

August 9, 2024

Open Letter to Kentucky Colleges and Universities

Cc: Campus Law Enforcement

Local Law Enforcement

Dear Kentucky College and University Presidents:

As the leading organization defending free speech across the Commonwealth, we write to remind you to respect the rights of students, faculty, and staff to express their views as protected by the First Amendment. While the First Amendment applies directly to public higher education institutions, the values of free speech, academic freedom, and civil discourse remain equally important at private institutions and thus compel their adherence to these values. Indeed, these values are at the heart of the unique role that colleges and universities play in fostering the free exchange of ideas in our society. Thus, a society that welcomes free speech does not use armed law enforcement to stifle protest and eliminate dissent.

Free speech and protest on college campuses are a rich part of our national history, generally, and Kentucky's history, specifically. For example, in the spring of 1961, college students across the South, including in Kentucky, demonstrated for the integration of restaurants, theaters, and other public spaces during the civil rights movement.¹ In May 1970, students at the University of Kentucky participated in protests against the Vietnam War following the Kent State shootings.² As we reflect on the lessons of the past and look towards the future, it is important for higher education institutions to recommit themselves to cultivating a campus environment that welcomes all voices and adheres to First Amendment principles to meet the challenges of the current moment.

As your institutions welcome students back to campus this fall, we encourage you to reflect on the guidance the National ACLU provided to higher education leaders earlier this year.

¹ Anne Braden Inst. for Soc. Just. Rsch., *50 Years Later... Examining Louisville's 1961 Civil Rights Demonstrations*, Univ. of Louisville (last visited July 29, 2024), <https://library.louisville.edu/archives/exhibits/sitins#:~:text=In%20the%20spring%20of%201961,the%20lead%20in%20challenging%20segregation.>

² Terrence S. Fox, *Terrence Fox University of Kentucky Student Protest Film*, Univ. of Ky. Libraries Special Collections Rsch. Ctr. (last visited July 29, 2024), <https://exploreuk.uky.edu/fa/findingaid/?id=xt7n8p5v9z8g#:~:text=From%20May%205%2D7%2C%201970,starti ng%20on%20April%2026%2C%201970.>

We are optimistic that by following the summary below, your campuses can avoid the unnecessary violence that occurred on campuses outside of Kentucky.

1. Schools may establish content-neutral and viewpoint-neutral policies regulating First Amendment activities, but discriminatory or targeted enforcement is impermissible.

Content-neutral policies that regulate the time, place, and manner of student demonstrations are generally permissible, but students must be left with ample room to express their views. Institutions may not selectively enforce their policies or single out certain students or viewpoints for punishment. This means that institutions should design their policies with the goal of maximizing opportunities for students to express their views while maintaining a safe campus environment.

2. Schools should seek to resolve issues collaboratively with students and should involve outside law enforcement only as a last resort.

Colleges and universities should work collaboratively with students to maintain parameters around First Amendment activities rather than relying on outside law enforcement to resolve issues. As we have seen, several colleges and universities that worked with their students during campus protests this year have been able to resolve disputes without the use of law enforcement.³ We have also seen that when armed police intercede to quell protests, their use of force can be disproportionate and excessive towards student, staff, and faculty protesters.⁴ Because of law enforcement's history of harm towards students of color, and their propensity for conflict escalation, they should only be called upon as a last resort. Higher education institutions should also consider the collateral consequences that an arrest or other disciplinary actions can have on their students.

3. Schools have a duty to protect students from discriminatory harassment and violence.

As part of your obligations to maintain a conducive environment for free speech and civil discourse, your institution must also protect students from discriminatory

³ See Abdallah Fayyad, *The lessons from colleges that didn't call the police*, Vox (May 3, 2024, 5:00 PM), <https://www.vox.com/24147461/columbia-gaza-encampment-campus-protests-police-crackdown-pro-palestinian-students> (“[a]dministrators at Brown, Northwestern, and several others negotiated with students, allowed them to continue protesting, or even reached deals to end the encampments by meeting some of the protesters’ demands.”).

⁴ See *id.* (“students and faculty have been beaten, tear gassed, and shot at with rubber bullets by police.”).

harassment and violence. Both public and private universities are bound by civil rights laws that guarantee all students equal access to education, including Title VI of the Civil Rights Act. While offensive speech is constitutionally protected, speech that is targeted at specific individuals because of their ethnicity or national origin constitutes discrimination. Physical intimidation and violence are similarly impermissible.

4. Schools must reject outside pressure to quell student protests that they disfavor or harshly discipline students with whom they disagree.

While colleges and universities have been under increased scrutiny from outside entities to quell student protests or severely punish students for exercising their First Amendment rights, institutions must adhere to their obligations under the First Amendment and allow students to express their views, including dissenting opinions. As we noted, student protests are a part of the Commonwealth's vibrant history and the American tradition. Additionally, the U.S. Supreme Court has held that "First Amendment protections [have no less force] on college campuses than in the community at large."⁵ Universities must stand firm in their commitment to equally apply their rules and policies as required under the First Amendment and reject pressure from external actors to do otherwise.

Balancing the need for safety and your institution's First Amendment obligations may, at times, be difficult. However, there are practical and effective ways to responsibly fulfill these duties without creating unnecessary harm by calling armed police on student protesters. Promoting free speech on campus will ensure that students are equipped with the skills to fully participate in our diverse democracy. We invite you to contact us as a resource when your institution is presented with these types of challenges, and we wish you and your students a successful academic year.

Sincerely,



Amber G. Duke
Executive Director
ACLU of Kentucky



Corey Shapiro
Legal Director
ACLU of Kentucky

⁵ *Healy v. James*, 408 U.S. 169, 180 (1972).