



**KNOW YOUR
RIGHTS**

UNIVERSITY STUDENTS: HB 377 AND YOUR FREE SPEECH RIGHTS

HB 377 is a state law that prohibits public schools and public charter schools from “direct[ing] or otherwise compel[ling] students to personally affirm, adopt, or adhere” to three tenets. The banned tenets are:

- “That any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior;”
- “That individuals should be adversely treated on the basis of their sex, race, ethnicity, religion, color, or national origin;” and
- “That individuals, by virtue of sex, race, ethnicity, religion, color, or national origin, are inherently responsible for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin.”

It also states: “No distinction or classification of students shall be made on account of race or color.” HB 377 does not include a specific penalty provision.

After the passage of HB 377, many university students wondered how the law might affect their education, research, teaching, and extracurricular activities. But the First Amendment protects the right to express and receive controversial viewpoints, and the Supreme Court has recognized that academic freedom is essential to democracy. The guide below is to help you understand your rights and alleviate some of the anxieties you may be experiencing.

YOUR FIRST AMENDMENT RIGHTS AS A STUDENT

The First Amendment protects free speech. Universities can generally regulate the time, place, and manner of expression, but cannot prohibit students’ speech based on the viewpoints they express. For example:

- Schools can require students to get permission before speaking through a loudspeaker on campus before 9 am, and a teacher could punish students for screaming through a class.
- Schools cannot prohibit students from protesting because they disagree with the protest’s cause or prohibit students from forming a student group because the group’s ideology runs counter to the administration.
- A school can limit where students can post fliers on campus but cannot prohibit particular groups from posting fliers.

Because access to ideas is essential to meaningful speech, the First Amendment protects access to ideas and information, too. Access to information and ideas in school prepares students for active and effective participation in our pluralistic society. This means that the state cannot restrict class content based on disagreement with the viewpoints expressed. For example:

- A college can make changes to curriculum because it finds that students are more interested in a certain field of study, or because a department chair

determines that the standards in the field have changed and students should learn these new developments.

- A school cannot prohibit teaching a subject because the topic is controversial or upsetting to some people.

The Constitution and civil rights also require equal access to education and protect against a hostile education environment. When courts look at whether speech in the classroom violates someone's rights, they ask whether the speech was related to a legitimate education objective. For example:

- A professor who used racist language in a class discussing the functions of hostile speech in society did not violate students' rights. A school that required students to read a book on Islam in a course discussing world religions did not violate students' rights.
- A professor who used sexist language in the classroom that was not related to the course topic of calculus violated students' civil rights.

YOUR FIRST AMENDMENT RIGHTS AS A TEACHING ASSISTANT

If you already avoid directing students to adopt certain views, and instead try only to broaden students' worldviews by proposing new ideas, HB 377 should not, on its own, change your teaching methods. As a teaching assistant, you generally have academic freedom to discuss controversial topics and expose your students to various viewpoints.

Academic freedom does **NOT** protect you from critique or criticism.

Academic freedom is limited by collective bargaining agreements, university policies, such as grading policies, and by protections against hostile work and learning environments.

YOUR FIRST AMENDMENT RIGHT TO PROTEST ON CAMPUS

HB 377 does not affect your constitutional right to protest.

Causing discomfort or offense is not a valid reason for a school to shut down a protest.

The First Amendment does not protect harassment, true threats of physical violence, or speech that intentionally and effectively provokes a crowd to immediately carry out violent and unlawful action.

IF YOU ARE DISCIPLINED FOR DISCUSSING DIFFICULT TOPICS IN CLASS, OR EXPERIENCE HB 377 AFFECTING YOUR EDUCATION

- **Write down** everything you remember, including the names of the people involved and details surrounding the incident.
- **Preserve** any messages or other communications from the people involved.
- **Contact** the ACLU of Idaho at <https://intake.acluidaho.org/>. We may be able to help.