

# An EQUAL SPACE for ALL

A Trustee Guide to Preventing Encampments and Occupations on Campus



AMERICAN COUNCIL OF TRUSTEES AND ALUMNI  
Institute for Effective Governance®

## AMERICAN COUNCIL OF TRUSTEES AND ALUMNI



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## A Trustee Guide to Preventing Encampments and Occupations on Campus

The spring semester of 2024 was a national and international disgrace for American higher education, very far from our boast of being the envy of the world. At home and abroad, the public saw images of encampments, occupations of campus buildings, noisome antisemitic harassment, and presidents of prestigious universities unable to control their campuses or explain consistently the principles by which they supposedly governed them.

It can only be with shame that one reads the long catalogue of antisemitic outrages on campus in the English edition of humanitarian and philosopher Bernard-Henri Lévy's new book, *Solitude d'Israël*, or *Israel Alone*. Cornell University, Cooper Union, Pomona College, Rutgers University, Columbia University, Barnard College . . . Monsieur Lévy chose the right word when he called it a "mudslide." The whole world is watching.<sup>1</sup>

Peaceable assembly and freedom of speech are core values of our nation, and they are absolutely essential in higher education. Time, manner, and place restrictions to ensure campus order are also equally important, and they are protected by precedents in case law. Implementing such restrictions serves free inquiry, civil discourse, and academic excellence by ensuring that everyone has a right to learn, participate in campus activities, and use campus spaces. Failure to understand and implement these legitimate prerogatives for



protecting the campus and its operations is to invite disaster.

Higher education leadership should prepare proactively to ensure a more effective response to similar developments in the future. Circulating last spring in group chats were such manuals as a “De-arrest Primer,” which encouraged physical resistance and violence against the police, and a “Do-It-Yourself Occupation Guide,” an illustrated guide to breaking and entering buildings, advocating vandalism. Unsurprisingly, another text circulating among demonstrators, “First We Take Columbia,” calls for more such occupations. The students and outside activists sharing these guides have stated that their goal is to transform our colleges and universities into platforms to advance their ideological agendas.<sup>2</sup>


The price of unpreparedness will likely be very high. From the most elite private institutions to state flagship universities, students—often spurred on and abetted by outside influences—have organized to stage “encampments,” commandeering large areas of campus or even occupying campus buildings to prevent them from being used. These are by design intended to disrupt university operations, and in some cases have led to commencement ceremonies being canceled due to the administration’s inability to guarantee the safety of those participating. At their worst, as we have seen recently, these demonstrations have been accompanied by antisemitic threats and harassment of Jewish students. New York University is the first, but probably not the last, to have to settle a lawsuit over the mistreatment of Jewish students. It is imperative to forbid campus encampments.<sup>3</sup>

Once an encampment has occupied the campus, the institution has very few options to avoid an ugly


spectacle that at best will make the administration look ineffectual and even make the board appear derelict. Negotiating and making concessions are invitations to more and increasing demands. They embolden others to employ similar coercive tactics in the future and further undermine the university's mission.

But campus encampments are more than just bad public relations for the institution, much like how student harassment is about more than the victims being bullied. Both infringe on the rights of all who are part of the campus, to whom trustees are responsible, and they erode public trust. The purpose of this brief guide is to equip college administrators and governing boards with the tools they need to restore order, respect for campus rules, and adherence to the academic mission and purpose of colleges and universities.

The following is a list of practical steps that governing boards can take to ensure that the academic community as a whole can access equally the campus square and be free of harassment. No matter what the motivation or cause, acts of intimidation have no place in a venue for liberal education.

 **Ensure that the institution has rules in place forbidding encampments and harassment and establishing sanctions for infractions.**

Colleges and universities are permitted to enact reasonable, content-neutral regulations on the *time, place, and manner* of protest activity. Examples of constitutionally permissible restrictions include noise limitations (such as the use of bullhorns), caps on how many people may participate in a protest (such as building capacity), or bans on overnight occupation of



a campus space. Such regulations to maintain ordered liberty powerfully protect free expression.

When such policies are ambiguous, or worse, non-existent, institutional leaders have a very difficult time re-establishing order. They expose themselves to the risk of specious charges that they are opposing free speech or that they are selective in what they forbid based on the content of the protest. But the difference between peaceful protest and encampment is that the latter seeks to commandeer the public square of campus to the exclusion of all else in the community. The purpose of an encampment is to disrupt campus life and encourage confrontation well beyond a symbolic level associated with common protest. Time, place, and manner restrictions, when properly crafted, draw the line between conduct that is and is not permitted.

Private institutions have more legal flexibility in the policies they can enact, although prudence dictates that administrators should hold themselves to the spirit of the First Amendment, even if not legally bound to it. Unlike public universities, whose premises by law are open to the public, private colleges and universities can restrict campus access to students, faculty, and staff. This can be useful to prevent outside agitators from inflaming a delicate situation and to minimize adverse interference with students' educational experience.

Depending on state law, private—and some public—institutions can ban the wearing of masks during a protest for the purpose of concealing one's identity (as opposed to reasons of health). Such a policy is important because of the chaotic nature of campus occupations and the desire of some participants to evade discipline for breaking university rules. *Students should know and expect that staff will videotape campus*

events, making it easier to identify students who seek to disrupt the campus.

Boards should also ensure that the institution's policies on harassment are similarly precise and clearly communicated to the campus community. The long-standing Supreme Court standard from *Davis v. Monroe County Board of Education* defines harassment as conduct that is “so severe, pervasive, and [emphasis added] objectively offensive, and that so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities.”<sup>4</sup> As such, mildly objectionable speech may be constitutionally protected, but conduct that creates a hostile educational environment is not.

➤ **Review and be certain that the penalties for violations are clear and severe.**

Students who disrupt the functions of the university, or even attempt to do so, should know they will face sanctions that will remain permanently on their collegiate records. Sanctions should include suspension or expulsion of the most serious offenders. The University of Florida, led by Senator Ben Sasse, made this abundantly clear in April 2024:

This is not complicated. The University of Florida is not a daycare, and we do not treat protesters like children—they knew the rules, they broke the rules, and they'll face the consequences. . . . And we also told them that clearly prohibited activities would result in a trespassing order from UPD [the University

Police Department] (barring them from all university properties for three years) and an interim suspension from the university.<sup>5</sup>


It is the board's responsibility to direct the administration to uphold the policies and rules that the institution has set. Campus leadership must communicate with words—and actions—that it will not tolerate interference with the rights of others in the community. There are typically strong sanctions against plagiarism because it strikes at the integrity of the academic mission of the institution. Similarly, barricading oneself in a campus building, vandalizing campus monuments, or indefinitely commandeering public spaces for one's exclusive use obstructs the function of the institution and deprives others of their rights to use these areas peaceably.

When students are found to be in violation of institutional policies against encampments, the board must ensure that the administration acts decisively and stand with it as it reviews and adjudicates the matter swiftly. The convoluted processes of student and faculty disciplinary committees often fail to signal to the student body at large that punishment follows violations with certainty. The board should not allow stalling, soft ultimatums, or worse, concessions to those who are out of compliance with campus rules. The optics of “de-escalation” are a recipe for long-term failure. When Harvard University reversed course two months after initially suspending five students who participated in a pro-Palestine encampment, the *Harvard Crimson* speculated that it would embolden repeat actions.<sup>6</sup> “Harvard has caved in, showing that the student intifada will always prevail,” bragged organizers on social media.<sup>7</sup> Northwestern University, Brown University, Rutgers University, and the University




of Minnesota have all entertained demonstrators' demands, including divestment from Israel. Even for those who may sympathize with the protest, this approach sends the misguided message that the ends justify the means. To put this in a word, no sensible campus leader would ever justify the pulling of a fire alarm to express disagreement with what is being said in a classroom. Coercive tactics should never replace discussion and dialogue as means of persuasion, especially at an institution of higher education.

Boards should also eliminate room for ignorance of the rules. As part of registration, institutions should require that students sign a form committing themselves to obey and honor the institution's student code of conduct. That form should also make it clear that violations can lead to suspension or expulsion and that there will be no refund of tuition in such instances. Doing so will go a long way toward preventing litigation against the administration for enforcing campus rules.

 **Adopt the Kalven Report on institutional neutrality.**

College and university presidents are coming under increasing pressure to use the imprimatur of their office to support or decry ideological or political causes external to the university's mission. The best way to avoid this is an unequivocal policy of remaining neutral as an institution on political matters.

Governing boards should adopt the Kalven Committee's Report on the University's Role in Political and Social Action, as have those at the University of Chicago, Purdue University, the University of North Carolina System, Vanderbilt University, and other



institutions.<sup>8</sup> When a board adopts an official policy of institutional neutrality, it frees its president from spending precious time deciding whether to issue public statements taking official positions on the controversies of the day.

It also follows from such a policy that management of institutional finances and the endowment are left to fiduciaries rather than political actors. **Financial and investment policies are not matters to be decided by campus pressure groups. Institutions of higher education are not political tools.**

Moreover, boards should consider adopting an official policy similar to the Stanford University Board of Trustees' Statement on Investment Responsibility:

The Trustees believe that the primary mechanism through which the endowment advances social good is through its financial support of the university's academic mission. Just as the University does not take positions on partisan or political issues, the Trustees maintain a strong presumption against using the endowment as an instrument to advance any particular social or political agenda. The Trustees believe that in most cases divestment from the University's endowment is an ineffective means of exercising investment responsibility, especially in comparison to the value of encouraging the University community to engage in education, research and debate.<sup>9</sup>

The University of Chicago—the birthplace of the Kalven Report—provides an instructive example of how these policies provide practical guidance. When the university in 2021 faced calls to condemn an

anti-Zionist social media post made by the incoming Undergraduate Student Government, the university president and provost issued a statement reiterating the institution's "longstanding practice against taking positions on social or political issues outside the University's core mission." The statement also recognized that antisemitic harassment was "antithetical to our values, including our deep commitment to open and free inquiry, and our welcoming of people of all backgrounds."<sup>10</sup>


When demonstrators demanded divestment from Israel, the university reiterated its position:

Over more than a century, through a great deal of vigorous debate, the University has developed a consensus against taking social or political stances on issues outside its core mission. The University's longstanding position is that doing this through investments or other means would only diminish the University's distinctive contribution—providing a home for faculty and students to espouse and challenge the widest range of social practices and beliefs.<sup>11</sup>

A policy on institutional neutrality ensures that the campus community understands the college or university's role as the forum, not the advocate.

 **Diagnose and address the root causes of intolerance.**

Two distinct problems characterize the present wave of encampments: (1) the demonstrators' commitment to transform universities into political tools for advancing their own particular agendas, evidenced by



their disregard for appeals to civil discourse; and (2) the disturbing extent to which these demonstrations are accompanied by targeted harassment of Jewish students. Addressing both must go beyond the whack-a-mole approach of reacting to crises as they come. The unfortunate reality is that the genesis of this volatility comes from decades of inactivity and misguided efforts by higher education leadership.

**Boards must ask the following difficult questions:**

- Do we have a history of taking political sides to the detriment of our mission, and has that history opened us to charges of hypocrisy?
- Do we have a history of indulging those who violate campus rules and failing to enforce policies?
- Do our admissions and hiring practices and procedures focus on considerations essential to academic excellence, such as intellectual promise and commitment to free expression and civil discourse (rather than, for example, passing ideological litmus tests or demonstrating commitment to political activism)?
- Do our marketing materials, admissions materials, and website encourage and celebrate political activism at the expense of intellectual engagement?
- Do our student orientation activities adequately prepare students to understand and discuss complex issues in a spirit of freedom and mutual exchange?

- Are our student life staff and faculty educated about free speech, academic freedom, and openness to viewpoint diversity?
- Does our core curriculum give our students the basic understanding of logic, political life, and American history and government that is required to become thoughtful citizens in a pluralistic country and world?
- To what extent are our efforts to promote a diverse and inclusive environment being counterproductive? Are our diversity, equity, and inclusion (DEI) offices contributing to the problem by fomenting a narrative that pits affinity groups against one another in a “oppressor vs. oppressed” paradigm that may contribute to the alienation of Jewish students? If so, an audit of DEI policies and programs would be in order.
- To what extent do university programming panels on international conflicts represent a diverse variety of viewpoints?

Even though these questions may spur uncomfortable conversations, far worse is the prospect of institutions of higher education failing to course correct given the circumstances. The norms of engagement in our nation’s communities, workplaces, and civic squares all flow from the example set by our colleges and universities. They play an important role in American society by serving as incubators of ideas and training grounds for the next generation of leaders to learn how to disagree respectfully in order to solve the problems of the future. As agents of accountability, trustees are best positioned to ensure that institutions of higher education continue to fulfill this vital responsibility.

## ACTA's IEG is here to help.

ACTA's Institute for Effective Governance® (IEG) draws on a broad network of higher education experts to provide key information that trustees can use to make wise decisions for their institutions. IEG offers a wide range of services, including orientations and retreats, board management seminars, and institutional assessments.

To learn more, visit **[www.GoACTA.org](http://www.GoACTA.org)** or call **(202) 467-6787**.



## End Notes

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