



Students: Know Your Rights

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

First Amendment to the US Constitution

1. Do students have the right to freedom of expression in school?

Yes. Under the Tinker standard, students have the right to freedom of expression as long as they do not "materially and substantially" disrupt the operation of the school or violate the rights of others. Chapter 71, section 82 of the Massachusetts General Laws (the Student Free Expression Act) puts this standard into state law. It reads:

"The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include, without limitation, the rights and responsibilities of students, collectively and individually (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions."

In 1996, the Supreme Judicial Court of Massachusetts held in *Pyle v. South Hadley School Committee* that the statute "is unambiguous" and protects the rights of students as long as their expression of views is not disruptive. The Act therefore protects T-shirts which could be considered "vulgar," but which do not disrupt the educational process. The *Pyle* decision gives Massachusetts students the broadest free speech rights in the country.

2. So can I say or publish anything I want in school?

No. Students' First Amendment rights are not absolute. For example, you cannot say or publish hurtful lies about people. This is called slander (if you say it) and libel (if you publish it). You can be sued for both. The law on libel, however, is different when the person you're discussing is a public figure like a politician.

The law is also different when a student's speech is "school-sponsored," as in a school newspaper or play. The *Fraser* and *Hazelwood* cases, decided in the 1980s, gave school authorities in most parts of the country (but, thanks to the Student Free Expression Act, not in Massachusetts), wide discretion to censor anything which could reasonably be considered to be part of the school's curriculum. Lower courts around the country have differed as to when non school-sponsored, private student expression can be censored.

Finally, just like the rest of society, students must obey obscenity laws.

3. Can students hold demonstrations or other forms of protest during the school day?

Yes. School officials cannot stop a demonstration simply because they don't like its message. Demonstrations can only be prohibited if the conduct of the *demonstrators* would substantially disrupt the school. Authorities cannot judge a demonstration by the reaction of its audience. If other students react badly to a protest, administrators should take steps to deal with *that* disruption.

4. *Do I have a right to pass out leaflets at school?*

Officials can only prevent the distribution of a leaflet if they are sure it would cause a major disruption. But administrators can set certain rules to make sure that students distribute their leaflets in a "reasonable time, place and manner." for instance, you can't interrupt a class in session, or block the halls and disrupt the flow of traffic while distributing your leaflets.

5. *Can school officials remove books they don't like from the school library?*

No. In 1982, in the case of *Island Trees Union Free School District v. Pico*, the Supreme Court ruled that because school libraries provide an "environment especially appropriate for the recognition of the First Amendment rights of students," officials could not "remove books from school library shelves simply because they dislike the ideas contained in those books." But authorities do have "significant discretion" to decide what goes in the libraries in the first place. In some states (not Massachusetts), courts have permitted the removal of books with "inappropriate language" or those not in keeping with "community standards."

6. *Can schools ban religious or other clubs which might be considered controversial?*

Congress passed the Equal Access Act in 1984. This made it unlawful for school authorities to bar certain student-initiated groups (including religious ones) from meeting after school if school facilities are available to other student-run groups.

7. *Do I have to participate in religious exercises in school?*

No. The Supreme Court has held that school prayers and Bible readings violate your right to freedom of religion, even if they are nondenominational and voluntary. In 1992 the Supreme Court decided in *Lee v. Weisman* that nondenominational prayers at graduation ceremonies were also unconstitutional. In later rulings the Court barred student-led group prayers assemblies and sports events.

But students have the right to pray individually or in groups or to discuss their religious views with their peers so long as they are not disruptive and don't force other students to participate. Students can also distribute religious literature in school as long as they obey the "reasonable time, place and manner" rules.

8. *Do I have to say the Pledge of Allegiance?*

No. You can remain quietly seated -- but you cannot disrupt the proceedings.

Matters of personal appearance -- dress codes and rules regarding the length of hair -- relate to freedom of expression and rights to due process and privacy. The Supreme Court has never ruled on whether public schools can regulate personal appearance, which means there are different standards in different parts of the country, according to how lower courts have ruled. In general, federal courts have been more supportive of a student's right to choose a hair style, since your hair cannot be changed as easily as a T-shirt, or removed like a hat.

1. Can school officials regulate the way I look?

In the last few years several school districts in the state have joined the nation-wide trend and adopted school uniforms. The courts in Massachusetts have not had the opportunity to rule about whether these dress codes are constitutional if there is no "opt out" provision for students on religious grounds or financial support given parents who cannot afford to purchase uniforms.

Chapter 71, section 83 of the Massachusetts General Laws states that "school officials shall not abridge the rights of students as to personal dress and appearance except if such officials determine that such personal dress and appearance violate reasonable standards of health, safety and cleanliness." This "model dress code," though passed by the state legislature, applies only to the cities and towns which have adopted it. See your local school board if you would like this section to be adopted in your town.

2. What about my hair?

In 1970, in the case of *Richards v. Thurston*, the First Circuit Court of Appeals ruled in favor of a 17-year-old student in Marlborough, Massachusetts, who was suspended for violating a school rule against "unusually long hair" on men. The court ruled that his hair was protected by the Due Process Clause of the Fourteenth Amendment which "establishes a sphere of personal liberty for every individual" as long as the exercise of that liberty does not interfere with the rights of others.

In 1995 a Massachusetts Superior Court invoked *Richards v. Thurston* to uphold the right of a student at a vocational technical high school to wear his hair as he chose. It struck down the school's "good grooming provision," which barred hair from measuring more than two and one-half inches below the ear.

3. Can teachers make me take off my hat?

Probably. Hats are not like hair -- they do not have to grow back when removed. Courts have been reluctant to interfere with regulations barring hats in schools or classrooms.

4. Can school officials ban message clothing?

Thanks to the *Pyle* decision (*see page 2*), they can only do so in Massachusetts if such clothing disrupts the educational process. In other states schools can ban messages they regard as indecent, lewd, profane, or vulgar.

Some schools also bar students from wearing T-shirts featuring beer slogans, cigarettes, or illegal drugs. There has never been a case on these kinds of shirts, but it should be pointed out that talking about something illegal, even on a T-shirt, is not the same thing as doing it.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."
Fourth Amendment to the US Constitution

1. Can school officials search my belongings?

Sometimes. Outside the school, law enforcement officers need to obtain a warrant from a magistrate before they can conduct a search. To get a warrant, an officer needs "probable cause" -- really solid grounds -- to believe that a search will reveal evidence of wrongdoing.

There are obvious difficulties in applying the Fourth Amendment to students in a school setting. During the 1980s, when drugs and weapons were seen as growing problems in schools, officials complained that the need to obtain a warrant before conducting a search made it impossible to keep schools running smoothly and safely.

In 1985, the Supreme Court ruled for the first time on the subject of school searches, and decided that the Fourth Amendment *does* apply to students, after a fashion. The case was *New Jersey v. T.L.O.*, involving the search of a purse belonging to a 14-year-old girl accused of smoking in the school bathroom. The Court ruled that school officials do not need a warrant or probable cause to search a student's belongings. Instead, students could be searched on "reasonable suspicion" -- more than a mere hunch -- that they have violated a law or school rule. To be constitutional, a search had to meet a "two-pronged test" -- authorities have to have a sound reason to expect evidence of wrongdoing to be found, and the searches must not be excessively intrusive.

If there is an issue of public safety at stake, such as a report that a student is carrying a gun, courts will generally uphold a search as reasonable. On the other hand, most courts have found that strip searches are for the most part not reasonable, and that they should especially not be carried out on young students. Metal detectors, as long as they are not used on all students, probably do not violate due process. But singling out certain students or types of students for metal detector searches may violate the Equal Protection Clause of the Fourteenth Amendment.

2. Are drug tests legal in schools?

The US Supreme Court has ruled that mandatory drug tests are constitutional for after-school sports and other extra-curricular activities. This means that there does not always need to be "individualized suspicion" that a student is using drugs to conduct a drug test.

3. Can a whole class or group be searched?

Perhaps in emergency situations, where public safety is at stake. To conduct a legal school search, there must usually be some "reasonable suspicion" that an individual or group is breaking a school rule. To search an entire school body to solve one infraction of the rules would probably be considered unreasonable. Dog sniffs of lockers and belongings and even students have been upheld by some courts, but others have made a distinction between dogs sniffing students (which is not permissible without good cause) and sniffing lockers, backpacks, and cars.

4. *Can my locker be searched?*

School authorities argue that since lockers belong to the school, the school has the right to search them at any time. However, there is no consensus about whether officials can search the contents of your locker without "reasonable suspicion." Some courts have held that there is a "reasonable suspicion" to examine your locker if it is singled out during a dog sniff for drugs. If your school handbook says that your locker is private, then you would have a reasonable "expectation of privacy" when using the locker.

5. *Can I refuse to be searched in school?*

Yes, but you must clearly say so. However, if you agree to a search which would otherwise be illegal because of the way it is conducted, anything found can still be used against you in a disciplinary or criminal hearing.

6. *Can a police officer search me in school?*

Only with a warrant and "probable cause" or during a grave emergency. The police can "stop and frisk" you -- pat you down -- only if they have reasonable suspicion that you are armed and breaking the law. To do a more thorough search, they must place you under arrest.

"No State shall...deprive any person of life, liberty, or property, without due process of law."

Fourteenth Amendment to the US Constitution

1. *What is due process?*

Due process means that all people must be treated fairly, according to certain specified procedures.

2. *What are my due process rights in school?*

Students were extended due process rights in 1975 when the Supreme Court decided *Goss v. Lopez*, a case which arose out of student unrest at a school in Columbus, Ohio. The Court ruled that "due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." If a student is facing more serious penalties, the Court said he or she is entitled to a full-scale hearing by an impartial tribunal, involving witnesses and lawyers and the right of appeal.

In 1993, the Massachusetts state legislature passed the Education Reform Act, which gave principals the right to expel students carrying weapons or drugs of any sort into school or for engaging in threatening conduct. Students have a hearing before the principal, rather than an impartial tribunal. School authorities decide what constitutes a "dangerous weapon." School districts do not have to provide any form of alternative education for expelled students, no matter what their age.

3. *Do schools have to have written codes of discipline?*

Not everywhere, but in Massachusetts, schools cannot enforce a rule unless it has been published and approved by the school committee.

4. Can I be punished at school for something I did off-campus?

Probably, if it affects your behavior at school in a way that endangers you or others, if it took place during a school-sponsored field trip or sports activity, or if it occurred near the school, for example when you were on your way home. But for the most part, courts have held that schools have no business interfering in what you do at home or out of school. chapter 71, section 84 of the Massachusetts General Laws states, "No student shall be suspended, expelled, or otherwise disciplined on account of...conduct which is not connected with any school-sponsored activities...." This provision, however, is binding only on school districts that adopt it.

5. Is physical punishment at school legal?

The Supreme Court upheld the use of corporal punishment in schools when it decided *Ingraham v. Wright* in 1977. Two junior high students brought this case after they were paddled very severely for a minor rule infraction and for being slow to answer a teacher's questions. The Court decided that this was not "cruel and unusual punishment." It also denied the students the rights of due process -- they did not have to be given a hearing before being punished.

Massachusetts and about 20 other states have made corporal punishment illegal.

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State...deny to any person within its jurisdiction the equal protection of the laws."

Fourteenth Amendment to the US Constitution

1. Can schools discriminate against me because of my race, gender, religion or sexual orientation?

No, no, no and no. *Brown v. Board of Education*, a Supreme Court case decided in 1954, established that racial discrimination in schools is a violation of the Fourteenth Amendment. This applies to enrollment in schools, classes, extracurricular activities and clubs.

Gender discrimination is also illegal under Title IX of the Education Amendments of 1972, which prohibits sex discrimination in schools that receive federal money. Girls and boys must get the same educational and extracurricular opportunities, including on the sports field.

The First Amendment protects your right to free exercise of religion. You cannot be excluded from any school group or denied access to school property because of your religion. Neither can you be sent home for wearing religious symbols.

In 1993, the state Student Advisory council to the Board of Education, and students from around Massachusetts, persuaded the state legislature to pass a law prohibiting schools from discriminating against students because of their sexual orientation.

2. What is sexual harassment?

Sexual harassment is unwelcome conduct (verbal or physical) of a sexual nature that creates a hostile educational environment. It is regarded by the courts as a form of gender discrimination covered by Title IX. In 1992, the Supreme Court decided the case of *Franklin v. Gwinnet County Schools* in favor of a student who charged that school officials had known about and failed to prevent a teacher from sexually harassing her. The Court said students who experience discrimination -- including harassment -- can seek monetary damages from schools under Title IX. In a later ruling the Court said schools could also be liable in cases of peer-to-peer harassment.

Schools should have in place policies against sex discrimination and harassment, as well as complaint procedures.