County Board of Education 1999)
- Controversial political attire, buttons, or insignia, such as
 - “Fuck the draft. Stop the War.” in reference to the Vietnam War and emblazoned on a jacket (Cohen v. California 1971)
 - Displaying a red flag associated with communism in a public meeting place (Stromberg v. California 1931)

Where and How Can I Express Myself on Campus?

California colleges and universities cannot restrict protected speech based on its content, but these institutions can limit where, when, and how protected speech is shared. Colleges and universities are allowed to enact some time, place, and manner restrictions, as long as they are not overboard and leave open alternative avenues of expression. (Ward v. Rock Against Racism 1989)

Allowed time, place, manner restrictions include, but are not limited to:

- Prohibiting camping on public property, including as a form of protest (Clark v. Community for Creative Non-Violence 1984)
- Requiring advance application for gatherings of more than 50 individuals in public parks (Thomas v. Chicago Park District 2002)
- Prohibiting the sale or distribution of any merchandise, including printed material, in public parks (Heffron v. International Society for Krishna Consciousness 1981)

Under the First Amendment, not all campus forums are governed by the same rules. “Limited public forums” such as a bulletin board restricted to advertising campus events or a university listserv restricted to discussing sporting events, can be subject to more restrictions limiting how or if protected speech can be shared. Once a college or university adopts rules for a limited public forum, those rules must be applied equally and cannot discriminate based on viewpoint.

What Speech Is Not Protected under the First Amendment and Leonard Law?

Speech that is not protected by the First Amendment can be completely restricted. Colleges and universities can discipline students for unprotected speech. At times, unprotected speech can potentially constitute a crime under state or federal law. Examples of unprotected speech include, but are not limited to:

- Obscenity, such as sexually explicit speech/images or speech that the average person would find offensive or disgusting by “contemporary community standards” of morality and decency (Miller v. California 1973)
- Speech that is meant to incite violence (Chaplinsky v New Hampshire 1942) and creates a clear and present danger of violence (Terminiello v. Chicago 1949)
- Speech uttered for the purpose of inciting imminent violence or other lawless action, and is likely to incite or produce such action (Brandenburg v. Ohio 1969)
- Some threats of violence (Counterman v. Colorado 2023)

You can find more examples of what constitutes unprotected speech from the Foundation for Individual Rights and Expression: <https://www.thefire.org/research-learn/unprotected-speech-synopsis>.



If you are being disciplined by your college or university for your speech or political expression, please call the Asian Law Caucus for help and guidance at (415) 896-1701.