

May 24, 2024

VIA EMAIL

Chancellor Howard Gillman
University of California, Irvine
chancellor@uci.edu

Re: Inappropriate Use of Interim Suspensions and Campus Bans in Response to Non-Violent Protests

Dear Chancellor Gillman:

The ACLU Foundation of Southern California and Peace and Justice Law Center have serious concerns about the imposition of interim suspensions and campus bans on numerous students and several student organizations by the University of California, Irvine (UCI) in connection with peaceful protests that have been occurring on campus. By imposing interim suspensions when they were not necessary to protect campus safety or prevent serious disruption, the University violated its own disciplinary rules. Because the interim suspensions took effect prior to any hearing or other opportunity for students to respond to allegations against them, they fail to comport with the most basic due process requirements.

When students who have engaged in non-violent protest are subjected to particularly harsh forms of University discipline without being able to contest their charges, they are likely to perceive the disciplinary system as arbitrary and as targeted at their political views. This premature punishment is therefore likely to have a chilling effect on the exercise of free speech rights on campus. The University compounded the potential chill when it decided to rely upon the criminal legal system in addition to its own disciplinary mechanisms, by initially subjecting some students who were present at a May 15 protest to Penal Code § 626.4 “withdrawal of consent” orders that ban them from every area of campus including even their own University housing before interim suspensions were issued. Finally, we are concerned by reports that several students have received administrative holds merely because their names were on student organization paperwork, and not because there are any allegations against them specifically. If true, these holds are punishing students for their *association* with student organizations and the viewpoints expressed by those organizations, in violation of federal and state free speech protections. We ask that you immediately retract the interim suspension notices and campus bans and offer students the full due process, First Amendment, and Liberty of Speech Clause protections the law requires.

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As background, we understand that on May 8, the University issued an initial round of interim suspensions against students and several student organizations. In general, the suspension notices were based on alleged violations of University policies and regulations, including those related to “disruption,” “disorderly/lewd conduct,” “disturbance of peace,” “failure to comply,” overnight camping, and amplified sound. The notices provided some generic factual allegations related to a campus encampment that was set up on April 29, but they contained no specific allegations about any individual student. The notices then informed recipients that based on such information, the University had summarily imposed interim suspensions before any hearing, instructing students that they were not to appear anywhere on the UCI campus, “includ[ing] any and all University housing facilities.”

The University soon decided to rely upon the Penal Code in addition to its own disciplinary mechanisms. Following dozens of arrests on May 15, the University issued Penal Code § 626.4 “withdrawal of consent” orders against some, but not all, of the more than 30 students, staff, and faculty who were arrested. Those orders banned students from returning to campus, including to their University housing, for either 7 or 14 days. On May 21, the University then issued another round of interim suspensions against students who were arrested on May 15, 2024. The May 21 suspension notices were similar to the May 8 notices, but they added to the factual allegations the protest and entry into the Physical Sciences Lecture Hall (PSLH) on May 15.

The University, on May 8, also imposed administrative holds upon recipients of the interim suspension notices for the student organizations, i.e., authorized “signers” for those organizations whose names appeared on student organization paperwork, casting doubt on their ability to continue in their academic programs and receive a degree until the holds are lifted. Absent evidence that these students actually participated in conduct that violated laws or University rules, the University may not punish them merely because they may be associated with other students who committed such violations. “The right to associate does not lose all constitutional protection merely because some members of the group may have participated in conduct or advocated doctrine that itself is not protected.” *N. A. A. C. P. v. Claiborne Hardware Co.*, 458 U.S. 886, 908 (1982).

While all the disciplinary notices advised students that they could request an appeal of their interim suspensions and meetings with the Office of Academic Integrity and Student Conduct (OAISC) to respond to the underlying allegations, these measures take time and provide inadequate protection against erroneous deprivation because students can only avail themselves of these procedures *after* they have been suspended and excluded from campus. These measures do not change the bottom line, which is that the University has imposed a serious punishment before any semblance of due process.

The University’s use of such draconian measures appears almost calculated to suppress unpopular speech. Other instances of loud noise on campus have not been met with such a response. UCI also has a long history of students protesting on campus and violating various campus rules and regulations without being disciplined.¹ This is the first time we are aware of the

¹ Indeed, in the school’s recent history, the campus has been the site of multiple protests, loud picketing, and demonstrations. During the November 2022 strike authorized by the union representing academic workers, for example, many students engaged in such activity without being penalized for “disturbance of the peace” or similar violations. They certainly did not face interim suspensions or other bans.

University using interim suspensions and bans to exclude large groups of student protesters or people who are associated with them from campus. It is not unreasonable to believe that the University is targeting these students in an effort to “suppress[] a particular view” that it disfavors. *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 830–31(1995).

Imposition of interim suspensions and campus bans here are not warranted by the circumstances.

The University’s actions here appear to have been unnecessary and inappropriate for the conduct alleged. The University’s provision governing interim suspensions, Student Code Section 105.08, emphasizes that an interim suspension is an extraordinary measure that must be imposed only in limited circumstances:

A student shall be restricted only to the minimum extent necessary when there is reasonable cause to believe that the student's participation in University activities or presence at specified areas of the campus will lead to physical abuse, threats of violence, or conduct that threatens the health or safety of any person on University property or at official University functions, or other disruptive activity incompatible with the orderly operation of the campus.²

According to its own rule, the University may not impose an interim suspension unless it is necessary to protect health or safety or to prevent severe disruption *incompatible* with the operations of the campus. Even then, the interim suspension must be tailored to address the specific threat to campus safety.³

Here, the University offered only generalized allegations relating to the campus encampment and May 15 protest and no particularized allegations against any students or the student organizations in the interim suspension notices. Moreover, the University did not articulate why it was imperative to remove the students from campus before they had an opportunity to respond to the allegations. Nor could it. As we understand it, at the time of the May 8 suspension notices, ingress and egress to and from buildings was not obstructed, normal classroom instruction continued, and students had worked with the Campus Fire Marshal to address any concerns that he raised. The particular offenses students were charged with, such as overnight camping and use of amplified sound without a permit, hardly present the type of severe disruption or serious safety risk that could justify imposition of interim suspension under Section 105.08.

² University of California Policies Applying to Campus Activities, Organizations and Students (PACAOS), § 105.08, <https://conduct.uci.edu/policies/pacaos/discipline-procedures.php>.

³ This is consistent with due process requirements governing the equivalent of “interim suspensions” in the K-12 context. Under Education Code section 48911(c), which governs primary and secondary schools, a K-12 student may be suspended without an informal conference when an “emergency situation” exists—a situation that presents a clear and present danger to the life, health, or safety of students or school personnel. The University’s own rules and section 48911(c) both make clear that an educational institution may only circumvent ordinary due process requirements where there is an extraordinary risk to safety or to the ability of the institution to function.

In fact, the only actual threat to health and safety, and any serious disruption that occurred over the last few weeks, appear to have been instigated by the University administration, not the students and organizations the University suspended. On April 29, the UCI Police Department (UCIPD) surrounded the encampment with yellow “crime scene” tape, halted the delivery of water to the campus demonstrators, and did not allow individuals to leave and return into the encampment, including to use the bathroom. On April 30, UCIPD surrounded the encampment with barriers and connected the barriers with metal zip ties, leaving only one point of egress from the barriers, and creating a serious safety risk. On May 15, the University exacerbated this risk by sending out false reports of a violent protestor after students conducted a banner drop from the PSLH building and expanded the encampment barrier in a symbolic gesture, resulting in hundreds of law enforcement officers from nearly two dozen agencies descending upon the campus. These actions resulted in predictable levels of chaos and escalation, but this chaos was not of the students’ making.⁴

There is no good justification as to why the interim suspensions are necessary to keep the campus peace. There is likewise no evidence that the 7- and 14-day campus bans under Penal Code § 626.4 met the standard set forth by the California Supreme Court for the imposition of such bans. Simply being present at a protest, even if such a protest involves technical violations of campus rules, does not meet the standard. *See Braxton v. Mun. Ct.*, 10 Cal. 3d 138, 145 (1973) (“[W]e interpret section 626.4 to require notice and a hearing on alleged misconduct before the issuance of any exclusion order unless the campus administrator reasonably finds that the situation is such an exigent one that the continued presence on the campus of the person from whom consent to remain is withdrawn constitutes a substantial and material threat of significant injury to persons or property.”). There is no basis we are aware of for any administrator to make such a finding. Thus, the University is likely violating the law as set forth by the State’s highest court.

Moreover, the sheer breadth of the interim suspensions and campus bans on the scale we are seeing at UCI is unprecedented. Rule 105.08 contemplates that students will be excluded “from classes, or from other specified activities or areas of the campus,” and not necessarily the entire campus. The University has not articulated why it needed to displace each student from the entire campus, thus disrupting their housing along with their ability to continue their coursework and access campus services.

The interim suspensions violate due process protections.

The University has imposed the interim suspensions without required due process. A bedrock rule of due process in higher education is that “[w]here student discipline is at issue, the university must comply with its own policies and procedures.” *Doe v. Univ. of S. California*, 246 Cal. App. 4th 221, 239 (2016); *see also Doe v. Regents of Univ. of California*, 5 Cal. App. 5th 1055, 1073 (2016) (same); *Berman v. Regents of Univ. of California*, 229 Cal. App. 4th 1265, 1271(2014). Here, the University bypassed all of its normal procedures for suspension by effectively imposing a sanction before students had the opportunity to respond to the evidence.

⁴ Irvine Faculty information about the events of May 15th, 2024. <https://ucifa.org/2024/05/23/irvine-faculty-association-information-about-the-events-of-may-15th-2024/>

The preamble to the Student Code section that outlines the general procedure for investigating and subjecting students and campus organizations to disciplinary action proclaims that “[p]rocedural due process is basic to the proper enforcement of University policies and campus regulations.”⁵ The procedure provides for clear notice of the charges and evidence and the opportunity of the accused student to respond to the evidence. Where the sanction imposed is a suspension or dismissal, students have a further opportunity for a hearing, which must be held “in accordance with generally accepted standards of procedural due process, the opportunity to present evidence in an orderly manner, and the right to examine and cross-examine witnesses.”⁶ The United States Supreme Court has “identified two levels of due process that apply to student discipline. The first level is notice of the charges and of the evidence and an opportunity to state the student's side of the story, to explain. . . . The second level builds upon the first and assumes the first level has been afforded. The second level is the formal hearing, with witnesses and cross-examination. *Goss v. Lopez*, 419 U.S. 565 (1975)] clearly states that the first level is required before a suspension of 10 days or less may be imposed, but the second level of due process is not required even before imposing a short suspension.” *Knight v. S. Orange Cmty. Coll. Dist.*, 60 Cal. App. 5th 854, 865–66 (2021) (citing *Goss*, 419 U.S. at 579)). The University failed to provide even the “first level” of due process before the interim suspensions took effect.

Moreover, the University has failed to specify the duration of the interim suspensions, even though the Student Code section requires that a notice specify “the duration of the Interim Suspension.” The notices indicate only that the suspensions would be in place for an indefinite period of time until the investigation or student conduct process is concluded. This failure alone renders the interim suspensions inappropriate. *See Doe v. Univ. of S. California*, 246 Cal. App. 4th at 239.

* * *

The University has made no showing to clear the high threshold required to justify the interim suspensions (and campus bans in some cases) that it has imposed on students and the student organizations. Nor are we aware of any evidence that would enable it to do so. It has failed to follow its own rules, or to provide basic procedural protections that are required of a public university. It is no answer to claim that students may take advantage of a hearing at some point after the interim suspensions and bans have been imposed because, by that time, a considerable amount of damage has already been done.


As the United States Supreme Court has stated, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). It is particularly important to protect and cherish contentious speech on university and college campuses, as “[t]he college classroom with its surrounding environs is peculiarly the ‘marketplace of ideas’” where old orthodoxies can be challenged and where new possibilities for learning and understanding the world can emerge. *Healy v. James*, 408 U.S. 169, 180–81 (1972). The University’s decision to impose broad interim suspensions and bans constitute precisely the type of overreaction that suggests students who dare to voice dissenting viewpoints should be silenced. The University’s actions therefore constitute an especially chilling form of pedagogy.

⁵ University of California Policies Applying to Campus Activities, Organizations and Students (PACAOS), § 103.10, <https://conduct.uci.edu/policies/pacaos/discipline-procedures.php>.

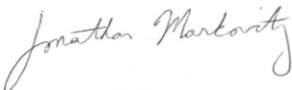
⁶ *Id.*

We are aware that you, Chancellor Gillman, have seriously grappled with campus free speech issues.⁷ The interim suspensions and bans that your administration has imposed cannot be reconciled with the principles you have taken such pains to study and to explain to others. They should not define your tenure or your legacy. We urge you to lift the interim suspensions and bans that have already been imposed and to ensure that the University does not resort to similar actions in response to expressive activity in the future.

Sincerely,



Ameena Mirza Qazi
Co-Executive Director
Peace and Justice Law Center



Jonathan Markovitz
Free Expression and Access to Government Staff Attorney
American Civil Liberties Union Foundation of Southern California

CC: Kyhm Penfil, Campus Counsel, UC Irvine, kpenfil@uci.edu,
Kyle E. Rowen, Campus Counsel, UC Irvine, krowen@uci.edu

⁷ See, e.g., Erwin Chemerinsky and Howard Gillman, Free Speech on Campus, 2017.