
STUDENTS!

Know Your Rights!



Freedom of Expression

Do I have a right to express my opinions and beliefs in school?

Yes. In a 1969 case called *Tinker vs. Des Moines School District*, the U.S. Supreme Court ruled that students can express their opinions orally and in writing – in leaflets, on buttons, or t-shirts – as long as they do not disrupt or interfere with the school’s activities. School officials can probably also stop you from using language that they think is “vulgar or indecent.” But other activities, such as wearing anti-death penalty t-shirts, are protected under the First Amendment.

Real Life Story: Graduation for one Nebraska senior wasn’t the exhilarating time it should have been. After the class chose her to be one of their commencement speakers, this student was required to show her speech to the school for editorial approval. In her speech, she used a word that the school considered offensive, even though it would have been entirely appropriate for prime-time television and was not obscene.

School officials told her she couldn’t use the word, but also threatened to withhold her diploma if she went ahead with the speech as planned. After ACLU intervention, she was allowed to give her speech using her own choice of words.

Do students have the right to hold a rally or demonstration at the school?

Yes, peaceful demonstrations are considered protected speech so a school is not allowed to prohibit them unless they disrupt school activities. School authorities cannot prevent students from participating in a demonstration that is held off campus or after school hours.

Real Life Story: A high school student in Millard, Nebraska wanted to hand out flyers against the Iraq War. The flyers didn’t say anything obscene, violent, or inappropriate; they just had his personal opinion about the war in Iraq. He was stopped by school authorities, his flyers were confiscated, and he was warned not to bring the flyers back or he would face suspension.

After ACLU intervention, the school acknowledged they were wrong and the student was allowed to distribute his flyers at the times indicated in the student handbook.

Can students collect money for political causes or fundraise at school?

Collecting money for a cause is generally recognized as part of your right to freedom of speech, so it should not be completely prohibited at school. However, some courts have ruled that students cannot collect money for political causes on school grounds.

Do students have the right to walk out of school as a form of protest?

Regular school attendance by a student is required in Nebraska, and the school can take action against you if you miss school and the absence is unexcused - even if you are participating in a political activity. However, school officials cannot punish you for missing school to participate in a political protest more harshly than they punish students for missing school for any other purpose.

Do we have to say the Pledge of Allegiance?

No. The court says that students have the right to sit silently during the flag salute and Pledge of Allegiance. As long as you do not disrupt the pledge you may refuse to participate.

Do I have a right to participate in a day of silence?

Yes. You may participate in a “day of silence” as a way of expressing solidarity with a cause. However, school officials can require you to speak and participate during class. You may remain silent in the halls and between classes.

Can the school stop me from wearing certain kinds of clothes in the school?

While the way you dress is a form of self-expression, the courts typically don’t interfere with the authority of school officials to impose dress codes. Officials usually justify dress codes by saying that they are necessary to prevent distraction or disruption, to prevent gang activity, or to promote safety. You may have a right to deviate from the dress code for religious or medical reasons. Prohibiting certain types of messages on clothing, while allowing others, may violate students’ rights to free expression.

Real Life Story: Two cousins attending Scottsbluff High School wanted to show their support for a family member with breast cancer. He wore a shirt and she wore a bracelet, both of which said “I ♥ Boobies.” The school confiscated the bracelet and warned both students they couldn’t show that message again without facing suspension for wearing a “vulgar” phrase to school. After ACLU intervention, the school backed down and both the shirt and bracelet are permitted now.

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Can a school say I can't wear my hair in a certain way or wear a piercing?

No. You have the right to wear your hair long or short and you can have a beard or mustache. The school can't dictate your grooming choices. However, certain hair styles – for example, a Mohawk or certain artificial hair colors – can unfortunately be regulated by schools, but only if the school can demonstrate that the hair style is a disruption. Similarly, the courts have ruled that a school can prohibit a student from wearing a visible body piercing in school.

My school principal says he has to review the student newspaper before it's published to make sure it puts him in a "good light." Can he do that?

No. The principal may only censor the student newspaper for a valid educational reason. School officials must show that the censorship is "reasonably related" to an educational purpose and that the material is inconsistent with the goals or missions of the school.

Can school officials stop me from publishing an underground zine?

No. The First Amendment protects your right to publish an unofficial or underground newspaper or magazine. School officials cannot ban your underground newspaper or pamphlet just because they don't like what you say in it. They also can't stop you from passing it out at school unless you are doing so in a way that disrupts school activities.

Are school officials allowed to take books off the school library shelves or out of classrooms because the officials don't like the ideas or language contained in the books?

No. School officials cannot remove books from the school library shelves or classrooms simply because of the ideas they contain. School officials are only allowed to remove books from classrooms or reading lists if the language is inappropriate or because the books don't advance the school's curriculum goals.

I created a Web site at home that makes fun of a teacher and I got suspended for it. Can they do that?

No. Courts have ruled that public school students have the right to create and maintain a Web site outside of school – even if the site is critical of a school official – so long as it would not cause a disruption at school if students were to access the site.

Religious Liberty

Can school officials sponsor prayers or other religious exercise at school?

No. School-sponsored prayers and religious readings (e.g., the New Testament or Qur'an) are unconstitutional because they go against a student's right to practice her own religion or none at all.

Can our valedictorian lead prayers or make religious references at our graduation ceremony?

Yes. A student has the right to pray or make religious references at a graduation ceremony if the designated student speaker was elected on neutral criteria (e.g., the person with the highest grade point average). A speaker may include a brief religious reference in a public address. However, school authorities cannot allow a religious leader or a student to give a prayer at school sporting events, nor ask a student to do so in a group setting.

Can students hold religious meetings on school property?

The government cannot use its power to prevent you from exercising your religious beliefs. However, the school does not have to let you use its facilities to hold religious meetings unless it lets other groups not sponsored by the school to use its facilities. Schools may not sponsor or endorse any religious gatherings.

In social studies, we are reading religious passages. Is that okay?

Yes. You can study religion at school – for example, its influence on history or literature. But the school cannot assign readings or use class time to teach that one religion is better than another or to disparage any religion.

My biology teacher gave us a brief presentation on the pros of creationism and cons of evolution as part of a lesson. Can she do that?

No. Schools can't write their lesson plan to promote creationism, because that is a religious belief. It is also unconstitutional to require that creationism be taught in science class along with evolution since creationism is neither a scientific theory nor subject to scientific methods of proof. Creationism may be part of the curriculum in other classes.

Bullying, Harassment, and Discrimination

There are two guys in school who have been bothering me for months. My parents complained to the teacher and the principal, but they did nothing. Are students protected from sexual harassment by other students?

Yes. Public schools can be held liable for failing to take action against student-to-student harassment where officials clearly knew about the harassment or the harassment is pervasive and they should have been aware of it.

Kids at my school call me nasty names and threaten to beat me up because I'm gay. One time, my teacher heard this and did not tell them to stop. Is this harassment allowed?

No. School officials who do nothing to stop harassment by other students or teachers because of sexual orientation or identity violate a student's right to equal protection the law. As a LGBTQ student, you are protected from harassment and discrimination at school, just as other students are protected from race or gender-based harassment and discrimination.

If you have experienced harassment, you should:

- Make a report in writing and include all the details of the incident, such as who was involved, what happened, when it happened, where it happened, and if there are any witnesses (get their names and contact information)
 - Find out your school's policy on sexual harassment
 - Follow your school's complaint procedure
 - Keep a copy of anything you file and all responses
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My school offers a class on reproductive health, HIV, and AIDS. Do I have to take it?

No. Schools cannot be prohibited from offering sexual education classes taught from a public health point of view. However, under Nebraska law, a parent or legal guardian may request that you be exempt from taking such classes for religious reasons.

Can school officials make me leave school if I become pregnant or forbid me from participating in certain activities?

No. A school may not discriminate against a student just because she is pregnant, has had a child, has terminated a pregnancy, or is recovering from procedures related to a pregnancy or abortion. Nebraska law gives you the right to remain enrolled in regular classes through the “teenage parent program.” Additionally, if you choose, you may require your school to create a special program tailored to your needs.

Can I start an LGBTQ or GSA club at my school?

The federal Equal Access Act says that if a public school permits non-curricular clubs, like chess clubs or community service clubs to meet at school, after or during school hours, then it has to let your club meet too. School officials cannot refuse to let students meet at school simply because they don’t agree with the club’s mission, theme, or actions.

Real Life Story: *Norfolk senior High students formed a Gay Straight Alliance (GSA) student club. They wanted to be treated the same as other clubs by being allowed to meet at school during the ‘club hour,’ use the photocopier, advertise their meetings in print and PA announcements, and have speakers. The school administration and school board formally denied their request even though other non-curriculum clubs – including two religious clubs, a Kiwanis club, and an anti-racism club – had these privileges.*

When the ACLU attorney wrote a letter to the school in 2002, the school backed down. The GSA is now treated in the same manner as all other student clubs. The GSA continues to thrive and educate Norfolk High students about anti-gay bias.

I have not told anyone at school that I am gay because I am scared of the reaction of my classmates. If the school finds out, can they “out” me?

No. Your school does not have the right to out you to anyone without your permission. The federal courts have held that threatening to disclose private information, such as sexual orientation, violates a student’s constitutional rights.

Can I bring a same-sex date to the school prom?

One court has ruled that prohibiting a gay student from bringing his date to the prom was a violation of his constitutional right to freedom of association. Nebraska courts have not yet ruled on this issue.

I am transgender. Can I get in trouble at school if I wear clothing of the opposite sex?

If your school has no official dress code, you should be able to wear what you wish to express your gender identity as long as it does not disrupt school activities. If there is a dress code, you may still have an argument that restricting gender expression is discrimination under Title IX.

Is my school required to provide special instruction, classes, and services for disabled students?

Yes. Federal law requires all school districts to provide special education to children with disabilities. This means that the needs of disabled students must be met just as the needs of non-disabled students are.

What can I do if my school placed me in a special education program and I do not belong there, or if my school did not place me in such a program and I do belong there?

Before a school can place you in such a program or choose not to do so, you must be properly evaluated and classified in accordance with the rules of your school district. If your parents consent to the decision, you have the right to a formal hearing to challenge the decision. If your parents contest the results of the hearing, then you can sue in court to determine the validity of the hearing’s findings. Ultimately, you have a lot of options. The laws of the United States strongly favor your right to a quality education with the fewest restrictions possible on your opportunities and learning environment.

Privacy and Law Enforcement

Can the school search my locker?

Yes, but only under certain circumstances. School officials can search your locker only if they have “reasonable suspicion” that it contains a prohibited or illegal object. School administration must post a sign or notice informing you that your lockers are subject to search.

What is reasonable suspicion?

Reasonable suspicion is a suspicion of wrongdoing based on specific facts and not on a mere hunch or rumor. For example, if the principal wants to search you because he or she thinks you “look like a drug dealer,” that isn’t good enough. But if another student tells the principal that he or she actually saw you dealing drugs, that may amount to reasonable suspicion, as can other observations about your behavior.

A teacher caught my friend using her cell phone in the hallway at school. She took my friend’s phone and started reading the text messages. Can the teacher just confiscate her phone like that?

It depends. If the school has a policy against cell phone use during the school day, then a school official may confiscate the phone because your friend violated school rules. However, in order to look through her text messages, the teacher must have reasonable suspicion that the messages themselves will reveal a rule violation. Even though you are at school, you still have a right to privacy in your belongings.

Can the school search the entire student body or an entire class just because they suspect one student?

No. There must be individualized suspicion that the student or students to be searched are violating school rules or the laws.

Can evidence that school officials find in a search be used against me?

Yes. Evidence seized in a search can be used against you in a school disciplinary proceeding or in a delinquency or criminal court proceeding, regardless of whether the search was conducted by a school official or the police. If the evidence is used in a court proceeding, the judge will have to first decide whether the official or the police officer’s search was lawful.

Do police have the same right to search students as school officials?

It depends. If the police are called to your school for a particular incident, the limits on their right to search students are the same as those on persons on the street. Police either need a court warrant or, if it is an emergency, they must have “probable cause” that a crime is being committed before the search. If the police officer conducting a search in a school is a “school resource officer” regularly stationed at the school, he or she does not need more justification than any other school official.

If a school official or police officer asks me for permission to be searched, can I say no?

Yes. You always have the right to say no to a search, and you should make it clear that you are refusing. If you agree to a search, you may turn an illegal search into a legal “consensual” search. However, you should not physically try to prevent a search, even if you think it’s illegal.

Do I have to answer if a school official or police officer asks me about criminal activity?

No. Even at school, you have a constitutional right to remain silent when questioned. As a general rule, it is better not to speak with officials or police about possible unlawful activity until you have spoken to your parents and a lawyer, and you should make it clear that you do not want to answer any questions until you have done so. You cannot be punished for refusing to answer a question by the police, though it may be grounds for school officials to discipline you.

If you are asked by a police officer for your name, and you refused to provide it you may be arrested and face a misdemeanor charge under Nebraska law. To comply with the law, you must state your true first and last name.

What if I am stopped by a police officer away from school?

Politely ask the officer, “Am I free to leave?” If the officer says yes, then calmly walk away. If the officer says no, then you must remain there. Remember, however, that you can still say no to a search or questioning. Other than providing your name, you do not have to provide any identification unless driving a car. If asked why you are saying no, tell the officer that you would like to speak to an attorney. Do not get into an argument with an officer, touch any officer, or physically interfere with a search or investigation.

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Ever since the beginning of school, I've been getting calls from the military recruiters pressuring me to join the armed forces. How can I get them to stop?

Chances are that the military recruiters got your home phone number from the school officials who are forced to release that information in order to obtain federal education dollars. According to the "No Child Left Behind Act," which was enacted by Congress in 2002, a student's name, address, and phone number must be shared with military recruiters or institutions of higher education.

Students or their parents or guardians may "opt out" by sending written notice to the school district that the schools do not have permission to share their information with military recruiters or institutions of higher education or both. Some schools provide their own opt-out forms. You should contact your school's administrative office to find out who should receive that form or letter.

Discipline

Is it legal for a teacher or school official to hit a student?

Under Nebraska law, teachers may use "corporal punishment." However, school officials may not use physical punishment that is excessive or cruel and unusual. Use of force by a teacher may violate your rights and should be reported.

When can a student be suspended or expelled?

In Nebraska, a student may be expelled for use of violence, force, threat or similar conduct, willfully causing or attempting to cause substantial damage to property, stealing property of substantial value, causing or attempting to cause personal injury to a school employee or student, threatening or intimidating a student for the purpose of obtaining money, knowingly possessing, handling, or transmitting a weapon, possessing or selling or using a controlled substance or alcohol, engaging in public indecency, engaging in bullying, sexually assaulting another person, or repeated violation of rules and standards of the school that are outlined in the school handbook provided to all students at the beginning of the school year. Before you can be suspended for more than ten days or expelled from school, you must be provided with adequate notice and the ability to request a hearing to determine whether you committed the offense.

If my school wants to expel me, do I get a hearing first?

Yes. You are entitled to a hearing, but you must request one. You must make the request for a hearing within five days of getting the school's official notice of expulsion. At the hearing, you have the right to have your parents and a lawyer present, to submit evidence that clears you of any wrongdoing, to present witnesses on your own behalf, and to cross-examine witnesses.

Are there special rules for suspending or expelling disabled students?

The federal Individuals with Disabilities in Education Act (IDEA) protects disabled students from being removed from the classroom if the conduct leading to suspension or expulsion is a manifestation of his/her disability. Unless the charge is for carrying a weapon, seriously hurting another, or drug possession, the school must hold a hearing within ten days to determine if this is the case. Even if the school ultimately finds that a disabled student may be suspended or expelled, the district must provide education in an alternative setting.

Immigrant Student Rights

Are non-English speaking kids entitled to an education?

Yes. If a student cannot follow what's going on in class, he or she is effectively being denied equal access to education. Public schools must therefore provide instruction for limited English proficient students.

Can the school require me to tell them what my immigration status is?

No. Schools may not ask about the immigration status of a student or parent. Likewise, the school may not deny educational benefits if the school learns or suspects a student is present without documentation.

A friend of mine is really worried because her parents are undocumented immigrants. If the school finds out, can she get kicked out?

No. Everyone living in the U.S. has a right to free and full public education. She should not be discriminated against at school because of her immigration status.

Do I have to answer a police officer's questions about my immigration status?

No. You must give them your name, but beyond that you have the right not to answer any questions, including questions about you or your family's immigration status. It is a good idea to speak with a lawyer before you answer any questions or sign any papers. If you say you are not a U.S. citizen and cannot prove that you are in the country legally, you may be arrested. However, if you do not have a valid immigration document, it is important that you do not show the officer fake documents. Do not lie or say you are a U.S. citizen if you are not. Also, do not carry papers from another country.

After I graduate from high school, I want to attend college. I have been told that I cannot get financial aid or in-state tuition because of my immigration status. Is that true?

In 1996, Congress passed a federal law prohibiting undocumented students from receiving in-state tuition rates at public institutions of higher education. Nebraska does grant in-state tuition benefits to undocumented students as long as they have lived in Nebraska for three years and have graduated from a Nebraska high school.