

## **Protecting Public Safety and Free Expression on Campus**

The ongoing war between Israel and Hamas has led to significant protest activity across the country, as well as a dangerous [spike in targeted violence](#) against Jewish, Muslim, Arab, Palestinian, and Israeli communities. Tensions have been particularly high on [college campuses](#), where dueling demonstrations have sometimes been accompanied by [threats](#) of violence. This document provides guidance to campus safety officers and their partners in law enforcement about how to protect their campus community’s First Amendment rights while preserving public safety during these and other demonstrations. For more detailed information on how to balance constitutional rights and public safety during protests and demonstrations, visit ICAP’s online toolkit, [Protests and Public Safety: A Guide for Cities and Citizens](#).<sup>1</sup>

The Supreme Court has established that there is “no room” for the view that “First Amendment protections should apply with less force on college campuses than in the community at large,” and instead has emphasized “the college classroom with its surrounding environs is particularly the ‘marketplace of ideas’” worthy of free speech protections.<sup>2</sup>

As governmental entities, public universities cannot implement policies that contravene the First Amendment.<sup>3</sup> Although private universities are not directly bound by the First Amendment—and may therefore be allowed to impose stricter restrictions on speech—those accepting federal funds must still adhere to federal anti-discrimination laws such as Title VI and Title IX.<sup>4</sup>

Whenever possible, law enforcement should consult before and during demonstrations and other events with legal counsel and coordinate with campus leadership, local officials, student and community groups, and other cooperating agencies. Together, campus leadership and law enforcement should communicate that, **while free expression must be protected, violence, threats, and incitement to violence have no place on campuses, are not protected by the First Amendment, and may violate criminal laws.**<sup>5</sup>

Here are some basic practical and legal guidelines:

- **The First Amendment guarantees people the right to peaceably assemble and protest, regardless of viewpoint.** However, the First Amendment does not protect violence or unlawful conduct or incitement to imminent violence or unlawful conduct.<sup>6</sup> Law enforcement may impose reasonable content-neutral time, place, and manner restrictions that are narrowly tailored to serve the government’s compelling interest in protecting public safety.
- These restrictions must *not* discriminate based on the content of the speech being regulated and must “leave open ample alternative channels for communication” of the speech.<sup>7</sup> **Any restrictions must**

---

<sup>1</sup> Available at <https://constitutionalprotestguide.org/>.

<sup>2</sup> *Healy v. James*, 408 U.S. 169, 180 (1972) (citation omitted).

<sup>3</sup> See, e.g., *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 830-31 (1995) (public universities may not discriminate based on viewpoint); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969) (public school administrators may not restrict expression absent a showing that the expression would “materially and substantially interfere with” appropriate discipline in the operation of the school).

<sup>4</sup> Title IX of the Education Amendments of 1972 protects individuals from sex-based discrimination in educational settings where institutions receive federal funds, while Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal funds. See, U.S. Dep’t of Just., *Title IX Legal Manual* (accessed Nov. 1, 2023), <https://www.justice.gov/crt/title-ix>; PEN America, *Campus Free Speech Guide: The Basics* (accessed Nov. 1, 2023), <https://campusfreespeechguide.pen.org/the-law/the-basics/>.

<sup>5</sup> For more information on the unlawfulness of threats and incitement to violence, please refer to ICAP’s 2020 [guidance](#).

<sup>6</sup> *United States v. O’Brien*, 391 U.S. 367, 376 (1968); *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>7</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

**not be applied in a manner that discriminates based on viewpoint.** With that in mind, campus officers and law enforcement may consider:

- Setting up buffer zones between opposing groups;
  - Banning items that can be used as weapons, consistent with state law and campus policy;<sup>8</sup>
  - Barring private militia or paramilitary activity.<sup>9</sup>
- **Law enforcement’s principal role is to facilitate individuals’ First Amendment rights to assemble and express themselves while protecting protesters and public safety.**<sup>10</sup>
  - Campus leadership and law enforcement should meet with student organizers to share plans and expectations ahead of any events. They should also make clear public statements that officers will protect constitutional rights during demonstrations. Officers on campus should communicate regularly and clearly to other law enforcement personnel and to the crowd.
  - Law enforcement’s response to mass gatherings should be measured and proportionate, and officers should take steps to avoid—even inadvertently—heightening tensions and making the situation worse, particularly when there is mistrust between student groups and law enforcement and/or the presence of violent threats accompanying demonstrations.
    - Law enforcement should tailor their responses to the actions and mood of the gathering, and should avoid using more force, gear, or equipment than necessary.
    - Law enforcement officers’ actions and demeanor affect how they are perceived. Cooperation with law enforcement depends on officers being perceived as fair, respectful, and restrained in their interactions and responses to the crowd.
    - When forming a barrier line or perimeter, officers should consider alternating the directions that the officers face so they are not perceived as favoring one “side.”
    - Officers should provide clear and repeated directions for crowd movements, communicate clear thresholds for arrest, give audible warnings and fair notice to demonstrators when they are in violation of the law and subject to arrest, and provide avenues for individuals to leave the area. Arrests may be made only where there is probable cause that a crime has been committed.
    - Law enforcement may declare an unlawful assembly and order demonstrators to disperse when a group has become violent or poses a clear danger of imminent violence. Loud, boisterous protest activity is not enough to create an unlawful assembly, nor is the commission of crimes by individuals that do not reflect a collective intent to be violent.
  - The First Amendment generally protects recording of government officials, including law enforcement, engaged in their official duties in public places, so long as journalists—including student journalists—comply with general laws that apply to everyone.

---

<sup>8</sup> Most colleges prohibit firearms on campus, but some state laws restrict these prohibitions. See Cole Claybourn, *What to Know About Gun Policies on College Campuses*, U.S. News and World Report (Dec. 16, 2022), <https://www.usnews.com/education/best-colleges/articles/what-parents-students-need-to-know-about-campus-carry-policies>; Everytown for Gun Safety, *Keep Guns Off Campus*, <https://www.everytown.org/solutions/guns-on-campus/>.

<sup>9</sup> For more information about your state’s anti-paramilitary laws, refer to ICAP’s catalog of all 50 states’ prohibitions on private military conduct, *Prohibiting Private Armies at Public Rallies*.

<sup>10</sup> A longer guidance document outlining how law enforcement can balance public safety and First Amendment concerns, produced by ICAP and several of its partners, is available [here](#).