

High School Students' Rights

What Every Student Should Know

Students today are aware of many social issues that affect them, their schools and society in general—issues like school budgets, discrimination, pollution and war. They can speak out about these subjects because, as the U.S. Supreme Court has said, students do not “shed their Constitutional rights to freedom of speech or expression at the schoolhouse gate” (**TINKER V. DES MOINES INDEPENDENT SCHOOL DISTRICT**).

Presented here is basic information about those rights and how they can or cannot be limited by school officials. The information is based on both federal and California state law. Federal law sets the minimum standard for student free speech rights, but some states, like California, grant greater rights to students than the federal law. Because of these differences among states, you should contact your local American Civil Liberties Union office or state department of education and ask what your state education code says about students' rights.

✓ YOUR RIGHT TO FREEDOM OF EXPRESSION

In California, there are special laws protecting the free speech rights of students in public and private high schools (**CALIFORNIA EDUCATION CODE**, Sections 48907 and 48950). These laws safeguard your right to:

- hand out leaflets
- express yourself in official school newspapers and yearbooks*, and “underground” or unofficial newspapers
- circulate petitions
- conduct polls
- set up information tables
- organize clubs and sponsor speakers and activities
- post notices and posters on school bulletin boards
- organize a peaceful rally or demonstration at your school
- wear buttons, badges, insignias, patches or armbands

* In states that don't forbid it, administrators are allowed by federal law to censor student speech in official school publications under certain circumstances (**HAZELWOOD SCHOOL DISTRICT V. KUHLEMEIR**).

✓ POSSIBLE RESTRICTIONS

When you use your free speech rights on school property, school officials can legally set some limits.

Speech Content Guidelines

School officials can legally require you to comply with the following content guidelines:

- The speech content should not contain anything “obscene,” libelous,” or “slanderous.” These terms must be defined according to current legal standards—not merely a school official’s opinion of what is obscene, libelous or slanderous.
- The content should not urge students to commit illegal acts on school premises or to violate lawful school regulations.
- The content should not be likely to cause a substantial “disruption” of the orderly operation of the school—as would, for example, a leaflet urging a student strike or class boycott. Note: Creating controversy is not disruptive by itself. Furthermore, a violent threat from someone who disagrees with you is not legal justification for censoring you, unless your words were designed to deliberately provoke a fight. The school is obligated to protect your right of free expression as long as you are not disrupting the school. Also, school officials cannot forbid all speech dealing with controversial topics or all speech dealing with a particular issue, unless it can be shown that it would cause a substantial disruption of the school.

Time, Place and Manner Guidelines

In addition to rules about content, the law allows some limits on when and where you can express yourself:

- Students passing out materials should not block halls or entrances so other students can’t get where they are going.
- Leaflets and petitions should not be circulated in a way that would disrupt the normal functioning of the school. For example, doing it during class without the teacher’s permission might be considered disruptive.
- If a school has a reasonable rule about when and where students can distribute material, it should be followed. However, if you feel it is too restrictive, you may want to get legal advice and challenge the rule.
- School officials cannot stop you from handing out leaflets because some people drop them on the ground. Otherwise, people could drop them on purpose just to silence you.
- In general, you should distribute literature during lunch, before or after school, and in a place where you won’t be blocking people or causing a substantial disruption of the school.

✓ **CLUBS AND ACTIVITIES**

You have the same right to organize a club or student association as any other student. Your club may want to distribute leaflets, sponsor speakers, set up information tables at school, circulate petitions, or organize the same kind of activities as other student groups. You cannot be denied permission to do these activities, even if they are political or controversial, as long as you don’t violate content and time, place and manner rules.

You have the right to have a peaceful rally or demonstration at your school—it’s considered free speech. Your school can only stop this if it would disrupt classes or the orderly operation of the school.

The law is unclear about collecting money at school for literature or political causes. Officially recognized clubs or student associations may have more freedom to do this than individual students or unofficial groups.

✓ SUBMITTING MATERIALS AHEAD OF TIME

School officials might ask to see your literature ahead of time and ask when and where you wish to distribute the material. This gives them the opportunity to warn you right away if they believe it would violate any of the guidelines mentioned above. In California, the law does not require that you get their permission before handing out any material, unless it is an official school publication (see “Prior Restraint” below).

✓ PRIOR RESTRAINT

In California, school officials can stop you ahead of time from distributing material prepared for official school publications, but only if it violates the content or time, place and manner guidelines described above (schools in other states may have stricter rules than this). “Official school publications” means material produced in journalism or writing classes, or for the school newspaper or yearbook. Other material, like an “underground” or unofficial newspaper, is not subject to prior restraint.

If your principal believes the material you prepared for an official school publication violates the content or time, place and manner rules, he or she is supposed to warn you as soon as possible that you could be disciplined if you distribute the material. You cannot be stopped simply because school officials don’t like what you are saying, or because you may create controversy.

✓ WHAT TO DO IF YOUR FREE SPEECH RIGHTS ARE BEING VIOLATED

Students who are told they can’t distribute material or engage in other activities outlined in this pamphlet should ask to see the school district’s policy on students’ First Amendment rights. The principal’s office should have a copy. Often, just getting the principal to read it will be enough to change his or her mind. If it doesn’t, appealing to the school district office will sometimes help. However, you may still be given rules that are stricter than the guidelines described here. In that case, you may want to get advice from a local chapter of the American Civil Liberties Union or National Lawyers Guild.

If you feel the policy restricting your activity is unjust, you may choose to go ahead and conduct your activity anyway. You should be aware that this form of civil disobedience has possible penalties and should find out what the consequences could be in advance. Consequences may include suspension, expulsion, or even prosecution on a criminal charge. Be sure to consult with local civil liberties groups ahead of time.

✓ SOME OTHER RIGHTS YOU SHOULD KNOW ABOUT

Freedom from Discrimination

Discrimination on the basis of gender in schools is against federal law (Title IX of the **CIVIL RIGHTS ACT**) and many state laws (for example, **CALIFORNIA EDUCATION CODE**, Section 40). Discrimination by a school system or by school officials on the basis of race or national origin is against the U.S. Constitution. Some state laws and the federal Rehabilitation Act of 1973 prevent school systems from denying access to educational services on the basis of a disability. Also, some school districts now prohibit discrimination on the basis of sexual orientation.

Access to Student Records

The federal Family Educational Rights and Privacy Act grants parents of students (and students themselves who are 18 or over) the right to examine their children’s school records. A student

under 18 can see his or her records if the parent gives written permission or if the school decides on its own to give the student access.

Schools may give school records to outsiders if there is a lawful court order and they make a reasonable effort to contact the parent beforehand.

School districts can choose to release your name, address, and other basic information (not including grades) to certain types of nonschool groups—like military recruiters, the news media, and PTAs. This information is called “student directory information.” Schools can release directory information without your permission, unless your parents (or you, if you are 18 or over) ask that the information not be released. They must notify you of this right to “opt out.” Usually this is done at the beginning of each school year.

FOR MORE INFORMATION

You may want to contact your school office or school district headquarters to get local policies regarding:

- student free speech rights and controversial issues in the classroom
- access to student records
- grievance procedures in cases of discrimination

For more information about students’ rights, contact:

AMERICAN CIVIL LIBERTIES UNION

www.aclu.org
125 Broad Street, 18th Floor
New York, New York 10004-2400
(212) 549-2500

STUDENT PRESS LAW CENTER

www.splc.org
1815 N. Fort Myer Drive, Suite 900 , Arlington, VA 22209
(703-807-1904)

NATIONAL LAWYERS GUILD

www.nlg.org
143 Madison Ave., 4th Floor, New York, NY 10016
(212) 679-5100

This brochure was prepared by the Committee Opposed to Militarism and the Draft (COMD), PO Box 15195, San Diego, CA 92175, (619) 265-1369; www.comdsd.org.

Information sources include:

California Education Code

We Have Rights, Too, ACLU of Northern California

The Rights of Students, National ACLU

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