

INDEPENDENT POST-ACTION REVIEW
APRIL 2024 INDIANA UNIVERSITY ENCAMPMENT PROTESTS
REPORT AND RECOMMENDATIONS

July 24, 2024

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I. EXECUTIVE SUMMARY

On October 7, 2023, Hamas launched an attack on Israel leading to a series of events that sparked protests and controversy around the world, including at colleges and universities in the United States. For many at Indiana University (“IU”) and throughout the country, the October 7th attack and the following events enflamed deep emotions, passions, and divisions.

Those divisions only increased at IU between October 2023 and April 2024 as a result of a series of incidents and events that were perceived as antisemitic or Islamophobic. Many students at IU and around the country feared for their safety and expressed concern that they could be targeted for harassment or harm as a result of their ethnicity or religion. In early 2024, pro-Palestinian students and others at IU began protesting the conflict in Gaza by disrupting campus tours, interfering with campus events and guest speakers, and protesting in portions of campus buildings. In the spring of 2024 across the country, pro-Palestinian students established encampments on university property at hundreds of institutions, ultimately leading to more than 3,000 arrests.

On April 24, 2024, IU’s leadership learned that pro-Palestinian protesters, newly organized under a group not affiliated with IU, intended to establish an indefinite encampment the following day in Dunn Meadow, a historic space for expressive activity at IU’s flagship Bloomington campus (“IU Bloomington”). IU’s leadership reviewed the IU Bloomington policy that was designed to regulate expressive activity in Dunn Meadow — which permitted tents until 11 p.m. — and determined that the policy was outdated and unclear. That policy permitted the administration to establish a committee to issue further guidance on the policy in emergent situations. IU’s leadership was concerned about the safety and security risks of an encampment, as well as the potential for significant disruption to the University’s operations. While they hoped the situation could be de-escalated short of law enforcement involvement, IU’s leadership believed it would be better to prevent an encampment than to take one down, and it would be safer to remove an encampment (if necessary) during daylight instead of at night. Against this backdrop, IU’s leadership elected to convene an ad hoc committee, which then modified the Dunn Meadow policy that evening to prohibit the installation of structures, including tents, without advance approval.

The next day, protesters established an encampment in Dunn Meadow. When IU administrators informed them of the new policy, distributed fliers about the new policy, pointed to signs notifying them of the new policy, and asked them to take their tents down, the protesters argued that the school policies permitted the structures, pointing to the old policy that remained on IU’s website. Protesters were told dozens of times over several hours that they could stay to protest at Dunn Meadow but had to remove their tents. While some disassembled their structures, many protesters refused to comply.

The IU Police Department (“IUPD”) lacked adequate staffing or the specialized training necessary to respond to a significant protest event in an increasingly volatile setting and sought the assistance of the Indiana State Police (“ISP”) to remove the encampment. Protesters, at times, circled the structures, physically blocking their removal. ISP then arrested 34 individuals and removed the encampment structures. The next day, students at Indiana University Indianapolis (“IU Indianapolis”) also established an encampment,

and the encampment at IU Bloomington was reconstructed. On April 27, 2024, after additional warnings, ISP removed the IU Bloomington encampment again, raising the total to 57 arrests. Later that same day, protesters reconstructed the encampment.

The encampments at both IU Bloomington and IU Indianapolis remain in place as of the publication of this report. At any given time, the number of protesters present in the encampments are between one and a dozen. The IU Bloomington encampment has attracted a number of unhoused individuals with no IU affiliation. Over the summer, one unhoused individual experienced a drug overdose in the encampment, while another living in the encampment as of this writing has a lengthy and violent criminal record. Although Dunn Meadow has been reserved by a number of student organizations and university groups to hold events throughout the upcoming school year, the current encampment precludes any other use of Dunn Meadow. In June 2024, IU's Board of Trustees proposed a new, university-wide expressive activity policy and solicited comments from stakeholders, and IU's Board plans to consider what policy to adopt prior to August 1, 2024.

In June 2024, IU engaged a law firm, Cooley LLP, to conduct an independent after-action review of the protest and encampment events at IU in April 2024, including the University's applicable policies and processes. This report details our review and sets forth recommendations for IU's consideration, consistent with IU's commitment to make the results of the review transparent and public. The report contains four sections.

First, we describe the details and scope of our investigation. In addition to collecting more than 10,000 documents and reviewing hundreds of hours of video footage, the Cooley team visited IU Bloomington for multiple days and conducted more than two dozen interviews of students, faculty, administrators, leadership, and outside community members from a variety of different viewpoints and positions. Our aim in conducting interviews was to ensure that the investigation was inclusive and informed by as many perspectives as possible. Cooley conducted the investigation independent from IU and had sole discretion over the content and recommendations of this report.

Second, the report details the factual background, including the relevant policies at IU and their respective histories, and the roles and responsibilities of different IU departments and organizations in administering those policies. This section also examines and summarizes relevant events that took place on campus between August 2023 to the present. In particular, a substantial portion of the report is dedicated to a detailed review of the events from April 24, 2024 to April 28, 2024, including IU's decision to create and implement a new regulation applicable to protests in Dunn Meadow, the establishment of an encampment in Dunn Meadow, and the decision to clear the IU Bloomington encampment twice, including by requesting the assistance of ISP.

Third, the report lays out our key observations from the investigation, which are as follows:

- 1. IU's leadership balanced free speech, campus safety, and regular university operations amidst a challenging and rapidly evolving situation.**
- 2. IU leadership's decision to change the Dunn Meadow policy was permissible under university policies and applicable legal standards, including the First**

Amendment; however, doing so the night before the planned encampment caused a number of unintended negative consequences.

- 3. IU has a decades-long history of inconsistently enforcing its policies, which has caused confusion and frustration and makes governance difficult.**
- 4. IU administrators repeatedly asked the protesters to remove the encampment structures and to continue the protest without them, but some protesters refused, and ultimately, using ISP's assistance was the safest option available to remove the encampment.**
- 5. IUPD is a critical university-wide resource, but their understaffing causes a myriad of negative effects.**

Fourth, the report outlines Cooley's recommendations for IU moving forward. The recommendations are based on the observations outlined above and focus on the three main areas for improvement identified in our investigation: (1) inconsistencies in policies and enforcement; (2) the safety and security of the IU community; and (3) communication with university stakeholders. They are:

Policies

- **Recommendation 1:** IU should approve a new expressive activity policy.
- **Recommendation 2:** To establish clearer and more consistent policies, the IU President should direct a review for gaps or inconsistencies between university-wide and campus-specific policies and make recommendations to the Board of Trustees on necessary changes.
- **Recommendation 3:** IU should implement adequate training and communication about its policies and appropriate audit procedures to ensure the consistent application of policies.

Safety and Security

- **Recommendation 4:** IU should establish a plan for implementing any new policy related to expressive activity.
 - **Recommendation 4.1:** IU should clearly communicate this plan to relevant stakeholders and set expectations regarding ISP's involvement.
 - **Recommendation 4.2:** IU should impose predictable and consistent conduct consequences for violating any new policy.
- **Recommendation 5:** IU should increase funding to IUPD in order to hire and retain more officers and bolster existing training and technological capacity.
- **Recommendation 6:** IU should consider utilizing campus-wide communications to alert the IU community of encampments or other large-scale or disruptive protests.

Communications

- **Recommendation 7:** IU should consider adopting a policy of not issuing official statements about public matters that do not directly affect the University's core functions.
- **Recommendation 8:** IU should improve communications involving critical constituencies on campus.

II. INVESTIGATIVE PROCESS AND SCOPE

On June 14, 2024, IU President Pamela Whitten announced that IU had retained Cooley LLP to conduct an independent review of the April 2024 events in Dunn Meadow and affirmed that IU's leadership team was committed to acting on the review's findings.

Our mandate was to conduct a thorough and independent review of the events leading up to and during the encampment protests at IU Bloomington and IU Indianapolis, as well as to make recommendations for IU going forward. That mandate did not include a review of external law enforcement's conduct, including any use of particular tactics or force. Those agencies are subject to their own internal review and accountability procedures.

We conducted our review fully independent of IU. IU complied with all requests for information and facilitated interviews with any IU employee we wished to interview. IU further committed to respect the confidentiality and anonymity of any student who spoke with us, and consistent with that commitment, we did not tell IU the identity of any students we interviewed.

Cooley conducted a thorough and wide-ranging review on a compressed timeline in order to deliver a report by August 1, 2024, ahead of the next academic year. Between June and July 2024, we spent multiple days at the Bloomington campus, and interviewed more than two dozen people, including some more than once, for a total of 30 interviews. We interviewed President Pamela Whitten, Provost Rahul Shrivastav, Superintendent for Public Safety Benjamin Hunter, Vice Provost for Student Life Dr. Lamar Hylton, and Associate Vice Provost for Student Life and Dean of Students Dr. Kathy Adams Riester. We also interviewed administrators from various departments including the Office of Student Life, the Office of General Counsel, the Office of Student Conduct, the Office of University Relations, the Office of Admissions, leadership of IU Indianapolis, undergraduate and graduate students, faculty, IUPD officers, community members, the Monroe County Prosecuting Attorney, and leadership of the ISP. With respect to the students we interviewed, we sought out and met with individuals from different backgrounds, viewpoints, and roles at the University, in order to ensure that a wide array of voices were heard, and many agreed to meet with us. However, some did not: we contacted two student leaders of the encampment multiple times and offered anonymity and confidentiality, but neither agreed to meet with us.

We also collected and reviewed relevant documents and data, including: over 10,000 internal documents and emails; hundreds of hours of video footage; university-wide and campus-specific policies; dozens of IUPD case reports; and other publicly-available materials. Cooley independently determined the scope of this document and data review, including the collection and identification of relevant emails.

Finally, Cooley had sole responsibility for the drafting and content of this report and the findings and recommendations were solely at the discretion of Cooley.

III. FACTUAL FINDINGS

As part of our investigation, we reviewed IU’s university-wide governance principles and policies, its relationship with external law enforcement partners, and IU Bloomington’s policy for the use of Dunn Meadow. We also reviewed the events of Fall 2023 to April 2024 — both on IU Bloomington’s campus and nationwide. Those earlier events are critical context for the events of late-April 2024, including the decision to change the Dunn Meadow policy on April 24, 2024, and the decisions to clear the encampment on April 25th and April 27th. In addition, we reviewed the context and events surrounding the encampment at IU Indianapolis.

A. IU’s Governance, Relevant Policies, and Relationships with Law Enforcement

IU is a public university with more than 69,000 degree-seeking undergraduate students, more than 20,000 students in graduate and professional programs, and more than 21,000 faculty and staff university-wide. The campus includes many stakeholders, including those in the administration, those in charge of governance of the University, faculty, the IU Department of Public Safety, and the student body. Moreover, as discussed below, IU has a deep history of free speech and expressive activity supported through a variety of university-wide and campus specific policies.

1. The Indiana University System

IU’s flagship campus is IU Bloomington, which has over 36,000 undergraduate students and over 10,000 graduate students. IU Indianapolis has over 25,000 undergraduate and graduate students.¹ In addition to IU Bloomington and IU Indianapolis, the IU system includes five additional campuses: IU East, IU Northwest, IU Southeast, IU Kokomo, and IU South Bend. It also includes two regional centers: IU Columbus² and IU Fort Wayne. The IU School of Medicine also has nine campuses across Indiana.

¹ Prior to July 1, 2024, IU Indianapolis was known as Indiana University–Purdue University Indianapolis, which was often shortened to “IUPUI.” IUPUI was a collaboration between IU and Purdue University. On August 12, 2022, IU and Purdue University announced that they planned to split IUPUI into two separate academic organizations. See *Indiana University, Purdue University announce new vision for Indianapolis campus* (Aug. 12, 2022), Indiana University, https://news.iu.edu/live/news/28003-indiana-university-purdue-university-announce-new?_gl=1*137i34o*_gcl_au*MTY5NzQ4MTA1Mi4xNzE3NzY5NzEy*_ga*MjM2NTM5MDc1LjE3MTY4NDUwODM.*_ga_61CH0D2DQW*MTcxOTg3MjY3NC4yNi4xLjE3MTk4NzUwMjEuMy4wLjA [https://perma.cc/M8TJ-QMCR].

² Prior to July 1, 2024, IU Columbus was known as IUPUC. Similar to IU Indianapolis, the name change was a product of a split with Purdue University.

2. Governance of the IU System

IU has a shared governance model. The Board of Trustees is the governing body of the University and delegates authority to the administration, although key stakeholders also include the University Faculty Council and the Bloomington Faculty Council.

Board of Trustees. The Board of Trustees (“Board”) governs the University, and Indiana law dictates the composition of the Board and assigns the Board broad responsibility. Those responsibilities include, among other things: setting tuition and fees; appointing a president and other university executives; hiring faculty and approving promotion and tenure; establishing codes of conduct for students, faculty, and staff; and prescribing disciplinary measures when codes of conduct are violated.³ Pursuant to its statutory authority, the Board has delegated significant amount of authority to the President of IU, a university-wide position.⁴

Shared Governance Model. IU is committed to the principle of shared governance — which means that faculty and administrators share responsibility for operating and governing IU. According to IU Policy UA-08, university policies “may be adopted and posted only with the approval of the Board of Trustees; or by the President within delegation; or by University Faculty Council (“UFC”); or by a university Vice President whose responsibilities include the subject of the policy.”⁵

The University Faculty Counsel. The UFC is a “representative body of elected members from all campuses of IU” that has “legislative and consultative authority” over certain university matters.⁶ Specifically, the faculty has legislative authority “to establish policy and determine procedures for its implementation governing the teaching, research, and service aspects of the University’s academic mission.”⁷ The Constitution of the Indiana University Faculty, ACA-04, specifically gives faculty authority over, among other things: IU’s academic mission; structure and standards for faculty governance; standards and procedures for student conduct and discipline; standards and procedures for faculty appointments, promotion, tenure, compensation, conduct, discipline, and grievances; standards and procedures for appointment and review of academic officers; and conferring degrees.⁸ The Faculty Constitution also notes that “[t]he Trustees and administration should consult the faculty” on any issues regarding: planning and decisions

³ *Board of Trustees, Indiana State Code*, Indiana University, <https://trustees.iu.edu/about-the-board/policies-resolutions/indiana-state-code.html> [<https://perma.cc/RHC9-PG73>].

⁴ *Board of Trustees, Authority of the Board*, Indiana University, <https://trustees.iu.edu/about-the-board/policies-resolutions/authority-of-the-board/index.html> [<https://perma.cc/A2L4-QCSB>].

⁵ *University Policies, Establishing University Policies*, Indiana University, <https://policies.iu.edu/policies/ua-08-establishing-university-policies/index.html> [<https://perma.cc/U3RK-L5YE>] [hereinafter UA-08].

⁶ *University Faculty Council*, Indiana University, <https://ufc.iu.edu/index.html> [<https://perma.cc/AXR4-JGHV>].

⁷ *University Policies, Constitution of the Indiana University Faculty*, Indiana University, <https://policies.iu.edu/policies/aca-04-constitution-indiana-university-faculty/index.html> [<https://perma.cc/YR5R-T3S8>] at § 2.2.

⁸ *Id.*

regarding physical resources; budgets; faculty compensation and benefits; establishment of administrative offices affecting the academic mission, and appointment and review of administrators filling those offices; and any other aspect of university operations having an impact on the academic mission.⁹

The Bloomington Faculty Counsel. Academic and administrative units can also develop policies specific to a local campus. For example, at IU Bloomington, the Bloomington Faculty Counsel (“BFC”) “is an elected, policy-making body responsible for exercising faculty authority on the Bloomington campus.”¹⁰ The Faculty Constitution provides that the faculty has legislative authority regarding, among other things: “The campus’ academic mission”; “The campus’ structure of faculty governance, consistent with the university faculty standards”; “Policy and allocation of authority for academic matters affecting more than one school on the campus including campus curriculum and General Education”; “Appointment, promotion and tenure, compensation, conduct and discipline, and grievances of campus faculty, consistent with university faculty standards”; “Campus student conduct and discipline, consistent with university standards”; and has consultive authority regarding budgets, athletics, and “[o]ther matters affecting the academic mission of the campus, subject to the legislative authority of the university and school faculties.”¹¹ Within a campus, schools and departments can also have policies that are specific to the academic mission of their unit.¹²

University policy UA-08 makes clear that while an academic or campus unit may develop localized policies, local policies cannot be *less* restrictive than university-wide policies.¹³ Where there is a conflict between a university-wide policy and a campus or department policy, the university policy controls.¹⁴

3. Relevant University-wide Free Speech Policies

IU’s Commitment to Free Speech. As exemplified in numerous IU policies, IU is committed to preserving an environment of free speech on its campuses, consistent with the First Amendment of the United States Constitution.¹⁵ “As a public university founded on the principles of broad-minded thinking, strong leadership and community building,

⁹ *Id.* at § 2.3.

¹⁰ *Bloomington Faculty Council*, Indiana University Bloomington, <https://bfc.indiana.edu/index.html> [<https://perma.cc/THJ3-Q4SW>].

¹¹ *Constitution of the Bloomington Faculty*, Indiana University Bloomington, <https://vpfaa.indiana.edu/files/policy-pdfs/bl-aca-d8-bloomington-faculty-constitution.pdf> [<https://perma.cc/892L-ZPHE>] at § 2.1(A)(1)-(2).

¹² See *Office of the Vice Provost for Faculty & Academic Affairs, Policies for IU Bloomington schools and departments*, Indiana University Bloomington, <https://vpfaa.indiana.edu/policies/school-department-policies.html> [<https://perma.cc/8JZ4-JN3K>].

¹³ *University Policies, Establishing University Policies*, Indiana University, <https://policies.iu.edu/policies/ua-08-establishing-university-policies/index.html> [<https://perma.cc/U3RK-L5YE>] at Policy Statement § G.

¹⁴ *Id.*

¹⁵ See, e.g., *Free Speech, History*, Indiana University, <https://freespeech.iu.edu/history/index.html> [<https://perma.cc/S4BV-93Z4>].

Indiana University has long welcomed the varying viewpoints of students, faculty and staff as well as guests on campus”¹⁶ and “encourages discussion from a variety of different perspectives and viewpoints[.]”¹⁷ To that end, IU “affords and is committed to protecting the rights of students,” faculty and others, “to free speech and expressive activity, such as assembling and speaking in public areas of campus, as well as writing, publishing, and inviting speakers on any subject” subject to IU’s “right to regulate the time, place, and manner of free speech and expressive activities[.]”¹⁸

Student Rights to Expression. IU has a university-wide Code of Student Rights, Responsibilities, & Conduct.¹⁹ Part I, Section D of the Code affirms students’ rights to freedom of association, expression, advocacy, and publication by recognizing, “the rights of all students and student organizations to engage in discussion, to express thoughts and opinions, to engage in peaceful and orderly protests, and to assemble, speak, write, publish in print or online, or invite speakers on any subject without university interference or fear of university disciplinary action” as long as those rights are exercised “consistent with UA-14, The First Amendment at Indiana University, UA-19, Event Management, and GR-01, Contact with State Officials, Federal Officials, and Political Campaigns, and Other Political Activities.”²⁰

Student Discipline. The Code of Student Rights, Responsibilities, & Conduct empowers IU to “discipline a student or student organization for acts of personal misconduct that occur on or off university property.”²¹ Personal misconduct includes, among other things, disorderly conduct “whether in person or virtual, that disrupts teaching, research, administration, or other university activity and/or disrupts the university community and its members” and “[f]ailure to comply with the directions of authorized university officials in the performance of their duties, including, but not limited to: . . . refusal to vacate a university facility when directed to do so.”²²

First Amendment Policy. Policy UA-14 details IU’s policy regarding the First Amendment. It affirms that IU, “does not limit speakers or visitors to the university on the basis of their points of view or beliefs, nor will the university prohibit the expression of objections to speakers or their points of view.”²³ However, “[c]onsistent with Indiana Code 21-39-8, Indiana University reserves the right to regulate the time, place, and manner of free speech and expressive activities to protect public health, safety, and welfare, and to

¹⁶ *Free Speech*, Indiana University, <https://freespeech.iu.edu/index.html> [<https://perma.cc/E7L8-QSSA>].

¹⁷ *Id.*

¹⁸ *University Policies, The First Amendment at Indiana University* (June 14, 2024), Indiana University, <https://policies.iu.edu/policies/ua-14-first-amendment-indiana-university/index.html> [<https://perma.cc/WL2U-CTSE>] [hereinafter UA-14].

¹⁹ *University Policies, Code of Student Rights, Responsibilities, & Conduct* (July 1, 2023), Indiana University, <https://policies.iu.edu/policies/student-code/index.html> [<https://perma.cc/NR3F-MDMV>].

²⁰ *Id.* at Part I(D)(2).

²¹ *Id.* at Part II(C).

²² *Id.* at Part II(C)(7).

²³ UA-14, *supra* note 18.

prevent the substantial disruption of its educational, research, outreach and business functions, and normal or scheduled uses of university property by the campus community. The exercise of free speech and assembly rights must comply with all applicable federal, state, and local laws and ordinances.”²⁴

The policy specifies that activities must not: “Interfere with or substantially disrupt classes in session or other scheduled programs or events; Interfere with or substantially disrupt the normal or scheduled use of university property or the functioning of the university; Interfere with or obstruct the flow of pedestrian or vehicular traffic; Employ unreasonable sound amplification or create unreasonable noise disruptive of normal university business or activities;” or “Constitute a genuine threat or harassment, or other speech acts unprotected by the First Amendment.”²⁵

The policy defines “substantial disruption” as:

[b]ehavior by an individual or group that prevents the university from conducting its educational, research, outreach and business functions, and normal or scheduled uses of university property by the campus community or that prevents a speaker, performer or event from proceeding, or that prevents others from hearing, seeing, or engaging with an invited speaker, performer, or event. The term also includes behavior that significantly hinders the protected expressive activity of another individual or group, prevents the communication of a message of another individual or group, or prevents the transaction of the business of a lawful meeting, gathering, or procession.²⁶

Specifically excluded from this definition, however, are events that include “lawfully protesting in an outdoor area of campus that is generally accessible to the public” except “when an outdoor area of campus has been reserved in advance” and “[a] minor, brief, or fleeting nonviolent disruption of an event that is isolated and short in duration.”²⁷

Event Management Policy. Policy UA-19 is a university-wide policy governing event management.²⁸ Broadly speaking, it requires event sponsors to submit event requests to relevant university officials for approval. For events requiring extensive logistical, safety, and security planning, which includes when university officials determine “that the event requires logistical planning for campus safety and security,” “significantly affects campus services,” or “that the event presents a high likelihood of substantial disruption of the

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *University Policies, Event Management* (Jan. 5, 2020), Indiana University, <https://policies.iu.edu/policies/ua-19-event-management/index.html> [<https://perma.cc/T2SZ-U4EQ>] [hereinafter UA-19].

university's . . . functions," event sponsors are required to comply with a host of requirements, including obtaining prior approval from authorized university officials, which can include IUPD.²⁹ The policy also notes that "[a]ll event sponsors and participants are required to comply with local, state, and federal law, university policies, and any venue-specific policies. Violations may result in removal from the venue, and could additionally be referred to the relevant university disciplinary process, the Indiana state judicial system, or both."³⁰ IU retains the right to refuse to schedule events or to halt or cancel events underway when the "safety of participants and others are at risk"³¹ as long as that determination is "based on the officials' assessment of information other than the content or viewpoints anticipated to be expressed during the event[.]"³²

4. Campus Safety, IUPD, and Relationships with Law Enforcement Partners

Campus Safety. As described in one IU policy, "[t]he safety of Indiana University students and employees, as well as the safety of visitors, is the highest priority of the university administration and Board of Trustees."³³ IU needs a safe environment to pursue its core functions and strategic goals, which, according to its Mission Statement include: providing "excellent, relevant and responsive education" to "students from all backgrounds"; pursuing "world-class research, scholarship, and creative activity"; and "engaging in the economic, social, civic, and cultural development of Indiana, the nation, and the world."³⁴

Indiana state law requires IU to maintain campus safety and empowers it to fulfill that responsibility. Indiana Code § 21-39-2-3 entrusts the Board with the responsibility of governing "the conduct of the . . . institution's students, faculty, and employees, wherever the conduct might occur, to prevent unlawful or objectional acts" that "seriously threaten the ability of the state educational institution to maintain the state educational institution's facilities; or violate the reasonable rules and standards of the state educational institution designed to protect the academic community from unlawful conduct or conduct presenting a serious threat to person or property of the academic community." To that end, the Board may appoint police officers and form a campus police department.³⁵

Indiana University Police Department. IUPD is IU's university-wide police department. It "employs sworn police officers who are certified by the State of Indiana and

²⁹ See *id.* at § (B)(2).

³⁰ *Id.* at § (B)(2)(f).

³¹ *Id.* at § (B)(2)(g)-(h).

³² *Id.* at § (C)(2).

³³ *University Policies, Possession of Firearms and Weapons* (Oct.12, 2023), Indiana University, <https://policies.iu.edu/policies/ps-03-firearms-weapons/index.html> [<https://perma.cc/ANJ5-LKTG>].

³⁴ [About IU, Indiana University, https://iu.edu/about/index.html#:~:text=Our%20mission%20is%20to%20provide,cultural%20programs%20and%20student%20services](https://iu.edu/about/index.html#:~:text=Our%20mission%20is%20to%20provide,cultural%20programs%20and%20student%20services) [<https://perma.cc/N6XT-F8WB>].

³⁵ See Ind. Code Ann. § 21-39-4-2 (West).

who meet state-mandated training requirements. These officers have full police powers, including the power to arrest, as granted by the State of Indiana . . . and have access to national and state law enforcement computer networks.”³⁶ IUPD officers have “primary jurisdiction on any real property owned or occupied by the university, including the streets passing through and adjacent to such property. IUPD officers also have the power to assist university officials in the enforcement of IU’s rules and regulations.”³⁷ Benjamin Hunter, Associate Vice President and Superintendent for Public Safety, leads the IUPD. According to Superintendent Hunter and other IU administrators, IUPD is currently about 40% understaffed, which significantly hampers their ability to police the campus; staff university events; and respond to emergent issues.

IUPD frequently collaborates with other law enforcement agencies. As IUPD explains,

[a]ny law enforcement officer may come onto campus at any time. Just as IUPD officers have powers to arrest, law enforcement officers from other agencies can arrest students and visitors on campus for violations of law within their agencies’ jurisdictions. In addition, the University has the responsibility of advising the appropriate authorities of violations of civil or criminal law committed by anyone on campus. The University will report violations either when a request for specific information is made or when there is a danger to life or property.³⁸

Indiana State Police. ISP is the main law enforcement partner for IU. Because IU has campuses throughout Indiana, ISP provides a single point of contact for IU’s law enforcement needs statewide. IUPD and ISP have a strong relationship, as ISP regularly provides assistance for IU events. For example, ISP frequently provides back-up assistance to IUPD for IU football games, and both men’s and women’s basketball games. When ISP is present at IU, they collaborate closely with IUPD, but ISP ultimately controls their own tactical and operational decisions. The Bloomington Police Department (“BPD”), like other local police departments for relevant IU campuses statewide, does provide some support to IUPD, including with respect to traffic control, but is not IU’s primary law enforcement partner.

B. IU Bloomington

President Whitten leads IU Bloomington, along with members of her cabinet, the Board and the BFC. Bloomington is Indiana’s flagship campus and has a deep history of free speech and expression that is both codified in policy and engrained in culture. Given this history, the campus first designated Dunn Meadow as the campus Assembly Ground

³⁶ *2023 Annual Security and Fire Safety Report* (Oct. 24, 2023), Indiana University, <https://protect.iu.edu/iu-police-department/campus-security-reports/annual-security-reports/iu-asfsr-2023-oct25.pdf> [<https://perma.cc/9VAZ-7VK4>] at 9.

³⁷ *Id.*

³⁸ *Id.* at 10.

in 1963. As discussed below, IU Bloomington's Dunn Meadow policy has changed many times throughout history in response to events taking place on campus.

This section of the report provides factual background on IU Bloomington's campus leadership, the history of IU Bloomington's Assembly Ground and Dunn Meadow policy, and the events of fall 2023 and spring 2024 at the center of this report.

1. Campus-Specific Leadership

Dr. Pamela Whitten joined IU in 2021 and currently serves as the 19th President of IU. As part of her tenure, President Whitten leads IU 2030, an interconnected strategic planning process that covers the entire university system and individual plans for each campus and the IU School of Medicine.³⁹

Provost and Executive Vice President of IU Bloomington **Dr. Rahul Shrivastav** assumed his position in March 2022. Provost Shrivastav oversees all academic units on the Bloomington campus; coordinates initiatives related to faculty research, creative activity, and professional development; diversity and inclusion; sustainability and rural partnerships; health and safety; and student success and well-being.

Dr. Lamar Hylton serves as the Vice Provost for Student Life at IU Bloomington and joined the University in August 2023. Dr. Hylton oversees all 25 departments that make up the Office of Student Life while also aligning the IU Bloomington 2030 strategic plan to improve the experience for all Bloomington students. Associate Vice Provost for Student Life and Dean of Students **Dr. Kathy Adams Riester** joined IU in February 2019. In her role, she oversees IU's student, family, military, and campus life programs, as well as the overall safety of the Bloomington campus.

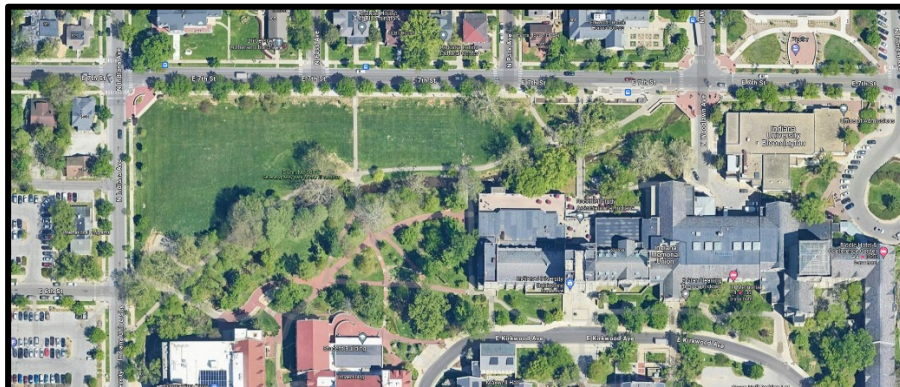
Benjamin Hunter serves as the Associate Vice President and Superintendent for Public Safety at IU. He joined IU in 2017 and oversees and advises university leadership on strategy, policy and execution for the University's emergency preparedness and response, policing and community safety, homeland security, emergency communications, university event management, and environmental health and safety. As superintendent, he is responsible for comprehensive strategy, policy and practices for public safety across IU, including the IUPD.

2. IU Bloomington's Dunn Meadow Policy and History

Dunn Meadow is a grassy 20-acre clearing on the southwest corner of IU Bloomington's campus. Over the last fifty years, the area has been home to many concerts, rallies, protests, celebrations, and outdoor events. It is a central point of campus that is located immediately next to the student union building, and students frequently hold events in Dunn Meadow and walk through it on their way to class. IU has enacted a

³⁹ *Office of the President*, Indiana University, <https://www.iu.edu/president/about-president-whitten/index.html> [<https://perma.cc/2LZC-UVQH>].

number of policies governing expressive activity in Dunn Meadow over the last fifty years, which we outline below.



Aerial Photo of Dunn Meadow

a. The 1963 Dunn Meadow Policy

The Board first implemented a policy governing free expression in Dunn Meadow on July 16, 1963, which marked IU's first regulation to establish an Indiana University Assembly Ground.⁴⁰ Initially proposed by the then-Faculty Council Special Committee on Student Demonstrations, the approved policy read as follows:

The size and complexity of a modern state university require that specific measures be taken to secure adequate communication within it. Because permanent internal media may at times be insufficient, the provision of facilities for impromptu use constitutes a valuable addition.

To establish an easily available facility for spontaneous speaking and assembly, the University hereby designates an area on Dunn Meadow, immediately north of the Memorial Union Building, to be known as the Indiana University Assembly Ground and to be marked as such. Here, in particular, members of the University community may express themselves freely on all subjects, within the limits of applicable laws and regulations, with or without advance notice.

It is expected that all persons will respect the rights of free speech and assembly which are enhanced by this action, and will maintain courtesy and good order during such speaking and assembly as may take place. Gatherings on campus elsewhere than on the Assembly Ground will not be permitted

⁴⁰ *Indiana University Board of Trustees Minutes, Minutes of the Board of Trustees of Indiana University, Bloomington* (July 18-19, 1963), Indiana University, <https://purl.dlib.indiana.edu/iudl/archives/iubot/1963-07-18> [<https://perma.cc/4Q6J-PNCL>].

to disturb classes or interfere with traffic. (The use of the streets of the City of Bloomington for parades or demonstrations is, of course, subject to the ordinances of the City[.] Information concerning these ordinances is available at the Student Activities Office.)⁴¹

b. The 1969 Policy

In the early sixties, IU saw an increase in students protesting both national and campus issues. In 1968, civil rights demonstrators occupied the then-Tenth Street Stadium for three days to demand fraternities rescind anti-Black discriminatory clauses in their policies. In March 1969, IU announced a 67 percent increase in tuition, leading thousands of students to protest in Dunn Meadow. That same year, students began protesting the Vietnam War in Dunn Meadow.

In response, on September 6, 1969, during a special meeting, the Board voted on and adopted procedural rules that would take effect during the 1969–1970 academic year, including an updated Assembly Ground policy, which read as follows:

The Board of Trustees has designated an area on Dunn Meadow immediately north of the Memorial Union as the Indiana University Assembly Ground. Here, members of the University community may express themselves freely on all subjects, within the limits of applicable laws and regulations, with or without advance notice. It is expected that all persons will respect the rights of free speech and assembly that are enhanced by this action, and will maintain courtesy and good order during such speaking and assembly as may take place.

Gatherings on campus elsewhere than on the Assembly Ground will not be permitted to disturb classes or interfere with traffic. Reservations for University facilities are made on a first-come, first-served basis and are subject to the Facilities Use policies specified in Section 3.6. The use of the streets of Bloomington for parades or demonstrations is subject to the ordinances of the city.^{42,43}

⁴¹ *Id.*

⁴² *Indiana University Board of Trustees Minutes, Minutes of the Board of Trustees of Indiana University, Indianapolis* (Sept. 6, 1969), Indiana University, <https://webapp1.dlib.indiana.edu/iubot/view?docId=1969-09-06&doc.view=print&toc.depth=1&toc.id=0&brand=iubot> [<https://perma.cc/EKF5-UETC>].

⁴³ Notably, at the same board meeting, the Board of Trustees also adopted rules of conduct which prohibited, among other things: “(1) [c]onduct that is made a crime by the criminal law of the State of Indiana, or of the United States of America, that takes place on University property or in the course of a University activity.”; “(2) [i]ntentional damage to or destruction of University property or of property on University

Protests and demonstrations continued to take place in Dunn Meadow over the following decades. For example, in 1970, thousands of students participated in a protest when President Nixon announced the expansion of the Vietnam War into Cambodia. Throughout the 1970s, 1980s, and 1990s, students protested apartheid in South Africa, demanding that IU divest from companies that operated in South Africa. In 1986, students' protest tactics included building a "shanty town" encampment in opposition to apartheid, which lasted from April 1986 into the fall 1986 semester. By December 1986, protesters voluntarily disassembled the shanties with plans to shift their protests to the residence halls.

c. *The 1989 Report*

In 1989, amidst continued protests and rallies in Dunn Meadow, the then-Dean of Students appointed a committee made up of students and faculty to interpret the 1969 policy. That committee produced a report and presented it during an October 17, 1989 BFC meeting.⁴⁴ Minutes from the meeting show that the Council did not vote on the report, but rather accepted it as an information item because it considered the report to be an interpretation of the already existing policy that was approved in 1969.⁴⁵ The Committee did, however, intend for the document to be distributed to students via the Bloomington campus' publication of *Ins and Outs* which was provided to all freshman arriving on campus. The report was not officially enacted as a policy during this meeting, or any subsequent meeting that academic year.

While the Committee's 1989 report interpreted the 1969 policy designating Dunn Meadow as the University's Assembly Ground, it both expanded and restricted the policy in some areas. For example, the 1989 report stated that the use of "continually carried" signs, symbols, and structures that were "taken away from 11 p.m. until 6 a.m." were deemed "an appropriate exercise of the right of expression in the Assembly Ground" that could be used, "day or night," and "with or without advance notice, within the limits of applicable laws or regulations."⁴⁶ However, it also required advance permission and notice for any "uncarried sign[s], symbol[s] or structures[s]" in Dunn Meadow between 11 p.m. and 6 a.m.⁴⁷ The report also specifically noted that overnight camping was not a

premises belonging to others."; "(3) [o]ccupation of all or part of any University building or the use of obstruction or coercion of any persons, or threats of violence to persons, for the purpose or with the effect of: (i) hampering or preventing the discharge of any University function; (ii) limiting the freedom of anyone to go about in a lawful manner; or (iii) compelling or preventing specific activities related to the University."; "(6) [r]efusal to vacate a building, street, sidewalk, driveway, or other facility of the University when directed to do so by an authorized office of the University having just cause to order the vacation."; and "(13) [u]sing, or attempting to use, University property in a manner inconsistent with its designated purpose." *Id.*

⁴⁴ See *Policy for the Use of the Indiana University Assembly Ground* (Aug. 11, 1989), Indiana University, <https://webapp1.dlib.indiana.edu/bfc/view?docId=B13-1990> [<https://perma.cc/SDU9-XF24>].

⁴⁵ See *Indiana University Bloomington Faculty Council Minutes* (Oct. 17, 1989), Indiana University, <https://webapp1.dlib.indiana.edu/bfc/view?docId=1989-10-17&chunk.id=d1e624&toc.depth=1&toc.id=d1e624&brand=bfc> [<https://perma.cc/CK9C-XW3V>].

⁴⁶ *Policy for the Use of the Indiana University Assembly Ground*, *supra* note 44, at § (2)(B)(2).

⁴⁷ *Id.* at § (2)(B)(3).

form of expression (“permission should not be granted to cook or live in overnight structures”)⁴⁸ and proposed that the Bloomington Provost should create a committee to (1) oversee the implementation of policy provisions, give advice about policy changes, and provide more detailed regulations if necessary; and (2) review denials of permission for “uncarried” overnight signs and structures.⁴⁹ Lastly, it stated that the University should not use physical force to enforce policy.⁵⁰ We have not located any record indicating that a committee was created after the report was released.

d. The 1989 Report’s Shift into IU Bloomington Policy

The BFC approved the 1989 report as official IU Bloomington policy at the latest on December 1, 2009, although it was referenced in BFC meetings as the approved Dunn Meadow policy from 1989 to the present.⁵¹ In 2009, the BFC held an omnibus vote on changes to the Academic Guide which added, in part, policies that were passed by the BFC, the Board of Trustees, or through the UFC in the previous years and had not previously been incorporated into the Academic Guide.⁵² The 2010 Academic Guide contains the same language that appears in the 1989 report but is titled “Policy for the Use of Indiana University Assembly Ground”;⁵³ now known as BL-ACA-I18.⁵⁴

A year later during the December 6, 2011 BFC Meeting, the BFC referenced the policy as set forth in the Academic Handbook when discussing the Occupy Wall Street movement and free speech on campus. In the same meeting, the then-BFC President noted that the unconventional format of the policy was “due to a kind of updating of administrative procedures when [IU Bloomington] switched from a chancellor to provost system” supporting that while it may not be a traditionally organized policy, it was a valid policy within the Academic Handbook.⁵⁵

⁴⁸ This is consistent with Supreme Court precedent approving of restrictions on camping as comporting with the First Amendment. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 289 (1984) (restrictions prohibiting sleeping or camping are reasonable and valid under the First Amendment).

⁴⁹ *Policy for the Use of the Indiana University Assembly Ground*, *supra* note 44, at § (2)(B)(3)–(2)(C).

⁵⁰ *Id.* at § (2)(D).

⁵¹ See, e.g., *Indiana University Bloomington Faculty Council Minutes* (Mar. 19, 1991), Indiana University, <https://purl.dlib.indiana.edu/iudl/archives/bfc/1991-03-19> [<https://perma.cc/5276-NKBB>].

⁵² *Indiana University Bloomington Faculty Council Minutes* (Dec. 1, 2009), Indiana University, <https://webapp1.dlib.indiana.edu/bfc/view?docId=2009-12-01&chunk.id=d1e229&toc.depth=1&toc.id=d1e129&brand=bfc> [<https://perma.cc/S2GM-HMLE>].

⁵³ *Academic Guide, Indiana University Bloomington Campus* (Feb. 15, 2010), Indiana University, <https://institutionalmemory.iu.edu/aim/bitstreams/d9674f26-e53d-4e60-bda4-e0fd51418c5f/download> [<https://perma.cc/FE624HHF>] at 519–21.

⁵⁴ At an unknown later time, the 1989 policy was posted on IU Bloomington’s website as BL-ACA-I18. It is unclear why the website shows that the policy was last updated in 1969. See *Policy for the Use of Indiana University Assembly Ground*, Indiana University Bloomington, <https://vpfaa.indiana.edu/policies/bl-aca-i18-use-assembly-ground/index.html> [<https://perma.cc/L25VE8QS>] [hereinafter BL-ACA-I18].

⁵⁵ *Indiana University Bloomington Faculty Council Minutes* (Dec. 6, 2011), Indiana University, <https://purl.dlib.indiana.edu/iudl/archives/bfc/2011-12-06> [<https://perma.cc/2YD2-QJR3>].

The BFC again referenced BL-ACA-I18 from the Academic Handbook as the enforceable policy during an October 23, 2018 BFC Meeting. At that time, the BFC was gathering feedback for the University’s major event policy and had asked the BFC’s Executive Committee to review the Assembly Ground policy, as the BFC felt that it was an older policy that needed to be revisited.⁵⁶ For these reasons, we believe that the Policy for the Use of Indiana University Assembly Ground, BL-ACA-I18, was a valid and enforceable policy, at least starting in 2009, despite the unorthodox language and procedure in finalizing the policy.

e. *Recent Intervening Statutory and Policy Changes Call into Question Whether BL-ACA-I18 Has Been Superseded*

A recent Indiana statute as well as intervening university-wide policies, however, call into question whether BL-ACA-I18 was superseded in part or in whole.

In 2022 the State of Indiana codified House Bill 1190, “Free speech at state education institutions” as Indiana Code § 21-39-8.⁵⁷ The law made several important changes to Indiana public universities’ First Amendment policies. First, it prohibited universities from designating an outdoor area of campus as “an area where protected expressive activities are prohibited.”⁵⁸ Second, it expressly allowed individuals to “freely engage in noncommercial protected expressive activity” on “any outdoor area of campus,” as long as the activity is both lawful and “does not materially and substantially disrupt the functioning of the state educational institution.”⁵⁹ Lastly, it codified that universities can enforce reasonable time, place, and manner restrictions on campus under a standard that mirrors federal law.⁶⁰

Shortly thereafter in 2022, IU approved UA-14, the University’s First Amendment Policy. As discussed in more detail above, UA-14 allows IU to implement and enforce reasonable time, place and manner restrictions and prohibits activity that interferes or substantially disrupts university business. In addition, UA-19, Indiana University’s Event Management Policy was implemented in 2018. As discussed above, the policy governs any events led by individuals or student groups on any Indiana University campus, including events implicating free speech, the First Amendment or expressive activity.⁶¹

These two University policies and Indiana Code § 21-39-8 collectively call into question whether BL-ACA-I18 was superseded in whole or in part. First, to the extent BL-ACA-I18 was considered a “local policy” for the Bloomington campus, as it appears to

⁵⁶Indiana University Bloomington Faculty Council Minutes (Oct. 23, 2018), Indiana University, <https://purl.dlib.indiana.edu/iudl/archives/bfc/2018-10-23> [<https://perma.cc/L3QH-NKKR>].

⁵⁷ H.B. 1190, 122nd Gen. Assemb., (Ind. 2022).

⁵⁸ Ind. Code Ann. § 21-39-8-9(a) (West).

⁵⁹ Ind. Code Ann. § 21-39-8-10(a)(1)-(2) (West).

⁶⁰ Ind. Code Ann. § 21-39-8-9(b)1 (West).

⁶¹ UA-19, *supra* note 28, at § (C)(1) (“Some of the events that will be managed in pursuant to this policy implicate the rights of speech and assembly accorded by the First Amendment of the U.S. Constitution.”).

have been, it would be superseded by UA-14, the First Amendment at Indiana University (passed in 2023) and UA-19, Event Management (passed in 2018). Per UA-08, campus-specific policies “may be more restrictive than a university policy, *but not less restrictive*.”⁶² BL-ACA-I18 clearly conflicts with UA-14 and UA-19 and is *less restrictive* than the more recent university-wide policies and both university policy and Indiana law allow for IU to put reasonable time, place and manner restrictions in place.

Second, to the extent BL-ACA-I18 is considered a university policy (despite not being listed as a university policy), it was arguably either partially superseded or impliedly repealed by the more specific and detailed provisions of the more recent policies UA-14 and UA-19.

Third, it is also possible that Indiana Code § 21-29-8 superseded BL-ACA-I18 as the statute prohibits universities from designating an outdoor area of campus as an area where expressive activities are prohibited. A plain reading of BL-ACA-I18 shows that the policy did not necessarily *limit* free speech to Dunn Meadow, but rather designated the area “as a public forum for expression on all subjects.” Such language does not clearly prohibit expressive activity from occurring elsewhere on campus. Moreover, the language of BL-ACA-I18 appears to expand students’ right to participate in expressive activity at Dunn Meadow, rather than restrict it as Indiana Code now prohibits. However, the history of BL-ACA-I18, as discussed above, makes clear that in 1963 the Board of Trustees designated Dunn Meadow as the Bloomington campus’ assembly ground for free speech and expressive activity so that the expressive activity was confined to one area of campus and not permitted elsewhere. Such designation would be prohibited under Indiana Code 21-39-8.

Although BL-ACA-I18 had not been updated in light of the recent changes to Indiana statute or university-wide policies, it was nonetheless treated as the operative policy at the Bloomington campus in April 2024, as discussed below.

3. Events from Fall 2023 to April 2024

Throughout our investigation, students, faculty and staff uniformly acknowledged that tensions began rising in the fall of 2023 both on IU’s campus and across the country with respect to the Israel-Palestine conflict. As set forth in detail below, starting in August 2023, the IU community dealt with tension and controversy stemming from a TikTok video involving a Jewish student speaking about a Palestinian student, described below.

These tensions continued after the October 7, 2023 Hamas attack on Israel. While university administrators and certain engaged groups in the student body were very focused on the protests throughout this time, we were told that the majority of the student body was not involved or interested in the protests and related events on campus during much of this time. However, by the time of the encampment protests in late April 2024, we were told that it was difficult for anyone to move about campus, attend class, or study for finals without being aware of, and distracted by, those protests and related events.

⁶² UA-08, *supra* note 5 (emphasis added).

a. *August 2023 TikTok Video*

Many pointed to an August 2023 incident as one of the first major issues to enflame tensions on campus related to the Israel-Palestine conflict. In August 2023, an IU student posted a TikTok video in which she told the story of an encounter between herself and her apartment complex neighbor who was a Palestinian IU student. The student, who identified herself as Jewish in the video, made disparaging comments about her neighbor in the video. As the video circulated in the IU community and elsewhere, both IU community members and people outside of the IU community called for the University to discipline the student and ensure the safety of the Palestinian student. On September 5, 2023, IU posted a statement on the University's Instagram account that read:

Indiana University is committed to ensuring all students, staff, and faculty feel welcomed, valued, safe, and supported. In pursuing all aspects of the university's mission, we hold ourselves and our community to the highest standards of ethical conduct and integrity. Behavior that involves acts of discrimination, hate, harassment, retaliation, threats, or engagement, has no place in our IU community.⁶³

Many students indicated that this event was well-known around campus and caused significant conversation throughout the month of September. University administrators and students reported that Palestinian students reached out to the University asking for additional support after this event.

b. *October 7, 2023 Attacks*

On October 7, 2023, Hamas, a U.S.-designated foreign terrorist organization, attacked Israel, killing 1,139 individuals and taking 251 hostages. Following that, Israel launched an attack on the Gaza Strip. Shortly after, protests across the nation, both in cities and on college campuses, began.

On October 9th, IU Hillel and Chabad, two Jewish organizations on campus, held a gathering in support of Israel at 8 p.m. in Dunn Meadow. The Palestinian Solidarity Committee ("PSC"), a pro-Palestinian student organization, held a counter event at Sample Gates. About an hour later, after the Hillel and Chabad event ended, the groups merged at Sample Gates where IUPD inserted themselves between the groups. Reporting of the event describes most students speaking to one another other peacefully, while others from both groups were heard shouting hateful messages.⁶⁴ Soon after this

⁶³ Christy Avery, *IU student criticized for TikTok video threatening Palestinian student* (Sept. 8, 2023), Indiana Daily Student, <https://www.idsnews.com/article/2023/09/iu-student-tiktok-video-threatening-palestine-hailey-toch> [<https://perma.cc/ZER8-BC3F>].

⁶⁴ Salome Cloteaux, Ruth Cronin, Andrew Miller, *Separate peaceful gatherings over Israel-Palestine conflict end in clash on IU's campus* (Oct. 10, 2023), Indiana Daily Student, <https://www.idsnews.com/article/2023/10/israel-palestine-rally-protest-conflict-iu-student> [<https://perma.cc/5SF5-KVQ3>].

event, a student reported to IU's bias incident reporting system that pro-Israeli students used derogatory language and spit on students at the event.

The next day, on October 10, 2023 President Whitten released the following statement to the IU community:

IU is heartbroken over the horrific violence that has occurred over the past few days. With heartfelt empathy and compassion, we stand ready to provide comprehensive counseling and support services to assist our students, faculty and staff affected by these attacks, especially those who may have family or friends in the region. Let us continue IU's long-held tradition as a caring community that supports one another through challenging times.

The statement was criticized by some in the IU community as being too ambiguous given the gravity of events.⁶⁵ Two days later, on October 12, 2023, President Whitten released a second statement:

As our campuses go into fall break over the next several days, I ask that we give heartfelt thoughts to the Jewish members of our IU family. I have reflected on the events of this past week and have had many conversations with the IU community. I continue to be heartbroken by the terrorist attack on the people of Israel. Let there be no ambiguity, Israel has suffered grievous atrocities at the hands of Hamas terrorists.

We recognize the pain and fear that is affecting the Jewish community on our campuses. I urge us to focus on coming together in taking care of our classmates, colleagues and peers – particularly everyone directly and indirectly impacted by the evil we have seen this week. Let us extend our Hoosier caring and compassion in this challenging time.

Jewish and Palestinian students sought support during this time. There were diverging views on the extent of the support provided. Some students appreciated the support shown when President Whitten engaged directly with student affinity groups. Others felt as though the Israel-Palestine conflict was so contentious that administrators were either unable or unwilling to engage substantively with the issue to reduce tensions on campus. We also heard that as the semester continued, many students began to feel less safe on campus. Multiple undergraduate students, particularly those who identified as Jewish, reported that they feared walking across campus at night due to possible harassment and physical harm as a result of their ethnicity and religion. We also were told that as the year continued, professors began commenting on the Israel-Palestine conflict, particularly in

⁶⁵ Marissa Meador, *UPDATED: IU President Whitten releases new statement on violence in Israel after backlash* (Oct. 12, 2023), Indiana Daily Student, <https://www.idsnews.com/article/2023/10/iu-pamela-whitten-palestine-israel-conflict-war-statement> [<https://perma.cc/6XGT-TU4C>].

support of Palestine, during classes which made some Jewish students feel uncomfortable and unwelcome on campus.

Also in the fall of 2023, two members of the IU's student government resigned and accused other student government leaders of failing to address antisemitism on campus. Indiana Congressman Jim Banks wrote a letter to IU expressing concern about rising antisemitism on campus.⁶⁶

c. Miko Peled's Event on Campus

Interviewees highlighted several incidents in the fall of 2023 relevant to the rise in tensions on campus. One such event involved IU's cancellation of a speaker event hosted by the PSC as a result of lack of available security, although the event went forward anyway.

According to publicly-available information, on November 6, 2023, Professor Abdulkader Sinno, an IU Associate Professor of Political Science and Middle Eastern Studies, and faculty advisor to the PSC, submitted a form to reserve a room on campus for an event that would feature writer and activist Miko Peled on November 16, 2023. The event form indicated that the event was academic and department-sanctioned and was approved a few hours after submission. Eight days later, Professor Sinno canceled the reservation at the request of an academic department chair, because the event was not a department-sanctioned event. Shortly thereafter, the PSC submitted its own form for the event. That form was denied hours later by Space Reservations, which informed PSC that there was not sufficient notice for proper security and safety measures to be in place. The PSC event was scheduled to take place at the same time as a major soccer tournament on campus which required IUPD to pull in officers for overtime and from regional campuses. Space Reservations told PSC, however, that it could hold the event on another day.

Regardless, the PSC decided to hold the event as scheduled. As a result, IUPD had to redirect security away from other events to properly secure the PSC event. Thereafter, Professor Sinno received a warning notice for violating university policies. On November 17, 2023, the Vice Provost for Faculty and Academic Affairs Carrie Docherty sent Professor Sinno notice that an investigation was opened pursuant to ACA-33 regarding his conduct of holding an unauthorized event. The investigation concluded on December 15, 2023. Vice Provost Docherty's decision letter, which Professor Sinno later shared publicly, ultimately found that Professor Sinno violated multiple university policies and imposed a series of sanctions against him, including: prohibition from teaching in the

⁶⁶ Letter from Jim Banks to Pamela Whitten (Nov. 15, 2023), https://banks.house.gov/uploadedfiles/11.15.23_iu_campus_antisemitism_letter.pdf [<https://perma.cc/DKM5-4RU5>].

spring and summer 2024 semesters and removal as faculty advisor for all student organizations for one calendar year.⁶⁷

d. Cancellation of Samia Halaby's Exhibit on Campus

The next such event occurred the following month. In December 2023, the University canceled Palestinian-American artist and IU alumna Samia Halaby's art exhibit, *Samia Halaby: Centers of Energy* which was set to take place at IU's Eskenazi Museum and last for three months. Ms. Halaby was informed via email that the event was canceled due to security concerns.⁶⁸ Public reports of the cancellation state that the museum director also informed Halaby via telephone that employees had concerns about her social media posts on the Israel-Palestine conflict.⁶⁹ The exhibit, which was planned three years earlier, was set to be a sister exhibit to an exhibit at Michigan State University. Many groups across IU condemned the cancellation, including Eskenazi School Staff, students and international non-profit organizations.⁷⁰

We consistently heard from IU's leadership and administrators that the event was canceled because IUPD — which was already stretched thin and understaffed across campus — could not provide security for the event over the three-month period it was scheduled to run. It is not clear, however, that this was communicated to the entire IU community, which many cited as a misstep of the administration given the already present tensions on campus.

e. Reports of Antisemitism and Islamophobia into Spring 2024

Throughout the fall and spring semesters of the 2023 to 2024 academic year, IU received both IUPD reports and incident reports regarding continued instances of antisemitism and Islamophobia against students and faculty on campus.

There were numerous instances of reports of antisemitism. For example, on November 27, 2023, IUPD found a swastika spray-painted on the Rotary Building on the Indianapolis campus. On January 8, 2024, Chabad House on the Bloomington campus received a bomb threat. On February 5, 2024, the Department of Education Office of Civil Rights opened an investigation into IU regarding a Title VI complaint by a non-IU

⁶⁷ Letter from Indiana University Vice President for Faculty and Academic Affairs Carrie Docherty to Professor Abdulkader Sinno (Dec. 15, 2023), https://drive.google.com/file/d/1CbFIUIN8KXaM-oLB01RcDO_1yAi2ew8n/view [<https://perma.cc/K7YZ-87PM>].

⁶⁸ Aubrey Wright, *Indiana University abruptly canceled a Palestinian artist's exhibit. It's now sold out* (Feb. 17, 2024), NPR, <https://www.npr.org/2024/02/17/1232243208/indiana-university-abruptly-canceled-a-palestinian-artists-exhibit-its-now-sold-> [<https://perma.cc/S5CK-RHCY>].

⁶⁹ Zachary Small, *Indiana University Cancels Major Exhibits of Palestinian Artist* (Jan. 11, 2024), New York Times, <https://www.nytimes.com/2024/01/11/arts/design/indiana-university-samia-halaby-exhibition-canceled.html> [<https://perma.cc/QZD2-YRVG>].

⁷⁰ Marissa Meador, *Art show highlights Palestinian painter Samia Halaby's work, rebukes IU's cancellation* (Feb. 20, 2024), Indiana Daily Student, <https://www.idsnews.com/article/2024/02/samia-halaby-uncanceled-palestinian-painter-artwork-iu-cancellation> [<https://perma.cc/5SPK-NUEQ>].

community member who alleged IU failed to adequately respond to antisemitism on campus in the fall semester.⁷¹ On March 4, 2024, two professors reported receiving threatening emails in Hebrew and English.

Students also reported being harassed on campus because of their ethnicity or support for Palestine. One student reported to a professor that he had been called a terrorist because he was Palestinian. Multiple students filed reports on December 19, 2023, when a group of men showed up to a gathering in support of Palestine and yelled that the students were “terrorists” and “rapists.”

A number of students described to us an incident of a car attempting to run over two IU students wearing hijabs off-campus. Students reported different versions of the events and at least one student had heard that it was later disproven. Because so many students we interviewed pointed to this incident, we sought records related to it. According to IUPD, there were two complaints involving female students wearing hijabs during this time period. In one incident, a female student wearing a hijab was waiting at a bus stop on campus when a truck pulled up and threatened to tear off her hijab. She reported the events to IUPD, who investigated and reviewed video footage from around the time of the incident, but was unable to identify the vehicle or the driver. The second complaint was reported to BPD as a hate crime, and alleged that a driver of a car moved towards two female students as they were crossing the street off campus, while at least one of the women was wearing a hijab. BPD investigated the incident but did not bring charges. The driver denied seeing the women in the crosswalk. The administration did not make a statement about either incident or communicate the ultimate investigative findings of the police to the community.

f. Other Bloomington Campus Events

Although the cancellation of the Peled and Halaby events received significant press coverage, IU authorized and supported well over 100 events touching on the conflict on the Bloomington campus. During the 2023 to 2024 school year, a variety of student groups held events with security support from IUPD. For example, the PSC held a rally with over 200 attendees on October 28, 2023; Chabad, Hillel, and Students Supporting Israel held “Face of October 7” on campus on January 24, 2024; the Office of the Vice President for Diversity, Equity and Inclusion held a webinar titled “Antisemitism, Jews, and Jewish Culture”; and the PSC hosted an IU professor to discuss the music history of Palestine on campus on December 7, 2023.

We heard from IU administrators that they felt it was important for students to hold these events, both as a matter of free speech and expression, but also to bring together communities on campus. The University, for example, permitted students to participate in

⁷¹ It appears that the editor-in-chief of *Campus Reform* made complaints of discrimination by IU and many other universities, including Princeton University, Brown University, Arizona State University and Northwestern University among others. See Andrew Lapin, *Meet Zachary Marschall, the Jewish conservative who leads the nation in campus antisemitism investigations* (Mar. 7, 2024), Jewish Telegraphic Agency, <https://www.jta.org/2024/03/07/united-states/meet-zachary-marschall-the-jewish-conservative-who-leads-the-nation-in-campus-antisemitism-investigations> [<https://perma.cc/F3AS-YE69>].

sit-ins inside campus coffee establishments, hold respective remembrance day events and rallies, and frequently coordinated meetings between the administration and student groups to make sure students' opinions and concerns were being heard.

We identified a very small number of instances where IU asked student groups to postpone events. In addition to the Peled and Halaby events described above, the University asked the Hillel Center to postpone a planned speech by Mosab Hassan Yousef, a controversial speaker who had previously gained fame for using derogatory language when speaking about Arabs and Muslims, due to security concerns.⁷² Hillel canceled the event with plans to hold it in the fall 2024 semester.⁷³

g. Campus Tour and Event Disruptions

As the 2024 spring semester began, students continued protesting on campus. The protests eventually expanded into intentional disruptions of campus tours. Many administrators and students reported that pro-Palestinian protesters, who included at times both students and individuals not affiliated with IU, initially silently protested on the tour path with signs but were not directly engaging with protesters. As time went on, however, these protesters began to loudly interject during tours, and in many instances engage with campus visitors.

On February 24, 2024 a family who knew an individual killed in the October 7th attack was confronted by a pro-Palestinian student protester during the campus tour. According to the IUPD, both parties escalated the situation and began to use explicit language and yell, and the visiting prospective student became emotional. A police report of the incident further stated that protesting students followed the tour into campus buildings. That student's family later reported to the University that the student would not enroll as a result of what had happened on the tour.

In April 2024, admissions officials expressed growing concern to the administration over the tour disruptions and saw that protesters were, in some instances, intimidating prospective students. Given these disruptions, IUPD had to expend resources on monitoring the tours every day. Currently, IUPD and the Office of Admissions report that protesters continue to disrupt tours, but are met with a warning that the disruption constitutes intentional, disorderly, disruptive and antagonizing conduct that materially and substantially interferes with university operations. Such disruptions are a violation of UA-14, which allows for free speech on campus but prohibits behavior that prevents university business to continue.⁷⁴ Students who violate this policy despite multiple warnings on the tour are referred by IUPD to the Office of Student Conduct. The Office of Student Conduct reports that while referrals for tour disruptions have been, and continue to be made, they

⁷² Marissa Meador, *Hillel postpones speaker event criticized as Islamophobic due to security concerns* (Mar. 26, 2024), Indiana Daily Student, <https://www.idsnews.com/article/2024/03/hillel-postpones-speaker-event-criticized-as-islamophobic-due-to-security-concerns> [<https://perma.cc/8FXM-QDT3>].

⁷³ *Id.*

⁷⁴ See UA-14, *supra* note 18.

believe there is often not sufficient evidence to continue through the student conduct process because protesters cover their faces, making identification difficult.

Similarly, pro-Palestinian students also began protesting campus events, such as a panel held by the IU Walter Center for Career Achievement where protesters raised concerns about the war to the panelists and engaged in heated conversations on the part of both panelists and protesters. Additionally, on March 3, 2024, protesters disrupted an event involving the Naval Surface Warfare Center, Crane Division,⁷⁵ that was held at the Luddy School of Informatics, Computing and Engineering. During the event, protesters were given three warnings to cease interruptions and were informed that police were coming to the event.

On April 8, 2024, during the solar eclipse event held on campus at IU's Arboretum, a protester was arrested for disorderly conduct after being advised at multiple times that amplified sound was not allowed. Earlier that week, IUPD and IU administrators advised the protesters that violating campus policies could be considered disorderly conduct by IUPD.

Throughout the spring semester, IU attempted to remain in contact with student leaders involved in the protests and PSC, which is a recognized student organization on campus. However, engagement with protesters became difficult as an increasing number of protest activities were led by IU Divestment Coalition ("IUDC"), an organization unaffiliated with the University.

h. Faculty No Confidence Vote

On April 16, 2024, the IU faculty passed votes of no confidence for President Whitten, Provost Shrivastav and Vice Provost for Faculty and Academic Affairs Docherty. A major precipitating event, among others, was a conflict between university leadership and faculty over whether university-wide, or local Bloomington, policies should govern the process to be followed for misconduct allegations against Professor Sinno related to the Peled event.

A month prior, the IU Faculty Board of Review determined that the University violated IU policy when it suspended Professor Sinno without consulting the Faculty Misconduct Review Committee.⁷⁶ In January 2024, the Bloomington chapter of the American Association of University Professors ("AAUP") Executive Committee, expressed their

⁷⁵ The Naval Surface Warfare Center (NSWC) is a naval laboratory that supports electronic, engineering and ordnance needs of the U.S. military. Since 2011, IU and NSWC Crane have collaborated under an educational partnership agreement to allow NSWC to leverage IU's educational and research assets. See Ryan Piurek, *IU expands partnership with NSWC Crane to advance national security innovation* (April 25, 2023), Indiana University, <https://blogs.iu.edu/iuimpact/2023/04/25/iu-expands-partnership-with-nswc-crane-to-advance-national-security-innovation/> [<https://perma.cc/42C7-FYEN>].

⁷⁶ Marisa Meador, *IU administrator violated policy in suspending professor Abdulkader Sinno according to Faculty Board of Review* (Apr. 2, 2024), Indiana Daily Student, <https://www.idsnews.com/article/2024/04/iu-administrator-violated-policy-suspending-professor-abdulkader-sinno> [<https://perma.cc/9GFX-3B7R>].

dismay at the University's decision to impose sanctions against Professor Sinno.⁷⁷ The AAUP asserted that university policy ACA-33⁷⁸ and Bloomington policy BL-ACA-D27⁷⁹ required the administration to file a complaint with the Faculty Misconduct Review Committee to allow them to make a recommendation for or against any sanction. Faculty asserted that this process was required when severe sanctions were enforced. In March 2024, the Faculty Board of Review ("FBR") sent a written opinion to Provost Shrivastav stating that Vice Provost Docherty was incorrect in applying ACA-33, as she sought severe sanctions, rather than common sanctions, when Professor Sinno was not permitted to teach or serve as an advisor to student groups.⁸⁰ However, Provost Shrivastav took the view that the University-wide policy, ACA-33, controlled.⁸¹

As basis for the vote of no confidence, the faculty also cited issues with the administration's encroaching on academic freedom, the cancellation of Samia Halaby's art exhibit and an attempt to separate IU from the Kinsey Institute. Both the Board of Trustees and President Whitten released statements after the vote urging collaboration and open communication among all parties.

i. Protest Events Across the Country on University Campuses

Like IU, other universities around the country experienced significant protests on campus as a result of the Israel-Palestine conflict. Starting in October 2023, students at Harvard University and Columbia University began protesting against Israel and in support of Palestine with students and others at dozens of colleges and universities following suit. Universities across the country also canceled events that had risks of

⁷⁷ *Statement of the Bloomington AAUP Executive Committee Concerning the Sanction of Associate Professor Abdulkader Sinno*, Indiana University, AAUP IU Bloomington, https://aaup.sitehost.iu.edu/reports/ExCom_Statement_1-8-2024.pdf [<https://perma.cc/2P5H-M4RK>].

⁷⁸ ACA-33, the University-wide policy concerning academic appointee responsibilities and conduct, was updated in March 2023. The policy contains a provision that it shall supersede any campus-level misconduct policies that are inconsistent with it. The policy also outlines how a complaint against an academic appointee should proceed, including a statement that "[a] campus faculty governance organization may have a policy that includes the involvement of a faculty advisory body in the decision to impose severe sanctions." See *Academic Appointee Responsibilities and Conduct*, (Apr. 25, 2023), Indiana University, <https://policies.iu.edu/policies/aca-33-code-academic-ethics/index.html> [<https://perma.cc/36ZH-LCNH>].

⁷⁹ BL-ACA-D22 is the Bloomington campus policy regarding faculty conduct. It states that the Faculty Board of Review ("FBR") (1) reviews complaints brought by academic appointees concerning adverse actions by university officials, and (2) hears appeals by academic appointees concerning sanctions imposed under the university of campus misconduct policies. BL-ACA-D22 had not been updated in light of ACA-33. See *Grievance and Review Procedures of Bloomington Academic Appointees*, (Feb. 15, 2023), Indiana University Bloomington, <https://vpfaa.indiana.edu/policies/bl-aca-d22-grievance-review-faculty/index.html> [<https://perma.cc/MT79-R2MT>].

⁸⁰ Meador, *supra* note 76.

⁸¹ See Marissa Meador, *IU Provost addresses controversy over professor suspension, Palestinian artist Samia Halaby's exhibit*, (Jan. 17, 2024), Indiana Daily Student, <https://www.idsnews.com/article/2024/01/provost-addresses-controversy-suspension-palestinian-artist-bfc> [<https://perma.cc/H6QG-2QPU>].

security issues. For example, the University of Vermont canceled a lecture by Mohammed El-Kurd, a Palestinian poet and journalist, citing safety concerns created by the ongoing hostilities in Gaza;⁸² Arizona State University canceled a pro-Palestine event featuring Congresswoman Rashida Tlaib;⁸³ Columbia University canceled a talk by Omar Shakir, head of Israel and Palestine at Human Rights Watch.⁸⁴

As the fall semester came to an end, some college protesters staged sit-ins in university buildings. For instance, 20 Brown University students were arrested after staging a sit-in in the university president's office⁸⁵ and Harvard students occupied an administrative building at Harvard demanding the end to hostilities in Gaza.⁸⁶

In early April, campus protesters began to establish encampments. Pro-Palestinian Columbia University students began an encampment on April 17, 2024, and refused to heed administrators' requests to comply with policies prohibiting encampments, leading to over 100 student arrests the next day.⁸⁷ Over 120 students were arrested at NYU and 47 at Yale for protesting in encampments on their campuses on April 22, 2024, after the universities provided students with multiple warnings and guidance regarding protests.⁸⁸

IU administrators and IUPD monitored these events nationally and understood that the IU protesters were utilizing similar protest tactics and strategies. For instance, IU administrators recognized that PSC appeared to be affiliated with the national organization Students for Justice in Palestine ("SJP"), which has over 200 chapters at universities in North America and was central to many campus encampments

⁸² See Dan D'Ambrosio, *UVM blames war between Israel and Hamas for cancelling Palestinian speaker* (Oct. 25, 2023), Burlington Free Press, <https://www.burlingtonfreepress.com/story/news/2023/10/25/uvm-cancels-palestinian-speaker-mohammed-el-kurd-middle-east-war/71304336007/> [<https://perma.cc/5HQ6TLVL>].

⁸³ See Lauren Irvin, *Arizona State cancels Pro-Palestinian event featuring Tlaib* (Nov. 17, 2023), The Hill, <https://thehill.com/homenews/state-watch/4315364-arizona-state-cancels-pro-palestinian-event-featuring-tlaib/> [<https://perma.cc/ZMF9-2DTZ>].

⁸⁴ See Andrew Marantz, *Columbia Suspended Pro-Palestine Student Groups. The Faculty Revolted* (Dec. 2, 2023), The New Yorker, <https://www.newyorker.com/news/our-local-correspondents/columbia-suspended-pro-palestine-student-groups-the-faculty-revolted> [<https://perma.cc/BR9C-8GQM>].

⁸⁵ See Haley Sandlow and Sam Levine, *Students occupying University Hall arrested after sit-in demanding divestment, ceasefire* (Nov. 8, 2023), The Brown Daily Herald, <https://www.browndailyherald.com/article/2023/11/students-at-university-hall-sit-in-for-ceasefire-detained-by-police> [<https://perma.cc/Y3EH-YB4S>].

⁸⁶ See Cam E. Kettles and Elias Schisgall, *After 24 Hours, Pro-Palestine Harvard Students End Occupation of University Hall* (Nov. 18, 2023), The Harvard Crimson, <https://www.thecrimson.com/article/2023/11/18/university-hall-occupation-ends/> [<https://perma.cc/K2QQ-TJVA>].

⁸⁷ See Shaon Otterman and Alan Blinder, *Over 100 Arrested at Columbia After Pro-Palestinian Protest* (April 18, 2024) The New York Times, <https://www.nytimes.com/2024/04/18/nyregion/columbia-university-protests-antisemitism.html> [permalink].

⁸⁸ See Erum Salam, *Dozens arrested at Yale and NYU as pro-Palestinian student protests spread* (April 23, 2024), The Guardian, <https://www.theguardian.com/us-news/2024/apr/23/yale-nyu-uni-college-arrests-pro-palestine-protest-israel-gaza-war> [<https://perma.cc/8KHX-NVMS>].

nationwide.⁸⁹ For example, PSC IU regularly reposts coordinated social media content from SJP.⁹⁰

As IU monitored both national and campus events, it became clear that protests at IU were following a similar pattern and escalation to those at other universities. University administrators were concerned with both the possibility of encampments — which posed safety and security risks and the potential for significant disruption — and that students could attempt to seize control of university buildings.

4. April 24, 2024

On April 24, 2024, IU's leadership learned that protesters planned to set up an indefinite encampment on IU Bloomington's campus. Operating under intense time pressure and well into the late evening, IU's leadership invoked a provision in the Dunn Meadow policy to convene an ad hoc committee to consider possible changes to that policy. That committee issued a new regulation prohibiting the erection of structures at any time in Dunn Meadow absent prior approval.

a. IU's Leadership Learns of the Planned Encampment

In the late afternoon of April 24, 2024, IU's leadership learned that a group called "IU Divestment Coalition" was planning a rally at Dunn Meadow for the following day at 11:00 a.m. IUDC was not (and is not) a recognized student organization. The social media post announcing the rally was co-posted with other non-IU-affiliated statewide organizations, the Central Indiana Democratic Socialists of America, the Indiana Coalition for Palestine, Indiana Resiste, and IU Alumni for Palestine.⁹¹ No event request for the planned rally was submitted by any of these organizations or any IU-affiliated organization.

⁸⁹ See National Students for Justice in Palestine, <https://nationalsjp.org/> [<https://perma.cc/8ECD-DFD9>].

⁹⁰ Compare, e.g., @nationalsjp, Instagram (Apr. 20, 2024, 10:05 a.m.), https://www.instagram.com/p/C5_GEIWuo0D/ [<https://perma.cc/QSQ5-PS3K>] (National SJP's Instagram post calling for a "Popular University for Gaza") with @psc_iu, Instagram (Apr. 20, 2024, 10:36 a.m.), https://www.instagram.com/p/C5_KLReO4CU/?hl=en [<https://perma.cc/7L9M-V7SR>] (PSC IU's Instagram post with an identical image and materially identical caption).

⁹¹ @iudivestnow, Instagram (Apr. 24, 2024, 6:01 p.m.), https://www.instagram.com/p/C6KQSDCA99u/?img_index=1 [<https://perma.cc/G2JK-ZN9Z>].



IUDC Instagram Co-Post Posted on April 24, 2024 at 6:01 p.m.

The IUDC social media post made a series of demands: (1) “the resignation of the terrible three in IU administration (Pamela Whitten, Rahul Shrivastav, & Carrie Docherty)”; (2) “the end of the Crane partnership”; (3) “financial divestment from ‘israel’ & adherence to BDS”; and (4) “accept our culture” by establishing a Muslim Cultural Center and a Middle Eastern Cultural Center. The post accused the IU administration of going “above and beyond to serve crimes against humanity, through repression of pro-Palestinian organizing, clearly witnessed in the suspension of Abdulkader Sinno for his association with pro-Palestinian groups on campus, the cancellation of the Samia Halaby art exhibit, and the solidification of the Crane Partnership.”⁹²

IUPD learned and communicated to IU leadership that — consistent with the national trend in establishing encampments on university campuses nationwide — the protesters planned to set up an indefinite encampment during the rally planned for the next day.

b. IU Leadership Meets

In response to this information, President Whitten held a virtual meeting at 9:30 p.m. on April 24th with Provost Shrivastav, IUPD Superintendent Hunter, attorneys from the General Counsel’s Office acting in an advisory capacity, and four-to-five other executive-level administrators. During this meeting, the participants recognized that the planned encampment was an escalation by protesters and that the administration needed to make

⁹² *Id.*

a decision on how to handle the situation quickly. The participants discussed numerous and varied concerns about the planned encampment.

Safety Concerns. The participants discussed a number of safety concerns related to the encampment. The rally was being organized by a group of non-affiliated organizations, which suggested that people unaffiliated with IU would be entering campus with the intent to live there for an indefinite period of time. Similarly, they were concerned that Bloomington's large, unhoused population could move into the encampment, again raising the possibility that members of the IU community, including undergraduate students, could be living in a confined space with unaffiliated individuals. The planned location for the encampment, Dunn Meadow, was across the street from Chabad House, which could further enflame tensions between pro-Israel and pro-Palestine supporters and lead to confrontations or violence. The participants discussed law enforcement information that indicated the protesters were considering taking over and occupying a building on campus. They also discussed the potential environmental and sanitary concerns of a long-term encampment, including the lack of restroom and shower facilities in Dunn Meadow. Finally, participants expressed concern that the encampment would become a hub for potential assaults, harassment, violence, and presence of firearms or other weapons on campus and endanger the safety and security of the campus.

The National Context. The participants also discussed the national context, noting that similar encampments on other campuses had led to serious safety issues and a large number of arrests. Indeed, on the same day as this meeting, an encampment started at Harvard University; at least 93 people were arrested at the University of Southern California; and 55 people were arrested at the University of Texas at Austin.⁹³ The participants recognized that they were not operating in a vacuum and that the protesters who planned the encampment were operating as part of a decentralized national movement and could similarly plan to occupy a campus space indefinitely, as protesters had at other universities.

The Decision to Prevent an Encampment. Noting these safety concerns and examples across the country, the participants came to the collective decision that IU should not allow an encampment or tents to be set up in the first place. Their view was that once the tents were up, it was going to be much harder and more dangerous to take them down, and therefore it was better to act quickly than to let an encampment take hold and attempt to remove it later. Throughout this discussion, President Whitten and the other participants were clear that they were not targeting a particular group or viewpoint in making decisions about how to respond to the planned encampment, but were responding to a rapidly developing series of events that posed serious risks to safety and university operations. Attorneys from the General Counsel's Office advised the participants that a policy prohibiting setting up an encampment without prior approval would be a valid time, place, and manner restriction under the First Amendment.

⁹³ Nadine El-Bawab, *How pro-Palestinian protests unfolded on college campuses across the US: A timeline* (May 4, 2024), ABC News, <https://abcnews.go.com/US/pro-palestinian-protests-unfolded-college-campus-us-timeline/story?id=109902300> [<https://perma.cc/9B9C-N2T2>].

The Plan for De-escalation and ISP Involvement. The participants also discussed what would happen if the protesters did not follow policy and instead proceeded to set up an indefinite encampment in Dunn Meadow. All agreed that they hoped that students would comply with policy directives from members of the Demonstration Response and Safety Team (“DRST”)⁹⁴ to remove tents and structures. If they did not (consistent with developments regarding encampments on campuses nationwide), and IU decided to clear the encampment, Superintendent Hunter stressed to the group that IUPD was not equipped — as to staffing, training, or equipment — to clear a large encampment and would need to request assistance from ISP. The participants understood that reality but hoped that the situation could be diffused without any police involvement.

The Existing Dunn Meadow Policy. The participants in the 9:30 p.m. meeting also discussed the relevant policies in consultation with attorneys from the General Counsel’s Office. The participants looked to BL-ACA-I18, the Policy for the Use of Indiana University Assembly Ground, as the operative policy. They noted that this policy posted on IU’s website provided that students, staff, and faculty “may express any point of view on any subject in the Assembly Ground, with or without advance notice, within the limits of applicable laws and regulations.”⁹⁵ However, it prohibited “uncarried” signs, symbols, or structures on the Assembly Ground between 11:00 p.m. and 6:00 a.m. without advance notice and permission.⁹⁶ It also provided that, “[w]e do not believe that overnight camping is itself a form of expression and we therefore believe that permission should not be granted to cook or live in overnight structures.”⁹⁷

However, the participants also discussed some of the challenges and ambiguities with the policy. For example, from a safety perspective, the participants discussed the potential dangers of clearing the encampment after 11:00 p.m., well after sunset. The participants were concerned that that protesters would receive mixed messages if they were allowed to set up tents initially, but then asked to take them down after 11:00 p.m. Finally, the participants noted that the existing policy was unorthodox and at times ambiguous in its wording, presentation, and structure. For example, the policy used aspirational language like, “[w]e believe,” and “should.” It was also presented as “minutes” from a Board of Trustees meeting rather than a clearly enacted policy.

The No Physical Force Clause. The participants also discussed Section (2)(D) of the policy, which states that “[w]e believe the University should not use physical force to enforce these rules. In cases of non-compliance, the University should use the legal process to enforce its legal rights.”⁹⁸ According to attorneys in the General Counsel’s

⁹⁴ The DRST is made up of administrators and faculty who receive special training to deescalate similar protest situations and educate students on approved and unapproved actions during protests. See *Free Speech: Frequently Asked Questions (FAQs)*, Indiana University, <https://freespeech.iu.edu/faq/index.html> [<https://perma.cc/26GJ-GCCM>].

⁹⁵ BL-ACA-I18, *supra* note 54, at § (2)(A).

⁹⁶ *Id.* at § (2)(B)(3).

⁹⁷ *Id.*

⁹⁸ *Id.* at § (2)(D).

Office, however, that aspirational language did not preclude the application of the criminal trespass statute in the Indiana Code to remove an encampment.

The Committee Clause. The participants then focused on Section (2)(C) of the policy, which provides in part that the “Bloomington Provost should create a committee to oversee the implementation of these provisions, to give continuing advice on changes of policy, and to provide, if necessary, more detailed regulations than those in the previous paragraph.”⁹⁹ That section also provided that because any review “should be prompt if it is ever needed, we think the committee should be very small--perhaps the President of IUSA,¹⁰⁰ the President *pro tem* of the Bloomington Faculty Council, and a member designated by the Provost.”¹⁰¹

The Participants Decide to Form an Ad Hoc Committee. Acting under legal advice from the General Counsel’s Office, the group invoked Section (2)(C) to authorize the Provost to convene an ad hoc committee to provide a “prompt” determination on “more detailed regulations” on the use of the Assembly Ground in Dunn Meadow.

The participants also noted that specific membership of the committee mentioned in the policy appeared to be a suggestion, rather than a requirement. In addition, the participants considered: (1) the late hour and pressing time constraints; (2) that the IU Student Government did not currently have a sitting president as the previous president’s term had ended and the president-elect had not been inaugurated; and (3) the President of the BFC was traveling out of town and was known to be generally inaccessible at that hour. Because of those considerations, but in an attempt to honor the spirit of the suggestion, Provost Shrivastav asked Dr. Lamar Hylton, Vice Provost for Student Life, to join the committee to represent the student perspective, and Vasti Torres, Interim Vice Provost for Undergraduate Education, to represent the faculty perspective. Provost Shrivastav also appointed Superintendent Hunter and Associate Vice President of Events and Conferences Doug Booher. Finally, two attorneys from the General Counsel’s Office were appointed as legal advisors.

c. The Ad Hoc Committee Meeting

At approximately 10:30 p.m., Provost Shrivastav convened a remote meeting of the newly formed ad hoc committee. Provost Shrivastav, the committee members, and the legal advisors to the committee joined. After formally appointing the committee members, Provost Shrivastav charged them with exploring possible changes to IU Bloomington’s Assembly Ground Policy.

The Decision to Change the Policy. Of the committee members we interviewed, there was some disagreement regarding their recollection of the precise role of the committee. One committee member felt that the decision to change the policy had already been made and the only question was how to best effectuate that decision. Others

⁹⁹ *Id.* at § (2)(C).

¹⁰⁰ Prior to 2018, IU Student Government was known as the IU Student Association (“IUSA”).

¹⁰¹ *Id.*

expressed their belief that the committee engaged in genuine debate over whether to change the policy at all. Regardless, each committee member with whom we spoke recalled a wide-ranging discussion about different avenues to alter the Dunn Meadow Assembly Ground policy. For example, the committee discussed safety concerns associated with a potential encampment, the national context, the tent policies of other Big Ten universities, how to define “tent,” and other issues. At one point, a committee member raised that other student organizations, including fraternities and sororities, had previously held events where they slept outside to raise money and awareness for unhoused individuals. Another raised the possibility that camping may be necessitated in the event of a natural disaster. The committee settled on including an approval process by which students could request permission to erect tents or structures and language allowing for camping (with University President approval) in situations analogous to a natural disaster.

The Plan to Give Notice. Committee members also discussed how they would provide notice of the contemplated policy change to students, faculty, and other IU community members. The committee decided on a three-pronged approach. First, they would place signs detailing the new policy in Dunn Meadow, such that anyone entering the meadow would see them. Second, they would have DRST team members hand out leaflets to protesters detailing the new policy. Finally, IUPD would provide verbal warnings to protesters detailing the new policy and notifying them of the consequences for disobeying the policy.

The Final Language. Eventually, and after extended deliberation, by 11:49 p.m., the committee approved the following language as a regulation modifying the existing Assembly Ground Policy:

The temporary or permanent installation of structures (including, but not limited to, signage, tents, etc.) at any time must be approved in advance, by the Office of the Vice Provost for Student Life in conjunction with University Events, and if approved, must adhere to guidelines provided by the University. The Office of the Vice Provost for Student Life, in conjunction with University Events, may approve overnight use of University property for camping in connection with approved University events or registered University organizations. Such use must be consistent with the University’s mission and will not be detrimental to the health, safety, or welfare of event participants or the campus community or in violation of any federal, state, or local laws or municipal ordinances. In extraordinary circumstances, such as times of natural disaster, camping may be permitted when approved in advance by the President of the University or their designee.

5. April 25, 2024

On April 25, 2024, protesters set up an encampment in Dunn Meadow and, after repeated warnings to take down the tents, protesters refused, and 34 individuals were arrested by ISP. A detailed recitation of the events of April 25th, based on interviews, camera footage, and publicly available information, follows.

a. *IU's Efforts to Give Notice of the Policy Change and Deescalate*

By early in the morning on April 25th, IU Bloomington officials acted quickly to implement the plans they had settled on the prior evening. Signs and leaflets with the relevant warning language were printed and readied for distribution.¹⁰²



Warning Sign and Leaflet from April 25, 2024

Also early in the morning, Superintendent Hunter emailed a counterpart at ISP informing him that IU had revised its policy to not allow tents in Dunn Meadow, detailing IU's planned procedure to warn protesters, requesting ISP's assistance, and requesting to speak by phone later that morning. Superintendent Hunter believed ISP's assistance on campus would be necessary given IUPD's understaffing and inability to safely respond to a large crowd that potentially necessitated a large number of arrests.

By 7:59 a.m., the updated Dunn Meadow regulation was posted on IU Bloomington's Office of Student Life website, but it was not easy to find. To locate the regulation, a user would have had to navigate to the "Involvement & Belonging" subpage, then to the "Policies & Accountability" subpage, scroll down to the "On-campus event policies and guidelines" section, and click an expandable section titled "Outdoor spaces."¹⁰³

Before the scheduled start of the rally at 11:00 a.m., IUPD officers confirmed that the warning signs were placed around Dunn Meadow, including at entrances to the meadow.

¹⁰² Absent from the signs and leaflets, however, was any language detailing the process by which students could obtain approval to erect structures or tents.

¹⁰³ See *Student org policies to know*, Indiana University Bloomington (April 24, 2024), <https://studentlife.indiana.edu/involvement-belonging/student-involvement-leadership/student-organizations/manage-organization/policies/index.html> [<https://perma.cc/76DQ-VSK3>].

Also before 11:00 a.m., individuals began congregating in Dunn Meadow. As of 10:52 a.m., approximately 30 protesters arrived in Dunn Meadow. They brought at least four tarps, at least one unassembled tent, a number of coolers, and three wooden objects with the flag of Palestine on one side and handles on the other (these would later be used as shields by protesters).



Photo of Dunn Meadow from April 25, 2024 at Approximately 10:52 a.m.

At approximately 11:05 a.m., members of the DRST team, accompanied by IUPD officers, approached the edge of Dunn Meadow to observe. Shortly after arriving, a protesting faculty member approached the contingent from DRST and IUPD. Almost immediately, the faculty member began arguing with IUPD officers and DRST team members over the applicable policy in Dunn Meadow. The faculty member, alluding to the policy labeled on IU's website as the 1969 policy, stated that "tents are sometimes required" under the policy. An IUPD officer responded that "actually, tents are not allowed. You will not be allowed to set up tents today." Although the officer repeated this statement numerous times, the protesting faculty member refused to accept the officer's statement and attempted to read the 1969 policy out loud. When the officer showed the faculty member a sign with the new policy, the faculty member stated, "that's not policy" and described the sign as "arbitrary."

Shortly thereafter, a member of the DRST team intervened in the conversation and another individual who appeared to be a student protester joined the conversation. The DRST team member reaffirmed that the policy stated on the signs was accurate. The protesters responded by calling the signs "wrong" and asking for them to be taken down. At one point, an IUPD officer reminded the protesting faculty member, "we're not trying to suppress your speech, we're saying you can't put tents up." Eventually, with the temperature of the conversation rising, the DRST team member asked for a brief break, during which she consulted the General Counsel's office to confirm that her understanding of the policy was correct. Having done so, she reengaged with the protesting faculty member to reaffirm that the new policy was in place and that structures were not allowed in Dunn Meadow. In response, the faculty member pointed out to the DRST member what happened when another administrator who had supposedly "misinterpreted policy," and was the subject of a faculty-wide no confidence vote as a result. The conversation ended

shortly thereafter with no agreement to deescalate or refrain from erecting tents or structures.

b. The Encampment Begins

Around the same time, at approximately 11:19 a.m., a van pulled into a parking lot across the street north of Dunn Meadow, where eight to ten individuals were waiting. As soon as the van arrived, those individuals began to unload camping supplies and equipment, including pallets of water, coolers, and tents, and briefly stored them in the yard of a campus affinity group across the street from Dunn Meadow. Shortly thereafter, the individuals headed south, across the street into Dunn Meadow, carrying the supplies. As those individuals arrived in Dunn Meadow, some individuals already present in Dunn Meadow began to move towards the van and yard where equipment was being stored and began to assist with the supplies and equipment.

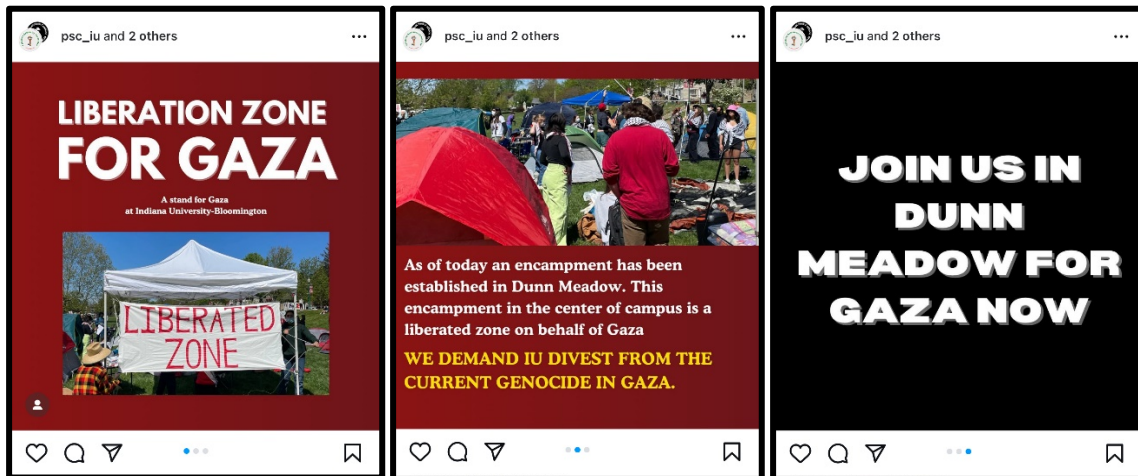
At approximately 11:24 a.m., protesters began to erect structures, including canopy-style tents with open sides and camping-style tents that are enclosed on all sides. While they did so, another group individuals formed a circle around those setting up structures. By 11:35 a.m., at least 15 tents were erected in Dunn Meadow. Also present by this time were supplies such as toilet paper, food, beverages, and signs that declared Dunn Meadow a “Liberated Zone.” We heard from some students present at the beginning of the encampment that it appeared to be peaceful, and members of the encampment set up a library and discussed arranging a series of teach-ins at the encampment.



Photo of Dunn Meadow from April 25, 2024 at Approximately 11:35 a.m.

At 12:12 p.m., PSC, IUDC, and Jewish Voices for Peace – Indiana (“JVP”) co-posted a post on Instagram announcing a “Liberation Zone for Gaza,” by stating “As of today an encampment has been established in Dunn Meadow. This encampment in the center of campus is a liberated zone on behalf of all Gaza. WE DEMAND IU DIVEST FROM THE

CURRENT GENOCIDE IN GAZA.”¹⁰⁴ The post also asked its readers to “JOIN US IN DUNN MEADOW FOR GAZA NOW.”



PSC, IUUC, and JVP Instagram Co-Post Posted on April 25, 2024 at 12:12 p.m.

c. Further De-Escalation Efforts by DRST

At approximately 12:13 p.m., DRST team members, accompanied by IUPD, entered Dunn Meadow and approached protesters in an effort to deescalate and obtain compliance with IU policy. The DRST team members attempted to hand out leaflets explaining the new policy and reiterating that tents were not allowed. Some protesters took the leaflets, but many did not. Shortly after DRST entered the encampment, a protester announced to the crowd: “Do not accept the flyers. They are false; they are not accurate. [DRST and IUPD] have been informed that these policies are not in agreement with IU’s official Dunn Meadow policy.” After this announcement, most protesters refused to take a leaflet or otherwise engage with DRST.

When DRST and IUPD were present in the encampment, protesters chanted, among other things, “IUPD, KKK, IOF,¹⁰⁵ they’re all the same.” Protesters also booed their presence and chanted “shame” repeatedly. One protester told DRST and IUPD that “you should be ashamed of yourself. How much are you being paid for genocide?” Another protester ripped a leaflet out of a DRST team member’s hand and threw it to the ground. At approximately 12:18 p.m., DRST exited the encampment. DRST refused to re-enter the encampment again to try to hand out leaflets and deescalate, leaving IUPD to attempt a second round of leafleting alone.

¹⁰⁴ @psc_iu, Instagram (Apr. 25, 2024, 12:12 p.m.), https://www.instagram.com/p/C6MNOXJOp4P/?hl=en&img_index=1 [<https://perma.cc/LVW8-DM88>].

¹⁰⁵ “IOF” stands for “Israel Occupation Forces” or “Israel Offensive Forces,” both pejorative terms for the Israel Defense Forces, commonly referred to as the “IDF.”

d. Activities at Chabad House

By approximately 12:40 p.m., a number of Jewish students began to gather in front of Chabad House, which is directly across the street from Dunn Meadow. They wrapped themselves in Israeli flags, danced to loud Israeli music, and hung a banner that read “Bring them home now.” In at least two instances, an individual from the protest group in Dunn Meadow walked onto Chabad property and unplugged the speaker.

Students who walked to Chabad House reported that protesters in Dunn Meadow yelled antisemitic statements at them, including “Fuck you, Jew.”



Photo of Dunn Meadow from April 25, 2024 at Approximately 12:49 p.m.

e. Continued Warnings and Non-Compliance

The First Formal Warning. At approximately 12:50 p.m., IUPD began to read formal warnings to the protesters through the public announcement system of an IUPD vehicle. The first warning read: “Attention, as the person having lawful control of this area, I request that you remove your tents immediately. Should you refuse to remove your tents, you will be asked to leave immediately.” Shortly after the warning was given, a protester approached the IUPD vehicle to ask if they needed to leave “immediately, immediately.” The IUPD officer confirmed that it was what the warning meant. While the officer read the warning, protesters surrounded the tents in a line, locking arms. They also chanted loudly while the warning was being read. Chants included, “From the river to the sea, Palestine will be free.”

The Second Formal Warning. At approximately 12:56 p.m., IUPD began to read a second warning to protesters. It read: “As the person having lawful control of this area, this is your second warning. I request you leave this area immediately and remove your tents. Otherwise, you will be subject to arrest for trespass, or violations of the law of the state of Indiana. You may also be subject to suspension under the University’s code of student rights, responsibilities, and conduct.” This warning was given numerous times between 12:56 p.m. and 1:49 p.m. from an IUPD vehicle’s public announcement system.

Continued De-Escalation Efforts. At approximately 1:22 p.m., representatives from IUPD and ISP approached protesters on foot to attempt to deescalate the situation, give warnings, and obtain compliance with IU policy. They were met by a group of protesters, including at least one protesting faculty member. That faculty member stated that he would not convey any message to student protesters if he felt that it was against faculty policy. The contingent from IUPD and ISP continued to speak with the group and explained to the protesters that “you guys can be here, you just can’t have tents here.” As the contingent explained that, the protesters interrupted to argue that the policy was different. The representative from ISP responded: “If those tents don’t come down, the State Police, not IUPD, will come through here and clear everybody out. If you resist us or stay, you will be arrested, ok? The tents need to come down, and then you guys can stay, ok? There’s nothing wrong with that. You can stay until 11:00 p.m.” Protesters then consulted what appears to be a printed version of the 1969 policy and asked ISP if they had read it. As the representative from ISP began to respond, protesters interrupted him, and began to chant. Finally, ISP reiterated that they would use force “if we have to” to “clear out” the encampment, that they are “not bound by faculty policy” but rather are “bound by state law,” and that that the protesters were free to protest if the tents came down. By 1:26 p.m., ISP and IUPD began walking away from the encampment.

Protesters Declare a “Popular University for Gaza.” At 1:33 p.m., PSC, IUDC, and JVP co-posted a statement on Instagram that explained that they had “set up [their] encampment here, while following in the footsteps of our comrades at other universities across the country, to take a firm and principled stand for Gaza. ALL OF OUR EYES ARE ON GAZA.”¹⁰⁶ They further explained that

[t]his encampment is our creation of a Popular University for Gaza. This genocide has shown that these institutions are merely beacons of empire. They pacify the masses through intellectual obfuscation, suppress anti-imperial organizing, and materially serve settler-colonial projects on this land as well as in Palestine. Our encampment is the beginning of an alternative to these spaces, one not meant to serve the ruling-class and status quo, but rather for the people by the people geared towards the liberation of Palestine and all oppressed peoples.¹⁰⁷

They also wrote that they adhered to the following principles in their movement: “The right to self-determination”; “Jerusalem as the capital of Palestine”; “The right of colonized people to resist against occupation”; and “The right of Palestinian refugees to return (in accordance with UNGA 194).”¹⁰⁸ They also repeated their demands to end the Crane

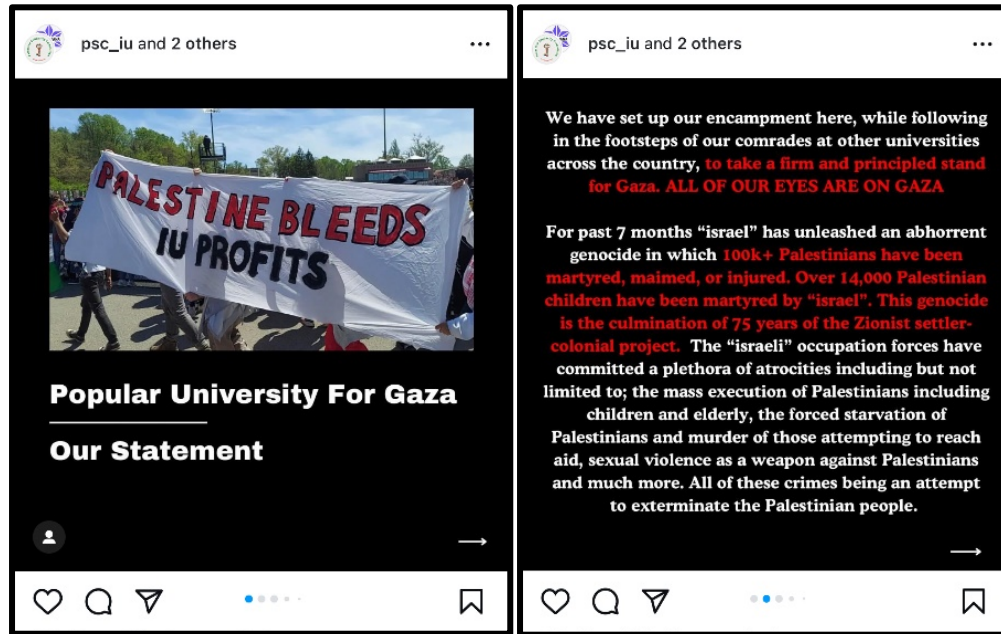
¹⁰⁶ @psc_iu, Instagram (Apr. 25, 2024, 1:33 p.m.), https://www.instagram.com/p/C6MWbabuV9R/?hl=en&img_index=1 [<https://perma.cc/GLM5-28KP>].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

partnership; for the resignation of President Whitten, Provost Shrivastav, and Vice Provost Docherty; and divestment from Israel.

Although they posted their demands on social media pages, the protesters did not communicate their demands directly to IU's leadership or administration.



Two Slides from a PSC, IUDC, and JVP Instagram Co-Post Posted on April 25, 2024 at 1:33 p.m.

The Third Formal Warning. At approximately 1:49 p.m., IUPD read a third warning to protesters. It read: "As a person having lawful control of this area, you have been given two warnings regarding your disruptive behavior during this event and have been asked to leave the area. Unless you leave immediately, you will be arrested for trespass or other violations of the laws of the State of Indiana. If you are a student, you may also be subject to suspension or expulsion under the University's Code of Student Rights, Responsibilities, and Conduct." This warning was repeated numerous times from an IUPD vehicle's public announcement system.

During the period the formal warnings were given, some protesters did leave the encampment. At approximately 2:11 p.m., some protesters began disassembling a number of tents. From video footage it appears that the protesters were consolidating the encampment and then encircling it with a line of protesters. Although some tents were removed completely, others were merely moved closer together or reassembled in a different place. Once the tents were consolidated, protesters condensed and formed a complete circle, locking arms around the encampment.



Photo of Dunn Meadow from April 25, 2024 at Approximately 2:15 p.m.

At approximately 2:27 p.m., IUPD read the same third warning to protesters multiple times, this time through a megaphone approximately 20-30 feet from the line of protesters. Similar warnings continued for the next hour. Although, as noted above, some protesters left the encampment, others did not and refused to take down the tents.

At 3:08 p.m., PSC, IUUC, and IU Alumni for Palestine (“IUAP”) co-posted a post on Instagram calling for others to show up to Dunn Meadow.¹⁰⁹



PSC, IUUC, and IUAP Instagram Co-Post Posted on April 25, 2024 at 3:08 p.m.

¹⁰⁹ @psc_iu, Instagram (Apr. 25, 2024, 3:08 p.m.), <https://www.instagram.com/p/C6MhUWUA8nT/?hl=en> [<https://perma.cc/66BB-3XFP>].

Provost Shrivastav’s Update to Faculty. At 3:30 p.m., Provost Shrivastav sent an email to the academic deans of IU Bloomington to update them on the ongoing protest in Dunn Meadow. He reiterated that IU “continues to encourage the free and civil exchange of ideas and academic freedom, including peaceful protest.” He also explained how in response to information about the rally, he convened an ad hoc committee to recommend changes to IU policy “that would best enable [us] to balance free speech and safety in the context of similar protests occurring nationally.” He detailed the policy change which prohibited erecting structures absent prior approval and the efforts that the administration made to provide notice to protesters. He then noted that despite numerous and repeated warnings, approximately 125 people remained in Dunn Meadow, “many with tents and supplies for multiple days.” He also emphasized that the administration’s action “[did] not prevent protestors from continuing their rally in Dunn Meadow as long as they comply with temporary or permanent structure regulations.” Finally, he expressed his hope that protesters would comply with the warnings and take down the structures, but he also noted that “it may become necessary to detain and remove individuals for criminal trespass – an action of last resort.”

f. ISP Removes the Encampment

ISP Enters Dunn Meadow. At approximately 3:45 p.m., around 30 Indiana State Troopers accompanied by approximately 15 IUPD officers entered the east side of Dunn Meadow. Upon arrival, they set up in a multi-tiered line formation. At the front, closest to the encampment and protesters, was a line of approximately 15 ISP troopers in unarmored uniforms and helmets with face shields. This front row of troopers was also equipped with shields. Behind this front line were IUPD officers, an ISP SWAT team of approximately 10 troopers, and other ISP personnel. The IUPD officers were at the back of the formation.



Photo of Dunn Meadow from April 25, 2024 at Approximately 3:45 p.m.

ISP also stationed an officer on top of the Indiana Memorial Union in an “overwatch” position to monitor the scene, including for any active shooter incidents or attempted

vehicle attacks, consistent with ISP protocol. That officer was equipped with a sniper rifle.¹¹⁰

As ISP and IUPD stood in Dunn Meadow, the approximately 100 protesters present again formed a line, locking arms together, and stood between the ISP line and the encampment. They chanted, among other things, “ISP, KKK, IOF they’re all the same,” “resistance is justified,” “Israel is a terrorist state,” and “America is a terrorist state.” At least three protesters stood with wooden shields, which are considered by the ISP and IUPD to be weapons because they can be used to inflict harm.

By this time, there were approximately 200 bystanders watching events unfold in Dunn Meadow. Most onlookers were stationed on the sidewalk of E 7th St. on the north side of Dunn Meadow. These hundreds of bystanders were elevated on a hill overlooking Dunn Meadow, watching, chanting, and filming. Other onlookers were on the sidewalk on the south side of Dunn Meadow. Some onlookers on the south sidewalk frequently stepped onto Dunn Meadow, usually to film or photograph encounters between protesters and the police.

At approximately 3:52 p.m., ISP gave protesters a final five-minute warning to disperse. At 3:56 p.m., PSC, IUDC, JVP, and IUAP co-posted a video on Instagram of the police line facing protesters. The caption read: “STATE POLICE HAVE ARRIVED AT DUNN MEADOW. SHOW UP NOW. WE PROTECT EACH OTHER.”¹¹¹



Photo of Dunn Meadow from April 25, 2024 at Approximately 3:56 p.m.

¹¹⁰ As discussed in Section II, *supra*, this report does not examine the tactical decisions of ISP. Although IU’s leadership authorized requesting ISP’s assistance, they had no operational control over ISP or their specific tactical decisions.

¹¹¹ @psc_iu, Instagram (Apr. 25, 2024, 3:56 p.m.), <https://www.instagram.com/p/C6MmshCpLKZ/?hl=en> [<https://perma.cc/R6QG-RCTD>].

ISP Arrest Protesters who Refuse to Move. At 3:57 p.m., after protesters did not heed the final warning, ISP officers began to approach the line of protesters standing between them and the encampment. As the ISP line advanced and made contact with the protesters' line, protesters refused to move backwards. Indeed, protesters leaned into the advancing troopers and attempted to push them back and stand their ground. Troopers used their shields to push back, in an attempt to push the line of protesters back behind the encampment. In that process, protesters who were pushing back and refusing to move were pulled through the ISP line, passed back to the IUPD, and were arrested with plastic zip-tie style handcuffs. As the ISP line advanced west through the encampment, a number of protesters refused to leave their tents and they were physically removed from them by ISP.



Photo of Dunn Meadow from April 25, 2024 at Approximately 3:58 p.m.

At approximately 4:01 p.m., as a protester was pulled through the ISP line, he fell to the ground but quickly regained his footing and ran east, out of Dunn Meadow to escape arrest. After a brief foot pursuit, an IUPD officer caught up to the fleeing protester and placed him under arrest. At approximately 4:02 p.m., the southern part of the ISP line had progressed further west through the encampment than the northern part of the ISP line.



Photo of Dunn Meadow from April 25, 2024 at Approximately 4:02 p.m.

At some point between 4:00 p.m. and 4:15 p.m., a student protester bit an ISP trooper in the forearm (the trooper would later get stitches for this wound). Also, at some point during the clearing, another officer sustained a broken finger. As other protesters were arrested, one protester asked an IUPD officer, “how does it feel to be a Nazi?” In another instance, as a protester was being handcuffed, an officer asked the individual if they would prefer to stand up to walk to the area east of the ISP line where arrestees were being temporarily held. The arrested protester responded, “hell no, fuck you,” and the officer dragged the individual to that area. Numerous protesters chanted, “Nazi, Nazi, Nazi.”

ISP Establishes a Perimeter Around the Encampment. By approximately 4:15 p.m., the ISP line had pushed the protester line west through the encampment. They then reestablished a line, standing facing protesters to the west, with the encampment behind them to the east.



Photo of Dunn Meadow from April 25, 2024 at Approximately 4:15 p.m.

Soon after reestablishing this perimeter, the IU facilities team entered Dunn Meadow and disassembled the encampment, finishing at approximately 4:40 p.m. Once the encampment was disassembled, ISP and IUPD began to move backwards, towards the eastern edge of Dunn Meadow. As they did so, protesters chanted, among other things, “pigs go home.” By 4:50 p.m., ISP and IUPD had departed from Dunn Meadow and arrested protesters were taken to a nearby IU facility pending transport to the Monroe County Jail.

g. The Aftermath of Arrests on April 25th

At 5:37 p.m., PSC and IUUC co-posted on Instagram that students had been arrested “after 5 hours of camping” and encouraged readers to call the office of the IU President to “demand amnesty for protesters” and “express support for the encampment.”¹¹²

Shortly after 6:00 p.m., the arrested protesters arrived at the Monroe County Jail. In total, 34 individuals were arrested on April 25th, 28 of whom were affiliated with IU. While being processed, each arrested individual received a trespass notice from IUPD, which notified them that they were banned from the IU Bloomington campus for one year.

No protesters reported to the ISP or IUPD receiving injuries as a result of ISP or IUPD action. Some IU community members thanked ISP and IUPD for their professionalism. In one notable example, an arrested individual submitted a compliment to IUPD, commending an officer for their professionalism, courtesy, and alignment with the values of community policing.

At 9:39 p.m., President Whitten emailed the IU Bloomington faculty with a message that summarized what had happened on campus during the previous 24 hours:

Since October 7th, we have successfully hosted dozens of rallies, protests and educational dialogues concerning highly controversial and deeply personal opinions regarding the events in the Middle East. Today there was a protest in Dunn Meadow that required us to balance our commitment to free speech activities with the need to ensure safety and security for our campus community Yesterday we became aware that a student group had announced a planned rally in Dunn Meadow with internal and external groups seeking to occupy the university space indefinitely through erection of tents and stockpiling of provisions for multiple days. In reviewing guidance from a 1969 Board of Trustees policy, there was a provision that stated that tents would need to be removed at 11 pm in compliance with university policy that prohibits overnight campus ground occupation. This same policy includes a clear provision that the provost can pull together an

¹¹² @psc_iu, Instagram (Apr. 25, 2024, 5:37 p.m.), https://www.instagram.com/p/C6MyXpBpV0u/?hl=en&img_index=1 [<https://perma.cc/L6EP-Z7Z3>].

ad hoc committee at any time to address specific changes that may be needed to the policy. Last night, the provost charged this committee to make recommendations that would best enable us to balance free speech and safety in the context of similar protests occurring nationally. The committee affirmed the right of peaceful protest, with the additional recommendation that temporary or permanent installation of structures in Dunn Meadow (including, but not limited to posters, tents, etc.) at any time must be approved in advance by the university and, if approved, adhere to the guidelines provided by the university. The change was posted online and at Dunn Meadow this morning, and participants were told repeatedly that they were free to stay and protest, but that any tent would need to be dismantled. Given the expectation of a high number of external participants, Indiana State Police was brought in as a law enforcement partner. Once prohibited structures were removed, the protests continued peacefully and, in fact, are continuing at the time of this writing. As we watched similar events unfold on numerous campuses around the country and prepared for today's rally, we thoughtfully considered the best course of action for IU with the safety of our community being foundational to our decision. We know that not all will agree with the course of action, but this was made through careful deliberation. Our university must create space for meaningful dialogue, while ensuring that our campus is safe and welcoming to all, and that peaceful protest, as many experienced today, symbolizes our steadfastness to the free expression of ideas.

After the arrests of that day, protesters continued to gather in Dunn Meadow to protest. They did not erect tents or structures, and they left the meadow at approximately 11:00 p.m.

6. April 26, 2024

a. *The Encampment Reemerges*

Early in the morning of April 26, 2024, PSC and IUDC co-posted on Instagram announcing “day two of encampment,” calling on people to “join the encampment” and “show up at 11:00 AM.”¹¹³ By approximately 10:13 a.m., a group of protesters, including faculty members, gathered in front of President Whitten’s Bloomington office in Bryan Hall, which also included the Office of the Provost. They erected at least one unoccupied tent on the grass near Bryan Hall. This group then moved north on N. Indiana Avenue

¹¹³ @psc_iu, Instagram (Apr. 26, 2024, 1:13 a.m.) <https://www.instagram.com/p/C6NmnMQu7gh/?hl=en> [<https://perma.cc/7LHV-G3SD>].

towards Dunn Meadow. The group carried at least two partially assembled tents. By 11:15 a.m., they arrived on the eastern end of Dunn Meadow and met a group of protesters already present. Upon the convergence of the two groups, the protesters began to erect tents in Dunn Meadow.

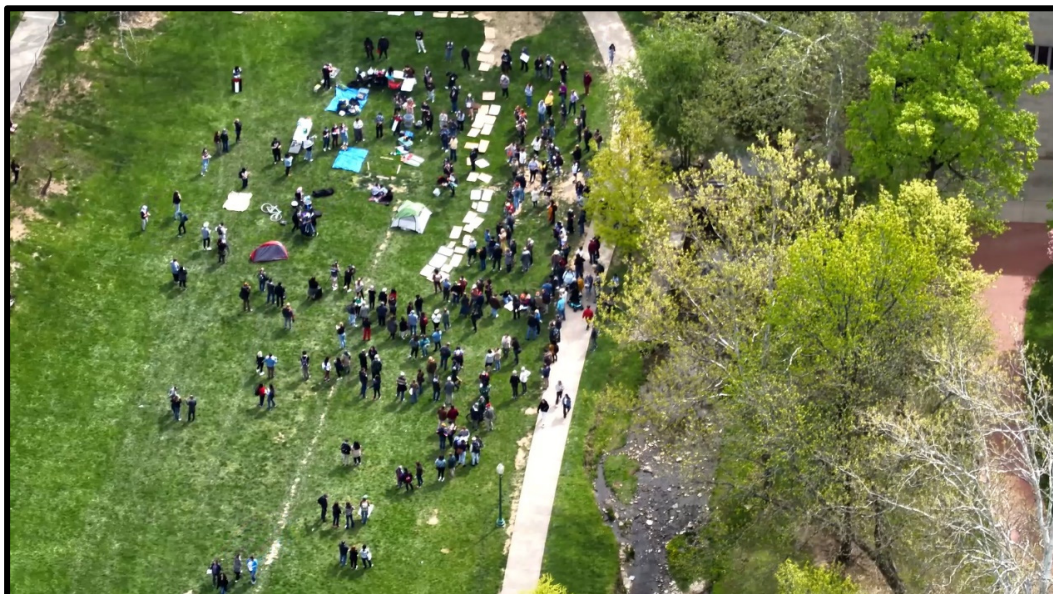


Photo of Dunn Meadow from April 26 at Approximately 11:15 a.m.

Shortly thereafter, IUPD began to attempt to distribute the same leaflets from the prior day, which explained, among other things, that tents were prohibited. In response, protesters chanted, “don’t take the forms” and largely refused to take the leaflets or otherwise engage with IUPD.

b. Further Efforts to De-Escalate and Obtain Compliance

While observing, attempting to deescalate, and warn protesters of their violation of policies on April 26th, IUPD officers observed that protest leaders were teaching other protesters how to use homemade shields and how to adopt formations to prevent police from removing them from the encampment again. They also observed that the protesters were using police scanners to monitor police activity.¹¹⁴ Some ISP and IUPD supervisors noticed that they were being followed and surveilled by individuals coming from the Dunn Meadow encampment as the ISP and IUPD supervisors moved around Bloomington by foot or by car.

At approximately 1:50 p.m., a high-ranking ISP trooper approached the encampment. He was met by a line of protesters holding wooden shields. The trooper appealed to a protest leader to talk to everyone and have them take the tents down. The trooper stated, “We don’t want what happened yesterday to happen again today.” The trooper left

¹¹⁴ The protesters were monitoring and recording police radio activity. The Indiana Graduate Workers Coalition has posted recordings from police action on April 27th on its website. See *IU Liberated Zone*, Indiana Graduate Workers Coalition, <https://igwc.work/iu-liberated-zone> [<https://perma.cc/AN6Y-QWZQ>].

approximately five minutes later without making any arrests. The protesters did not heed the trooper's warning, and the structures remained standing.

Also that afternoon, the IU administration began to disseminate information to the campus about how they would handle appeals from trespass orders issued the prior day. They encouraged anyone who had received a trespass notice to initiate an appeal through IUPD, noting that “[t]respass ban notices will be suspended during the appeals process in nearly all cases. This will allow these students and faculty to complete the semester.”

c. Incident with Chabad House and Jewish Students

At approximately 11:00 p.m., a group of Jewish students exited Chabad House, where they were attending a Shabbat dinner, and began to walk home. As they did so, they were followed home by an unknown man. When the group of students arrived at their home, the individual who had been following them screamed at them, threatened to break down their windows, used homophobic slurs, and threw items that were on the home's porch towards the house. The Jewish students were frightened by the encounter and called the police, who were unable to immediately identify or apprehend the individual. According to one of the students who was followed home, the individual appeared to come from the encampment in Dunn Meadow.

d. IU's Non-Enforcement

Protesters continued to keep the tents erected throughout the day on April 26th. By 11:00 p.m., protesters and their tents remained in Dunn Meadow.¹¹⁵ Despite this, the IU administration made the decision not to clear the encampment on April 26th. The IU administration officials we spoke with described this decision as a “judgment call” that was made in an attempt to see if the protesters would comply with the 11:00 p.m. deadline in the 1989 Dunn Meadow report. This decision was also motivated in part by a desire to avoid further contact between protesting IU community members and ISP and by the hope that the encampment would remain small and end of its own volition. The tents were not removed at 11:00 p.m.

7. April 27, 2024

On April 27, 2024, the encampment remained standing and IU's leadership, including President Whitten and Provost Shrivastav, again requested the assistance of ISP to remove it. This time, the decision to request ISP assistance was not widely disseminated and there were more ISP troopers than protesters. As such, the removal of the encampment was significantly faster on April 27th. Ultimately, 23 protesters were arrested

¹¹⁵ Protesters had stated on social media that they intended to camp overnight. In an Instagram post posted at 9:57 p.m. on April 26, 2024, PSC and IUDC encouraged readers to “join us at the first overnight encampment” that would exist from “[n]ow till divestment.” @psc_iu, Instagram (Apr. 26, 2024, 9:57 p.m.), <https://www.instagram.com/p/C6P08K8tvXy/?hl=en> [https://perma.cc/EV6N-6556].

on the April 27th (17 of whom were affiliated with IU) raising the total to 57, but the encampment re-emerged just hours later.

a. *The Decision to Clear the Encampment Again*

Protesters remained overnight in tents between April 26th and April 27th. By approximately 9:38 a.m. on the April 27th, there were approximately 30 people encamped in Dunn Meadow in approximately 15 tents.



Photo of Dunn Meadow from April 27, 2024 at Approximately 9:38 a.m.

At 9:50 a.m., the IU Bloomington X account posted a reminder: “IU encourages and respects free speech, including the right to peacefully protest and demonstrate. Consistent with university policy, the installation of temporary structures requires advanced approval and camping is not allowed overnight. IU students, faculty, staff, and visitors are expected to comply with both university policy and state law. Students are held accountable to the Student Code of Conduct. These policies are in place to safeguard the IU community.”¹¹⁶

In the morning of April 27th, IU’s leadership, including President Whitten and Provost Shrivastav, met to decide how to handle the reconstituted encampment. The group understood that the safety concerns remained the same as they had been on April 25th. In addition, IUPD and ISP had observed what appeared to be rocks in tents and numerous buckets, both of which could be used as weapons or to cause injury. IUPD and ISP had also become aware of a post on social media related to the encampment encouraging the use of firearms to defend against allegedly unlawful police action. And while IU’s leadership had hoped the situation would have deescalated on April 26th, they believed

¹¹⁶ @IUBloomington, X (Apr. 27, 2024, 9:50 a.m.), <https://x.com/IUBloomington/status/1784218565140226344> [<https://perma.cc/SAQ7-RX3D>].

the situation had continued to escalate. Therefore, the group collectively decided to again remove the encampment with ISP's assistance.

Key campus leaders — whether administrators, faculty, or students — were not notified in advance of ISP's arrival and planned action. ISP and IUPD believed that information about their activity was reaching the protesters in advance, either through leaks or protesters' use of police scanners to monitor police action. ISP and IUPD were concerned that if the information reached the protesters in advance, there would be an increased risk of violence and injuries and they would be less effective in their efforts to remove the encampment safely and efficiently. As a result, IU's leadership decided not to widely disseminate their decision to request ISP's assistance within IU.

b. IUPD and ISP Enter Dunn Meadow and Give Repeated Warnings

At approximately 12:18 p.m., approximately 60 ISP troopers entered the east side of Dunn Meadow, flanked by approximately 15 IUPD officers. This time, because a student protester bit a trooper on the 25th and an officer broke their finger, the front line of ISP troopers wore body armor routinely used by law enforcement during crowd control situations. At the time police entered Dunn Meadow, protesters had already formed a line facing east to confront the arriving officers. When ISP and IUPD entered Dunn Meadow, there were approximately 15 structures — two canopy-tents with at least one open side, and approximately 13 traditional camping-style tents — and 40–50 protesters in the encampment.



Photo of Dunn Meadow from April 27, 2024 at Approximately 12:20 p.m.

At 12:20 p.m., IUPD began to warn protesters using a megaphone approximately 20 feet from the protester's line. The first warning read: "As the person authorized to have lawful control of this property, IU policy prohibits permanent and temporary structures without advance approval. You must remove your tents immediately. After you remove

your tents, you are welcome to return to continue protest activities without erecting tents or other structures.” In response, the protesters chanted, among other things, “shame.” Over the next few minutes, IUPD continued to read the same warning and then progressed to a second warning: “If you do not remove all tents from IU property at this time, law enforcement will enforce the IU policy and remove tents beginning in ten minutes. After removing the tents, exit towards Indiana Avenue. You may return in person to continue your protest activities without tents. If you do not remove all tents, you will be arrested for criminal trespass or other violations of Indiana law. If you are arrested, you will be banned from campus and unable to return to IU property. If you are a student, you may also be subject to suspension or expulsion under the Code of Student Conduct.” Protesters did not remove tents in response to either warning.

At approximately 12:22 p.m., ISP began to give their own warnings to protesters. ISP told the protesters: “You have been ordered by a person authorized to have lawful control of this property to remove the tents and structures from the property. You are violating the rules of policy of the property, and have been asked to leave the area. I am giving you ten minutes to leave this area. We will not limit your egress at any time during this ten-minute period. If you stay beyond this ten-minute period, you will be trespassing, a violation of state law and subject to arrest.” This warning was repeated multiple times.

c. Some Protesters Appear to Encourage Others Not to Comply with ISP Orders

At approximately 12:23 p.m., some protesters began to take down some of the tents and move them out of the clearing in Dunn Meadow. However, at approximately 12:25 p.m., a female protester appeared to have a conversation with one of the leaders of the protests, who was in the line of protesters facing the police and who was frequently using a megaphone to lead chants. After this brief conversation, the female protester went behind the line of protesters and ran towards other protesters who were disassembling tents. As she reached them, she made gestures indicating that she was telling them to stop taking down the tents. Shortly thereafter, the same protest leader she had spoken to moved back to the area behind the line and also had a brief conversation with protesters who were taking down tents. After these interactions, protesters who had previously been disassembling and moving tents stopped what they were doing.

At 12:26 p.m., the IUDC Instagram page posted an “urgent update” saying that “the SWAT team has been called on IU’s liberated zone” and asking for others to “join us now.”¹¹⁷

d. IUPD and ISP Repeat Warnings

At 12:31 p.m., IUPD again gave a warning: “If you do not remove all tents from IU property at this time, law enforcement will enforce the IU policy and remove tents beginning in three minutes. After removing the tents, exit towards Indiana Avenue. You

¹¹⁷ @iudivestnow, Instagram (Apr. 27, 2024, 12:26 p.m.), <https://www.instagram.com/p/C6RYW9jg6fE/> [<https://perma.cc/G7V3-YGKS>].

may return in person to continue your protest activities without tents. If you do not remove all tents, you will be arrested for criminal trespass or other violations of Indiana law. If you are arrested, you will be banned from campus and unable to return to IU property. If you are a student, you may be subject to suspension or expulsion under the code of student conduct.”

By 12:34 p.m., two structures remained standing in Dunn Meadow. Both were canopy-style tents, one with all four sides exposed, the other with only the eastern side (the side facing away from police) exposed. Also by this time, approximately 100 bystanders had gathered on sidewalks to the north and south of Dunn Meadow. Two to three individuals who identified themselves as faculty members then approached ISP and IUPD and asked for officers to stand down. The officers told the faculty that if the protesters took down the structures, they would be left alone. Protesters, however, gave no indication that they intended to disassemble these structures.



Photo of Dunn Meadow from April 27, 2024 at Approximately 12:34 p.m.

e. ISP Clears the Encampment a Second Time

At approximately 12:35 p.m., a line of ISP officers began advancing west towards the line of protesters. Approximately one minute later, the ISP line made contact with the line of protesters. The protesters refused to back up and pushed into the ISP to prevent them from advancing. ISP used shields to push protesters back and continued moving forward to remove the encampment. ISP’s contact with the protester line is pictured below.



Photo of Dunn Meadow from April 27, 2024 at Approximately 12:35 p.m.

As the ISP continued to advance west, they pulled protesters who refused to move behind their line, where IUPD officers were waiting to place protesters under arrest. Some, but not all, protesters refused police instructions to put their hands behind their backs. At times, protesters were pinned to the ground until officers were able to place handcuffs on the individual.

At approximately 12:38 p.m., as officers had progressed most of the way west through the encampment, officers identified one of the leaders of the encampment. As they moved to arrest him, he ran west, away from the advancing line of officers. One officer chased him down and began to place him under arrest. As the officer was doing so, a group of protesters, including another leader of the protests, ran up to the leader and the arresting officer and attempted to prevent the officer from effectuating the leader's arrest by grabbing him and dragging him from the officers' hands. More officers then arrived who then tackled and arrested protesters who had attempted to interfere with the protest leader's initial arrest. Now west of the ISP line and nearly encircled by protesters, an ISP trooper entered the scene and commanded protesters to move back to give officers room to effectuate arrests safely.

As this was happening, the protester line began to disintegrate and move backward, allowing the ISP line to continue moving forward through the encampment. By 12:39 p.m., less than five minutes after advancing towards the encampment, the ISP line completed its move west through the encampment. Once the troopers reached the end, they formed a line facing west and protesters formed another line facing the troopers, this time outside the encampment.



Photo of Dunn Meadow from April 27, 2024 at Approximately 12:39 p.m.

By 12:50 p.m., facilities employees arrived to clean up the encampment. As ISP held their ground to allow facilities employees to complete their work, protesters chanted, among other things, “pigs go home” and “fuck you Pam.” At approximately 1:20 p.m., ISP and IUPD pulled back from Dunn Meadow, departing from the east side of the meadow. As they did so, the protester line advanced east as well, retaking the ground the encampment previously occupied.

A total of 23 individuals were arrested on April 27th — 17 were affiliated with IU while 6 were not. No protesters on April 27th reported injuries to ISP or IUPD.

f. Aftermath of Arrests on the April 27th, and Immediate Reestablishment of the Encampment

After being arrested in Dunn Meadow, the protesters were taken to another IU location for processing and then arrived at the Monroe County Jail. Around 25 to 30 additional protesters gathered outside the jail, chanting, among other things, “let them go.” By approximately 3:15 p.m., protesters began to be released.

The arrested individuals, with one exception, received a trespass notice, barring them from IU Bloomington’s campus for one year. The exception was one arrestee who received a five-year trespass notice because he was both a leader of the encampment and he had previously sent an allegedly threatening email to a university official.

At 12:57 p.m., after the encampment had already been cleared, a student (who was not participating in the protest) submitted a request that PSC be allowed to assemble 15–20 tents in Dunn Meadow. An administrator within the Office of Student Life had asked that such a request be submitted. Another administrator responded to the student a few hours later thanking them for their request and informing them that their request was under review.

By around 2:45 p.m., protesters announced by their Telegram channel that “We will hold down the liberated zone for the people of Palestine!!” and “no matter how many get arrested, we will not back down in our steadfast solidarity with the people of Gaza!!” By 3:30 p.m., approximately 100 people remained in Dunn Meadow and by 3:45 p.m., protesters had erected at least seven tents. These tents remained in Dunn Meadow overnight.

8. April 28, 2024

g. IU Leadership’s Dialogue with Student Leaders; Attempts to Obtain Approval Under New Policy

In the day following the second day of arrests, the IU administration, including Provost Shrivastav, engaged in conversations with student and faculty leaders in an attempt to establish lines of communication. In these conversations, the IU administration told student leaders, who were acting as informal go-betweens with the administration and the encampment, that the requested approval for tents was under review by others in the administration. Faculty and student leaders expressed frustration that the approval process was taking as long as it was and that they were not informed that ISP had been called to campus.

Also on April 28th, in a message to all Arts & Sciences Faculty, the Executive Dean of the College of Arts & Sciences acknowledged that it was a stressful time for many and that they were struggling to determine how to support students and faculty who had been arrested. It also outlined the trespass appeal process and noted that “trespass ban notices will be suspended during the appeals process in nearly all cases. This will allow students and faculty to complete the semester.”

At approximately 6:15 p.m., an IU administrator in the Office of Student Life communicated to the student who submitted the request for tents that the request for an event in Dunn Meadow with tents had been approved subject to the following conditions: Only two tents were allowed and they:

must only be symbolic in nature and may not be used for camping or other activities. Nothing and no one should occupy the inside of the tent. No additional tents beyond the approved number may be erected in Dunn Meadow. All tents must be dismantled no later than 11:00 pm and may not be erected again until 6:00 am. Per policy, no overnight camping is permitted, including cooking and living outside or in overnight structures. Any violation of the foregoing terms and conditions will result in an automatic revocation of this approval and will require that the tents be removed from University property immediately upon notice from the University. You are also approved for one tarp in addition to the two tents that have been approved. The approval of two tents and one tarp is valid through Sunday, April 28th at 11:00 pm. Usage of tents beyond this date and time will require that a new request be submitted.

A materially identical request was also approved on identical terms for the following day, April 29th.

At approximately 8:00 p.m., the student who submitted the request withdrew it because “[g]iven the very limited perimeters of this approval, we don’t feel we are able to hold our envisioned event as we originally planned. I am writing to withdraw my request for the proposed event.” To date, no further requests for tents or encampments have been submitted.

h. President Whitten’s Message to the IU Bloomington Community

Later that evening on April 29th, President Whitten issued a public statement regarding the encampments and arrests. She wrote that, “un-regulated encampments raise concerns for us as stewards of the campus because they tax limited public safety resources and become magnets for those making threats of violence or who may not have the best interest of Indiana University in mind.” She also noted “a troubling rise in antisemitism nationally and on college campuses” and reaffirmed IU’s “unwavering” commitment to free speech. She said the decision to utilize the police was an attempt to balance “legitimate safety concerns related to un-regulated encampments and our commitment to free speech. After standing down for 24 hours, we sought to give the protesters the opportunity to comply with policy, particularly the 1969 prohibition of tents after 11 p.m. They chose to expand the encampment after 11 p.m.” She further explained that “[t]his was not a decision we made lightly. Protesters were encouraged before and during the process of dismantling the tents to step aside to avoid arrest, and most did. They were also encouraged to remain in Dunn Meadow after the dismantling of the encampments to continue their protest, which most did.” Finally, she encouraged students banned from campus to file appeals, which would halt the trespass orders and allow them to complete the semester.

9. Aftermath and Current Encampment

The IU and Bloomington communities were deeply affected by the events of late-April 2024. This section briefly details some common reactions to the two clearings of the encampment within the IU community; protests after the clearings; developments in criminal charges and student conduct cases against the protesters; a proposed change to university-wide expressive activity policy; and the current status of the encampment (which is still standing as of the publication of this report).

i. Reactions from Various Constituencies

Many IU community members including faculty, students, administrators, and parents were deeply affected by the encampments.

Many interviewees felt that clearing the encampment — especially using ISP’s assistance — was an unnecessarily forceful reaction to what they believed to be peaceful protest that created safety concerns for the protesters. They also zeroed in on the Dunn Meadow policy change, arguing either that it was procedurally improper, or an unreasonable way to balance campus safety and freedom of expression. We heard

significant confusion over what had actually happened at Dunn Meadow — many students, administrators, faculty, and community members were unaware of what had transpired before ISP arrived and expressed confusion over why ISP had been called in the first place. Many individuals expressed their belief that ISP had descended on an otherwise peaceful and law-abiding protest. Some students reported deep distress over watching police arrest their friends. Similarly, we heard frustration from student and faculty leaders, as well as from within the Office of Student Life, that they had not received timely information about the developing situation.

We also heard from many interviewees and students who appreciated that IU's leadership took decisive action against encampment protesters. Interviewees expressed support for First Amendment rights, but believed that the protesters were being disruptive, causing an unsafe environment, and not following the rules. Therefore, they supported IU's decision to clear the encampment on two occasions, but also expressed confusion as to why it has been allowed to stand since. We also heard dismay at the offensive slogans and chants used by protesters, which made other students and community members feel unsafe. One undergraduate student expressed that they and their peers felt unsafe walking into the Indiana Memorial Union (a building immediately south of Dunn Meadow) to study for finals because they had to walk past the encampment. The same student opined that the presence of the encampment polarized campus so severely that they no longer felt comfortable identifying themselves as Jewish to other students they didn't know.

Nearly every student we interviewed referred to the difficulty of studying for finals and completing their coursework at the same time the encampments were being established and removed: it was disruptive to the educational environment.

Multiple interviewees voiced frustration with the inconsistent application of policies at IU, and in particular, the revised Dunn Meadow policy. People both inside and outside of IU Bloomington criticized the failure to consistently enforce the new policy beyond April 25th and April 27th, and the decision not to enforce the policy on April 26th as well as after April 27th. Students, faculty, administrators, and community members repeatedly emphasized a desire for policies to be enforced consistently and predictably.

Similarly, multiple members of the IU community questioned why, in the face of clear policy violations related to tour disruptions and the encampment, there had been what they viewed as no consequences from the Office of Student Conduct. In particular, we heard complaints about the inconsistent application of consequences that appeared to favor the protesters, to the detriment of those who felt unsafe as a result of their actions. Interviewees also expressed concern that the lack of any consequences for clear policy violations could encourage protesters to further escalate their actions.

Regardless of their perspective on the events, the interviewees we spoke with were nearly universal in recognizing that the encampment and arrests were some of the more difficult times they encountered as members of the IU community. Indeed, multiple interviewees became emotional in recounting these events.

j. *Other Events Since April 2024*

In the wake of the late-April arrests, tensions within the IU community have continued. For example, on April 29, 2024, the then-Bloomington Faculty Council President released an open letter calling for President Whitten’s resignation or removal. Also on April 29th, PSC and IUDC called for a “walk out” on finals. On May 3, 2024, IU Bloomington hosted its graduate commencement ceremony. During President Whitten’s speech, people in the crowd occasionally yelled phrases including “resign” and “free Palestine.” On May 4, 2024, IU Bloomington hosted its undergraduate commencement during which President Whitten was booed by some members of the crowd. Some graduating students walked out of the graduation ceremony and many of those same students attended an “alternative graduation” in the still-standing encampment in Dunn Meadow.¹¹⁸

On May 15, 2024, the IU Board of Trustees issued a statement addressing the climate within the University:

The Board of Trustees is grateful to IU faculty, staff, and other constituents who have shared their concerns with us. We want to state clearly that we are listening closely, are attentive to the issues that have been raised and are deeply committed to addressing them in a proactive and effective manner. Our direct conversations with President Whitten and her leadership team make it clear that they, too, understand the challenges and are also committed to paving a productive path forward. The Board of Trustees will provide all resources necessary to address these issues in a transparent and accountable fashion. We have asked for and President Whitten has agreed to commission an independent review of the campus climate to better inform the path forward. With strong leadership, President Whitten has guided our university to many positive accomplishments under adverse conditions and continues to enjoy our support. We are confident she can and will rise to this challenge.¹¹⁹

There have also been significant developments in the criminal and student conduct cases against protesters. On May 31, 2024, the Monroe County Prosecuting Attorney’s Office announced that it would not file charges against all but one of the individuals arrested in connection with the Dunn Meadow encampment. Chief Deputy Prosecutor Jeff Kehr explained, “[b]ased upon the facts and circumstances surrounding these arrests, including, among other things, the constitutionally dubious process by which the University passed and enforced its new policy regarding structures in Dunn Meadow, the

¹¹⁸ George Hale, *Pro-Palestinian messages flown over IU graduation ceremony*, Indiana Public Media (May 5, 2024), <https://indianapublicmedia.org/news/pro-palestinian-messages-flown-over-iu-graduation-ceremony.php> [<https://perma.cc/5AS6-S57G>].

¹¹⁹ *Statement from the IU Board of Trustees*, Indiana University (May 15, 2024), <https://trustees.iu.edu/index.html> [<https://perma.cc/5G9A-H23U>].

State is unlikely to be able [to] convict these individuals at trials on the merits. To attempt to do so would be a poor use of limited resources and wholly inconsistent with the sound exercise of prosecutorial discretion.”¹²⁰

As to the student conduct cases, most students received a policy reminder, *i.e.*, they were reminded of the relevant IU policies, but they faced no other consequences from the Office of Student Conduct. Others were offered an option to pursue an alternative dispute resolution, and for some students, that process remains ongoing.

With respect to the no-trespass orders issued by IUPD, the vast majority of them were stayed pending appeal, which allowed arrested students and faculty to reenter campus and finish the semester. In addition to the stays pending appeal, the appeals of nearly all no-trespass orders have since been granted, which means that almost none of the no-trespass orders issued to protesters remain in effect.¹²¹

Also in June 2024, the Board released a draft “Expressive Activity Policy” which would apply university-wide and, among other things, require permission for the temporary installation of structures at any time and explicitly prohibit overnight camping.¹²² The Board solicited feedback from the IU community and that feedback remains pending before the Board as of the release of this report.¹²³

k. The Current Encampment & Continued Tour Disruptions

As of this writing, the encampment in Dunn Meadow remains standing. Although the exact number of individuals and tents fluctuates, there are generally one to five individuals regularly present in the encampment, and no more than a dozen present at any one time. There are currently approximately three tents in the encampment, although the number has fluctuated to as many as 15 tents. The tents in the encampment at any given time are not taken down after 11 p.m. Encampment residents frequently spend time on the sidewalk north of Dunn Meadow, which has led to complaints and minor altercations with passersby. IUPD has also received reports of vandalism on the same sidewalk, including of Palestinian flags painted on the sidewalk.

At points since April, a number of unhoused individuals have set up tents and resided overnight in Dunn Meadow, usually in an area southwest of the encampment. Indeed, at one point, IUPD identified an unhoused individual with a violent criminal history and

¹²⁰ Lucas González, *Prosecutor won't charge 55 arrested at Dunn Meadow protests*, Indiana Public Media (May 31, 2024) <https://indianapublicmedia.org/news/prosecutor-no-charges-against-55-arrested-at-dunn-meadow-protests.php> [<https://perma.cc/K3A3-YWLH>].

¹²¹ As of the publication of this report, the hearing of one individual (who delayed in initiating an appeal) is still pending. One other individual who received a no-trespass order has not responded to outreach from IU and has not filed an appeal.

¹²² See *BOT Draft Expressive Activity Policy*, <https://www.scribd.com/document/745630745/BOT-Draft-Expressive-Activity-Policy> [<https://perma.cc/C94J-PG93>].

¹²³ See *IU Trustees table two major decision to gather more input* (Jun. 13, 2024), Indiana Public Media, <https://indianapublicmedia.org/news/trustees-table-two-major-decisions.php> [<https://perma.cc/AV9Z-5C8T>].

several arrests for firearm and other weapons violations who had moved into a tent in Dunn Meadow; on another occasion an unhoused individual experienced a drug overdose in Dunn Meadow. Encampment residents have also been observed bathing and collecting water in IU's Campus River, a small stream that runs just south of the encampment.

Dunn Meadow has typically been home to numerous welcome and orientation events at the beginning of a school year, and other events throughout the school year. Dunn Meadow can be reserved by student groups for various purposes. Although Dunn Meadow has been reserved for various student and university-sponsored events in August for the beginning of the 2024–2025 school year, the presence of an encampment precludes any other use of Dunn Meadow.

Protesters, some of whom are students and others of whom are not affiliated with IU, have also continued to disrupt campus tours despite repeated warnings from DRST and IUPD. Per IUPD, most campus tours since the end of the spring 2024 semester have been protested and disrupted in some form. Generally, protesters have followed tour groups, used picket signs, and chanted. At times, protesters have chanted over a tour group leader when they were trying to speak. IUPD and DRST have repeatedly warned protesters not to talk or yell over the tour guide so that the tour is not interrupted and that they should stay back at least 20 feet from the tour group. Protesters have repeatedly disregarded such warnings. Protesters wear masks and face coverings to obscure their identities, and many run away when the IUPD arrives. IUPD officers have referred such incidents to the Office of Student Conduct but the disruptions continue. We heard from various administrators and students that a number of prospective students and their families, particularly those who identify as Jewish, have declined to enroll in IU because they did not feel safe on campus as a result of these tour disruptions.

C. IU Indianapolis

IU Indianapolis also has a small encampment that, as of the publication of this report, is still standing. However, administrators at IU Indianapolis have not asked students to leave or take down their tents as a result of administrators' belief that they do not have the policies to permit them to do so.

1. Overview of Relevant Policies

IU Indianapolis has enacted some policies specific to the Indianapolis campus.¹²⁴ However, unlike IU Bloomington, IU Indianapolis has not designated a specific area within campus as an assembly ground or other designated free-speech area. Nor has IU Indianapolis enacted a policy that specifically addresses First Amendment activity or rules regarding student organizations. Therefore, the university-wide policies including the Code of Student Rights, Responsibilities, & Conduct, Policy UA-14 (The First Amendment

¹²⁴ See *IUPUI Campus 2023-2024, IUPUI Bulletins, Policies, IUPUI Policies & Procedures*, Indiana University Indianapolis, IU Academic Bulletins, <https://bulletins.iu.edu/iupui/2023-2024/policies/index.shtml> [<https://perma.cc/BUX7-6JA7>].

at Indiana University), and Policy UA-19 (Event Management) discussed in further detail above in Section III(A)(3) *supra* remain operative.

2. The Context of IU Indianapolis's Campus

The interviewees we spoke with described a distinct culture and context on IU Indianapolis's campus. IU Indianapolis's student body is about half the size of IU Bloomington's. A much higher percentage of students at IU Indianapolis are above age 25, work at least part-time while attending school, and commute to school rather than live on campus. According to some interviewees we spoke with, these factors contributed to a significantly lower level of tension on campus surrounding the Israel-Palestine conflict. Consistent with this, one IU Indianapolis administrator explained that between October 7, 2023 and April 2024, there were some protests and demonstrations on campus, but they generally complied with campus policy and were not substantially disruptive to university operations.

3. IU Indianapolis's Encampment

On April 26, 2024, a few students at IU Indianapolis established an encampment designated as a "Liberated Zone" under the building that houses the Kelley School of Business' presence on the IU Indianapolis campus.¹²⁵ The encampment at IU Indianapolis was started, in large part, to support the students in Bloomington. Per the Instagram page of the Palestine Solidarity Committee at IU Indianapolis, protesters had essentially the same demands as the protesters at IU Bloomington.¹²⁶

By May 2, 2024, approximately 23 tents had been erected with approximately the same number of students regularly present within the encampment. Protesters have, among other things, written messages and drawn pictures on columns supporting the Kelley School of Business building. Protesters have also hung tarps from the columns, which enclosed the encampment and limited visibility of activities inside it. A few non-IU affiliates have been present and stayed overnight in the encampment since it was erected. Protesters in the encampment have also encountered a number of unhoused individuals, but according to one IU Indianapolis administrator, no unhoused individuals have stayed overnight in the encampment. Administrators from the office of the Vice Chancellor for Student Affairs have regularly engaged with students present in the encampment to check in with them, ensure their safety, and to ask them not to expand the limits of their

¹²⁵ This area is known as "Democracy Plaza" as it is a location that has been used by IU Indianapolis since 2008 to "support the development of well-informed and engaged students through critical thinking and civil discourse on political, cultural, and societal issues." See *What is Democracy Plaza at IUPUI*, IUPUI Social Justice Education, <https://diversity.indianapolis.iu.edu/offices/mc/socialjustice/images/DP-Handout.pdf> [<https://perma.cc/N3Z7-PEAG>]. Central to that effort was the installation of over a dozen chalkboards on which questions are posed and students are free to respond in writing.

¹²⁶ See @psc_iupui, Instagram (Apr. 28, 2024, 2:14 a.m.), <https://www.instagram.com/p/C6S3JfruJkh/> [<https://perma.cc/PAR7-MDEN>].

encampment beyond the footprint of the Kelley School of Business building. Protesters have largely complied with this request.

In an email to the IU Indianapolis community on May 2, 2024, Chancellor Latha Ramchand noted that the encampment existed in a national context in which “outside influence on student groups” has resulted in “violence on many of those campuses.” She noted, however, that “[w]e hope we can avoid such incidents and help our students appreciate that their safety will always be our top priority.”

By June, the number of people in the encampment dwindled to approximately five at any given time. Approximately 15 tents were erected, but most are not regularly occupied.

The IU Indianapolis administration has not asked the protesters to leave or disassemble the encampment. One IU Indianapolis administrator explained to us that this decision was motivated in part by a desire to avoid what had happened at IU Bloomington, as well as a recognition that the encampment at IU Indianapolis was smaller, comprised almost entirely of IU students, and was cooperative with administrators and IUPD. This administrator also believed they lacked the necessary policy to clear the encampment and understood that IU Indianapolis’s approach would be to wait for the IU Board of Trustees to enact a new university-wide policy that deals with encampments.

As of this writing, both IU Indianapolis and IU Bloomington are waiting for revised policies from the Board for guidance with respect to the current encampments.

IV. ANALYSIS AND RECOMMENDATIONS

A. Key Factual Observations

1. IU’s leadership balanced free speech, campus safety, and regular university operations amidst a challenging and rapidly evolving situation.

IU has a long history and tradition of protecting free speech and the right to protest, and interviewees spoke resolutely about their commitment to free speech on campus. At the same time, IU has an obligation to safeguard its campus and students, and to ensure that students are free to learn in an environment that is not subject to significant disruptions. The events of spring 2024 undoubtedly challenged IU to strike a balance between those responsibilities.

Against this backdrop, IU’s leadership faced an incredibly difficult situation on the evening of April 24, 2024. Consistent with escalating national trends, protesters indicated that they planned to establish an indefinite encampment on IU’s Bloomington campus within the next 12 to 24 hours. The leadership determined that the establishment of an encampment would likely be substantially disruptive to normal university operations and could pose safety risks to the IU community. They saw disruption and sometimes violence on other campuses, and they decided that to the extent possible, they should attempt to prevent an encampment from being set up. At the same time, they remained committed to permitting expressive activity. They decided that, given IUPD’s understaffing and lack of expertise in this area, they needed to request the assistance of ISP. Importantly, IU did

not prevent protesters from engaging in protected expressive activity. DRST and law enforcement repeatedly explained to protesters that they were free to stay and protest if they took the structures down. Indeed, they hoped that protesters would voluntarily comply with policy and refrain from setting up an encampment. Police involvement came only after protesters made clear their intent to violate policy and establish an indefinite encampment.

Given the information available at the time, we believe that IU's leadership made good-faith decisions designed to protect the operations and safety of the IU community and, in part, the safety of the protesters themselves.

2. IU leadership's decision to change the Dunn Meadow policy was permissible under university policies and applicable legal standards, including the First Amendment; however, doing so the night before the planned encampment caused a number of unintended negative consequences.

There is no doubt that IU's prior Dunn Meadow policy, as created and amended in 1963, 1969, and 1989, did not provide clear and helpful guidance for the IU community in this instance. Not only did the language of the policy lack proper information for administrators, students and other IU stakeholders to act effectively and knowingly within their authority and rights, but it was also created before (and not altered after) Indiana's state-wide ban of designated "free speech zones" on college campuses. We find that IU's ultimate decision to clear the encampment and enforce reasonable time, place and manner restrictions in Dunn Meadow was permissible under the existing authorities. However, IU's decision to change the policy the night before a planned protest led to significant unintended challenges in the communication, acceptance, and enforcement of the updated policy.

As an initial matter, IU's prior and current Dunn Meadow, First Amendment and Event Management policies comport with relevant First Amendment Law. The policies are appropriately content-neutral. In other words, no policy limited the subject of protests or events on campus. This is further supported by UA-14, Indiana University's First Amendment Policy ("As a public institution, Indiana University does not limit speakers or visitors to the university on the basis of their points of view or beliefs, nor will the university prohibit the expression of objections to speakers or their points of view."). Protesters were also repeatedly told they could remain in Dunn Meadow to protest, but could not have tents.

IU's prohibition on structures and tents overnight is also a valid manner restriction.¹²⁷ As noted above, the Supreme Court has made clear that prohibiting tents is a reasonable time, place, and manner restriction, and Indiana law does not protect tents as a form of

¹²⁷ See *Cox v. State of New Hampshire*, 312 U.S. 569 (1941) (holding that governmental bodies may enforce regulations that restrict the time, place or manner of expressive activity and free speech).

First Amendment expression.¹²⁸ Moreover, both Supreme Court and Indiana law permit IU to implement time windows when protests are allowed on campus in order to guarantee the safety of students at night, as well as keep the University quiet and calm overnight to promote a better learning environment. These restrictions are considered valid and enforceable time restrictions as students are provided a window of time (e.g., an ample alternative channel of communication) to express their views while also protecting the University's interest in a peaceful and safe campus.¹²⁹

IU's decision to clear the encampment also comported with due process. Protesters were well informed of UA-14 and UA-19 prior to the encampment and were provided with sufficient notice of the plan to clear the encampment under the new policy. As discussed above, members of the DRST team, IUPD, and ISP provided the new policy guidelines via signs and paper handouts, and the protesters were provided multiple verbal warnings over an extended period that they were in violation of university policies prior to any arrest.¹³⁰

Although the University acted within its authority, IU leadership's decision to change the policy overnight caused negative unintended consequences. We heard multiple complaints about the optics of the administration meeting in the middle of the night, the night before the protests. In part, the timing of the decision-making limited IU's ability to seek input from relevant stakeholders and eliminated the chance for a thorough review of the policies for gaps or conflict with other policies or laws in effect.

We heard from various interviewees, including students, faculty, and members of the Office of Student Life, that the change to the Dunn Meadow policy on the evening of April 24th was not adequately communicated to the IU community. We recognize that IU leaders were acting on a severely compressed timeline in a fluid situation and that the new policy was shared on the ground with protesters through signs, leaflets, and verbal warnings. However, the new policy was difficult to find on IU's website, as a user needed to navigate through a series of subpages and expandable sections. Meanwhile, the 1989 Dunn Meadow report remained posted in the same location as other applicable IU

¹²⁸ In *Clark v. Community for Creative Non-Violence*, the Supreme Court found that the National Park Service's prohibition on camping, sleeping, storing personal belongings as a protest was a proper and valid manner restriction against free speech. 468 U.S. at 289 (“[S]leeping, like the symbolic tents themselves, may be expressive and part of the message . . . does not make the ban any less a limitation on the manner of demonstrating, for reasonable time, place, or manner regulations normally have the purpose . . . of limiting expression but are nevertheless valid.”). Moreover, Indiana Code § 21-39-8, which lists “expressive activities” protected under state law, does not include structures or tents as a protected expressive activity.

¹²⁹ For these same reasons, IU's actions and policies comport with Indiana Code § 21-39-8 which allows Indiana public universities to enforce reasonable time, place and manner restrictions on campuses, including outdoor campus areas. Ind. Code. § 21-39-8-9 (2023).

¹³⁰ A policy or law can violate due process if it “fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits” and “authorizes or even encourages arbitrary and discriminatory enforcement.” See *Hill v. Colorado*, 530 U.S. 703, 732 (2000). Courts have found that “fair notice” under due process requires a rulemaking body to do “nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply.” *United States v. Bronstein*, 849 F.3d 1101, 1107 (D.C. Cir. 2017).

Bloomington policies.¹³¹ Indeed, from a review of body-worn camera on April 25th, we saw multiple instances where a protester had either a printed version or a web version of the 1989 report with them in Dunn Meadow. When confronted with signs, leaflets, and verbal warnings that appeared to contradict the policy they had, protesters expressed frustration and at times disbelief, especially absent an explanation for the discrepancy.

We note that while there was frustration and disbelief about the change in policy that required pre-approval for establishing structures, even the 1989 report required that any established structures needed to be removed during the hours of 11 p.m. and 6 a.m. without prior approval. There is no indication from our review that the protesters planned to comply with the old Dunn Meadow policy and to remove the encampments at 11 p.m. Instead, some protesters had indicated through their statements at the time that they did not plan to remove the structures overnight.

Ultimately, IU's decision to clear the encampment and enforce restrictions in Dunn Meadow were permissible under the law and IU policy; however, doing so clearly increased feelings of distrust and uncertainty within the student body and faculty, particularly among those who relied on the past culture and precedent of consultation with stakeholders and expressive activity at IU.

3. IU administrators repeatedly asked the protesters to remove the encampment structures and to continue the protest without them, but some protesters refused, and ultimately, using ISP's assistance was the safest option available to remove the encampment.

We heard from various stakeholders that ISP's involvement and the perception of their militarization were points of anger and frustration within the IU community. Similarly, a photo of an ISP sniper went viral and caused negative reactions on campus.¹³² While IUPD has significant ties and relationships within the IU community, they lack the staffing or training to respond to a significant encampment or protest event. IU leadership's decision to request ISP's assistance was the safest option for all involved once earlier efforts at de-escalation failed.

It is also worth emphasizing that IU's leadership had hoped that ISP would not need to engage with protesters. Rather, they hoped their repeated efforts to deescalate and obtain compliance with protesters would obviate the need for police involvement. However, many protesters refused to remove the structures. After protesters decided to set up an indefinite encampment and IU's leadership decided to enforce policy to prevent it, ISP's involvement was the safest option available — for both officers and protesters.

¹³¹ See *Office of the Vice Provost for Faculty & Academic Affairs, Policies at IU*, Indiana University Bloomington, <https://vpfaa.indiana.edu/policies/index.html> [<https://perma.cc/T2GM-Q5QT>].

¹³² We note that ISP's regular protocol to protect the safety of crowds and officers is to place an ISP officer with a long gun overhead, which enables that individual to take immediate action to stop a shooter or violent attack on the crowd.

4. IU has a decades-long history of inconsistently enforcing its policies, which has caused confusion and frustration and makes governance difficult.

Our investigation identified that IU has a decades-long history and culture of inconsistent policy adherence and enforcement at all levels of the University, including the student body, faculty, and administration.

We heard from numerous interviewees from varying campus constituencies that there is a widespread perception on campus that it is hard to know when policies will be enforced. These concerns took different forms. For example, some interviewees that expressed discontent with IU's actions regarding the encampment frequently mentioned their belief that the Dunn Meadow policy had not be enforced in the past and therefore, should not have been enforced in this instance. Given those interviewees' belief that the Dunn Meadow policy had not been enforced in the past, and was being enforced now, some questioned whether the decision to do so was based on the content of the protests. Other interviewees did not share this perception, but nonetheless described how this general inconsistency and uncertainty has at times fueled a sense of unease and danger on one hand and has emboldened disruptive protesters on the other.

Relatedly, some of the inconsistent application and enforcement of policies have been tied to duplicative, overlapping, and conflicting policies at the university-wide and campus-specific levels. Local policies have not been updated to reflect changes in university-wide policies, leading to significant confusion and a culture of local campuses not complying with university policy. When faced with a choice of policies to apply, not all decisionmakers have always chosen the same policy, which leads to inconsistent application and fuels a perception that policy enforcement decisions are made arbitrarily.

For example, university-wide policies likely preempted Bloomington's Dunn Meadow policy in whole or in part, and in any event prohibited disruptive, unapproved events like the encampment, but the Bloomington policy had not been updated to reflect intervening statutory or policy changes. Those same university-wide policies are applicable to IU Indianapolis's encampment, but significant confusion persists, which has resulted in different treatment of the two encampments. Moreover, the President was subject to a no confidence vote based in part on a dispute over whether local or university-wide policy governs faculty disciplinary proceedings, where the local policy had not been updated to reflect intervening university policy. Our view is that the arguably ambiguous and overlapping relationship between university-wide and campus-specific policies contributed to the controversies of the last year.

With respect to the enforcement of protest and encampment policies specifically, we frequently heard two related concerns. First, many IU community members expressed confusion about IU's enforcement on April 25th and April 27th, but not on the day between or any time thereafter. Next, many expressed confusion and frustration that protesters who participated in the encampment have faced inconsistent consequences that have, in many cases, varied over time. Many never faced any consequences. Some were criminally charged, but those charges were dropped. Some were cited for student conduct violations, but most were offered policy reminders, and others were offered some kind of alternative dispute resolution (that did not involve suspension). Some were prohibited

from entering campus for a period of time, but (with one or two exceptions), those no-trespass orders have been vacated. And despite all of that action on April 25th and April 27th, protesters have since been allowed to establish and remain in both the IU Indianapolis and IU Bloomington encampments largely unbothered by the IU authorities. Our view is that these inconsistencies undermine the safety and security of campus. Furthermore, the inconsistencies lead to frustration, confusion, and further conflict within the IU community, and lead to questions over whether disparate enforcement of policies was due to impermissible reasons.

The inconsistent application of policies as to encampment protesters is also tied to a more general divide at IU regarding the role and approach of the Office of Student Conduct (“OSC”). Some IU community members stated that OSC frequently meted out insufficiently serious punishment such that students were not deterred from further policy violations. These IU community members generally envision OSC as a key component of an enforcement strategy to prevent future disruptive protests and encampments without police involvement by ensuring clear and predictable student consequences. Others disagreed with this perspective and viewed the student conduct process as primarily educational rather than punitive. These IU community members generally disagreed with the characterization that encampment and other protesters faced insufficiently serious or predictable consequences for their conduct. We do not attempt to settle this dispute. However, without better alignment within IU, and without support from the Board as to approach, culture, and policies, IU’s ability to deal with violations of university policy coherently, fairly, and consistently will be jeopardized. OSC is a critical player in IU’s efforts to create and enforce consistent policies, including those that involve encampments and other disruptive protests.

5. IUPD is a critical university-wide resource, but their understaffing causes a myriad of negative effects.

IUPD and its leadership are critical players in ensuring the security and safety of the IU community on every IU campus. Throughout our review, IU community members generally praised the professionalism and community-oriented¹³³ approach of IUPD. Indeed, even some protesters who were staunchly opposed to any law enforcement involvement in Dunn Meadow recognized the professionalism of IUPD. For example, an arrested protester submitted a compliment regarding an IUPD officer’s professionalism, courtesy, and alignment with the values of community policing.

Despite this, IUPD’s chronic understaffing causes a myriad of negative effects. For example, IUPD has a difficult time providing security coverage for the numerous events on campus that require an IUPD presence for campus safety. Indeed, IUPD’s understaffing and the resulting difficulty staffing events were central to key events that contributed to the rising temperature on campus through fall 2023 and spring 2024. The Samia Halaby art exhibit was canceled because of the strain it would have on an already

¹³³ *Protect IU, A commitment to progressive and inclusive policing*, Indiana University, <https://protect.iu.edu/iu-police-department/community-policing/index.html> [https://perma.cc/J342-MTHE].

understaffed IUPD. IU denied last-minute permission for PSC's event with Miko Peled because IUPD was spread too thin to ensure adequate security coverage for the event and the numerous other events on campus at the same time. Increased IUPD staffing may have avoided both incidents and thus reduced the number of flashpoints that eroded trust between some students and the IU administration.

Finally, as discussed above, IUPD's understaffing hampers their ability to handle large-scale disruptions on campus, such as tour disruptions and encampments, which necessitates the involvement of ISP.

B. Recommendations

Our investigation and factual observations lead us to make recommendations for IU going forward in three categories: (1) policies; (2) safety and security; (3) and communication.

1. Policies

Almost every interviewee expressed concern that IU has differing perspectives and applications of campus and university-wide policies, that the policies are not clear, and that there is a historical practice of not reconciling or enforcing the existing policies. The events surrounding Dunn Meadow provide a prime example of how a lack of clear and consistent policies can cause and exacerbate issues on campus. Further, a review of the University and BFC archives in connection with the Assembly Ground Policy made clear that history has, over time, allowed for unexpected gaps in university and campus policies, contributing to a culture of non-enforcement of policies.

Recommendation 1: IU should approve a new expressive activity policy.

IU's Board should implement a new expressive activity policy prior to the upcoming academic year. As described above, there are significant questions about whether IU Bloomington's Dunn Meadow policy has been superseded in part or in whole. IU's Board is leading the efforts of drafting and a new policy, and after an initial draft was published in June 2024, the Board recently directed IU's General Counsel to seek community feedback on its proposed policy that would amend the April 25, 2024 policy.

Any future expressive activity policy should provide clear and enforceable regulations for expressive activity on campus, comport with both First Amendment precedent and Indiana Code § 21-39-8, and provide an avenue for IU to prevent disruptive and dangerous incidents in the future. Future approval of any policy should be accompanied with training and communication to university stakeholders, as discussed below. IU should also allow a short period of time for protesters to come into compliance with the new policy. Such a window of time should be clearly communicated if, and when, a new policy is approved.

Finally, IU should clearly communicate to the campus any new policy changes. For example, IU could send widely distributed emails summarizing policy changes to relevant campus or university stakeholders. Such communications could likely come from a neutral party, such as the Human Resources Department. Similarly, clear

communications about new university-wide policies, particularly where they may supersede or conflict with local policies, are paramount.

Recommendation 2: To establish clearer and more consistent policies, IU President Whitten should direct a review of potential gaps or inconsistencies between university-wide and campus-specific policies and make recommendations to the Board of Trustees on necessary changes.

As discussed, gaps and inconsistencies between university-wide and campus specific-policies contributed to tensions during the fall and spring semesters at IU. We identified a number of instances where local campus policies, including the Dunn Meadow policy, had not been updated to reflect intervening university-wide policies or statutory changes, making governance difficult.

President Whitten should direct a review of potential gaps and inconsistencies in university and campus policies and make recommendations to the Board on necessary changes. This review should also ensure that IU's policies comport with changes to Indiana law. While this review would likely be a significant undertaking, it is imperative IU aligns its policies, practices and procedures, with the support of the Board, to prevent future miscommunications and incidents like those discussed in this report.

In the short term, this policy review should focus on anticipated challenges in the new academic year concerning policies related to speech, assembly grounds or general campus activities, including the access and use of university event spaces and facilities.

Even in instances where IU stakeholders understood a certain policy applied, many found that the University did not consistently enforce or apply policies. Many students believed that past non-enforcement of certain policies, such as the Assembly Ground Policy and its prohibition on overnight camping, eliminated the possibility for future enforcement. To promote both order and fairness across the university system, IU needs clear policies that are consistently applied and enforced.

Recommendation 3: IU should implement adequate training and communication about its policies and appropriate audit procedures to ensure the consistent application of policies.

As part of implementing consistently-applied policies, IU will need to provide adequate training to all impacted stakeholders. Specifically, IU should ensure that students, faculty, and staff understand the applicable policies and are notified of policy changes. IU should also provide clear training to the individuals and departments tasked with enforcing respective policies at the beginning of every academic year, or as policies change throughout the year. Training should also be provided to any administrator responsible for interpreting, or otherwise explaining any future policy or processes changes, and must make clear the requirement that policies must be enforced consistently in a manner that is content-neutral.

Future consistency will also require backward-looking assessments on how policies are being applied and enforced. IU should consider, going forward, ways to audit the application and enforcement of policies to ensure consistency.

2. Security & Safety

Campus security and safety are critical to maintaining an environment conducive to intellectual exploration and personal growth. It is appropriate for IU's leadership and IUPD to prioritize campus security and safety. However, we found that there are areas for improvement.

Recommendation 4: IU should establish a plan for implementing its new expressive activity policy and any further interactions with the encampments.

IU should formulate and communicate a clear plan for implementing any new expressive activity policy and for any further interactions with the encampments that still stand as of the release of this report.

If the new policy requires removal of the current encampments, this plan should, at a minimum, establish:

- When the encampments should be removed;
- How the encampments should be removed;
- Who should remove the encampments;
- The threshold for external law enforcement involvement;
- The consequences for policy violations; and
- How IU will prevent the reemergence of unauthorized encampments.

Recommendation 4.1: IU should clearly communicate this plan to relevant stakeholders and set expectations regarding ISP involvement.

Before students arrive on campus for the fall semester, they should have clear notice of how IU plans to handle unauthorized encampments and disruptive protests. IU should consider sending a university-wide communication detailing, to the extent feasible, IU's plan for implementing its new expressive activity policy and addressing encampments. For example, the communication could list prohibited and allowed activities that are most relevant to the IU community.

IU should also manage the university community's expectations regarding the involvement of external law enforcement partners. During our review, we heard two interrelated concerns regarding the decision to request ISP's assistance to remove the encampment in Dunn Meadow. First, some IU community members substantively disagreed with the decision to request ISP's assistance in clearing the encampment. To them, ISP's presence on campus is nearly always surprising or shocking and unnecessary. Second, some IU community members expressed a more narrow, procedural concern regarding the request of ISP's assistance: that it was unclear what threshold was crossed for ISP to be called to campus.

As to the first substantive objection, we recognize that some IU community members will never think it appropriate to request ISP's presence on campus. However, the IUPD does not have the staffing or training resources necessary to professionally and safely manage large-scale, crowd-control situations. Therefore, collaboration with external law

enforcement partners is a necessary reality, even for non-protest related crowds like those at IU football and basketball games. As such, if IU decides to enforce a new expressive activity policy that prohibits unauthorized encampments, and protesters do not comply with that policy, ISP's involvement will likely be necessary to protect the safety of both the protesters and the officers. To the extent feasible and appropriate, IU should consider more widely communicating that IUPD's capabilities in these areas are limited and should publicize its efforts to remedy them.

As to the second procedural objection, IU should deliver a clear and consistent message to the IU community: if unauthorized encampments or any other large-scale crowd events occur in the fall semester, IU will likely need to request ISP assistance again. Whenever possible, IU should strive to establish and communicate clear criteria by which it will request ISP's assistance in order to manage expectations and possibly to deter some policy violations.

Recommendation 4.2: IU should impose predictable and consistent conduct consequences for violating any new policy.

Clear and consistent policies that are well communicated help foster a sense of predictability, stability, and improve campus safety. Consistent and predictable enforcement of those policies also prevents any perception that the enforcement is linked to the content or viewpoint of the expressive activity. IU should clearly communicate to the entire IU community the expectation that there will be clear and predictable conduct consequences for violating any new policy related to expressive activity.

This approach could help minimize the need for IUPD or ISP involvement if IU decides to remove an unauthorized encampment, as protesters would be on clear notice what student conduct consequences they face if they willingly violate the new IU policy.¹³⁴ IU should also work to ensure that those who violate policies do not face disparate outcomes for similar acts by virtue of whether they are students, faculty, or staff. This would involve coordinated efforts by the OSC, UFC/BFC, as well as Human Resources. To further support this recommendation, and the consistency of its application, IU should consider forming a standing committee or recurring meetings with members of OSC, UFC/BFC, IUPD, and campus leadership to reenforce cooperation among these administrative departments.

Recommendation 5: IU should increase funding to IUPD in order to hire and retain more officers and bolster existing training and technological capacity.

Staffing levels at IUPD are critically low. By some estimates, IUPD is approximately 40% understaffed. Not only does this severely hinder IUPD's ability to keep IU's campuses safe and secure, but it also hampers a wide variety of other university

¹³⁴ In light of the Monroe County Prosecutor's decision to drop trespass charges for protesters, it is unclear whether charges would be pursued in similar situations going forward. In our view, this is another reason to utilize IU's conduct processes, rather than the criminal justice system, to address unauthorized encampments at IU.

functions. For example, IUPD understaffing affects the ability of the University to host events that require security and IUPD presence. In particular, large or long-running events or multiple competing events requiring security were sometimes difficult or impossible to accommodate given IUPD's strained resources.

IUPD's understaffing also affects the extent to which collaboration with external law enforcement partners is necessary. Increased funding and staffing for IUPD may help minimize or reduce instances in which external collaboration is necessary.¹³⁵

A subsidiary of this recommendation is to identify and place permanent members of the IUPD command staff as soon as possible. As a corollary to difficulties with staffing and retention, some leadership positions within IUPD are either vacant or occupied on an interim basis. In order to effectuate the recommendations in this section and fulfill its mission to maintain the safety, security, and operational continuity of IU, it is critical that IUPD build on its existing leadership strength by hiring and retaining the best leaders possible.

Increased funding to IUPD would also allow the department to bolster their already extensive, evidence-based, and exemplary training regimen,¹³⁶ as there is always room for more learning and collaboration in a university environment. To that end, IUPD should consider increased training and/or exercises with ISP (and other agencies as appropriate) for protests. For example, IUPD could receive new or refresher trainings on supporting a mobile field force, effectuating a large volume of arrests, the utilization of de-escalation techniques, and more. In the same vein, IUPD could build on existing de-escalation training, and ensure that all new recruits receive that training. Better trained officers that are on the same page as law enforcement collaborators will help ensure protests are policed safely, consistently, and well within the bounds of applicable law and policy.

Finally, increased funding to IUPD would allow increased investment into technology that allows IUPD to maximize their effectiveness even when understaffed. For example, IU could consider establishing a dedicated Security Operations Center ("SOC") to centralize technology, including CCTV and other electronic physical security devices. The SOC could act as a 24/7 central location to coordinate police planning and response across all campuses. IU should consider obtaining encrypted radio channels to facilitate communications with law enforcement partners in a way that does not compromise critical law enforcement information. IU should also research and consider the use of electronic incident management software for planning, response, and recovery efforts of the IUPD (including the use of real-time messaging for critical IUPD communications). IU should also consider an expansion of existing UAV resources to allow live-streaming of drone footage to field units.

¹³⁵ At least some continued collaboration with ISP and other external law enforcement partners will likely always be necessary and beneficial. Therefore, IU and IUPD should continue to cultivate their well-established relationships with external law enforcement partners, including ISP.

¹³⁶ See *Protect IU, Best-in-class training and professional development*, Indiana University, <https://protect.iu.edu/iu-police-department/community-policing/officer-training.html> [<https://perma.cc/AQY8-HG2C>].

Recommendation 6: IU should consider utilizing campus-wide communications to alert the IU community of encampments or other large-scale or disruptive protests.

Under the Clery Act,¹³⁷ institutions of higher education are required to maintain alerting systems to issue timely warnings when crimes reported to a campus security authority or local law enforcement pose a serious or ongoing threat to the campus community and emergency notifications when there is confirmation of an immediate threat to the health and safety of the campus community. Our view is that the events of April 25th and 27th *did not* require a Clery warning of either kind. However, to err on the side of keeping the campus informed, to show transparency, and to keep others away from the area to manage a growing crowd, IU should consider utilizing campus-wide notifications or advisories in these situations, even if it is not required by the Clery Act.

3. Communication

Almost every interviewee we spoke with identified communication challenges as a common issue that contributed to tensions on campus leading up to, during, and after the Dunn Meadow encampment protests. There were several elements of this trend and they include, but are not limited to: (1) disagreement on the tone, tenor, and content of the relevant message; (2) disagreement on what to say, when to say it, and to whom to say it to; (3) some instances where information was shared with some groups and not with others tasked with delivering or amplifying the message; and (4) a somewhat consistent belief and campus climate whereby information is only shared on a “need to know” basis.

Recommendation 7: IU should consider adopting a policy of not issuing official statements about public events that do not directly affect the University’s core functions.

During our review, we heard from multiple interviewees that IU Bloomington has a culture whereby various institutions on campus, including the University itself, are expected to issue statements on public events. For example, and as discussed above, President Whitten issued two statements in the wake of the October 7th attacks. We heard from various interviewees that some in the IU community felt President Whitten’s first statement did not condemn Hamas’s attacks in strong or specific enough terms. At the same time, though, we also heard from multiple interviewees that others in the IU community felt as though President Whitten’s second, more specific statement did not adequately address the impact of world events on Muslim or Palestinian members of the IU community. Put differently, every time the University makes a statement on one event

¹³⁷ 20 U.S.C. § 1092(f).

outside of the University, but not another, it may appear inconsistent and alienate groups on campus.

IU should consider following in the footsteps of an increasing number of peer institutions¹³⁸ by not issuing official statements about public events that do not directly affect the University's core functions.

Recommendation 8: IU should improve communications involving critical constituencies on campus.

Communication within a community is essential to foster and support trust and stability. IU is no exception. Throughout our review, we heard repeatedly that while the past year was difficult, and there were breakdowns in trust and communication, there was also a uniform love for IU and hope that the campus could come together to create a safe and inclusive environment conducive to learning and intellectual exchange.

Community members and students spoke positively of the direct interactions they had with IU's executive leadership, including President Whitten in particular, over the past school year. Students and community members were moved by President Whitten's efforts to physically be with student groups on campus and make herself available. Those efforts are commendable and should continue.

At the same time, we also heard a perception among student and faculty leaders that they did not have the amount of access they wanted to IU leadership. For example, multiple student leaders shared their view that they did not have regular opportunities to meet with IU leadership. While we understand from IU leadership that the President and Provost have regular standing meetings with some student and faculty leaders, we want to encourage more interaction, as these are opportunities to build trust and improve coordination on campus. To that end, communication and an openness to building trust must go both ways: we encourage both IU's leadership and its campus leaders to actively engage in productive communication.

Finally, where practicable, IU should strive to keep key and relevant constituencies informed during emergent events. While it may not always be possible to do so given the particular circumstances, where possible, it is preferable.

¹³⁸ See, e.g., *Report on Institutional Voice in the University*, Harvard University, Office of the Provost, https://provost.harvard.edu/sites/hwpi.harvard.edu/files/provost/files/institutional_voice_may_2024.pdf [<https://perma.cc/S4GV-QL5V>]; *Faculty Senate approves motions on freedom of expression, institutional statements* (May 30, 2024), Stanford University, <https://news.stanford.edu/stories/2024/05/faculty-senate-approves-motions-on-freedom-of-expression> [<https://perma.cc/WC7X-9WP4>]; *Syracuse Statement on Free Expression and Free Inquiry* (May 7, 2024), Syracuse University, https://academicaffairs.syracuse.edu/syracuse-statement/?_gl=1*aj30gq*_gcl_au*MjA3OTk3OTAyLjE3MTcwODA1NTA.*_ga*MTA1NjMzOTgwOC4xNzE3MDgwNTUw*_ga_S5CXSPXYHM*MTcxNzA4MzgZNS4zLjAuMTcxNzA4MzgZNS4wLjAuMA.*_ga_65S0N1FWNY*MTcxNzA4MzgZNS4zLjAuMTcxNzA4MzgZNS42MC4wLjA [<https://perma.cc/FQ7P-ANCE>].