

CIVIL DISOBEDIENCE AT PUBLIC UNIVERSITIES

BREAKING THE RULES TO MAKE A POINT? KNOW YOUR RIGHTS!

College presents the first opportunity for many students to become politically engaged and express their opinions through protest. Some students are surprised to learn that the First Amendment does not protect unlawful conduct even if it's done to make a political point. This guide provides a brief introduction to your rights in student discipline matters and some tips on navigating your school's systems.

When student protesters occupy buildings or disrupt classes and events, their actions may be punished through the criminal courts (if the conduct constitutes a crime, like trespassing or vandalism) and through the university's disciplinary system, if university rules were broken. University-imposed penalties may include community service, restitution, probation, suspension, and expulsion. The university may also prohibit students from participating in extra-curricular activities, holding leadership positions in student groups, or from attending the school's graduation ceremony.

PRACTICAL TIPS TO CONSIDER BEFORE ENGAGING IN CIVIL DISOBEDIENCE:

If you're thinking of breaking school rules to make a political point or protest your school's policies or actions, there are a few things that you can do to prepare.

- ☆ Review these ACLU guides:
The rights of demonstrators in California:
WWW.ACLUNC.ORG/RIGHTSOFDEMONSTRATORS
Your rights when interacting with police officers:
WWW.ACLUNC.ORG/POLICERIGHTS
- ☆ Get in touch with the Midnight Special Law Collective, the Ruckus Society, or the National Lawyers' Guild about civil disobedience training and legal support.
- ☆ Review your school's code of conduct and student handbook to understand the rules—both what is and isn't allowed—and disciplinary procedures.
- ☆ If you can, establish communication with the administration and faculty allies to facilitate negotiations over the protest and to advise you in any disciplinary process that may follow.
- ☆ If possible, find out what kinds of discipline the university has issued to students in the past.

DUE PROCESS: NOTICE AND AN OPPORTUNITY TO BE HEARD

Under the United States and California Constitutions, California's public schools must provide students due process of law before imposing fines or restitution, and before suspending or expelling them for misconduct. "Due process" means that you must be provided with notice of the charges and evidence against you and an opportunity to challenge those charges in fair proceedings.

Even for a suspension of ten days or less, a public university or college student is entitled to:

- ☆ An oral or written notice of the charges against the student,
- ☆ An explanation of the evidence against the student,
- ☆ An opportunity to contest those charges, and
- ☆ A fair and unbiased adjudicator.

NOTICE – A DESCRIPTION OF THE CHARGES, FACTS, AND EVIDENCE AGAINST YOU

PRACTICAL TIP ON NOTICE: If you learn you are facing disciplinary charges, be sure to request in writing the specific charges and evidence against you, possible witnesses, and the maximum possible penalty. Ask that your school provide specific facts about what you did. For example, if a group of people damaged property, ask that the school provide any facts and evidence they may have about your actions that the school claims directly caused the damage. Also ask for evidence of the actual costs the university claims it incurred.

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OPPORTUNITY TO BE HEARD – YOU HAVE A RIGHT TO A HEARING BEFORE AN IMPARTIAL ADJUDICATOR

Due process requirements vary depending on the severity of the punishment. For a suspension of ten days or less, universities can provide due process through a meeting with a single administrator, but it must take place before the suspension, unless a student's presence is reasonably deemed to pose a threat. If a suspension is imposed before a hearing because the student poses a threat of disruption, notice and a hearing must be provided as soon as possible.

For longer suspensions, expulsions, or charges over potentially criminal conduct (such as vandalism or resisting arrest), or if the credibility of witnesses is at issue, students may have a right to be represented by an attorney (at the students' expense), to cross-examine persons bringing evidence against them, and to call their own witnesses. Information about the hearing process should either be in the student's notice of charges or in a publically available student handbook or code of conduct.

PRACTICAL TIPS ON HEARINGS: If you learn that your school intends to discipline you, request a hearing in writing as well as notice of the specific charges, facts, and evidence against you, as well as the maximum penalty your school intends to seek against you.

Keep in mind that many university hearing procedures require that students speak for themselves, rather than having an advisor or attorney speak for them in the hearing. However, if you face related criminal charges or an expulsion, assert your right to counsel and take care to avoid statements that could be used against you in a criminal case. For less serious charges, bring a trusted faculty member to the hearing and seek an attorney's advice ahead of time. If you feel the proceedings were not fair or that the evidence presented did not support the discipline imposed, appeal to the president or chancellor of your school.

VOLUNTARY RESOLUTION OR SETTLEMENT: You may be offered an informal or "voluntary" resolution by school authorities, which means accepting a lesser penalty than you might receive if you went forward with a hearing to contest the charges. The decision whether to accept the lesser penalty depends on the strength of the university's case against you and how well you can live with the resolution offered. If the voluntary resolution includes a monetary payment and the charges against you are mostly undisputed, try to negotiate a lower amount and consider fundraising options before subjecting yourself to the risk of prolonged suspension or expulsion. Any agreement

should be in writing. If possible, review the school's proposal with an advisor or lawyer before you agree to it.

VIEWPOINT DISCRIMINATION – WHERE THE FIRST AMENDMENT MAY PROTECT UNLAWFUL CONDUCT

Flag burning can be punished under a law prohibiting outdoor fires, but not under a law that prohibits dishonoring the flag. Even though universities can punish students for breaking school rules in the name of a cause, the punishment may not be harsher than it would be for a student engaged in the same misconduct without an expressive purpose. If you feel you have received a disproportionately severe punishment because of your message or because you were engaged in protest, raise this concern in an appeal of your discipline and contact the ACLU.

RESOURCES

If your university has a legal department or law school, you could seek assistance from law students or professors. Student associations on campus and student services offices may be able to provide or refer you to student advisors. The following organizations may also be of assistance:

ACLU of Northern California:

WWW.ACLUNC.ORG ☆ (415) 621-2488

ACLU of Southern California:

WWW.ACLU-SC.ORG ☆ (213) 977-5253

ACLU of San Diego and Imperial Counties:

WWW.ACLUSANDIEGO.ORG ☆ (619) 232-2121

National Lawyers Guild: The NLGSF

(WWW.NLGSF.ORG) may be able to help with both criminal and campus disciplinary proceedings in the Bay Area, and has an online form to request legal support for a demonstration. In southern California, contact the NLG LA Chapter for legal support and civil disobedience training at WWW.NLG-LA.ORG ☆ (323) 653-4510.

Midnight Special Law Collective:

WWW.MIDNIGHTSPECIAL.NET

The Ruckus Society:

WWW.RUCKUS.ORG



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