



# Know Your Rights

A Handbook for Public School Students in Pennsylvania



## About this booklet

If you are a public school student in Pennsylvania, you have rights. This booklet tells you about those rights, when you can use them, and when school officials and police can limit them. This booklet does not offer legal advice. It offers tips about how to handle certain situations and information on where to go for help.

Most of the rights discussed in this booklet also apply to students in charter schools. Charter schools are public schools, but they are run independently of the school district.

Charter schools must follow state and federal law, including the U.S. Constitution. This means that students facing serious disciplinary action (such as expulsion) have the same rights as students in public school. Like regular public schools, charters cannot deny a student enrollment because of a disability, not being proficient in English, or immigration status.

## About the American Civil Liberties Union of Pennsylvania (ACLU-PA)

The American Civil Liberties Union of Pennsylvania is a non-profit, non-partisan membership organization that works to defend and promote the principles of freedom and equality embodied in the United States and Pennsylvania constitutions. We promote these rights through advocacy, education, litigation and legislative activity.

## Our Services

Contact us if you think your rights, as described in this booklet, are being violated and you need legal help. All contact with us – calls, letters and emails – are confidential. We do not charge for our services.

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# Freedom of Expression

## What You Can Say

### **The Basics**

- You have the right to express your opinions in school, but there are some limits.
- School officials can limit expression that threatens immediate harm to the welfare of the school or community, encourages unlawful activity, advocates illegal drug use, uses profanity or swear words, or is vulgar.
- School officials can limit your expression to prevent major disruptions to classes and school activities. The law says students cannot “substantially and materially” interfere with school activities.
- You cannot be required to say the Pledge of Allegiance.

**My history teacher gave our class an assignment to write a paper on a political issue we believe is important. After I wrote a paper explaining why I think gay marriage should be legal, my teacher gave me an F because she said I picked an inappropriate topic. Shouldn't I be allowed to express my opinion?**

**Yes.** As long as your assignment meets all the requirements set out by your teacher, you cannot be penalized for choosing a controversial topic or for the position you take on a topic. But you do not have a right to speak out in class about something that is not related to the course topic.

**Can a teacher force me to say the Pledge of Allegiance, stand up while others say it, or leave the room if I don't participate?**

**No.** You can't be forced to say the Pledge of Allegiance, salute the flag, sing the national anthem, or stand or leave the room while others do so. You can be punished only if you make it hard for other students to say the Pledge or sing the national anthem.

**I was given detention for making a speech at a school assembly in which I said some things that had a sexual double meaning. Can the principal do that?**

**Yes.** The school can punish you for making sexually suggestive remarks. Students can be prohibited from using lewd, profane or offensive language at school assemblies and elsewhere around the school.

**A teacher overheard me talking about wanting to kill my ex-girlfriend's new boyfriend. I was just joking, but I was suspended from school for a week. Can the school do that?**

**Yes.** School officials take threats of violence very seriously. If they believe that you intended to carry out the threat, they can punish you in order to protect other students.

***What is a "substantial and material disruption" of school?***

This is a serious physical disturbance of the school day, such as a walkout, a riot, destruction of school property, and other events that make it impossible for school officials to maintain order.

- If you are not allowed to wear a T-Shirt or button to school because of its message, you should contact the ACLU.
- Find out the clothing rules that apply to your school or school district. Check the student handbook or the school or district's web site.
- Charter schools can set their own dress codes and uniform policies. They do not have to adopt the local public school policy.

## What You Can Wear

### The Basics

- You can be prevented from wearing clothing with messages that are lewd, indecent, promote drug use, disrupt the educational process, or cause a health or safety risk.
- If the message on clothing is religious or political (like a protest against something in the school), it is less likely that the school can legally block you from wearing it.
- School officials are allowed to set dress codes or require school uniforms.
- School officials must return clothing taken from students.

### Can my school require me to wear a school uniform?

**Yes.** School officials can require students to wear uniforms, but courts are divided on whether those policies must permit students to wear expressive clothing, such as political T-shirts, to school.

### Can my school force me to wear a gym uniform?

**Yes.** You can be required to wear a gym uniform (or special gear) if it is needed to keep you safe while you are participating in school activities. If you have a religious objection to wearing the standard gym uniform, your school must allow you to wear clothing permitted by your religion unless the school can show that it would be dangerous. For example, the school might permit you to wear a skirt or pants rather than gym shorts.

**If I wear something to school that violates the dress code, like a hat or hoodie, and the teacher takes it from me, does the school have to return my property?**

**Yes.** Schools must have a way for you to get back clothing items taken from you, such as a place where you or your parent or guardian can pick them up later. But if you do not want your hat or hoodie taken in the first place, don't wear it to school.

**Do I have the right to wear armbands or buttons expressing political opinions, including ones about my school or community?**

**Yes,** as long as the armbands or buttons do not cause a material and substantial disruption to the school or contain lewd or vulgar language.

**I wore a T-shirt supporting gay rights. Some students called me names and interrupted class. Can the principal make me remove my shirt?**

Students who disagree with your message should not be able to prevent you from expressing yourself. School officials should discipline the unruly students before banning the T-shirts. But if that doesn't stop the disruption, then you may be required to cover up the message on your shirt.

**Students were told that they could not wear hoodies, black trench coats, baggy pants, any kind of head gear, or have visible body piercings or tattoos. The school says it's to protect our safety. Can they do that?**

You do have a right to express yourself in your dress, but school officials can stop you from wearing certain items for safety reasons. For example, you can be required to remove hoods or hats while in school unless you have a religious or medical reason for wearing them. And the school can ban open-toed shoes (no flip-flops!). Courts are not likely to overturn a school dress code unless it discriminates on the basis of your religious or political views.

**My principal says students cannot wear red or blue bandanas because they are gang symbols. But if I'm not in a gang, why can't I wear one?**

Your school can stop students from wearing clothing associated with gangs in order to prevent violence. But schools cannot prohibit students from wearing religious symbols that are also associated with gangs unless there is evidence that allowing students to wear a particular religious symbol would seriously disrupt school activities.

**My school has a rule against body piercings. Girls are allowed to have one piercing in each ear, but boys can't have any piercings. No one is allowed to have any visible facial piercings. Can they do that?**

**Yes.** Piercings are not protected by the First Amendment. They are seen as a possible disruption or health risk. You can state your case to your principal about keeping your piercing, but the courts aren't necessarily on your side.

Some people have argued that applying different rules to girls and boys is discriminatory. Courts in other states have rejected that argument when it comes to earrings or dress codes, but the issue has not been decided in Pennsylvania, where there are strong rules against gender discrimination.

**Can the school stop me from coming to school with blue hair or dreadlocks?**

It is up to you to decide the length or style of your hair, including facial hair. If your school wants to stop you, then it has to prove that those styles will disrupt your school or cause a health or safety problem.

# Your Right to Meet and Protest

## The Basics

- If your school lets other student groups that are not related to school courses meet, then it has to let your group meet and apply the same rules to all such groups.
- The school can require that a teacher or other school employee serve as an advisor to student clubs. But the school can't block students from forming a club just because they can't find an advisor.
- You have the right to hold protests and demonstrations, but school officials can stop you from protesting on school property during the school day if the protest interferes with school activities.

### Can the school stop a student group from meeting at school?

If the school allows student groups not directly related to school courses, like a community-service club or chess club, to meet on school property after school, then it has to let any student group meet. But if the school allows only clubs that are related to courses, like a math club or Spanish club, to meet on school property, then it probably does not have to allow other clubs to meet.

School officials can set rules about when and where student groups can meet, but those rules must be the same for all student groups. Check your student handbook to see if your school has such rules and what they are.

### Can Gay-Straight Alliances (GSAs) and pro-choice student groups meet at school?

**Yes.** If your school lets other school groups not related to courses hold meetings at school, then student-led GSA and pro-choice clubs must also be allowed to hold meetings at school.

### Can we form a Christian Bible study group and say prayers at our meetings after school?

**Yes.** If your school lets other school groups not related to courses to meet, then your Bible group can also meet and you can pray if you want.

### Can a teacher or someone from the community participate in our Bible study meetings?

**No.** Only students can be involved in meetings of student religious groups on school property. Although school staff can supervise, they can't participate, and people from outside the school can't lead or regularly attend the meetings. It would probably be okay for the group to invite a minister or parent to come once as a guest speaker.

### Do middle and elementary school students have the right to form religious or political clubs at school?

**Probably not, but the law is not clear.** The law that requires schools to treat all student groups that are not related to school classes the same (the Equal Access Act) does not apply to students below high school level. But some courts have ruled that middle or elementary school students have the right to form religious or political clubs just like any other student-run clubs.

### Can school officials control where my student group protests?

School officials can restrict where you protest on school property, especially inside of school. They have less control over what you can do outside of the school building. They can tell you that you cannot block an entrance to the school building. Sidewalks around the school are areas where protests usually must be allowed. If it's a protest about something important, especially related to school operations, then it's more likely to be protected by the Constitution. But schools can prohibit students from holding protests at school if they cause a serious disruption to school activities.

### Can I be punished for being in a protest?

School officials cannot punish you for simply being in a protest. If you cut class to be in a protest — whether it takes place on or off school grounds — then school officials can count your absence as unexcused and discipline you.

# Your Right to Publish and Distribute Material

## The Basics

- School officials have more power to censor school-sponsored student publications than non-school-sponsored ones.
- School officials can stop you from handing out materials at school if they are lewd or vulgar, cause or are likely to cause a serious disruption of school operations, or advocate illegal drug use.
- School officials can create reasonable rules for when and where you can distribute materials at school.
- School officials cannot tell students when, where, or how to hand out non-school-sponsored material away from school grounds.

### Can my school restrict what I can say in the school-sponsored student newspaper?

Under Pennsylvania law, school officials can block the publication of an article or newspaper only if it contains material that is false and injures a person's reputation, is harmful to minors because of its sexual content, or would cause a serious disruption of school activities. They are not allowed to censor a school newspaper just because it criticizes the school or school officials. Otherwise, students are free to report the news just like contributors to other newspapers. School officials can require that all student articles be reviewed by a school official before they are published.

### What is the process for approving articles submitted to a school-sponsored student paper?

Your school should point out clearly who is in charge of reviewing articles and how long that school official is given to make the decision about an article. If that time passes and the official still hasn't decided, then consider your article approved.

### Can I create a non-school-sponsored newspaper and distribute it at school?

**Yes.** School officials *cannot* ban or make you get approval for content of any material (newspaper, flyer, etc.) that is not sponsored by the school. Your school *can* stop you from distributing material in school if it contains curse words or includes lewd pictures.

### **Can my school restrict how I distribute my paper?**

The school *cannot* stop you from passing it out at school unless you seriously disrupt school activities while distributing it. You have to follow reasonable school rules that tell you when you're allowed to hand out materials at school. The school's policy must apply to all students handing out materials. Check your student handbook to see what the policy is.

### **Our independent newspaper is going to include an editorial criticizing a school board decision. Do we have to put our names on the newspaper article?**

It is unclear whether schools can prohibit you from distributing anonymous materials in school. Pennsylvania law allows schools to require that at least one person responsible for the publication be identified, but that requirement may violate the First Amendment right to anonymous speech.

### **Can I ask students to sign a petition urging the school board not to adopt a school uniform policy?**

**Yes.** Students have the right to circulate petitions at school as long as they do not interfere with school activities.

### **Do I have to get approval to post a flyer on a bulletin board?**

Schools must provide students with space on school bulletin boards. School authorities can tell you which bulletin boards you can use. They can also make you put your name and the date on whatever you post.

### **What if we were to put up something controversial on the bulletin board, like a flyer about a gay rights rally?**

If your school lets some students post information on the bulletin board about non-school events, then the school has to let all of you post such information. Your school can't block you from using the bulletin board just because they don't like what you say. But your school can tell you to take down flyers that use lewd or vulgar speech.

# Cyberspeech and the Internet

The First Amendment also protects the free speech rights of Internet users, including public school students. A lot of questions haven't been completely answered yet, but the following are some guidelines.

## The Basics

- School officials are allowed to limit student activity done on school-owned computers.
- Generally school officials cannot punish students for what they post to the Web when they are at home or away from school.
- School officials cannot stop students from posting to social networking sites, like Facebook, when they are outside of school.

## Can school officials punish students for what they say on off-campus, personal student Websites or on social networking sites?

**Generally no**, but there may be some exceptions. Schools cannot control what you say or post on the Internet on your own time using your own computer if you do not physically bring it onto school property. This is true even if you are discussing school. The school may be able to punish you for off-campus speech that disrupts the school, makes a threat against a teacher or another student, or amounts to severe harassment. You would need to do more than just offend a school official to be disciplined.

**What if I create a Website as a project in my computer class at school, or if I use a school computer to post a status update on Facebook?**

Your school has some control over what you can say online using a school computer or what you do during a school-sponsored activity. As with speech or clothing, if something happens in school, teachers have a lot more authority to restrict what you do, including what you say or post on the Internet. That changes significantly when you are doing things from your home.

**I sent an email from home to another student making fun of our assistant principal. A school official saw it and suspended me. Can the school do that?**

**No.** If you send an e-mail from your home computer to a friend's computer the school should not be able to punish you unless you print out the message and bring it to school. If someone else brings it to school, and the message contains material that violates school rules (like swear words or sexually explicit speech), whoever brought it to school could be punished. Since you didn't bring it to school, you shouldn't be the one who gets in trouble.

**My friend posted photos on Facebook that showed me drinking beer on a school trip. My principal saw the photo and gave me an in-school suspension. Is he allowed to do that?**

**Yes.** Your principal has the authority to discipline you for violating school rules during a school-sponsored trip. Anything that you or your friends post on social networking sites like Facebook or MySpace may be viewed by school officials. Even if you don't "friend" them, one of your friends can still show your page to a teacher. Keep in mind that even if you deactivate your account, the stuff you post may still be accessible to others.

**Can my school's basketball coach force me to deactivate my Facebook and MySpace accounts in order to play on the team?**

Your coach should not be able to force you to choose between exercising your First Amendment free-speech right to use a social-networking site and participating on the basketball team.

# tips

## Away from School

- Make sure that you post only information about yourself or your friends that you would be comfortable with your parents, teachers, and potential employers seeing.
- If a friend posts something about you that you are uncomfortable with or tags you in a photo that embarrasses you or could get you in trouble, you should ask that friend to remove the photo or message from his or her page.
- Check your privacy settings on Facebook to ensure that photos and messages can be viewed only by people you choose.
- Be careful what you send from a school-issued email account. Check the school's rules to find out if there are any restrictions on what students can use them for. If in doubt, you should use a non-school e-mail address like Gmail or Yahoo.

- The ACLU believes that schools should not be allowed to control students' off-campus speech. Call us if you have a problem.

## At School

- Check your school's computer use policy before you post anything using a school computer. The policy can be found in the student handbook or on the school Website.
- If your school is blocking information that you think would be useful to students, speak up. Try to gather as much support for your position as possible, and then let school officials know what you think.

### Can my school library put Internet filtering software on its computers?

Schools that receive money from the federal government to help pay for Internet service are required to install Internet filters that block students from accessing information that might be harmful to minors on school computers, such as sexually explicit photos. A big problem is that many schools also block sites that feature content that schools or other authorities dislike, such as sites on AIDS or other health- and sex-related information.

# Religion in School

The First Amendment says that everyone in the United States has the right to practice his or her own religion, or no religion at all, without the interference of the government. The government is not allowed to establish an official religion, favor one religion over another, or favor religion over non-belief — there is a “wall of separation” between church and state.

## **The Basics**

- Students have the right to practice their religion in schools, but school officials cannot force students to be religious.
- School-sponsored events, such as sports, classroom activities, or graduation ceremonies, cannot promote religion or include prayer.
- Religious theories cannot be taught as science.
- Students are allowed to practice religion on their own if it does not disrupt school operations.
- Students are allowed to organize religious groups as long as the school allows other non-curricular groups to meet.

# Prayer in School

## **Can a teacher lead my class in prayer, even if it is voluntary?**

**No.** Public school teachers cannot lead classes in prayer or Bible readings. Even non-denominational prayer (not from any particular religion) is unconstitutional. It doesn't make it okay just because the teacher says you don't have to participate. You can't be forced to choose between participating in a prayer or standing aside and possibly being embarrassed in front of your classmates.

## **Our teacher likes to start the class with a moment of silence so that we can pray if we want to. Is that okay, since she's not really forcing us to pray?**

**Maybe.** If the real reason for your teacher's moment of silence is to encourage your class to pray, it's not okay. But a moment of silence might be okay if a teacher can show a non-religious reason for it, like giving students a moment to think about the upcoming school day.

## **My high school requires class officers to attend a religious baccalaureate service at a local church. I was elected vice president of my class, but I don't want to attend. Do I have to go?**

**No.** Schools cannot require or encourage students to attend any religious event, including baccalaureate services.

## **Our high school is planning to have a rabbi or priest say a prayer at the graduation ceremony. Is that allowed?**

**No.** Prayers by clergy or anyone else at public school graduations are unconstitutional. Graduations are school-sponsored events and public schools can't include prayers in their program.

# tips

If you feel pressured by a coach or teacher to participate in prayer, you should tell your parents. You or your parents should talk to the principal about your concerns, and the principal should tell the staff member to stop praying with students. The principal should not say who complained about the practice. Call the ACLU if the school refuses to take action.

## **School officials said that they would let the students vote on whether to have a student-led prayer at our graduation. Is that allowed?**

**No.** Student-led prayers are not allowed at graduation, even if students vote for them. If you vote on whether to have a graduation prayer, students whose religious beliefs are in the minority will lose out. They might feel excluded from their own graduation or they might feel pressured to participate in the prayer.

## **Can the school board start its meetings with a prayer?**

School boards probably cannot start their meetings with prayers, especially if students regularly attend school-board meetings or school employees are required to attend. Such prayers send the message to students and community members that the school district endorses the religious message expressed by the prayer and make people who don't share that religion feel like outsiders.

## **School officials allow student-led prayers at the beginning of our football games. Some of the kids and their parents don't like it and say it's unconstitutional. Are they right?**

**Yes.** School-sponsored prayer doesn't belong in public schools, even when it is led by students themselves. Prayer at school football games, sports team banquets, and other school-sponsored extracurricular activities is unconstitutional regardless of who leads it. Public school employees, including teachers and coaches, are not allowed to lead or participate in prayer with students during school-sponsored activities.

# Accommodating Religious Students

## **I like to sit by myself during lunch and pray or read the Bible. Is this ok?**

**Yes.** During free time at school you can pray privately, read the Bible or other holy book, wear clothing that expresses your religious beliefs or talk about religion with your friends. But you can't disrupt school activities or violate other students' rights.

## **We sometimes have a quiet reading time during homeroom period. Can I read my copy of the Qur'an?**

**Yes.** You can bring in a religious book to read or even for show and tell. Religious books or objects are allowed in school, as long as it doesn't feel like the school or a teacher is endorsing one religion, which can make other students feel excluded.

## **Once a month, some students leave school to attend religion class. Aren't students required to attend school?**

Pennsylvania law allows school officials to excuse students from regular classes in order to attend religious instruction for up to 36 hours per year if they have permission from their parents. Schools cannot pay for students' transportation to religious classes or hold religious classes on school property.

## **I'm Muslim and I need to pray during the school day. Are students allowed to pray on their own in public schools?**

**Yes.** The First Amendment protects your right to worship or not, as you choose. You have the right to pray at school, as long as you don't disrupt school activities or try to force other students to pray with you. For example, you may say private grace over your food or any other prayers required by your religion, so long as you aren't disruptive. What's not allowed is group prayer that the school sponsors, facilitates, or participates in.

## **Some students at my school decided to meet every morning at the flagpole in our schoolyard and pray. Can they do that?**

It's probably OK if the meetings aren't sponsored, organized, participated in or approved by school officials. Of course, if your school allows student prayer groups to gather on school grounds, then it also has to allow other student groups to gather.

**I am Jewish and some of my religious holidays fall on school days. Do I have to call out sick for religious holidays? Will the school excuse my absence?**

You do not have to call out sick or offer any other excuse for taking occasional religious holidays. Pennsylvania school law requires school officials to excuse students for religious holidays when requested by a parent and prohibits school officials from penalizing students for those absences. So they shouldn't count against your perfect attendance record. The only exception to this rule is that the holidays cannot be so frequent that they mean you aren't attending school full time. So, for instance, Muslim students cannot take off every Friday, even though that is their holy day.

## Teaching Religion in School

**Can the school district make us take a Bible class?**

**No.** Public school officials can't encourage or promote any religious beliefs as part of the curriculum. Obviously, a Bible class created to teach students Christian values would be promoting a government version of Christianity in a school attended by students who may have many different Christian and non-Christian perspectives.

**Our social studies class is learning about religions from around the world. Some of our class readings are from the Torah, the Qur'an and the New Testament. Is that okay?**

**Yes,** you can study about religion at school, including, for example, religion's influence on history, literature and culture. But your readings and class time can't be used to promote religion, teach that one religion is better than another one or to insult any religion.

**Can my school district hang a copy of the Ten Commandments in every classroom?**

**No.** The Ten Commandments can't be posted in public schools. Again, school officials can't be in the business of teaching religion. That's true whether they teach you directly or indirectly by hanging a religious object like the Ten Commandments or a picture of Jesus on the wall.

**Can my science teacher discuss intelligent design as an alternative to evolution? She claims that she simply wants to expose students to an alternative to evolution.**

**No.** In 2005, a judge ruled in an ACLU of Pennsylvania case that intelligent design cannot be taught in science class because it is not a scientific theory, but a religious one. A comparative religions class could discuss intelligent design as one of many different approaches to the origins of life. A social studies class could also talk about intelligent design as part of the history of the anti-evolution movement.

**My biology teacher was going to teach evolution this year, but some parents who believe in creationism complained that evolution contradicts the Bible. Can school officials force her not to teach evolution?**

**No.** It is unconstitutional to require that creationism be taught in science class along with evolution. Schools can't write lesson plans to further one set of religious views over others. If a school official forced your teacher not to teach evolution because it goes against the Bible's story of creation, it would be favoring one religious belief, creationism, over others.

**Our school secretary helped us start a gospel choir at our high school. The principal told us that if we wanted to keep meeting at the school, the secretary couldn't help us. Can he do that?**

**Probably yes.** Religious student groups that meet on school grounds after hours have to be student led and can't have school staff involved. If you sing only religious songs and pray as part of your activities, you are seen as a religious group and the school secretary shouldn't be involved.

**The principal also said that we couldn't keep singing only religious songs at school concerts. What's the problem with that?**

The problem is that it makes it look like the school, through your choir, is promoting religion. But if your choir sings some religious songs as part of a non-religious music program, that would probably be okay.

**Do I have to take a class that conflicts with my religion? My parents are very upset that our health class is learning about abortion.**

You can get out of specific parts of health or science classes that conflict with your religious beliefs. Your parents should ask school officials in writing to excuse you.

**My parents think that a book we use in English class is blasphemous and want it taken off our reading list. Can they force the school to do that?**

**Probably not.** While a student has the right to have his religious beliefs accommodated, that doesn't mean he has the right to change the school's curriculum for all the other students. If school officials give in to the demands of a religious group, they run the risk of favoring religion over non-religion, or favoring one particular religious view.

## Religious Clothing and Accessories

**My math teacher used to wear a crucifix, but school officials have asked her to remove it. Can they do that?**

**Yes.** Pennsylvania law says that public school teachers can't wear religious clothing or accessories while on the job. That prevents a nun from wearing a habit, a priest from wearing a Roman collar, a Muslim from wearing a veil, and a Jew from wearing a yarmulke or a visible talit katan (fringes) while teaching. This prevents a teacher from promoting a particular religion.

**What about teachers who have to keep their heads covered because of their religion? What can they wear?**

School staff can probably wear any head covering that doesn't send a religious message to students. For example, a Jewish teacher could wear a baseball cap or other non-religious head covering, and a Muslim teacher could wear a scarf. These are okay because people wear baseball caps and scarves for many reasons, so a teacher isn't identifying or promoting his or her religion just by wearing a baseball cap.

**Our school just adopted a mandatory school uniform policy. My parents object to the uniforms for religious reasons and don't want me to wear one to school. Can the school make me wear a uniform?**

As we said in the Freedom of Expression section, the law in this area isn't clear. You have a constitutional right to practice your religion, which includes the right to dress as required by your religion. School uniform policies should make allowances for that. Some schools put an opt-out provision in their uniform policies in order to protect a student's right to religious and personal expression.

## Holiday Celebrations and Displays

**Are public schools allowed to have holiday displays on school property?**

It really depends on the circumstances. The general rules about a holiday display on school or other government property are these:

- If it promotes religion, it's probably not OK.
- If it includes some religious stuff as part of a mostly secular (non-religious) display, then it's probably OK.
- If the overall message of a display is religious, then the display is unconstitutional.
- If the overall message is one of cultural diversity or a general celebration of the winter holidays, then it's probably OK.

**Can school officials put up a Christmas tree?**

**It depends.** It's probably OK because the Christmas tree is not considered by the courts to be a religious symbol, particularly if it's included with other non-religious symbols of the season. It's a different story, though, if the Christmas tree is decorated with religious symbols. Then it takes on a religious meaning that may not be OK at school.

### **Can we sing Christmas carols in class or at a holiday concert?**

Christmas carols can be religious (“Silent Night”) or non-religious (“Frosty the Snowman”). It is okay for schools to include religious Christmas carols in holiday concerts because the carols have both religious and non-religious value. However, school holiday concerts that include religious Christmas carols must include non-religious music as well. School officials must allow students who object to singing or performing religious music to opt out of doing so.

### **Would it be okay if our school had a play in December showing how different students and teachers celebrate Christmas, Ramadan and Hanukkah?**

A play that explores how various people celebrate holidays might be okay. Schools are allowed to teach about religious holidays or to celebrate the secular parts of the holidays. But they can’t observe holidays as religious events. So a school play that has a specific religious message like one celebrating the birth of Christ would violate the Constitution by promoting one religion.

## **Religious Groups’ Access to Schools**

### **My teacher hands out materials from community groups that provide activities for students after school and during the summer. Is it OK for him to hand out a flyer from a Christian group advertising a Bible class for students that meets at our school after hours?**

Courts have ruled that if schools provide flyers about community groups’ activities to students, they cannot refuse to hand out flyers that advertise similar activities just because they are sponsored by religious groups. School officials can refuse to hand out flyers that encourage students to believe in a particular religion or insult other religions.

**The flyer said that the Bible class is taught by an adult, but I thought that only student-led religious groups were allowed to meet after school.**

If the school allows non-religious community groups to use school facilities for after-school activities, then it must allow religious community groups to use school facilities for similar after-school activities.

**There was a group handing out Bibles in the school building. Are they allowed to do that?**

Schools should not allow outside groups to distribute Bibles to students during the school day, especially if there are no other groups distributing other religious or non-religious materials at the same time. However, students who attend your school are probably allowed to hand out Bibles to other students as long as they do not create a disruption by doing so.

**Can the principal stop me from handing out religious pamphlets at lunch?**

**No.** Students have the same right to distribute religious materials at school as they do other material not sponsored by the school as long as they do not cause a substantial disruption to school activities. Your principal must tell you when you can distribute the pamphlets.

# School Security and Your Privacy Rights

The Fourth Amendment to the U.S. Constitution and the Pennsylvania Constitution prohibit unreasonable searches and seizures of our persons or property by the government.

In public schools what is considered reasonable depends on the circumstances. Students have fewer privacy rights in school than outside school. Courts balance student privacy rights against the school's interest in maintaining safety and discipline.

## The Basics

- School officials, including most school security, are not considered regular police. They have more authority over day-to-day matters in schools than regular police.
- The law restricts when and how searches can be conducted in schools.
- School officials don't need *probable cause* or a warrant to search students' belongings, only *reasonable suspicion* that the search will produce evidence of a crime or a violation of school rules. *Reasonable suspicion* requires less evidence than *probable cause*, but it should be more than a hunch.

- The more “personal” the search, the more it is restricted. School desks and lockers are considered less “personal” because they are school property. Students’ backpacks and cell phones are considered more “personal” because they are student property. Strip searches are rarely considered legal.
- School officials must return student property that has been confiscated.
- School officials can install and use metal detectors.
- A student who brings a weapon to school can be expelled, but the superintendent can recommend a different punishment in individual situations.

## Police Officers & School Security Guards

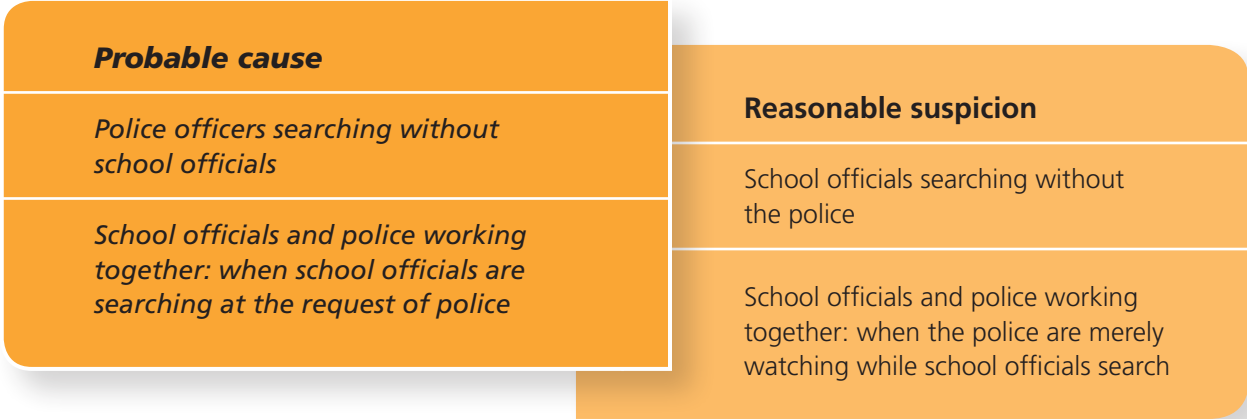
### Do students have the same guarantees against unreasonable searches and seizures as others?

**Not exactly.** When school officials are acting without the regular police they must have some information that leads them to think they will find evidence of a crime or violation of a school rule in order to search you or your belongings.

Here are some examples:

- Being caught breaking a school rule or the law may provide the principal with *reasonable suspicion* that a search of your backpack or locker will produce additional evidence.
- A tip from a reliable source also may provide school officials with *reasonable suspicion* to search you.
- Acting in an unusual or suspicious manner may provide school officials with *reasonable suspicion* for a search of your backpack or locker.

The situation gets fuzzy when both school officials and regular police are involved, as we’ll discuss later.



**Do police officers have the same right to search us that school officials have?**

**No.** Ordinarily the police cannot enforce school rules; they can only investigate crimes and make arrests. Police usually need a warrant and *probable cause* to search you at school or on the street unless there is reason to believe that you are armed and dangerous, or if you are being arrested or agree to be searched.

Compared to school officials, the police are required to have more solid and specific information that the person they want to search has illegal items or evidence of a crime at the time and place of the search. Police must get the written permission of a judge (called a “warrant”) to search you, with a few exceptions.

### So school security guards or other school police can search us with less evidence?

School security guards and other school police are usually considered school officials, so they need only *reasonable suspicion* to search you. They have authority anywhere on school grounds and the school bus. But that authority probably doesn't extend to property next to school grounds.

### Regular police officers came to our school and watched while the vice principal searched a student. Since the police were involved, didn't they need a warrant and *probable cause* for the search?

When the police play a small role in a search carried out by school officials, *reasonable suspicion* is all that is needed. If the police didn't direct the search or have the school do the search for them, then your vice principal needed only *reasonable suspicion* to search the student. But if school officials are acting on behalf of the police (or as agents of the police) and are directed by the police, they might need *probable cause*.

### *School Resource Officers*

In some public schools, police are stationed in schools full-time as School Resource Officers (SROs). Some SROs are armed and have the power to arrest students. In addition to playing a security role, SROs may give talks in classes, monitor the lunch room and study hall, or carry out other tasks assigned by the principal. Whether an SRO needs probable cause or reasonable suspicion to conduct searches depends of the agreement between the school district and local law enforcement. In most Pennsylvania schools, SROs have the same power as local police.

# tips

## Protect Yourself with Police

- If police try to question you, ask to speak to a lawyer. They must then stop questioning until you have a chance to speak with a lawyer.
- If police ask to search you, just say no in a loud, clear voice so that witnesses can hear you.
- If police say they have a search warrant, they must show it to you. The warrant has to have your name or an accurate description of you on it. It has to state what evidence the cops are looking for and where they think they're going to find it.
- Do not physically resist a police search, even if you think the police are wrong and the search is illegal. That can be used against you later.

### What can we do if school officials or police ask to search us?

Never agree to be searched if you are asked by a school official or police officer. If you give your consent to the search, then anything found on you can be used as evidence against you. If you do not agree to the search, there is a possibility that anything found on you cannot be used against you in court or school disciplinary proceedings.

### I saw a male security aide search a fifth-grade girl for drugs in the hallway at school. They were being really rough with her. Is that legal?

School officials have to conduct searches in a reasonable way. That means they can't be excessively intrusive or forceful in their searches, in light of your age, gender, and what they're looking for. A seizure of your belongings also has to be reasonable. School officials cannot take away your stuff for longer than needed to find out whether their suspicion was correct. They also cannot search in places that could not possibly contain the item they are looking for. For example, they cannot search a wallet to find a gun.

### Can police officers ever search without a warrant?

**Yes**, if they think someone will be hurt or evidence destroyed if they wait for a warrant. They can also search you without a warrant, and the areas within your immediate reach, at the time of your arrest. And police can search you anytime, even without *reasonable suspicion* or *probable cause*, if you agree to the search.

### Can the police stop and frisk me without a warrant?

**Yes**, but only if they have a *reasonable suspicion* that you are breaking the law and that you have a weapon on you. The frisk must be limited to a pat down of your outer clothing with open hands strictly to look for weapons. If they feel something they think feels like a weapon, then they can search you.

### Can school officials let police come into schools to question or arrest students?

**Yes**, but no one can make you talk to the police. You have the right to remain silent.

## Locker, Backpack, & Strip Searches

### Can school officials use a metal detector if they don't have a reason to suspect me of doing something wrong?

Your school should have guidelines about the use of metal detectors since metal detector searches do run the risk of violating your constitutional rights. They should tell you ahead of time about the possibility of metal detector searches and shouldn't single out certain students or certain types of students when doing the searches. Also, how far the school can go to search your clothing or backpack if the metal detector goes off depends on whether the machine's signal gives them a *reasonable suspicion* that you are carrying a weapon. That may depend on what type of machine it is and what it can detect.

# tips

## Protect Yourself with School Officials

- School officials, like the principal, can question you without granting you access to a lawyer.
- You can still ask for your parent or lawyer to be in the room when a principal is asking you questions.
- Do not answer questions a principal or school official asks you about a crime without a parent or a lawyer present.

### Are school officials allowed to search our lockers and desks?

**Yes.** School authorities can search your locker and desk without *reasonable suspicion* if they tell you ahead of time and allow you to be there during the search. Lockers and desks are school property. They can search a locker without telling you ahead of time only if there is a *reasonable suspicion* that the locker holds material that threatens the health, welfare and safety of students in the school.

School authorities cannot search inside any of your belongings that they find inside your locker or desk, like a closed purse or backpack. To search a closed personal container, the school official must have *reasonable suspicion* that he or she will find evidence of a violation of school rules or the law inside that container.

### After a girl was caught smoking a joint at school, the principal searched my locker for drugs without first telling me. Is that OK?

If the principal had no reason to suspect that you had anything to do with the girl using drugs, that doesn't sound like a reasonable search. But if she told the principal that she got the joint from you, then the secret search would have been okay.

### If they find anything in my locker or desk, like drugs, cigarettes or weapons, can they use it as evidence against me?

**Yes.** School authorities can seize any illegal materials and use them as evidence against a student in disciplinary proceedings. Illegal material includes any item banned at school, such as cigarettes, alcohol, drugs, knives and guns. And there is nothing to stop school officials from telling the police what they have found and giving them the evidence. If the police bring criminal or juvenile charges, then a judge will have to decide whether the search was reasonable before the materials taken from you can be used as evidence in the court case. The bottom line is: do not bring banned items to school.

### A teacher caught my friend smoking in the school bathroom. Can the teacher search her purse for cigarettes?

**It depends.** You have a legitimate expectation of privacy in your pockets, purses or backpacks since that's where you put personal stuff like keys, money, and photos. So, if a school official wants to search your belongings, he or she must have a *reasonable suspicion* that the search will show that you are breaking the law or a school rule. In this case, the search was probably okay because the teacher had a good reason to think she'd find some more cigarettes in your friend's purse.

### Can a student's car parked in a school lot be searched?

School officials, including school security, have the authority to search cars if they have *reasonable suspicion* that a search of the car would uncover evidence of contraband or disciplinary violations. However, regular (non-school) police officers or school officials acting at the direction of regular (non-school) police officers must have *probable cause* to search inside a student's car.

### Can school officials conduct strip searches of students?

**Almost never.** Strip searches are so intrusive that they almost always violate students' privacy rights. The only exception is if the school reasonably suspects that a student is hiding items that pose a threat to other students, such as dangerous drugs, under their clothes on their bodies, and there is no less intrusive way to search.

## Cell Phones

### I got caught texting during class and my teacher took my cell phone. Can she just take my property like that?

If your school has a rule that you cannot use your cell phone during class, then teachers can enforce that rule by taking your cell phone. The school cannot keep your cell phone forever, though, and must explain how you can get it back.

### Can a school official search the contents of my cell phone?

**No,** unless he or she has *reasonable suspicion* that your phone contains evidence that you violated a school rule. The rules for searching students' cell phones are the same as the rules for searching students' backpacks. So, for example, if your teacher had a *reasonable suspicion* that she would find a text message you sent during class on your phone, she is probably allowed to search through your text messages to find it. But your teacher cannot read text messages that you sent outside of class.

# tips

- It can be potentially dangerous and damaging to you to be involved in “sexting” in any way, whether taking photos, distributing them, allowing them to be taken, or having them on your phone.
- Delete from your cell phone and computer any photos of naked minors that are sent to you and do not send them to anyone else.
- Do not post photos of naked minors on your Facebook or MySpace pages.

## **Some boys were suspended for having naked photos of girls in our class on their cell phones. The girls were suspended for posing for the photos. That's not fair!**

You're right. Although the school can probably bar students from bringing cell phones that contain nude photos to school (just like the school could bar students from bringing copies of porn magazines with them to school), the school should not punish students for posing for naked or half-naked photos outside of school.

## **My principal gave the photos to the police. Can the students be prosecuted for child pornography?**

The law is unclear about whether minors (under 18 years old) can be convicted of child pornography for “sexting.” Although you cannot be convicted of child pornography simply for posing nude for a photo, you might face child pornography charges for having a photo of a naked minor on your cell phone or sending a photo of a naked minor (including yourself) to someone else.

## **Can my school hold an assembly to tell kids that taking naked photos of themselves is a bad idea?**

**Yes.** School officials can educate students about the dangers of taking naked photos and sending them to other people just as they educate students about the harms caused by drugs, alcohol, and unsafe sex.

# Drug Testing and Drug Dogs

## Basics

- Drug testing of all students is usually not allowed.
- School officials must have evidence of a drug problem in order to test students in extracurricular activities.
- Police are allowed to use drug dogs on school property if they have *reasonable suspicion* that there is contraband.

## Is random drug testing of all students permitted?

Normally school officials cannot require drug testing of all students. The Pennsylvania Constitution provides strong protections for privacy that would prohibit an across-the-board testing policy in all but the most extreme circumstances.

## Can my school require students involved in extracurricular activities to take random drug or breathalyzer tests?

It depends on the circumstances. The law looks at voluntary activities, such as sports and other extracurricular clubs, differently from required school functions. In Pennsylvania, school officials cannot perform random drug tests of students involved in extracurricular activities unless the school can show a history of drug abuse or a particular reason for targeting those students. For example, if school officials suspect some students on a team have been using drugs, then they may be able to require all students on the team to take a drug test. A student can refuse, but he or she won't be allowed to participate in the activity.

## If some kids were arrested for selling drugs at our school, can the police bring drug dogs into our school?

It depends on what is being searched. Police can use dogs to sniff students' lockers if the school has warned students that their lockers may be subject to search. However, under the Pennsylvania Constitution, using drug dogs to sniff students' personal property requires *reasonable suspicion* that the student's belongings contain an illegal substance. Drug dogs can be used to search students themselves only if the police have *probable cause* to believe that the student has drugs or other contraband on their persons.

# Student Discipline

## Basics

- School officials cannot punish you by refusing to give you a diploma, lowering your grade, or hitting you.
- If you are being suspended or considered for expulsion, you must be told what you are being punished for and school officials must inform your parents or guardian.
- School officials must set up a meeting or a hearing if you are being removed from school for more than three days.
- School districts must provide expelled students with an education until they turn 17.

### **What does “due process” mean in public schools?**

Due process means that the school can't give you a serious punishment like a suspension or expulsion without first following fair procedures to determine if you broke a school rule. These include:

- Telling you exactly what you are accused of doing wrong.
- Telling you exactly what the punishment will be.
- Giving you a chance to tell your side of the story before punishing you.

You may not have these rights for minor punishments, such as a one-day after-school detention.

### When can I be disciplined?

School officials can punish you for behavior in school, coming to and from school, and at school-sponsored activities, such as field trips. In some situations, you can be punished for out of school conduct that disrupts school programs when it has a strong connection to school.

### Where can I find my school's disciplinary policy?

Each school district has a set of policies, known as the Code of Student Conduct. It tells which behaviors can lead to discipline. The code must be published and distributed to students and parents and available in the school library. Often the code can also be found on the school or district's Website. Most schools distribute it at the beginning of each school year.

### Are there limits on the type of discipline that can be handed out?

**Yes.** Schools officials cannot deny you a diploma, change your grade (unless your misbehavior affects your class performance), or hit you as a form of punishment. They may use reasonable force to stop a disturbance, take a weapon or dangerous object from a student, or protect people or property.

### Can the school punish me for what I do when I'm not on school grounds?

School officials can regulate your conduct any time you are under their supervision, which includes transportation to and from school and going on field trips. They may be able to punish you for things you do away from their supervision, if that behavior also seriously disrupts school.

### Can my teacher make me do classroom chores as punishment?

**Yes.** Your teacher can assign you to perform a community service requirement, instead of facing more serious forms of discipline when minor school or classroom rules are broken.

## *School Discipline at a Glance*

**Detention** – having to remain after school or attend school on Saturday

**In-School Suspension** – being removed from class but remaining in the school

**Suspension** – being removed from school for up to 10 days

**Disciplinary Transfer** – being sent to an alternative school for disruptive youth

**Expulsion** – removal from school for more than 10 days, or permanently

<i>Type of Discipline</i>	<i>What is It?</i>	<i>Do You Have a Right to a Hearing?</i>	<i>Your School Must</i>	<i>You Have the Right To</i>
<b>In-School Suspension</b>	You are excluded from regular classes, but still attend school	More than 10 days: informal hearing	<ul style="list-style-type: none"> <li>• Tell you the reason for the discipline and give you a chance to tell your side of the story</li> <li>• Notify your parents/guardians in writing</li> </ul>	Respond to testimony against you, if there is a hearing. (typically a meeting with the principal)
<b>Out-of-School Suspension</b>	You must stay out of school for one to 10 days	More than three days: informal hearing	<ul style="list-style-type: none"> <li>• Notify your parents/guardians in writing</li> <li>• Inform you of the reasons for the suspension and give you an opportunity to respond</li> <li>• Conduct an informal hearing if suspension is more than three days</li> </ul>	If there is a hearing: <ul style="list-style-type: none"> <li>• Respond to testimony against you</li> <li>• Tell your side of the story and present witnesses</li> <li>• Hearing to be held within five days of the suspension</li> </ul>
<b>Expulsion</b>	You are excluded from school for more than 10 days, sometimes permanently	Formal hearing; school board must approve the decision	<ul style="list-style-type: none"> <li>• Notify your parents/guardians in writing</li> <li>• Allow you to stay in your normal class until the hearing, unless you are considered a safety threat to the school</li> <li>• Make provisions for alternative education if you are under 17 and your parents/guardians are not able to do so</li> </ul>	<ul style="list-style-type: none"> <li>• Have a lawyer at your hearing</li> <li>• Produce witnesses on your behalf</li> <li>• See the names of witnesses and testimony against you</li> <li>• Appeal a decision to expel you to the Court of Common Pleas</li> <li>• Have a record of the hearing</li> </ul>
<b>Transfer to an Alternative School</b> <i>(outside of Philadelphia)</i>	You are sent to a special program for disruptive youth	An informal hearing	<ul style="list-style-type: none"> <li>• Notify your parents/guardians in writing</li> <li>• Inform you of the reasons for the transfer and give you an opportunity to respond</li> </ul>	<ul style="list-style-type: none"> <li>• Respond to testimony against you</li> <li>• Tell your side of the story and present witnesses</li> <li>• Have an evaluation at the end of each semester to see if you can return to your regular school</li> </ul>
<b>Transfer for Disciplinary Reasons</b> <i>(in Philadelphia)</i>	You transferred to an alternative school for disruptive youth or to another regular school for disciplinary reasons	Hearing with an independent hearing officer	<ul style="list-style-type: none"> <li>• Notify your parents/guardians in writing</li> <li>• Inform you of the reasons for the transfer and give you an opportunity to respond</li> </ul>	<ul style="list-style-type: none"> <li>• Present evidence and present witnesses</li> <li>• Get a record of the hearing and a written decision</li> </ul>

### **My parents don't read or speak English very well. How can they get information about what is going on if a school tries to discipline me?**

Non-English speaking families have a right to receive information about discipline in a language they understand. The school district must provide information about the disciplinary action the district takes against you in your home language. A family can request that a translator be provided at the disciplinary hearing.

### **I got arrested for something I did away from the school grounds. Can I be suspended from school even if I haven't been convicted yet?**

An arrest is only an accusation. If school officials suspend you based on your arrest, they violate the basic idea that people are innocent until proven guilty. Your school, however, may hold a suspension hearing to decide if you have broken a school rule. Based on the hearing, it might suspend you even before your court trial. Talk to a lawyer before going to the school hearing because what you say at the hearing can be used against you later in your court trial. But if the incident had nothing to do with school, the school cannot suspend or expel you.

## **Suspensions**

### **What is a suspension?**

A suspension is an exclusion from school for one to 10 days in a row. Being sent home counts as a suspension. You can be suspended by a principal or other person in charge of school discipline, such as the dean of students. Generally, a classroom teacher cannot suspend you, unless that teacher is also in charge of school discipline.

Once the school makes a decision about suspending you, normally you cannot appeal it to state court. You can ask the local school board to reduce or eliminate the suspension, and you may be able to challenge it in court if the discipline violates your constitutional rights.

School policies about suspensions can be found in the Code of Student Conduct.

### **What procedures must school officials follow if they want to suspend me?**

School officials must tell you the reasons for the suspension and give you a chance to respond. Depending on the circumstances, school officials may or may not have to do all of this before the suspension starts. For example, if you are considered a threat to the school, school officials will suspend you first and then hold a hearing. If you are suspended, your parents and the superintendent of your school district must immediately be told in writing why you are being suspended. Students must be given a chance to make up exams and other work missed while on suspension.

### **What if the school suspends me for more than three days?**

If the suspension is longer than three days, school officials must offer to hold an informal hearing to discuss the situation with your family and give you a chance to show why you shouldn't be suspended. An informal hearing is usually a meeting with the principal. You have the right to question any witnesses present at the hearing, speak, and produce witnesses on your own behalf.

### **I'm being suspended from my classes, but the vice principal told me I am still expected to come to school. What kind of suspension is this?**

It's an in-school suspension, meaning a student is excluded from his or her regular classes but is still expected to come to school. During the suspension, the school district must arrange for your continued education and you have the right to make up school work.

### **I was suspended. Can school officials prevent me from going to my graduation ceremony as well?**

**Yes.** Pennsylvania courts have allowed school districts to exclude suspended students from graduation ceremonies. School officials can't deny you a diploma if you have completed all the requirements for graduation.

## *Charter Schools and Discipline*

Charter schools are public schools that are run independently of the regular school system. They set their own discipline policies with some limitations. Charters don't have to follow the regular school district's policies and districts have no say in the charter's Code of Student Conduct. But charter schools must follow state and federal law, including the U.S. Constitution.

For example, the School District of Philadelphia can adopt a zero tolerance policy, but a charter school located in the city does not have to follow that policy. At the same time, charter school students facing expulsion have due process rights that are similar to regular public school students. Students have the right to a formal hearing, and the final decision must be approved by the governing body of the school.

Finally, a charter school cannot refuse to enroll a student who has been expelled from another school if that student meets the other admissions requirements of the school. If you were expelled for having a weapon, the school can place you in an alternative program during the period of expulsion, but charter schools generally don't have alternative programs.

# Expulsion

## What is an expulsion?

An expulsion is an exclusion from school for more than ten school days in a row. Some students are permanently expelled (not allowed to return to their original school).

## What can my school expel me for?

Look in your school's Code of Student Conduct to find the offenses that could lead to expulsion from school.

## What procedures does the school have to follow if it wants to expel me?

Before you can be expelled, the school must tell your parents by certified mail about the proposed expulsion and the reasons for it.

- You can't be expelled without a formal hearing to decide your case, unless you decide to give up your right to a hearing. The school board or a committee of the school board holds the hearing.
- You can't be expelled unless the majority of the school board votes to do so.
- You can remain in your regular classes until the formal hearing is held and the school board makes a decision.
- If school officials consider you to be a threat to the health, safety or welfare of others (at an informal hearing), they can remove you from school before your expulsion hearing. You are not supposed to be removed from school for more than 15 school days without a formal expulsion hearing.

## What are my rights at a formal hearing?

- To be represented by a lawyer. You have to find your own lawyer.
- To have the hearing conducted in private unless you ask that it be public.

- To know the names of any witnesses against you and to get copies of their statements.
- To ask that any witnesses against you appear in person at the hearing and answer questions.
- To testify and present witnesses on your own behalf.
- To have a record of the hearing made and to buy a copy of it.
- To appeal the decision to a local court, called the Court of Common Pleas, within 30 days.

### **What happens to my right to receive an education if I'm expelled?**

If you are under 17 years old, you must be provided with some type of education. Your parents are responsible for finding another educational program for you after you are expelled. If they can't do so within 30 days, they must tell the school district in writing. Then the school district must arrange for your continued education. If you are 17 or older, you no longer have a right to go to public school once you've been expelled. Some districts allow older expelled students to complete their education, although they don't have to do so. If you want to return to school, ask your school district to provide you with an option.

### **Can I go to school in another district if I have been expelled?**

**Yes.** A school district may not deny or delay your enrollment based on the information contained in a disciplinary record. If you are currently expelled for a weapons offense, your new school district can place you in an alternative education program during the period of your expulsion.

### **Can I return to my regular school if I have been permanently expelled?**

**In most cases, no.** A permanent expulsion means that a student cannot return to his or her regular school. However, in Philadelphia public schools you can apply to be allowed to return to your old school. The district considers your attendance, grades, and behavior while you were in an alternative disciplinary school. The superintendent makes the final decision. Check the rules of your local district.

# tips

Students being considered for expulsion have a right to a formal hearing. You can use the hearing to argue for a lesser punishment. Here are some things that might be considered: Was the banned item not intended to be used as a weapon? Did you know that the item was in the backpack?

## Can my school transfer me to a disciplinary school?

Your school can transfer you to a special disciplinary school or alternative education program if you break certain rules. Before you are transferred, you have the following rights:

- To be told the reasons for the possible disciplinary transfer.
- To have an informal hearing where you can argue why you shouldn't be transferred.
- In Philadelphia, students have the right to a hearing run by a person who is independent and neutral. This hearing officer gives a written decision stating the reasons for transferring or refusing to transfer a student.
- Normally you don't have a right to appeal a transfer to the local court. You may be able to challenge it at the school board. Going to court is an option only if you believe your constitutional rights have been violated.

If you are a threat to other students or to school property, the school can transfer you immediately. School officials still have to tell you the reasons for the transfer and hold the hearing as soon as possible after the transfer.

### **Do I have to go to an alternative school if I am returning to school from juvenile detention?**

You cannot be automatically sent to an alternative school. Your school must first hold an informal hearing to determine if you are currently fit to return to regular school or whether you fit the definition of a “disruptive student.” School officials will consider criteria like whether the incident leading to detention occurred at school or at a school-sponsored activity and whether you got into trouble while in detention.

## **Weapons at School**

### **What is a considered a weapon?**

Under Pennsylvania law, a “weapon” shall include, but not be limited to, any knife, cutting instrument, cutting tool, nunchaku, firearm, rifle or any other tool, instrument or implement capable of inflicting serious bodily injury.

### **Can I be expelled from school for bringing a Swiss army knife to class if I use it only to trim my fingernails?**

**Yes.** You can be punished if you carry it or keep it in your locker, even if you don’t use the weapon. Also, your school could punish you as severely for bringing an imitation weapon to school as a real weapon. Any student who possesses a weapon on school property, at school activities, or on any public transportation to or from school, must be expelled for at least one year under Act 26 (a Pennsylvania law).

The law permits an exception. The superintendent of your school district can recommend a lesser punishment in individual cases, such as an expulsion for less than a year, no expulsion at all, or some other form of discipline less serious than an expulsion.

### *Zero Tolerance*

Some school districts have adopted “zero tolerance policies,” which make severe punishment mandatory for certain violations of school rules, including but not limited to possession of a weapon, possession of drugs, and assault. Philadelphia has such a policy.

### **Can a student be suspended for telling a teacher he was going to bring a gun to school, even though he never brought the gun to school?**

**Yes.** A statement like that can be considered a threat and will justify school discipline and maybe even criminal prosecution. Since the 1999 shootings in Columbine, Colorado, many schools have reacted strongly to student threats, or perceived threats, to school security. Courts are generally sympathetic to their concerns. In one case, a Pennsylvania court said that a student who threatened to bring a gun to school was guilty of making terroristic threats, which is a serious crime in Pennsylvania.

need help?

**The Education Law Center of Pennsylvania** provides information and assistance to students and families about school discipline. Contact them at **215-238-6970** or visit **[www.elc-pa.org](http://www.elc-pa.org)**.

## **Discipline of Students with Disabilities**

### **My friend has a disability. Does that make a difference in how the school disciplines him?**

The Code of Student Conduct applies to all students. But students with disabilities have special rights in the discipline process. This is because the law recognizes that their behavior sometimes is a result of their special needs or the district's failure to address their needs. In many instances, a school must first hold a hearing — called a “manifestation determination” — to determine if the behavior was due to the disability before punishing the student.

### Can a student with a disability be suspended or expelled from school?

The rules about this are complex. Here are some basics:

- If a student has any type of disability other than mental retardation, the school can suspend the student for up to 10 days in a row or 15 total school days over the course of the school year. If that student is to be expelled (removed from school for more than 10 days in a row), a special team must first decide that the behavior in question is not connected to the disability.
- If a student has mental retardation, a special team must decide that the behavior in question is not connected to the disability before a student can be suspended for any length of time.
- If the school says the behavior was not connected to the disability, but the parents disagree, they can appeal.
- If a student is accused of bringing a dangerous weapon or illegal drugs to school, or if the student causes serious bodily injury, he or she can be immediately removed from that school and sent to an alternative school. The “manifestation determination” would happen later.

### Can a teacher hit a student with disabilities if she doesn't behave?

**No.** Corporal punishment and mechanical or physical restraints can never be used on students with disabilities, or any student.

# Fair Treatment

All young people living in the United States have a right to a free and full public education. They shouldn't be discriminated against at school because of their race, sex, religion, ethnic background, citizenship status, sexual orientation or disability.

## Discrimination

**I believe my teacher gives me a hard time just because I'm Arab American. Is there anything I can do to change this?**

**Yes.** Teachers and administrators at your school can't discriminate against you because of your race, the country you or your family came from, or the language you speak. If you feel you are being discriminated against, you or your parents should speak to a teacher, guidance counselor, the principal, the school board, a community organization or a lawyer.

**We have a girls' soccer team at my school. The boys keep getting new uniforms and when we ask for uniforms, our coach says that there's no money. Isn't it against the law to discriminate like this?**

**Probably.** The unequal treatment of girls' and boys' sports may well violate state and federal laws. A court would look at the athletic program as a whole, not just the soccer teams, to determine whether there are substantial disparities in how the girls are treated.

**I wanted to try out for the football team, but the coach sent me home just because I'm a girl. Shouldn't I at least be allowed to try out?**

Public schools have to give equal athletic opportunities to female and male students. Separate teams for guys and girls are probably okay, as long as the school gives students of both sexes the chance to participate in the particular sport.

If the school doesn't do that, then a student may be able to try out for the opposite-sex team unless it's a contact sport; however, in Pennsylvania, some courts have said it's okay for girls to try out for all-male teams even if it's a contact sport, like football.

**A kid in my class was kicked out of school because one of his teachers found out that he is HIV positive. Is that allowed?**

**No.** Students who are HIV-positive or who have AIDS are entitled to an education like other students. They are protected from discrimination at schools and other public places under the Americans with Disabilities Act and the Pennsylvania Human Relations Act. Since HIV isn't spread by casual contact, HIV positive students shouldn't automatically be seen as a threat to anyone else's health.

## Immigration

**I am not a citizen. Do I have the same rights at school as other students?**

**Yes.** You have a right to enroll in your local public school, regardless of your immigration status. Once you are enrolled in a school you have the same rights as every other student. For example, you cannot be punished or expelled from school because of your status.

**I am afraid my teacher will report my immigration status to the government and have my family deported. Is there anything I can do to protect myself?**

School staff members are not permitted to ask about your immigration status or to require you to show immigration documents at any time. They are unlikely to find out about it unless you tell them. Never discuss your immigration status with anyone at school. If they do find out, they could report it to the government, although this does not happen very often.

### **I am an immigrant and plan to attend a state school for college. Do I qualify for in-state tuition? Can I get financial aid from the government?**

If you are a lawful permanent resident (have a “green card”) you can pay tuition at a public college at the in-state rate. You can get federal or state financial aid if you are a permanent resident, have legal status as a refugee, or fall into a few other special immigration categories. If you are undocumented, you cannot get the in-state tuition rate or financial aid from the state or the federal government.

## **Language**

### **What is my school required to do for non-English speakers?**

First, school officials must identify students who are not fluent in English and evaluate their language skills and academic achievement (using a test called ACCESS). Students must be provided with an educational program that allows them to learn English, make progress in other subjects, and to use school services like counseling and health services.

### **What programs do schools have for non-English speakers?**

If you are not fluent in English, you are called an English Language Learner (ELL). Usually, you have a right to receive English-language classes every day. These programs are known as English as a Second Language (ESL) or English for Speakers of Other Languages (ESOL). These teachers do not have to be bilingual (know both English and the other foreign language), but they receive special training in how to teach English Language Learners. Some schools (very few in Pennsylvania) offer bilingual classes (instruction in both English and a foreign language).

### **How am I supposed to keep up in regular classes like history and math while I am learning English?**

While you are learning English, the school must also make sure your teachers adapt the materials and teaching in regular subjects so that you and other English Language Learners can learn. That way, you won’t fall behind in math, science, or other important subjects.

### **English is not my first language. Do I still have to take standardized tests, like the PSSA?**

Most English Language Learners still have to take these tests, but your school may make adjustments to the test to make it accessible. For example, a school could provide a translation of the test's directions.

### **How long should I be in ESL classes? Can I choose to leave when I feel that I am ready?**

The school has to assess your progress on a regular basis and determine when you know enough English to exit from ESL classes. Usually, this is the school's decision, not the family's; however, the family can express its opinion.

### **Can my school put me in special education classes just because I am an English Language Learner?**

**No.** Having language learning needs is not a disability. But if you need to learn English and have a disability, the school must also provide special education services.

### **How are parents supposed to communicate with school officials if they do not speak or understand English well?**

When you enroll in a school, the school may conduct a "Home Language Survey" to determine what language is spoken in your house. Your school is required to send home important documents (such as school policies, health forms, etc.) in the language your parents feel most comfortable using. When parents come to school for meetings, they're supposed to be provided with an interpreter. If possible, ask for interpretation services in advance so that the school can be ready.

- Report any abuse to the school principal or the school staff member identified in the student handbook as responsible for receiving reports of harassment or discrimination. Don't just tell a teacher or school counselor.
- Keep a list of all the anti-gay incidents at your school.
- Record your school's response to them.
- Contact the superintendent of the school district or the school board and get help from them.
- Tell other groups, like LGBT support groups, about the problem.
- Contact the ACLU and other civil rights organizations for help.

## Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Students

**Is my school required to protect LGBTQ students who have been called names, threatened, or have had nasty messages left on their lockers?**

**Yes.** LGBTQ students are protected from harassment and discrimination at school by several laws and policies. Anti-gay harassment that creates a sexually hostile environment is illegal under federal law. A Pennsylvania law prohibits discrimination based on sexual orientation in PA educational programs. Finally, some school districts have adopted policies outlawing discrimination based on sexual orientation. Philadelphia and Pittsburgh have such policies.

Public schools most likely have a constitutional obligation to treat abuse of LGBTQ students as seriously as any other abuse. For example, one federal court ruled that school officials violated a gay student's right to equal protection when they didn't do anything about serious harassment he received from other students because he was gay.

**My friends and I want to start a Gay-Straight Alliance at our school to meet after classes in our school building. Do we have a right to meet at school?**

**Yes.** If your school allows other student clubs (not related to courses), like chess or community service clubs, or a Bible club, to meet at school after school hours, then it has to let your club meet, too.

**The principal told students that only boy-girl couples could go to the prom together. Can he make such a rule?**

Two federal courts have said that gay and lesbian couples can go to the prom together. The First Amendment says that you have a right to associate with whom you want, and the Fourteenth Amendment says you have a right to equal treatment. If other students can go to the prom with their chosen dates, then you should be allowed to do so, too.

**I am a transgender student and my principal sent me home for dressing up as a female. Is he allowed to do that?**

It is unclear how the law protects your expression of gender identity (as opposed to biological sex). At least 13 municipalities in Pennsylvania have ordinances to protect against discrimination based on gender identity: Allentown, the city of Lancaster, Doylestown, Erie County, Harrisburg, Lansdowne, New Hope, Philadelphia, Pittsburgh, Scranton, Swarthmore, York, and Allegheny County. In towns without ordinances, your rights are less clear.

If your school has no official dress code, you should be able to wear what you wish, as long as there is no substantial and material disruption to your school's activities. If there is a dress code, you may still have an argument that restricting your gender expression is discrimination under Pennsylvania law, but there has yet to be a case like this in the Pennsylvania courts.

If you have been diagnosed with gender identity disorder by your doctor, you may be protected under Pennsylvania's definition of disability, but federal law does not recognize gender identity disorder as a disability.

### **What if I go through the complete transition from male to female? Shouldn't my gender identity be respected then?**

If you go through a process of transition and change the gender designation on your birth certificate, your school should respect that choice by changing your documents accordingly and allowing you to use gender-appropriate facilities. But since Pennsylvania courts have not seen a case like this, the law is still unclear. Again, you are more protected in places that prohibit gender identity discrimination.

## **Students with Disabilities and Students Needing Special Education**

Students with disabilities have a right to a free and full public education. This means that schools have to meet the needs of disabled students, including providing them with teaching and other supports that are tied to their individual needs. Also, schools have to allow them to participate in regular school activities to the extent to which it is possible.

need help?

***The Disability Rights Network of PA provides advice about disability rights and access to services. Contact them at:***

1-800-692-7443 [Voice], 1-877-375-7139 [TDD], [intake@drnpa.org](mailto:intake@drnpa.org), or visit [www.drnpa.org](http://www.drnpa.org).

### **As a special education student, do I stay in the regular class with other students or must I go to special classes?**

It depends on your needs. The law says that you should be educated in the "least restrictive environment." As much as possible you should remain in class with other students. You may be pulled out of the class part of the day to receive special services, or may remain in a regular class with an aide, but you should not be removed from the class any more than is needed.

### **How do I go about getting special education services at school if I need them?**

First, your parent or guardian should request an evaluation from the school and sign a form granting school officials permission to evaluate you. This evaluation should take place within 60 days.

If school staff members decide you need special education, they should design or place you in an appropriate program, if your parents agree. If possible, you should receive your special education programs in the same class and school you would normally attend.

### **What happens if my parents don't like the special education program?**

If your parent or guardian thinks the proposed program is wrong for you, you are entitled to an informal pre-hearing conference with school officials in which you try to work things out and/or a formal hearing before an impartial hearing examiner.

If you already receive special education services, your parents can ask for a re-evaluation if they think your program isn't meeting your needs. The request should be in writing and sent to the school principal.

### **What if I, as a student with disabilities, want to play sports or be involved in some other extracurricular activities? Can the school refuse to let me do it?**

Students with disabilities must be given equal opportunity to be involved in extracurricular activities whenever possible. That means schools have to make reasonable accommodations for these students. But schools may deny participation to a disabled student if there's a serious risk of injury to the student or other people or if they can point to other non-discriminatory reasons for denying participation.

### **As a special education student, does the school have to give me transportation to and from school?**

**Yes**, if the group that creates your special education program (the Individual Education Plan Team) decides that you need it in order to attend school.

- Keep a record. Write down all the details of the incident, such as who was involved, who witnessed it (get their names and contact information), what happened, when it happened and where it happened.
- Ask a school official to try to stop the behavior. Be sure to put your request in writing.
- Keep a copy of your records and any documents you receive.
- File a complaint with the Pennsylvania Human Relations Commission. *(see next page)*

## Sexual Harassment

Sexual harassment is unwelcome verbal or physical behavior of a sexual nature that may include requests for sexual favors by teachers, coaches, or other school officials in return for some benefit, such as a good grade. It also may include behavior that creates an intimidating, hostile, or offensive school environment or that interferes with the student's school performance.

Sexual harassment of students and by students is against the law, whether it's teacher-on-student, student-on-student, or student-on-teacher harassment. All schools must have a procedure for students to report and resolve complaints of sexual harassment.

### **Our teacher is always making jokes about sex to us. It makes me feel uncomfortable. Is that sexual harassment?**

**Possibly.** The teacher's continued unwelcome sexual jokes to you in class may be creating a hostile classroom environment, and seriously interfering with your ability to study and do well at school. That may also be sexual harassment. If this makes you feel uncomfortable and/or interferes with your schooling, ask the teacher to stop or report it to another school official.

### **Are public school students protected from sexual harassment by other students?**

**Yes.** Public school officials can be held legally responsible for student-on-student sexual harassment that occurs at school. Courts consider whether school officials clearly know, have been made aware of or should have been aware of the harassment and have done nothing to stop it. They also consider whether harassment is so serious that it deprives the student being harassed of educational opportunities at the school.

# Bullying

## **I am frequently pushed into my locker by a group of football players in between classes. Is there anything I can do to stop this?**

All public schools in Pennsylvania must include information about bullying in their student conduct policies. The policies must explain what the disciplinary consequences are for students who bully or harass other students and should tell you the name of a school staff member to contact if you are being bullied. You and/or your parents should tell the staff member about the bullying, and the school has an obligation to take steps to stop it from happening.

## **I reported the problem, but nothing was done to stop it. Is the school required to do anything when I complain about being bullied?**

School officials have an obligation to follow up on complaints about bullying and to discipline students who violate the code of conduct by bullying other students. Ultimately the principal is responsible for resolving the problem and doing what is needed to create a safe school. If the principal does not do that, you should complain to the superintendent or head of the school district. Make sure you keep records of every time you or your parents have told the school that you are being harassed or bullied by other students.

need help?

**Contact the Pennsylvania Human Relations Commission (PHRC)** if you think you have been discriminated against because of race, color, sex, religious creed, ancestry, national origin, handicap or disability. You must contact them within 180 days of the alleged act. Call (717) 787-4410 to file a complaint or visit [www.phrc.state.pa.us](http://www.phrc.state.pa.us) for more information.

The PHRC does not have the power to investigate complaints of discrimination based on sexual orientation, but there is an effort to change the law. Very often discriminatory behavior may also involve issues that the PHRC can investigate. If you feel you have been the victim of discrimination, you should take your complaint to the PHRC.

# Enrolling in School

## Basics

- A school cannot delay a student's enrollment if the school doesn't have records from a former school.
- School officials cannot require a student to produce immigration documents or Social Security numbers.

### **I'm over 18. Can I still go to public school for free?**

You have the right to attend public school until you graduate or turn 21, whichever comes first. If you turn 21 during a school year, you have the right to finish that school year. However, the school district is not required to provide you with an education if you have been expelled and are over the age of 17.

### **My family just moved into a new school district. What do I need to show the school in order to start classes?**

Students or parents/guardians must provide:

- Proof of age.
- Proof of immunizations required by law.
- Proof of residency. Districts may require that more than one form of residency be provided, but the Pennsylvania Department of Education says schools should be flexible in verifying residency, and should consider what information is reasonable in light of the family's situation.
- Parent Registration Statement: A sworn statement by the parent saying whether the student has been or is suspended or expelled for offenses involving drugs, alcohol, weapons, infliction of injury or violence on school property.

School officials may also offer your family a "Home Language Survey," a questionnaire about what language is used at home.

Students should usually be permitted to attend school on the next school day. A student should never have to wait more than five school days in order to start classes.

### **I don't have my records from my old school. Can I start a new school?**

**Yes.** Your new school cannot prevent or delay your enrollment just because it has not received your prior school records. If you don't have your records, your new school should do its own assessment of your academic levels to place you in classes. It is your new school's responsibility to obtain those records, not yours or your parents'.

### **Are there documents that the school cannot ask to see?**

**Yes.** The school district may never ask the family for the student's or parent's immigration documents, Social Security card or number, records from a child welfare agency (other than to establish residency), or information relating to why a child is residing in the district or living with a particular person. Also, school districts cannot require children to undergo a physical examination as a condition of enrollment.

### **I do not live in the same district as my parents. Am I still allowed to attend school in the district in which I live?**

**Yes**, if you are under 21, self-supporting and independent from your parents' or guardian's control, or you are married. You would then be considered an "emancipated minor."

If you're not an emancipated minor and live with an adult other than your parents, you might be allowed to attend school in the different district. You must show the school that the adult you are living with is supporting you (or that you receive public benefits like Social Security) and is not being paid to do it, that he/she will take responsibility for your schooling, and that you are planning to live there indefinitely (and not just for the school year or term).

### **Can I enroll in school if my family doesn't have a home and we live in a shelter?**

**Yes**. You cannot be barred from school just because you lack regular housing. If you are living in a shelter, motel, car, tent, or are temporarily living with a friend or relative because your family lacks housing, you can immediately enroll in the school district where you are living. You have the right to go to school in that district if you spend most of your time there or if you are regularly in a shelter, receive services, or conduct daily activities in that district.

### **Can a school district prohibit me from enrolling if I was expelled from another school for having a weapon on campus?**

**No**. A school district may not deny or delay your enrollment based on the information contained in a disciplinary record — even if you were punished for offenses involving drugs, alcohol, weapons or violence. If you are currently expelled for a weapons offense, your new school district can place you in an alternative education program during the period of your expulsion. The same rules apply to charter schools.

### **I don't feel safe in my school. Can I transfer to another school?**

**Yes**, in some instances. If you have been the victim of a violent crime or your school has been placed on a list of "persistently dangerous schools" (put together by the Pennsylvania Department of Education) you have the right to transfer to another public school within your school district. Although you cannot pick the new school, that school cannot also be considered "persistently dangerous."

# Student Records

## Basics

- Students and/or their parents are allowed to know what is in the student's records.
- Students and/or their parents are allowed to ask that the records be changed if there is incorrect information in the student's records.

### What is in my school records?

School records include most of the information a public school keeps on a student, including grades, disciplinary reports, attendance records, behavior reports and standardized testing results.

### Do my parents have a right to see my school records?

**Yes**, a parent or guardian has the right to see the public school records of his or her child unless the student is 18 or married. At that point, only you may see school records unless you give permission for your parent to see them. An unmarried student under 18 has the right to see some, but not all, of her records without her parent's consent. The Pennsylvania Code describes these records as official administrative records that constitute the minimum personal data necessary for operation of the educational system, which means identifying data, birth date, academic work completed, level of achievement such as grades and standardized achievement test scores, and attendance data.

### **What do my parents have to do to see my school records?**

Your parents should send a letter to the school principal saying that they want to see all the records the school district has on you. Keep a copy of the letter.

The school has to let them see your records within 45 days of getting the letter, or maybe even sooner if you are a special education student.

Once your parents get your records, they have a right to get copies of all or any part of your school records and to have a school official explain what is in your records. A school district may require a parent to pay for a copy of a record.

### **What happens if there's misleading information or something else wrong in my records? What can I do about it?**

You and your parents have the right to ask that the records be changed. Put your request in writing. If school officials disagree with you, you can request a hearing to show why you think they should change the records. Even if you lose at the hearing, you can include a statement in the records explaining why you believe the information is wrong. The school must include this statement every time your school records are released to someone else.

### **Can the school show my records to anyone else?**

You have some rights of privacy when it comes to your school records. The school has to get written consent from your parents (or you if you're 18 or older) before it can show your records to anyone outside the school system. However, the school doesn't need to get your consent before they can send your records to another school system or college where you plan to enroll. They still must tell you that they are sending the records, give you a copy if you want one, and allow you to challenge the records.

Your school can also release directory information about you including your name, address, telephone number, birthday, participation in extracurricular activities, and date of graduation. But the school has to tell your parents ahead of time what information it will release. Your parents can then ask that any or all of this information about you not be released.

# Military & Students

## Basics

- A student or parent can request that the student's contact information not be given to military recruiters.
- Students are not required to take military-sponsored tests such as the Armed Services Vocational Aptitude Test (ASVAB).

### Can the school release my records to military recruiters?

**Yes**, but there are limitations. The law requires school districts to give military recruiters student contact information (such as name, address and phone number). Recruiters use this information to contact young people about joining the military. The law also gives students, parents, and guardians the right to have student contact information withheld from the military. This is called "opting out." The release of student information has become controversial because of the increase in aggressive military recruiting activity as well as the expansion of military programs in public schools.

### Is there information that schools cannot give to the military?

**Yes.** Schools cannot give out information from student records, such as scores, grades, and discipline records, or any other information besides basic contact information.

### ***Who can opt out?***

A parent, student or guardian may sign the “opt-out” form. Both the United States Department of Education and the Pennsylvania Department of Education have stated that either a student of any age or a parent (or guardian) can sign the opt-out form.

### **My school gives a test called ASVAB. I see “armed services” in the name. Does this have anything to do with going into the military?**

**Yes.** The Armed Services Vocational Aptitude Battery Test (ASVAB) is the entrance test all people must take when they apply to join the military. It is offered free in high schools as part of something known as the Career Exploration Program.

### **Are students required to take the ASVAB?**

**No.** While the military has encouraged schools to have all students take the ASVAB, students cannot be forced to give this kind of personal information to the military. Unfortunately some schools tell students that they must take the test or may try to coerce them (harassment, ridicule, counselors telling students they won’t help them in other ways if they don’t take the ASVAB). In some schools, students are told that the whole class must take the test with no arrangements made for students who do not want to take it. While schools may require their students to take an assessment test approved by the state, there is no legal requirement that students take the ASVAB military test.

### **What happens if I take ASVAB?**

When you take ASVAB you sign a form giving the military the right to use personal information to recruit you. After taking the test, military recruiters may contact you at home, school and other places to talk you into joining the military. They may also contact your parents. If a student takes ASVAB in high school, he or she can use the ASVAB score in place of the regular military entrance test if he or she decides to enlist in the military within the next two years.

# Sexual Health and Education

The Fourteenth Amendment protects our freedom to make certain decisions about our bodies and our private lives without the interference of the government, which includes public schools. This “right to privacy” has some limits, but applies to reproductive health issues like birth control and abortion.

## Basics

- Schools in Pennsylvania must offer HIV/AIDS education.
- Students can opt out of sexual education classes that conflict with their religious beliefs.
- School officials cannot force pregnant teenagers to leave school.

### **Is my school required to teach sexual education?**

**No.** The state doesn't make all Pennsylvania schools teach sexual education to students, but many school districts do. If your school teaches sexual education, students must be allowed to opt out of particular classes that go against their religious or moral beliefs.

### **Is my school required to teach HIV/AIDS education?**

**Yes.** Schools in Pennsylvania must offer age-appropriate HIV/AIDS education that teaches abstinence and HIV/AIDS prevention. If the course conflicts with your religious beliefs, your parents can have you excused from class.

### **My high school wants to hand out condoms to students in our health resource centers. Can they do that?**

**Yes.** In Pennsylvania, condoms can be distributed at schools if the program is voluntary, parents are told about it ahead of time, and they can refuse to let their child participate.

### **If I want to get an STD test, do I need my parents' permission?**

**No.** You don't need your parents' consent to get tested or treated for sexually transmitted diseases or HIV/AIDS. If you are under 18, you can get tested for free at a family planning clinic.

### **Can I get birth control even though I'm only 17?**

**Yes.** Minors have a right to privacy that includes access to birth control. Most family planning clinics receive federal funding and by law must keep all information confidential. They can't tell your parents without your permission. You can get birth control for free, or for very little money, at the clinic.

# School Issues for Pregnant & Parenting Teens

## **I am pregnant. Can I be forced out of school?**

**No.** You cannot be forced to leave school because you are pregnant, married, or because you have a baby. You can't be excluded from attending classes, graduation, or most other school activities. A federal court once ruled that a girl had been discriminated against because of her gender when she was kicked out of National Honor Society for being pregnant.

## **Does my school have to provide child care?**

There are no laws requiring a school to supply child care for student parents. However, subsidized child care is available, but not guaranteed, if a student meets certain financial criteria and is enrolled full-time in school. In addition, the state of Pennsylvania sponsors free child care facilities in some high schools and middle schools. These programs are PPT (Pregnant and Parenting Teen) and ELECT (Education Leading to Employment and Career Training).

## **Our school has classes on parenting. Are they allowed to do that?**

**Yes.** Schools can offer special courses for pregnant or parenting students, as long as they are voluntary.

## **My doctor thinks that I'm going to need bed rest toward the end of my pregnancy. Can I receive home instruction from my school?**

**Yes,** schools have to offer home tutoring to pregnant or parenting students if a doctor certifies that the student must stay home for medical reasons. In addition, you are entitled to home tutoring for up to six weeks after giving birth, but you can return to school sooner than that if you choose to do so.

### **I had to stay home from school to take care of my sick child. Can I be considered truant?**

Under Pennsylvania law, schools can excuse students from school for “urgent reasons,” including lack of adequate child care for temporary periods. If you miss school in order to temporarily care for your sick child, your absence should be considered “excused.”

### **I am 15 and have a newborn baby. Can I stay home to take care of her instead of going back to school?**

In Pennsylvania, you must attend school until you are 17. You may be able to enroll in a cyber-school program, however, that allows you to take classes from home.

## **Non-School Issues for Pregnant & Parenting Teens**

### **Where can I go to get a pregnancy test or prenatal care?**

Go to the nearest family planning clinic. They can give you a pregnancy test and counseling about your options. You don’t need your parents’ permission for a pregnancy test, and the clinic can’t tell your parents. If you are under 18, you can get these services for free at the clinic. Some clinics also offer prenatal care and perform abortions.

Pennsylvania provides free medical care to low-income pregnant women. To see if you are eligible, contact your County Assistance Office of the Public Welfare Department (in the phone book’s blue pages, under government offices). Ask about the “medical assistance” or “MA” program.

### **Do I have to get my parents’ consent to receive medical care if I’m pregnant?**

**No.** If you are (or have ever been) pregnant, married, or have graduated from high school, you don’t need anyone’s consent to receive medical, dental, or other health services, except an abortion.

### **I think I might be pregnant. What happens if I decide to get an abortion?**

It's your constitutional right to have an abortion. In Pennsylvania, however, if you are under 18 you must get permission for an abortion from one of your parents or from a judge. If you can't tell your parents, or if they refuse to consent to an abortion, then you can go through a "judicial bypass." That's a private hearing before a judge who can okay the abortion for you without getting your parents' consent. The judge cannot tell your parents, your boyfriend, or anyone else about your pregnancy. You may also travel to another state (like New Jersey or New York) which does not have these parental consent laws.

### **Are there exceptions?**

**Yes.** You may not need to get permission for an abortion when it's a medical emergency, your parents aren't available (in which case someone who stands in their place can give permission), or you are legally emancipated.

### **My mom is being really supportive of my decision to get an abortion, so what do we do now?**

You need only the permission of one of your parents to get an abortion. Then you and your mom are going to have to listen to a lecture about abortion that the state requires. You both must wait at least 24 hours after the lecture to sign the consent form for the abortion.

### **Does my boyfriend have to be told that I'm having an abortion?**

**No.** You do not have to tell him about the abortion or get his permission.

### **Can my parents make me get an abortion if I don't want one?**

**No.** You cannot be forced to have an abortion by anyone, except possibly in a medical emergency when your life is in danger.

### **My parents don't want me to keep the baby after she's born. Can they make me give her up?**

**No.** You have a right to custody of your child, unless the court says you're unfit. You also have the right to consent to the health care of your child.

# need help?

For information about birth control, emergency contraception, pregnancy, prenatal care, abortion, HIV/AIDS, and sexually transmitted diseases call **CHOICE (Concern for Health Options: Information, Care, and Education)** at **1-800-84-TEENS** or **1-800-848-3367**.

For information about the judicial bypass or your abortion rights, contact your local family planning clinic or call **CHOICE** at **1-800-84-TEENS** or **1-800-848-3367**.

For information about child care, contact the **Child Care Information Services (CCIS)** agency at **1-877-4PA-KIDS** or **1-877-472-5437**.

For information about how to obtain low cost health care, contact **[www.compass.state.pa.us](http://www.compass.state.pa.us)** or **1-800-692-7462**.

# Resources

## Freedom of Expression

### **Court Cases**

#### **In-school speech:**

*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969): First U.S. Supreme Court case to establish that students do not shed their free-speech rights at the schoolhouse gate.

*Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986): Schools can prohibit the use of vulgar and lewd language in school.

*Hazelwood v. Kuhlmeier*, 484 U.S. 260 (1988): Schools can censor school-sponsored speech, such as student newspapers and plays.

*Morse v. Frederick*, 551 U.S. 393 (2007): Schools can prohibit speech that advocates illegal drug use.

#### **Internet speech:**

*Reno v. ACLU*, 521 U.S. 844 (1997): Internet speech receives the same First Amendment protection as other forms of speech.

*Flaherty v. Keystone Oaks School District*, 247 F. Supp. 2d 698 (W.D. Pa. 2003): Speech on students' home computers that is never physically brought onto school grounds is protected by the First Amendment.

*Latour v. Riverside Beaver School District*, 2005 WL 2106562 (W.D. Pa. 2005): Student production of rap music that includes violent language imagery does not constitute a "true threat" and is not grounds for student expulsion.

*Killion v. Franklin Regional School District et al.*, 136 F. Supp. 2d 446 (2001): Derogatory cyberspeech toward school officials that does not cause a material disruption of the learning environment, is created off school grounds, and is not transported by the student to school grounds, is protected by the First Amendment.

#### **Pledge of Allegiance:**

*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943): Students cannot be forced to recite the Pledge of Allegiance.

*The Circle School v. Pappert*, 381 F.3d 172 (2004): Schools cannot require students to obtain parental permission to refuse to recite the Pledge of Allegiance.

**Clubs:**

*Board of Education of the Westside Community Schools v. Mergens*, 496 U.S. 226 (1990): Schools must treat all non-curricular student clubs equally.

**Other Resources**

Student Press Law Center, [www.splc.org](http://www.splc.org)

## Religion in School

**Court Cases****In general:**

*Lemon v. Kurtzman*, 411 U.S. 192 (1973): Government actions must have a non-religious purpose, neither advance nor inhibit religion, and not result in “excessive entanglement with religion.”

**Evolution:**

*Edwards v. Aguillard*, 482 U.S. 578 (1987): Schools cannot be mandated to teach creationism.

*Kitzmiller v. Dover Area School District*, 400 F. Supp. 2d 707 (2005): Public schools cannot advance the theory of “intelligent design” as science, or as a scientific alternative to evolution.

**School Prayer:**

*Santa Fe Independent School District v. Doe*, 530 U.S. 290 (2000): Schools cannot permit student-led, student-initiated prayer at school events.

*Lee v. Weisman*, 505 U.S. 577 (1992): Schools cannot permit clergy-led prayer at graduation.

*Abington Township School District v. Schempp*, 374 U.S. 203 (1963): Schools cannot lead students in prayer or devotional Bible reading.

*Engel v. Vitale*, 370 U.S. 421 (1962): Schools cannot begin day with opening prayer.

**Religious Displays:**

*Stone v. Graham*, 449 U.S. 39 (1980): Schools cannot display Ten Commandments.

**Other Resources**

Anti-Defamation League, *The December Dilemma: December Holiday Guidelines for Public Schools*, [http://www.adl.org/issue\\_education/december\\_dilemma\\_2004/default.asp](http://www.adl.org/issue_education/december_dilemma_2004/default.asp)

## Student Discipline

**Court Cases**

*Goss v. Lopez*, 419 U.S. 565 (1975): The imposition of school suspensions without providing students with notice of the charges and an opportunity to defend themselves violates students’ right to procedural due process guaranteed by the Fourteenth Amendment.

*Dunmore v. District of Philadelphia, et al.*, US District Court for the Eastern District of Pennsylvania, June 29, 2004: Consent decree laying out rights of Philadelphia students when proposed for transfer to a disciplinary school.

*D.O.F. v. Lewisburg Area Sch. Dist. Bd. of Sch. Dirs.*, 868 A.2d 28 (Pa. Commw. 2004): Schools' authority to punish students is limited to times when students are in school, engaged in school-sponsored activity, or traveling to or from school.

*Lyons v. Penn Hills School District*, 723 A.2d 1073 (Cmwlth Ct. 1999): A school board went too far because its zero tolerance weapon policy didn't let the superintendent make any exceptions.

### **Other Resources**

School Discipline in PA, Education Law Center.

Fairness in School Discipline: A Guide for Attorneys and Advocates who Represent Students. Education Law Center.

School Discipline in Pennsylvania. Education Law Center. Also available en Español.

School Discipline in the Philadelphia School District. Education Law Center.

When Can Your Child be Expelled for Bringing Weapons to School? (Act 26). Education Law Center. Also available en Español.

All Education Law Center materials can be obtained online at: [www.elc-pa.org](http://www.elc-pa.org).

## Fair Treatment

### **Court Cases**

*Lau v. Nichols*, 414 U.S. 563 (1974): Students must be provided linguistically appropriate (read: ESOL) education.

*Plyler v. Doe*, 457 U.S. 202 (1982): Children of undocumented immigrants have the right to attend public school.

*Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999): School boards can be held responsible under Title IX of the Education Amendments of 1972 for "student-on-student" harassment.

*McMillen v. Itawamba County School District*, NO. 1:10CV61-D-D, 2010 WL 1172429 (N.D. Miss. March 23, 2010): First Amendment protects female student's right to attend prom with same-sex partner and to wear tuxedo instead of dress.

### **Other Resources**

English Language Learners in Pennsylvania Schools: Legal Issues and Advocacy Opportunities. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org).

Rights of English Language Learners in Pennsylvania Public Schools. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org).

How to Get Help for English Language Learners. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org) (also available in en Español).

Legal Issues for School Districts Related to the Education of Undocumented Children. National School Boards Association and the National Education Association. [www.nsba.org](http://www.nsba.org).

The Right to a Special Education in Pennsylvania: A Guide for Parents and Advocates. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org).

What Can You Do If Your Child is Being Bullied by Other Students? And Sample Letter Requesting an Investigation. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org).

Educating Students With Limited English Proficiency (LEP) and English Language Learners (ELL). BEC 22 Pa. Code §4.26. Pennsylvania Department of Education.

The Right to a Special Education in Pennsylvania – a Guide for Parents and Advocates. Disability Rights Network of Pennsylvania, <http://drnpa.org/publications/education>. (Also available en Español)

## Students' Privacy Rights and School Security

### **Court Cases**

*Safford Unified School District v. Redding*, 129 S. Ct. 2633 (2009): Schools cannot strip search students unless they have reasonable suspicion that search will uncover evidence of drugs or other items that pose serious threat to safety of school community.

*New Jersey v. T.L.O.*, 468 U.S. 1214 (1984): School officials can legally search students' private property if they have a reasonable suspicion when they begin the search and conduct the search in a reasonable way.

*Klump v. Nazareth Area School District*, 425 F.Supp.2d 622 (E.D. Pa. 2006): Search of students' cell phones violates Fourth Amendment unless school has reasonable suspicion that search will uncover evidence of wrongdoing.

*Commonwealth of Pennsylvania v. Cass*, 551 Pa. 25, 709 A.2d 350 (1998): Schools have the right to conduct reasonable searches of student lockers using K9 drug dogs.

*Theodore v. Delaware Valley School District*, 761 A. 2d 652 (Pa. Cmwlth 2000): Pennsylvania schools cannot institute a broad drug-testing program (ex: requiring all students participating in extracurricular activities to submit to drug/alcohol testing).

## Enrolling in Schools

Right to Attend School in Pennsylvania. Education Law Center. [www.elc-pa.org](http://www.elc-pa.org)

Enrollment of Students. BEC 24 P.S. §13-1301 - §13-1306. Pennsylvania Department of Education.

Enrollment Q&A. BEC 24 P.S. §13-1301 - §13-1306. Pennsylvania Department of Education.

The Education Law Center of Pennsylvania has released enrollment guides to help you through the enrollment process. They are available in video format, and en Español. Go to [http://www.elc-pa.org/pubs/pubs\\_residency.html](http://www.elc-pa.org/pubs/pubs_residency.html) for step-by step guides on:

- How to Enroll Your Child In School.
- How to Enroll Yourself as an Older Youth in School.
- How to Enroll a Child Who is Homeless in School

## Military Students

Access to Secondary Students. BEC 20 USC §7908. Pennsylvania Department of Education.

Student Testing Program, Department of Defense, USMEPCOM Regulation 601-4, November 13, 2006

## Sexual Health and Education

### **Court Cases**

*Planned Parenthood v. Casey*, 505 U.S. 833 (1992): Government has the right to restrict abortion until it places an undue burden on the woman seeking an abortion.

*Parents United for Better Schools v. School District of Philadelphia*, 148 F.3d 260 (1998): School districts in Pennsylvania have the right to operate sexual education and counseling as long as the program is voluntary.

### **Other Resources**

Pregnant and Parenting Students. Basic Education Circular. Pennsylvania Department of Education. 24 P.S. Section 13-1327.

## ACLU Resources

Contact the American Civil Liberties Union of Pennsylvania for hard copies of the following resources:

- Know Your Rights: A Quick Guide for Lesbian, Gay, Bisexual, and Transgender High School Students.
- Minors' Access to Confidential Health Care in Pennsylvania. [www.aclupa.org/downloads/Minorscard1009.pdf](http://www.aclupa.org/downloads/Minorscard1009.pdf)
- Transgender People and the Law: Frequently Asked Questions.
- Locating the School-to-Prison Pipeline.
- Talking Points: The School-to-Prison Pipeline. [www.aclu.org/racial-justice/school-prison-pipeline](http://www.aclu.org/racial-justice/school-prison-pipeline)
- Discussion Questions: The School-To-Prison Pipeline. [www.aclu.org/racial-justice/school-prison-pipeline](http://www.aclu.org/racial-justice/school-prison-pipeline)
- Know Your Rights: LGBT Equality" wallet card. [www.aclu.org/hiv-aids\\_lgbt-rights/resources-lgbt-equality](http://www.aclu.org/hiv-aids_lgbt-rights/resources-lgbt-equality)
- Get Busy. Get Equal: The Tools You Need to Get LGBT Equality Today. <http://gbge.aclu.org>



# Know Your Rights

## A Handbook for Public School Students in Pennsylvania

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*The editor would like to thank the following persons for their wise comments and reviews of sections of this handbook: Deborah Gordon Klehr, David Lapp, Janine Schwab, Rhonda McKitten, Len Rieser, Mark Scott-Sedley, Carol Petraitis, and Vic Walczak. Fred Ginyard, Fred Pinguel, Amanda Bergson-Shilcock, and Zach Steele discussed student and family public school issues with us during the early stages of this project. Sara Mullen and Kendra Royster provided additional editing support.*

*September 2010*

