



Massachusetts Campus Activists, Know Your Rights!

College disciplinary hearings

The following information is general information. It is not legal advice, as the facts of every case are different. If you need to speak with a lawyer about college/university disciplinary actions, the Massachusetts chapters of the [National Lawyers Guild](#) and the [Council on American-Islamic Relations](#) have compiled a list of lawyers who handle discipline cases and their fees.

- Contact the National Lawyers Guild at nlgmass-director@riseup.net or 617-227-7335.
- Contact CAIR-Massachusetts at info@ma.cair.com or [here](#).

However, this is not an exhaustive list. You can also check with the lawyer referral services for the [Massachusetts Bar Association](#) and the [Boston Bar Association](#).

Starting point. Most colleges and universities in Massachusetts are private schools. The First Amendment does not apply directly to private institutions, which means there is no constitutional right to free speech or free assembly on private college/university campuses. Instead, at a private school, your rights are based on the school's written policies, rules and procedures. Therefore, it is critical to read your school's policies on free expression of ideas, student conduct, and disciplinary procedures. Here are the three most important sections of your school's rules on student conduct:

- **Policy: What behavior violates your school's rules?** Your student handbook describes what conduct is not allowed and may have a specific section on protests and demonstrations. Read these sections carefully.
- **Procedures: How are disciplinary complaints handled?** You have the right to require your school to follow its own written procedures for any disciplinary actions. Some schools start with an informational session, where they tell you what the problem is and then bring you back for the actual disciplinary hearing, which gives you time to prepare. Other schools go right to discipline with little or no advance information about the complaint that was made against you. Appeal rights also vary greatly. It is critical to prepare in advance for these meetings or hearings.
- **Sanctions: What are the possible punishments?** Most schools use a tiered system of discipline, starting out with a warning, then more serious discipline such as probation or a deferred suspension, and finally a suspension or expulsion. The possible discipline will

generally depend on two things: the seriousness of your actions (was there any property damage, violence, or significant disruption of the school's functioning, etc.) and your past disciplinary record, if any.

What about state universities, like UMass? Students at state colleges and universities are covered by the First Amendment's protections of the rights to free speech, to assemble peaceably, and to petition the government to address their grievances. Public schools cannot try to suppress demonstrations or other political events simply because they don't approve of what is being said. However, they still can set reasonable time, place, and manner restrictions on demonstrations and other political events. It is important to consult the student handbook to determine what those "reasonable restrictions" are at a particular state school. In addition, you need to carefully study your school's rules on the disciplinary process and the possible punishments.

FIND AN ADVISOR TO HELP YOU PREPARE YOUR DEFENSE AND TO ATTEND ANY MEETING OR HEARING. Check your school's procedures to see who can come to the meeting/hearing with you and what role they can play. ***DON'T GO ALONE.*** Many schools will not let you bring a lawyer, but will allow a faculty or staff member to attend and provide support for you. However they may not be able to speak on your behalf at the meeting or hearing, but they can provide emotional support, help you ask for breaks during the meeting/hearing, and take detailed notes for you.

Decide what your defense should be. If you don't understand your school's disciplinary policy, ask your advisor or faculty members for help. Next, look up your school's statements/policies on the free exchange of ideas, academic freedom, and free expression on campus. Depending on what your school's policies say, and how the school has enforced (or ignored) those policies in the past, you may be able to argue that your disciplinary charges go against the school's own principles on the free exchange/expression of ideas.

Also, find out how students have been treated in the past for activism on other issues (climate change, BLM, fossil fuel divestment, etc.), to see if pro-Palestinian activists are being singled out, or treated differently or more harshly, than other student activists. Discrimination in the application of disciplinary policies on the basis of many protected categories (such as race, disability, national origin, sex/gender) is illegal, even at most private universities and colleges.

Finally, ask for more time to prepare, especially if finals or a break are coming up or if you have criminal charges pending stemming from the same incidents.

Gather support. Your disciplinary hearing is taking place in the context of widespread campus activism in support of Palestinian human rights. Take advantage of that. Ask sympathetic faculty

(especially those with tenure) and staff to put pressure on the school to drop the charges and to write individual letters of support for you. Work with other students to create a petition or a letter-writing campaign that quotes the school's own statements about supporting the free expression of ideas. If you know any alumni or donors, ask them to contact the administration.

Prepare for your hearing. It may sometimes be helpful to prepare a written statement and give it to the school ahead of time, as long as you can testify consistently with that statement when you speak at the hearing. You should also prepare (for your own use only) notes or an outline of what you will want to say at any meeting or hearing, as this can be a stressful situation. In addition, give your school any evidence, such as photos or videos, and supporting letters or petitions. Possible defenses, depending on your situation:

- ***No violation of policy:*** Sometimes the actions you have engaged in do not actually violate the language of the policy. Read the policies carefully to see if the school has misapplied it to your situation.
- ***Inconsistent or conflicting policy language:*** If the provision under which you are being charged is inconsistent with or conflicts with other parts of the policies, you may be able to argue that the provision cannot be applied because a reasonable student wouldn't be able to understand how the policy is supposed to work.
- ***Discriminatory application of the policies:*** If other campus activists in the past have engaged in actions similar to yours (but concerning a different political issue) and have not been disciplined, the school must act consistently and not subject you to discipline.
- ***Unreasonable sanctions:*** Even if you have violated your school's policy, you can still argue that the school should be reasonable with its sanctions. For example:
 - **Unequal treatment:** You are being treated more harshly than other activists in the past because the school doesn't like what you are saying.
 - **Protection, not punishment:** The school should encourage the free exchange of ideas, instead of punishing students who speak out.
 - **Other consequences:** Describe any other negative consequences you are already experiencing (doxing, social media bullying and threats, etc.) and argue that you have already been punished.

When should you hire a lawyer? Most schools will not let you bring a lawyer to a disciplinary hearing. But you may want to speak with a lawyer before the hearing to help you understand your school's disciplinary policy and hearing procedures, and to help you prepare written statements or other evidence. You may also need a lawyer afterwards, if you want to appeal the

school's decision. Appeals are often not done in-person, but can be decided solely on the papers submitted by both sides, so a lawyer can help you prepare your appeal. If a lawyer is involved before the case is concluded, they can also identify any legal issues with how the school is handling the case, and may be able to advocate with the school's attorney on your behalf if it appears the school is violating your rights.

Can you sue your school over discipline?

- **Private colleges:** Massachusetts courts have made it clear that they will not get involved in school disciplinary cases unless 1) the school didn't follow its own policies, or 2) the way your case was handled lacked "basic fairness" (an undefined term in Massachusetts law, and not a very high standard for schools to meet), or 3) the school discriminated by disciplining you, or disciplining you more harshly than other students who took the same action (now or in the past), due to your race, religion, national origin, gender, or another protected class.
- **Public colleges:** In addition to being able to sue a public school for failure to follow its own policies or for discrimination, students can also sue public schools for failing to provide due process in the disciplinary procedures (a higher standard than "basic fairness") or for violating constitutional rights. In addition, public colleges and universities must abide by the First Amendment and cannot discriminate against students based upon the content of their speech or activism.
- **Practical considerations:** Lawsuits often take a long time to resolve (3 – 5 years in many cases), so you should talk to a lawyer about your chances of a favorable outcome, and whether it may make sense to try negotiating with the school before filing a lawsuit.

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