

**EXECUTIVE LEADERSHIP TEAM MEETING
FIRST AMENDMENT DISCUSSION
District Office Board Room | September 18, 2019
3:00 pm – 5:00 pm**

Executive Leadership	3:00 - 3:15 pm	Brian King
First Amendment and Policy and Regulation Presentation	3:15 - 4:15 pm	JP Sherry Abrè Conner
Breakout discussions	4:15 - 5:00 pm	

A CONVERSATION ABOUT THE FIRST AMENDMENT

September 18, 2019
General Counsel
JP Sherry

First Amendment

- "Congress shall make no law abridging the freedom of speech . . . or the right of the people to peaceably assemble and to petition the Government for redress of grievances."

Justice Anthony Kennedy

- "At the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal. Government action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right."

California Constitution

- Section 2(a)

Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.

California Constitution

- Section 3(a)

The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

Best Practices & Tools

- Sometimes the best answer is to ignore the speaker.
- Sometimes the best answer is to engage the speaker.
- Sometimes the best answer is to provide your own speech.
- The best answer is NOT to suppress speech.

ACLU: College Protests and Demonstrations

by Abre' Conner

What does it mean to have protected speech?

What does it mean to have protected speech?

ACLU: College Protests and Demonstrations

What does it mean to have protected speech?

Free Speech on College Campuses

Speech on

What does it mean to have protected speech?

What does it mean to have protected speech?

A few examples of college demonstrations

ACLU: Know your Rights



By Abre' Conner, Staff Attorney
ACLU Foundation of Northern California

*This information is not intended as legal advice

What's the best place for a rally, protest, or demonstration on college campuses

- Traditional Public Forums: Is it a sidewalk, a street or a public park? If the answer is yes, you're holding your protest at a traditional public forum, where speech may only be restricted through reasonable time, place and manner restrictions.
- Designated Public Forums: Common examples of designated public forums include public auditoriums, the steps of city hall and plazas in front of public buildings.
- Non-Public Forums: In other venues, your rights are less clearly protected. At military bases, airport terminals, or the entrance to a post office, for example, reasonable prohibitions and restrictions may be upheld, as long as they are objectively applied and do not favor one side of an issue over the other. The government cannot discriminate based on viewpoint, even in a non-public forum.

What does it mean to have protected
speech

Free Speech on College Campuses

- **Is all speech protected?**

- **IT DEPENDS.** The First Amendment protects your right to express your opinion, even if it's unpopular. But this right doesn't extend to libel, slander, obscenity, "true threats," or speech that incites imminent violence or law-breaking. If you grab a megaphone during a riot and yell "shoot the cop" or "loot the shop," you may reasonably expect trouble.

- **What if others react violently to what I say?**

- Students can't be held responsible for the way that counter-demonstrators or your own supporters react, as long as your words don't directly incite violence or law-breaking. It's the responsibility of the police to control the crowd.

- **Can everyone express free speech?**

- Free-speech rights are for everybody. It doesn't matter whether you're a U.S. citizen or whether you're of voting age.

- **What about amplification?**

- It depends. But if the intent is to convey a message, it is probably protected.

Free Speech on College Campuses

- **What about asking for money?**

- **IT DEPENDS.** The First Amendment protects a student's right to ask for money. A campus cannot allow for some clubs and organizations to ask for money and not others. Moreover, if the campus has to examine what a sign reads or what a person says to determine whether it is allowed, this type of restriction is probably not within the constitutional limits.

- **Can public universities or college campuses restrict protests?**

- Students should be allowed to protest on the outdoor streets and plazas of public college and university campuses, subject to reasonable time, place, or manner restrictions. A public college cannot allow protests on one side of an issue but prohibit protests on the other side. But it may restrict speech activities that unduly interfere with classes.

- **Are there constitutional limits to police intelligence-gathering and surveillance of political activists?**

- Overly intrusive and unnecessary police spying and intelligence gathering activities may violate constitutional guarantees of freedom of speech or privacy if it is targeting groups or individuals engaged in First Amendment activity absent some connection to suspected criminal activity.

What does this mean in practical terms?

- Schools may have free speech areas. It's important to review the school policies and regulations to know whether this is the case.
- Setting up tables and banners can be subject to reasonable time, place, and manner restrictions
- There can be noise ordinances that impact rallies. Generally speaking, some type of amplification device can be used. It's important to know the local rules and regulations for where you plan to conduct your rally. This also means knowing the rules at your college campus as well.

So you're interested in Civil Disobedience

What is civil disobedience

- Civil disobedience is the active refusal to comply with certain laws as a form of protest.
- Be aware of any consequences particular to students on campus, such as:
 - If an individual is a non-citizen, the government may communicate your arrest to the U.S. Immigration and Customs Enforcement, which could affect your immigration status and even result in your deportation. This is important for colleges to flag if this comes up with students. If there are policies in place regarding when the university may communicate with ICE, that is important to communicate to students as well.
 - California law prohibits most private employers from asking about arrests that did not result in a conviction. However, if you apply for a job in law enforcement, in another state, or with the federal government, they may be asked about arrests as well as convictions.
 - If there is a warrant out for a student's arrest, they may be held in custody.

A few examples of rallies, demonstrations, and parade issues

- Fresno Demonstration Log Surveillance of “liberal” parades and demonstrations
- Fresno Parade Ordinance
- SRCEH v. City of Sacramento
- FBI surveillance of “Black Identity Extremists” FOIA requests

Resources

- National Lawyers Guild
- ACLU
- The Ruckus Society is not a legal resource, but provides direct action education. www.ruckus.org
- The Midnight Special Law Collective website lists resources: www.midnightspecial.net

The ACLU Foundations of California have an app that allows users to record law enforcement in real-time, alert other users to nearby law enforcement encounters, and to submit videos and incidents to the ACLU. Download it at www.mobilejusticeca.org



Questions?

LRCCD Policy 1413

- The Los Rios Community College District's Board Policy and Administrative Regulation 1413 Use of Outdoor Areas address the use of the campuses for First Amendment purposes. Board Policy 1413 states that public expression in the form of freedom of speech and advocacy may be exercised on any District outdoor property that is open to the public generally, and at such times and places and in such a manner as is compatible with the use of the property.

LRCCD Policy 1413

- It further requires that these activities take place in a way that:
- Assures orderly conduct;
- Avoids disruption or interference with District/College operations;
- Avoids disruption or interference with the ability of the District/College to carry out its responsibilities as an educational institution;
- Protects the rights of all individuals who use District/College property;
- Protects persons against practices that would make them involuntary audiences;
- Assures the safety of all members of the District/College communities; and
- Complies with all applicable laws.

LRCCD Regulation 1413

- Space is available on first-come first-choice basis.
- Prior notice requested, but not required. Requires notice when arrive.
- Requires uses to be compatible with use and maintenance of area.
- Requires free flow of persons and traffic and should not interfere with activities of campus.
- Amplified sound requires a permit.

1.0 Public Expression (Ed. Code, § 76120)

- 1.1 The use of outdoor areas open to the public generally shall be granted under the Free Speech clauses of the United States and California constitutions, those sections of the Education Code pertaining to the use of such areas by student, employee, or public individuals/groups, and all applicable laws. Public expression in the form of freedom of speech and advocacy may be exercised on outdoor Los Rios Community College District property open to the public generally at such times and places and in such a manner as is compatible with the use of the property, and that: (a) assures orderly conduct; (b) avoids disruption or interference with District/College operations; (c) avoids disruption or interference with the ability of the District/College to carry out its responsibilities as an educational institution; (d) protects the rights of all individuals who use District/College property; (e) protects persons against practices that would make them involuntary audiences; (f) assures the safety of all members of the District/College communities; and (g) complies with all applicable laws.
- 1.2 Smoking, vaping and the use of tobacco is prohibited on all District/College property.
- 1.3 The Chancellor shall develop Administrative Regulations to implement this District Policy.

LRCCD

Policy Adopted: 1/18/06
Policy Revised: 6/10/15; 12/14/16
Policy Reviewed: 12/14/16
Adm. Regulation: [R-1413](#)

1.0 General

- 1.1 Los Rios Community College District property shall be used only in accordance with Federal, State, and local laws and shall not be used for any unlawful activity.
- 1.2 All persons on District/College property are required to abide by District/College Policies and shall identify themselves upon request to District/College officials acting in the performance of their duties. Violation of District/College Policies may subject a person to possible legal penalties or may result in District/College sanctions. If the person is a student, faculty member, or staff member of the District/College, that person may also be subject to District/College disciplinary action.
- 1.3 Public expression in the form of freedom of speech and advocacy may be exercised on District/College property at such times and places and in such a manner as is compatible with the use of the property, and that: (a) assures orderly conduct; (b) avoids disruption or interference with District/College operations; (c) avoids disruption or interference with the ability of the District/College to carry out their responsibilities as educational institutions; (d) protects the rights of all individuals who use District/College property; (e) protects persons against practices that would make them involuntary audiences; and (f) assures the safety of all members of the District/College community.
- 1.4 Smoking is defined as inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or other product intended for inhalation, in any matter or in any form. Smoking also includes the use of e-cigarettes. An e-cigarette is any oral device that provides a vapor of nicotine or any other substance for inhalation. E-cigarettes do not include products approved by the United States Department of Food and Drug Administration for medical treatment.

2.0 Use of Outdoor Areas Open to the Public Generally

- 2.1 On District/College outdoor areas open to the public generally, all persons or organizations may exercise their constitutionally protected rights of free expression, speech, assembly, and worship, and meet and distribute and sell noncommercial literature incidental to the exercise of these freedoms. Such activities shall be compatible with use and maintenance of the area and the free flow of persons and traffic, and shall not interfere with or disrupt the normal activities of the District/College property. Interference with District/College property entrances or exits is strictly prohibited.
- 2.2 Any individual or group wishing to engage in speech activities is requested to notify the appropriate College or District Facilities Management department as far in advance of the activity as possible. If advance notice has not been made, notice of arrival (including location of activity) is required. Notice of arrival should be made at the campus Facilities Management department as soon as practical.

- 2.2.1 The Facilities Management department should notify campus police, custodial department, or other appropriate College departments of any non-student or non-College organization speech activities when possible.
- 2.3 Organizations/individuals are encouraged to reserve space in advance. Locations are filled on a first come, first choice basis. A reservation increases the chance of obtaining a particular location. Locations should be chosen to minimize interference with the free speech rights of others. Conflicts in location shall be addressed to the Facilities Management department.
 - 2.3.1 Requests for reservation of District/College outdoor areas open to the public generally are reviewed and acted upon by Facilities Management departments for the respective College or District property. A reservation request may be denied if the request is not in accordance with District/College Policies and Administrative Regulations. A reservation request shall be denied if the circumstances are such that the event will present a clear and present danger to the orderly operation of a College or the District. In case of a denial of or any conflict of property use, the reservation applicant may appeal to President. The President will render a decision on the appeal within seven (7) calendar days.

3.0 Use of All Other Property and Facilities

- 3.1 Persons or organizations (including those not affiliated with the District or a College) shall be eligible to use District/College facilities (classrooms, athletic fields, etc.) as set forth in Administrative Regulations [R-1411](#) (Use of Facilities) and [R-1412](#) (Fees for Use of Facilities).

4.0 Religious or Political Activities

- 4.1 As a state instrumentality, the District/Colleges must remain neutral on religious and political matters. The District/Colleges cannot sponsor or fund religious or political activities, except when authorized by the Los Rios Community College District Board of Trustees.
- 4.2 Religious or political authorized student organizations shall have access to District/College property on the same basis as all other authorized campus organizations. See District Policies [P-2311](#) (Student Associations) and [P-2312](#) (Student Organizations and Activities).
 - 4.2.1 Authorized student organizations may sponsor and fund religious or political activities provided no District/College funds are used to underwrite these activities.
- 4.3 The name, insignia, seal, or address of the District/Colleges or any of their offices or units shall not be used for or in connection with religious or political purposes or activities except as consistent with District/College Administrative Regulations.

- 4.3.1 In correspondence, statements, or other material relating to religious or political activities or issues, the District/College title of a faculty or staff member shall be used only for identification. If such identification might reasonably be construed as implying the support, endorsement, or opposition of the District/College with regard to any religious or political activity or issue, the identification shall be accompanied by an explicit statement that the individual is speaking for himself or herself and not as a representative of the District/College or any of its offices or units.
- 4.4 Funds: To avoid District/College endorsement of a political candidate, the payment of District/College-controlled funds is prohibited to individuals who have declared their intention to run for elective office at the time a contract is made. This prohibition covers contracting for payment of fees, honoraria, or travel expenses.
- 4.4.1 This prohibition does not extend to members of the Board of Trustees who have declared their intention to run for election as members of the Board of Trustees or other elective office. Such Board of Trustees members may continue to receive their customary compensation, reimbursement expenses, and other fees, compensation, or money due to them for the performance of their duties as elected members of the Board of Trustees. Section 4.4 shall apply in all other respects.
- 4.5 Faculty, Students, and Staff. The District/Colleges recognize, support, and shall not abridge the constitutional rights of faculty, students, and staff to participate, either as individuals or as members of groups, in the political process of supporting candidates for public office or any other political activity. The District Policies above in no way constitute prohibitions on the right of any individual or group in the District/College community to express political views.

5.0 Amplified Sound Permit

- 5.1 The following Administrative Regulations have been developed to assure that sound at events held on District/College property is maintained at a reasonable level and is not disruptive to District/College activities or communities. A permit must be approved by the Facilities Management department for outdoor use of amplified sound. Permits will not be approved if the sound may interfere with classes, the orderly administration of the District/College, or reasonably disturb District/College operations, or community residents.
- 5.2 The level of sound must be limited to reach only the immediate audience. Speakers must be positioned carefully in order to prevent sound from disturbing persons not in the immediate area. Atmospheric conditions, the surrounding terrain and the buildings can greatly influence the effect of sound. The set-up of speakers should be carefully checked before each event and monitored occasionally during the event by the permit holder. Sound checks must be conducted only during the hours sound is allowed.

- 5.3 Outdoor use of sound is generally permitted in areas designated by each College and in accordance with the conditions enumerated; all other areas by exception only. A list of the designated areas for each College shall be available at the Facilities Management department.

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Adm. Regulation Adopted: 11/28/05
Adm. Regulation Revised: 4/26/10; 4/27/15; 10/17/16
Adm. Regulation Reviewed: 10/17/16
Board Policy: [P-1413](#)

Hypothetical

Project Truth showed up at one of our colleges today. About ten people set up a display in the quad. They did not provide warning in advance that they were going to show up or ask permission. Their display has graphic pictures depicting aborted fetuses. They are walking around the campus talking to students, faculty and staff about their message that is opposed to abortion and supportive of the right to life. They are reported to have told some of our students they are going to hell for the choices they make. Students are upset about the interactions with the demonstrators.

At the same time, members of the Black Lives Matter movement appeared on campus to protest the decision of the District Attorney not to charge the officers who killed an unarmed man. Their rally is 100 people strong; they are carrying signs; they are chanting slogans; and are agitated and frustrated about the District Attorney's inaction.

The tensions on campus are high and the Black Lives Matter folks have set up their demonstration right next to the Project Truth folks. Reports are coming in that people are yelling at each other about their different messages, although no physical confrontations have occurred.

Meanwhile, faculty members circulate emails to everyone on exchange:

Our campus leadership must take a stronger stance on how to accommodate visitors. Yes, we all have a right to free speech. However, if the event or activity serves as a detriment to students and the campus -- getting to class, limiting access to bookstores or other venues -- then it behooves us to insist that these people be moved.

As a faculty coordinator of a student club, I would NOT be able to put up a booth on the quad. I'd be asked to take it down. Why do they get to do what they are doing?

They are name calling, humiliating, mocking, and berating anyone who walks by. These are all criteria for "hate speech" when they are directed at individuals, which is exactly what they're doing. That violates their free speech right. Free speech is not "say whatever you want." There is a line, and they crossed it yesterday.

You are members of the senior cabinet at your college. You have hastily assembled yourselves to discuss this matter.

What additional facts do you need to know?

What can you do? What should you do? What is your action plan?

What messages you would like to convey to the college? How?

FLC PROPOSED Initial Campus Response Team for Fall 2019 (Tier 1)

We are currently convening a campus stakeholder group to brainstorm ideas and strategies for a long-term approach, including capacity building for staff and faculty, to help support students when divisive, inflammatory, and aggressive free speech events take place on our campus. While a broader campus conversation to develop a strategy for spring is in progress, this initial team will help respond to incidents that may arise during the fall 2019 semester.

Who: All managers, supervisors, campus police, and *(proposed: include interested faculty, student, and classified senate leadership)*

Strategy or approach:

1. Depending on availability, managers, supervisors, and campus leaders (faculty, student, classified) to volunteer to staff the FLC quad (initial quick scheduling using Google Docs); typically, events occur between 9 a.m. and 2 p.m.
2. Los Rios Alert System to alert “campus response team” (possible- Captain Cox to check with Public Information Office)
3. FLC-All message to campus community (draft a message template to have one ready to go-PISO)
4. Audio visual—can we quickly deploy a camera to record (proposed)
5. A-frames—currently we have 2 that state “**Warning, graphic images ahead**”, having more made; we can also modify the message if needed (Facilities is already working on ordering more A-frames)
6. Staff to wear identifiable apparel and name tags; have positive messaging made to either handout and/or wear
 - a. Suggest alternate ways to get to class if needed
7. For fall, quick training on de-escalation strategies or informational resources provided to team
8. Perhaps coordinate table on FLC campus resources (Weave, Title IX, counseling services, etc.)

Parameters on free speech: *(based upon what we learned during Free Speech Forum)*

- We are here to support students, but we cannot interfere with an individual’s first amendment right of free speech.
- Short of incitement of violence or actual physical violence/confrontation (violation of the law), staff cannot impede or shut down public events.
- Individuals on campus cannot block student walk-ways (they cannot create a material and substantial disruption for students to get to class)