

# **KNOW YOUR RIGHTS**



## **A Legal Guide for Students**

# **StandWithUs SAIDOFF LAW**

## **ABOUT STANDWITHUS LAW**

StandWithUs Saidoff Law empowers students and community members through a legal response to antisemitism and antizionist activity. We work around the clock responding to legal intake, determining the appropriate response, initiating legal action, and bringing all StandWithUs resources to bear.

The purpose of this booklet is to answer some of the most commonly asked questions about the First Amendment, school policies, and legal rights in K-12 and on college campuses. The information contained herein is for informational purposes only; it is not intended to serve as legal advice.



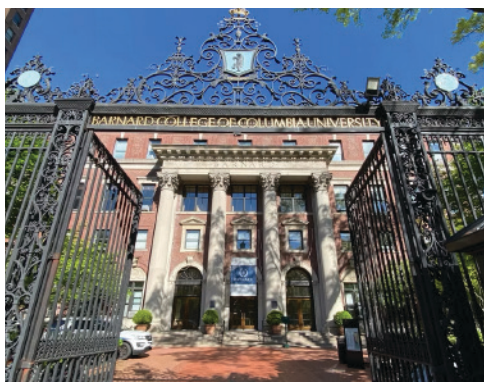
For questions and assistance, please visit  
[www.StandWithUs.com/legal](http://www.StandWithUs.com/legal).

To report an antisemitic incident or request help, visit  
[www.StandWithUs.com/report-an-antisemitic-incident](http://www.StandWithUs.com/report-an-antisemitic-incident).

# Free Speech Rights

The First Amendment protects all individuals in the U.S. from governmental interference of their right to express themselves and their right to hear someone else express themselves.

Public schools are government entities. This means that (unless a specific exception applies—see below) public school administrators and other employees cannot interfere with a student’s right to free speech. Private schools may restrict free speech, but private schools often adopt policies holding themselves to the free speech standards applicable under the First Amendment.



## When Can Free Speech Rights Be Limited?

### Limitations on the HOW or WHERE of Speech

The extent to which the government can regulate private speech often depends on where the speech occurs (i.e., the type of “forum”). Private speech receives greatest protection in open public forums (places with a long tradition of serving expressive purposes: public sidewalks, streets, and parks). In limited public forums, the government can permissibly restrict speech in order to ensure the forum is being used for its limited purpose (e.g., classrooms, libraries, etc.). Finally, in nonpublic forums or places not generally open for expressive purposes (e.g., courthouses, jails, and government offices), the government has the greatest leeway to regulate speech. Even where government entities cannot constitutionally prohibit private speech, they may impose reasonable **“time, place, and manner”** restrictions on speech/expression, such as rules that

regulate or prohibit the use of amplified sound; require those attending a campus protest to have a valid university ID; and prohibit distribution of political flyers inside dorms.

### **Limitations on the WHAT of Speech**

In imposing any such “time, place, and manner” speech regulations, the government must remain content neutral. This means that the content of private speech (i.e., what is being said) can be regulated only in limited circumstances, such as if the speech disrupts or interferes with the rights of others to learn, speak, associate, or assemble; defames (i.e., makes false statements of fact that cause damage to another’s reputation); incites others to engage in imminent violence; or expresses a threat toward another person or group.

### **Limitations on VIEWPOINT of Speech**

Part of the requirement that the government remain content neutral when regulating private speech is the requirement of viewpoint neutrality. For example, a government entity is not allowed to deny space or funding for an event solely because



of the speaker's viewpoint. So, if your school generally provides funds for events and an anti-Israel event receives funding but your pro-Israel event does not, that is not a viewpoint-neutral decision and likely violates both the First Amendment and related school policies.

## Hate Speech

*“Just because it is awful doesn’t make it unlawful.”*

Hate speech attacks a person or group based on an immutable characteristic like ethnicity, religion, national origin, race, etc. As offensive as it may be, hate speech is generally protected by the First Amendment unless one of the previously mentioned exceptions applies. Hate speech may also be prohibited or punished when it escalates into unlawful conduct, such as harassment, discrimination, or criminal action (e.g., vandalism).

## Hate Crimes

A hate crime is when a crime is committed—such as vandalism, assault, or battery—and it is motivated by prejudice against the victim's ethnicity, race, religion, national origin, etc. For an offender to receive a hate crime charge, there must be evidence of both a crime and biased motivation. If you are the victim of a crime or if you need urgent help, contact police or campus security immediately. For information on reporting hate crimes, view our hate crimes fact sheet at **[www.StandWithUs.com/legal-factsheets](http://www.StandWithUs.com/legal-factsheets)**. For victim advocacy and to report crimes to StandWithUs, visit **[www.StandWithUs.com/report-an-antisemitic-incident](http://www.StandWithUs.com/report-an-antisemitic-incident)**.

## School Policies and Speech

School leaders must ensure that policies and procedures are clearly conveyed to the community and consistently and neutrally enforced. All schools, public or private, have their own codes of conduct, student handbooks, and/or bylaws. It is important to review your school's or district's rules to know what should be done in a given situation, including what one is permitted to post online. Encourage enforcement of these rules.



Because of the unique characteristics of school and campus contexts, students' rights to free expression are limited by their responsibility to follow school rules. The right to freedom of speech does not carry with it the right to disrupt the educational or other lawful functions of the school, block building entrances, engage in disorderly conduct, or harass others.

## Document the Incident



Within the bounds of relevant school policies and state laws regarding two-party consent and permissible filming/recording, document any activity that may violate campus policies or the law so you can report it:

1. Take photos or videos of potentially unlawful or threatening antisemitic behavior and language, and screenshot relevant text messages, emails, and posts.
2. Take notes of details like the date, time, location, and what you experienced or witnessed, especially if you cannot document evidence in the moment.
3. Wherever possible, determine the identity—or ask campus police or other university officials to determine the identity—of any witnesses or offenders.
4. Try to create a written record of the incident by sending an email detailing what happened to the appropriate authority or filing a formal complaint as soon as possible.

# Reporting Antisemitic Discrimination and Unlawful Conduct at Your School

Most schools have anti-discrimination and anti-harassment policies to protect students. This serves as a contract between the students and the school. You should report antisemitic incidents when they occur and stand up to false accusations of harassment or discrimination. StandWithUs is here to help you.

## Examples of actionable conduct to report:

- Physical assault
- Blocking the entrance of campus buildings or other campus facilities
- Preventing you from going to class
- Spitting on you
- Verbal harassment
- Stalking
- Canceling or significantly altering a class (e.g., moving it to Zoom) because of an antisemitic protest
- Discrimination or harassment by another student/professor/TA
- Applying a double standard (i.e., treating you differently because you are Jewish, Israeli, or Zionist)









## Reporting an Incident

**1**

**Find your school's webpage to report** bias, harassment, or discrimination. Each institution's form will look different and may require different information. The link may live within a specific department's website page, such as the DEI Office, Students Affairs, etc. Some campuses will allow you to complete and submit the form anonymously. However, if you submit it anonymously, you may not be able to further engage directly in the process or receive direct updates about an investigation into your claims. The university may also take the complaint less seriously if it is filed anonymously.

**2**

**When filling out the form, be as detailed as possible.** State where the antisemitic incident happened, who was involved, who was a witness, and what happened. Attach all relevant evidence. You will likely be able to add more details or evidence later, but the more you state right away, the better.

**3**

**Clearly explain what activity was prohibited conduct,** why it was a violation of a specific law or policy, and how it targeted your Jewish, Israeli, or Zionist identity. It is helpful, though not necessary, to specifically note any relevant policies and violations.

**4**

**Do not assume that the assigned administrator or investigator will understand why the incident was antisemitic,** especially if it relates to Israel. Unlawful or threatening behavior that targets Jews because of their Zionism is not legitimate criticism of Israel and should not be confused with political speech, even if the word "Zionist" is used. It is therefore important to spell out in your complaint that an incident was based on your Jewish identity and why. Note that your Jewish identity is multifaceted, and attacks against you may implicate one or more identity-based categories under your school's

anti-harassment policies: you can be targeted for your **religious Jewish identity** when wearing a kippa or a Star of David necklace; for your **ethnic Jewish identity** when you are targeted because of your Zionism; or for your **national origin identity** when you are targeted for being Israeli or having Israeli ancestry.

**5**

**Follow up after filing your complaint.** If you have not heard back after a reasonable amount of time from filing, reach out in writing to the relevant administrator or investigator, and make sure to reference your initial submission date. Keep the momentum moving by staying in touch with the investigators involved. To prevent delays, respond promptly to any correspondence.

**6**

**Report to the police.** Reporting an antisemitic incident to your school administration is a separate process from reporting it to the police. Do not assume that the university will refer your case to law enforcement. If you feel physically unsafe or there was criminal activity like assault, theft, or direct threats of violence, you should also report to local/campus police so they can investigate on a separate track.

**7**

**If you feel you have been treated differently or harassed after filing your complaint, this might be retaliation.** Administrators, faculty, and other students are prohibited from engaging in retaliation against you for reporting harassment, bullying, intimidation, or discrimination. If retaliation happens, document and report it to the investigators. You will need to show a connection between the filing and retaliation. If you believe you are at risk of retaliation, you may have options to protect yourself, such as requesting a no-contact order.



# Academic Freedom

## K-12 Teachers

Public school teachers do not have the right to teach whatever they want or create any curriculum they want—school districts/officials have the authority and discretion over content. The rules related to “academic freedom” for teachers are different depending on whether they teach at a public or private school. Contact StandWithUs if you need assistance with a matter that involves K-12 teacher or curricula issues.

## College Professors and Teaching Assistants

Faculty members are, in general, granted academic freedom, i.e., they have broad discretion in determining what ideas they present and the manner of doing so, particularly when it relates to their subject matter.

### However, faculty members should NOT:

- Engage in political indoctrination
- Teach controversial matters that have no relationship to their expertise or class subject matter
- Penalize students for their views or identities

If you are concerned that your professor/teaching assistant has or will unfairly lower your grade because you challenged their speech or materials, make sure to keep written evidence of your concerns and any correspondence with the professor/teaching assistant.

### **Resident Advisors (RA)**

As students themselves, RAs enjoy free speech protections. However, if an RA expresses hatred or bias toward a specific person or group based on identity, they are likely in violation of their RA contract or code of conduct. If your RA targets or marginalizes you based on your religion, ethnicity, or Zionism, you should keep a record of all emails, screenshots, posts, videos, and correspondence and file a bias report.

### **Student Groups and Academic Departments**

Every school has a code of conduct regulating student activities as well as school policies against discrimination and harassment. Student groups and academic departments are typically given wide latitude to host events, even biased events, so long as they are within the purview or mission of the group/department. In general, do not jump to cancel offensive speech or events. Instead, find strategic ways to fight bad speech with good speech.

Student groups should all be held to the same code of conduct and discrimination policies when they are hosting events, hosting speakers, and/or displaying or circulating materials on campus. If an academic department, student club, or student government body uses university “assets,” such as official social media accounts, email listservs, or department websites, to disseminate politicized statements against Israel or antisemitic rhetoric, it likely is violating campus policies and codes of conduct. Report these violations to your administration by filing a bias report. StandWithUs can help.

### **Title VI Complaints**

Title VI of the Civil Rights Act of 1964 is a federal law that prohibits federally funded programs—which include public





schools and most colleges and universities, including private institutions—from engaging in discrimination based on the protected statuses of race, color, and national origin. This includes discrimination based on someone’s actual or perceived Jewish identity/ancestry.

To successfully assert a Title VI violation, you must show evidence of:

1. A “pervasively hostile learning environment”: harassment/conduct/inaction was severe enough to interfere with a student’s ability to participate in one or more of the school’s programs
2. Administration’s knowledge of the hostile learning environment
3. Administration’s failure to take the steps reasonably necessary to remedy the problem by ignoring, tolerating, encouraging, or failing to adequately address it

A pervasively hostile learning environment can be created by a stand-alone incident or a series of antisemitic events. You generally have 180 days (six months) from the date of the incident to submit a Title VI claim.



Title VI protects students who are mistreated because they are or are perceived to be Jewish, Israeli, or Zionist and/or are Zionist as part of their religious Christian/Muslim identity. Thus, non-Jewish individuals who experience disparate or discriminatory treatment because of the perpetrator's antisemitic bias may have a viable Title VI claim.

## Recording

Within the bounds of relevant school policies and state laws regarding two-party consent and permissible filming/recording, it is often possible to record audio and/or video footage—generally based on whether someone has a reasonable expectation of privacy regarding the speech or conduct at issue. If they do, you should not record them. Generally, you can take pictures and videos of people who do not have a reasonable expectation of privacy in public areas. Classrooms are not considered public areas.

Please comply if you are at an event where attendees are specifically asked not to take pictures or videotape. Note that public officials may not seize your video or photograph, or order its deletion, without a warrant.

Authorities—like teachers or professors—can limit documentation through reasonable “time, place, and manner” restrictions so long as they apply those restrictions consistently. For example, a professor may expressly prohibit students from recording during class time if it is disruptive. However, the professor must enforce that rule consistently.

If you want to record, make sure you are familiar with the applicable policies. If a professor or teacher gives you permission to record, make sure you have that permission in writing or otherwise recorded.

### **Contacting StandWithUs Law**

StandWithUs can help students and parents respond to antisemitism and support Israel through legal and other action. In addition to helping file campus-level bias or discrimination complaints and accompanying students during campus investigative meetings and hearings, we can escalate with legal demand letters, community campaigns, Title VI complaints, criminal complaints, and, where warranted, litigation. If students are falsely charged or find themselves facing administrative hearings for standing up to antisemitism, our legal team can help. When in doubt, reach out!

**If you need legal advice to deal with anti-Israel  
activity or antisemitism, contact us today.**

**[www.StandWithUs.com/legal](http://www.StandWithUs.com/legal)**

Reach out for help at  
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# When in Doubt, Reach Out!



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