

# Students!

## KNOW YOUR RIGHTS



Third Edition, November 2010

# Important

The material provided here is for informational purposes only, and is current as of September 2010. It is not meant to be and should not be taken as legal advice, nor should you rely on this information instead of seeking the advice of an attorney. The legal issues surrounding civil rights and civil liberties are complex, and a person's rights may vary from case to case depending on small and subtle details. Only a lawyer who has taken the time to become fully aware of the facts in a given case can provide you with sound legal advice.

If you feel your rights have been violated, contact an attorney at once. The law imposes time limits on most actions to defend your rights, so it is important to act quickly. If you do not know how to reach an attorney, call the Lawyer Referral Service of your local bar association. They will be able to direct you to a lawyer experienced in the type of law involved in your case.

If you are under 18, finding a lawyer can be difficult. Many lawyers do not represent minor clients without a parent's permission. If it is possible, speak to a trusted adult about finding a lawyer. Legal clinics based in universities may be able to assist minors in figuring out their legal options.

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# Introduction

This handbook outlines your rights as an Ohio public school student. It is important to note that some of the rights discussed may apply only in Ohio or only to students in public school.

Over the years, the courts have defined which limits on student rights are constitutional and which are not. Schools must balance the need to provide a safe and orderly environment against a student's rights to privacy, free speech, and religion. As a result, you have fewer rights in school than you do outside of school. The law constantly changes, and the trend has been towards further limiting student rights, especially in light of growing concerns about violence and drugs in schools. Visit [www.acluohio.org](http://www.acluohio.org) for the latest news and updates on student rights.

With so many unresolved issues muddying the legal landscape, the ACLU is working vigorously to defend and extend the rights and protections of students.

Here's what you can do to protect your rights in school:

- **Read your school's policy guide or student handbook.** You can get a copy from the board of education, the school's main office, or even online.
- **Talk to your parents, teachers or other school officials** if you think someone's rights have been violated.
- **Learn more about your rights.** Contact a counselor, teacher, attorney, or the ACLU for more information. The ACLU of Ohio has numerous publications available in print and online at [www.acluohio.org](http://www.acluohio.org).
- **Start or join an ACLU club** to educate your school on civil liberties.
- **Become a member of the ACLU.** You can join online at [www.acluohio.org](http://www.acluohio.org).



## Freedom of Speech and Expression

During high school, it's natural to want to express who you are, what you like, and what you think. You might choose to express yourself by the way you dress, the music you listen to, the websites you create and read, and the politics in which you participate. The First Amendment protects all of these rights, and these rights are not left outside the schoolhouse door.<sup>1</sup> But certain student rights can still be limited to prevent disruptions.

### *Time, place, and manner restrictions*

Schools can impose reasonable rules and restrictions on when, where, and how students may express themselves. For example, while you do have the right to express your opinions, you do not have a right to speak out in the middle of class on an unrelated topic.

### *Content-based restrictions*

Although schools are not allowed to suppress your political views, they can limit some expression in order to teach “the boundaries of socially appropriate behavior.”<sup>2</sup>

Schools may regulate the following types of speech:<sup>3</sup>

- school-sponsored speech (which may take place in a classroom, at an assembly, or at a graduation ceremony);
- vulgar, lewd, and offensive speech;
- speech that causes a disruption in school or is reasonably likely to;
- speech that interferes with other students' rights;
- speech that incites other students to illegal activity;<sup>4</sup>
- speech that celebrates drug use;<sup>5</sup>
- speech that is "obscene;"<sup>6</sup>
- speech that makes false personal attacks.

School officials will determine when speech falls into one of these prohibited categories. For example, a school official might find a message obscene even if a student does not. Although school officials make these decisions, they must maintain objectivity. The officials cannot act just because they do not like a message.<sup>7</sup>

## Student clubs

### *Equal Access Act*

Under the Equal Access Act,<sup>8</sup> student groups in public high schools may not be denied access to the facilities for meetings if other "non-curriculum related" groups are allowed to meet on the property before or after school. The school may not discriminate against a group based on the religious, political or philosophical nature of its activities.

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*Greg wants to form a student chapter of the ACLU at his public high school. School administrators do not want any controversial clubs at the school, and have forbidden him from having such a group. Instead, they suggested that he start a break-dancing club that will not involve politics. Is this okay?*

No. The Equal Access Act applies here. If the school permits any other non-curriculum related groups, then it must allow an ACLU club as well. School officials may not discriminate based on the political nature of the group.





A student group is “non-curriculum related” if:

- the subject matter of the group is not taught in a class;
- the group’s subject matter does not concern the student body as a whole; and
- participation in the group is not required for a course and does not result in credit.<sup>9</sup>

For example, a French club that teaches French would likely be “curriculum related” under the Equal Access Act, but a community service group is usually considered a “non-curriculum related club.”

If your school does permit extracurricular clubs, it must ensure that:

- the meetings are voluntary and student-initiated;
- the meetings are not sponsored by your school or the government;
- the meetings do not interfere with school activities; and
- people from outside your school do not regularly participate in the group’s activities.<sup>10</sup>

## Did you know?

Many high schools have tried to ban gay-straight alliances (GSAs) from meeting at school. Some federal courts have struck down these attempts and ordered school administrators to allow GSAs to meet.<sup>11</sup> If your school refuses to let you start such a club, contact the ACLU.<sup>12</sup>

The law does not require a school to provide any funding for student group meetings other than the cost of using the school space. It also provides school officials with the authority to maintain order and discipline on campus. Most schools have a policy on student groups, so you should familiarize yourself with the rules before forming a club.

### *Religious clubs*

Students are allowed to form religious clubs under the law, but school and government officials cannot influence the club's activities or require anyone to participate.<sup>13</sup> Faculty and staff members may attend the meetings, but they cannot participate.<sup>14</sup>



### *Gay-straight alliances*

Gay-straight alliances (GSAs) are student clubs that work to address bullying and harassment of lesbian, gay, bisexual and transgendered (LGBT) students. These groups promote respect for all students, regardless of sexual orientation.<sup>15</sup>

The Equal Access Act allows students to form GSAs or other clubs that promote the rights of LGBT students. Public schools may not prohibit GSAs if they allow other non-curriculum related groups — no matter how administrators feel about the clubs' message.<sup>16</sup>

### *Bulletin boards*

Schools often provide bulletin boards for student clubs to use. If your school allows even one club to post flyers and other information on its bulletin board, then it must allow *all* student clubs to do so. Schools cannot prohibit some clubs from using the bulletin boards because they do not agree with the opinions of those clubs. However, your school *can* forbid students from putting up flyers that are obscene or promote violence.

### **Newspapers and handouts**

The First Amendment protects speech, including newspapers and other publications. But students don't always have the same protection as adults. Schools can regulate your speech in order to maintain school safety and their educational mission.<sup>17</sup>

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*On her way to school, Bitta was stopped by a member of the Gideons who tried to give her a Bible. She was very upset about this because she is not religious. She complained to her principal, who told her that the Gideons have the right to distribute Bibles. Is her principal correct?*

It depends on where the Bible distributor was when he gave Bitta the Bible. Bibles cannot be distributed on school property or during regular school hours.<sup>18</sup> However, it might be allowed if she received the Bible on a public sidewalk in front of the school.<sup>19</sup>

Different standards apply depending on whether a student newspaper is under the control of the school administration, or under the control of the students.<sup>20</sup>

There are different standards for students when speech is school-sponsored.<sup>21</sup> The U.S. Supreme Court defines “school-sponsored speech” as any activity that parents, students, and community members would think that the school approved of.<sup>22</sup>



Schools may control the content of school-sponsored speech, including student newspapers, yearbooks, literary magazines, on-campus videos, and radio broadcasts. Schools can ban publication of materials that they think substantially interfere with schoolwork or that might infringe on the rights of other students.<sup>23</sup>

School officials can control the content of school-sponsored publications for educational reasons.<sup>24</sup> This means that schools can edit writing that they think is “ungrammatical, poorly written, inadequately researched, biased, prejudiced, vulgar or pro-

fane, or unsuitable for immature readers.”<sup>25</sup>

However, different rules apply to publications that are mostly student-run, and they enjoy greater protection from censorship by school officials.<sup>26</sup> In deciding whether a newspaper is student controlled and subject to greater protection under the First Amendment, the court will look at the school’s policies and practices to see if the school has always controlled newspaper content or if it historically left most content decisions up to the students.<sup>27</sup>

Schools cannot remove an article from a student newspaper simply because they don’t agree with the views expressed in the article.<sup>28</sup> They also cannot censor an article that criticizes the school or school officials.<sup>29</sup>

But what if you’ve produced a publication off campus and with your own resources? As long as the publication isn’t sponsored or funded by your school and isn’t part of a class or school project, then your school cannot control its content.<sup>30</sup> Further, in most cases, students can distribute these publications to other students without prior approval from the school.<sup>31</sup>

A school may forbid distribution of publications on campus if the content is vulgar and offensive or might interrupt school-work.<sup>34</sup> And schools can still restrict the time, place, and

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*Cara made a website on her home computer to show off her skateboarding skills. Some of the student skateboarders made crude gestures in the pictures and videos. She also called certain school administrators and other students “losers.” The school suspended Cara for the rest of the year and one insulted teacher lowered her grade. Is this OK?*

The school cannot punish Cara for what she did outside of school, no matter what her website says, unless it causes a disruption in school or if it contains “true threats.”<sup>32</sup> A school or a teacher cannot lower a student’s grades just because the student said something bad about the school or a teacher.<sup>33</sup>

manner of distribution of publications, even when they are not school sponsored.

### **Online speech**

The First Amendment protects Internet content the same way that it protects books, speeches, and newspapers.<sup>35</sup> If you use the Internet at school your activity can be regulated just like school-sponsored speeches and newspapers, based on where the website, email, or blog is created.

Schools generally cannot punish you for what you say or print on your own time with your own resources. For example, an Ohio court found that a school could not discipline a student because school officials did not like the content of his personal website.<sup>36</sup> Emails sent from home to a friend's home are usually considered speech outside of school.

A school may limit your online speech if it is created during school hours, using school resources (such as the school computer lab), or if it will disrupt school activities. Your school can create guidelines for what is appropriate content, such as prohibiting vulgarity or blatantly sexual content. But before the



school can punish you or censor your message, the school board must first point to a specific reason as to why your speech would disrupt classroom activities.<sup>37</sup>

Schools may discipline students for speech that disrupts school. Courts have required that the speech substantially interfere with school activity in order for a student to be disciplined. Fear that speech may disrupt things; speech that leads to discussion or even heated debate; or speech that a school official dislikes are not sufficient reasons to stifle speech.<sup>38</sup>

### *True threats*

Schools generally cannot discipline students for online activity or speech that occurs entirely outside of the school setting. The only exception is for “true threats” made against someone else in the school; then schools may discipline the student making the threat according to the school’s policy.<sup>41</sup>

True threats are plans for harming other students, school officials, or yourself. Threats of violence are not protected by the First Amendment.<sup>42</sup>

If a website, blog, or email contains a true threat, school officials can punish a student for creating it and/or notify the police of potential danger.

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*Justin wrote rap lyrics and put them up on the Internet. The rap lyrics referred to killing some of Justin’s fellow students. Justin wrote the lyrics at home and put them on the Internet from his home computer. The school suspended Justin, saying that the lyrics were a true threat and that they have the right to punish him for the content of the lyrics. Are Justin’s lyrics a true threat?*

It depends. Some courts have ruled that rap lyrics alone are not a true threat.<sup>39</sup> However, if the lyrics or the website contained anything else besides the lyrics, such as instructions, pictures of the weapons, or a detailed plan, the website could be seen as a true threat.<sup>40</sup> If it is a true threat, Justin could be in trouble with the school and the law.

### *Cell phones and personal electronic devices*

Schools may place restrictions on cell phone and computer use during school time, on school property, and utilizing school resources. For example, a school can reasonably require that cell phones be turned off during class.<sup>43</sup> For information on cell phone searches, please see the Search and Seizure section.

### *Sexting*

Sexting is a term used to describe taking, sending, receiving or displaying nude photographs or photographs depicting a sexual act via a cell phone, email, blog or other online communication. According to a 2009 study done by the National Campaign to Prevent Teen and Unplanned Pregnancy, one in five teens has been involved in sexting.<sup>44</sup>

The practice can have legal and psychological consequences.

Some states treat sexting as a crime and Ohio is one of them. You could be charged with producing or distributing child pornography, a felony, if you engage in sexting.<sup>45</sup>



This includes taking or sending your own nude photo, taking or sending a nude photo of someone else, or receiving a nude photo of someone, even if you did not ask to receive it. If you are found guilty, you could face prison time and/or have to register as a sex offender.<sup>46</sup>

Sexting also can result in emotional and reputation damage from having intimate photos of yourself sent to a friend who later may decide to send it to everyone they know. Such photos can also be distributed and archived on line for people to access far into the future.



Since sexting carries serious legal and psychological consequences, if school officials find out you are sexting, they will likely contact your parents and perhaps also the police. It is best to avoid these problems by not engaging in sexting and to delete any sexting photos you might receive.

## **Censorship**

### *Textbooks and libraries*

The U.S. Supreme Court does not allow a school to remove books from school library shelves simply because the school officials dislike the ideas they contain. The Court views school libraries as the main place where students exercise their freedom to learn.<sup>47</sup> But schools have wide leeway about what books they select for, or remove from, the libraries. For instance, a book can be removed if it is “pervasively vulgar,” or if it is not “educationally suitable.”<sup>48</sup>

Schools have broader control over textbook and curriculum selections (books you read for class). The Supreme Court recognized that schools bear the task of teaching community values and can select books in line with those values.<sup>49</sup>

### *Internet*

Schools often block Internet content on school computers based on guidelines they create. There is a disagreement as to whether a school should be able to block access to certain sites. Some argue that certain sites are disruptive and contain improper content for in-school reading. Others say that blocking some sites may prevent students from having access to useful resources. If you believe your school has blocked a site unfairly, speak to your teachers or principal about why you think there should be access.

## **Dress codes**

Clothes can be a form of silent expression, and like regular expression, your clothes cannot disrupt school.<sup>50</sup> Even though

there is legal protection for silent expression under the First Amendment, Ohio law allows school boards to make reasonable dress codes.<sup>51</sup> Just because you do not like your school's dress code, that alone is not enough reason for a First Amendment challenge.<sup>52</sup> If you are concerned that something you wear might get you in trouble, check to see if there is a dress code and if the school actively enforces it.

Some school boards believe a dress code helps maintain a safe and orderly educational environment.<sup>53</sup> Courts have held that dress codes must balance students' rights to dress as they wish against the school's interest in maintaining this safe and orderly environment.<sup>54</sup>

### *School uniforms*

Ohio law allows school districts to adopt a policy requiring students to wear a uniform or follow a strict dress code as long as the school meets four conditions:

- Suggestions must be taken from administrators and parents before mandating any uniform.
- Parents must be given six months notice before implementing a uniform or changing a uniform.
- Economically disadvantaged students must be helped in obtaining the clothing required for a uniform.

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*Mindy has blue hair and a tongue ring. Her old school did not have a problem with her look, but her new school has asked her to take out her tongue ring and dye her hair back to a regular color. Can her new school stop her from having blue hair and a tongue ring even if her old school did not?*

Yes. A school can have reasonable dress codes, including bans on piercings, tattoos, or certain prom or graduation attire. Even if one school allows dyed hair and piercings, that does not mean that a different school must allow the same thing.<sup>55</sup> In fact, some courts do not see tattoos and piercings as protected speech under the First Amendment at all, so schools can make rules as they see fit.<sup>56</sup>

- A uniform policy must provide exceptions for students who occasionally wear a special uniform as part of a nationally recognized youth organization, such as the Scouts.<sup>57</sup>

### *T-shirts*

School officials cannot ban t-shirts simply because they do not like the message. However, school boards can ban t-shirts with “indecent” speech or messages that could cause violence or disruption in school.<sup>58</sup> Many courts have addressed what kinds of t-shirts are permissible in school. For example, your school may not forbid you from wearing a t-shirt that criticizes the President or that contains any other political message, because the First Amendment covers political speech, even in school.<sup>59</sup> On the other hand, courts have said that a school can make rules limiting speech containing vulgar language, sexual innuendo, or messages that promote suicide, drugs, alcohol, or murder.<sup>60</sup>

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*LeBron wore a sports team jersey to school and was suspended from school for wearing gang clothing. Some older kids in the neighborhood wear the sports team jerseys and hats to show that they are in a gang, but LeBron just likes the sports team. Can the school punish LeBron for wearing the sports team jersey?*

Maybe. Schools in Ohio are allowed to have a dress code to help maintain a safe and orderly environment. However, some courts have found that rules banning “gang clothing” or “gang activity” are not specific enough to justify punishing a student. Such policies leave the definition of gang clothing or activity up to the school board, something that is not allowed under First Amendment law.<sup>61</sup> If the school wants to ban a certain article of clothing, it must tell the student body in advance or have a specific reason why that type of clothing would cause disruption or violence at school.

# Religious Freedom

The First Amendment guarantees the right to practice the religion of your choice and ensures that the government does not force you to practice religion if you don't want to. The aim of the First Amendment is that all faiths must be tolerated and none favored.<sup>1</sup>



## Religion in school

The separation between church and state is especially important in public schools. Why? Unless you are home-schooled or privately educated, you are required by law to attend a public school, which brings together people of many religious backgrounds in a secular learning environment.

Schools can teach *about* religion in the context of literature, history, or culture, but they cannot favor one religion over another or force anyone to believe in, observe, or practice a religion. Nor may schools conduct or promote religious activities.

As a student, you do have a right to express religious viewpoints and wear religious symbols, as long as those expressions don't disrupt school activity. Schools may not show favoritism in what religious expression they allow.

### **Intelligent design**

Some religious groups object to the teaching of evolution in science classes because, in their view, it contradicts the Bible's teachings about the creation of the universe. These groups want schools to teach an alternative to evolution, such as creationism or intelligent design.

In 1987, the U.S. Supreme Court held that laws requiring schools to teach creationism alongside evolution violate the First Amendment.<sup>2</sup> Schools cannot restructure science classes to "conform with a particular religious viewpoint."<sup>3</sup>

Some religious groups want schools to teach intelligent design, which is similar to creationism. A Pennsylvania court held that teaching intelligent design violated the First Amendment.<sup>4</sup> The court stated that intelligent design is a type of creationism and is a religious theory, not a scientific one.<sup>5</sup>

## **Definitions**

**Creationism** — A belief in the literal interpretation of the Bible regarding the creation of the universe and of all living things.

**Evolution** — Changes in the genetic composition of individuals within a population that over generations result in the development of a new species.

**Intelligent design** — A belief that nature and living things were designed by intelligent beings and were not created by chance.<sup>6</sup>

**Secular** — Not specifically relating to religion or to a religious body.<sup>7</sup>

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*Kelly is an atheist. She does not want to say the Pledge of Allegiance at school with the rest of her class because of the line “One nation, under God.” Does she have to say the Pledge?*

No, Kelly does not have to say the Pledge. State law allows local school boards to determine whether to make reciting the Pledge of Allegiance in the classroom mandatory.<sup>8</sup> The law also allows teachers to choose to recite the Pledge in their classrooms, even if it is not required by board policy. If the Pledge is recited in your classroom, the law says that individual students may refuse to participate and cannot be punished for not saying the Pledge. The U.S. Supreme Court has held that forcing a student to recite the Pledge is unconstitutional.<sup>9</sup>

Ohio passed a plan in 2004 to allow for the teaching of intelligent design in public schools, but due to public opposition, the state school board voted in 2006 to remove intelligent design from the high school science curriculum.

### Prayer

As a student, you are free to pray on your own at school, but school staff cannot be involved in student prayer.

Public school officials are not allowed to lead students in prayer or Bible-reading sessions.<sup>10</sup> In Ohio, even public school boards cannot open their meetings with prayer.<sup>11</sup>

The U.S. Supreme Court has said that school-sponsored or voluntary moments of silence are sometimes allowed

because silence itself is not religious.<sup>12</sup> But schools may not set aside moments of silence that are intended for prayer, even if a student can choose to “opt-out” of the prayer.<sup>13</sup>

Ohio law allows teachers to provide their students with



## Did you know?

Public schools may not hang pictures of Jesus<sup>14</sup> or the Ten Commandments<sup>15</sup> inside classrooms or hallways. Such displays would represent a school endorsement of religion, which is not allowed under the First Amendment.

“reasonable amounts of time for programs or meditation upon a moral, philosophical, or patriotic theme.”<sup>16</sup> Ohio law also says that you can choose not to participate in a program or meditation if it goes against your or your parents’ religious beliefs.<sup>17</sup>

### **Sporting events**

Student-led prayer is a controversial topic that often comes up at sporting events, in locker rooms, or on the loud speaker before the game. The U.S. Supreme Court ruled that the First Amendment does not allow school-sponsored prayer at sporting events, even if led by students, because it would be coercive and unfairly discriminates against people of a different religion and people who do not believe in religion.<sup>18</sup>

Courts have held that the First Amendment prohibits students from holding an election to decide whether to pray at a school-sponsored event. If an election were to favor a majority of students who prefer a religious message, it would ignore a minority of students who might feel uncomfortable with that message.<sup>19</sup>

### **Graduation speech**

Sometimes school officials or students want to include a religious message in graduation speeches. The Supreme Court has ruled that public schools may not insert religious messages into graduation speeches, nor may religious leaders (clergy) deliver graduation speeches, even if the school attempts to make the speech secular.<sup>20</sup> Moreover, schools cannot allow students to make religious speeches at school events.<sup>21</sup>

## **Religious dress**

Schools may not prohibit religious attire in general, and they cannot single out a specific religion by forbidding certain attire. For example, many Sikh (pronounced “seek”) people wear a turban head covering and some carry ceremonial daggers. Schools cannot ban Sikh attire in general, but they may ban all knives, including Sikh ceremonial daggers, for safety reasons.<sup>22</sup>



## **Religious events**

The courts have said it is okay to distribute flyers at school for community events of a religious nature that are not school sponsored, and this does not violate the First Amendment.<sup>23</sup> The U.S. Supreme Court noted that students know the difference between school-sponsored events and outside events requiring parents to sign permission slips.<sup>24</sup>

Under current law, public schools generally may acknowledge and discuss religious holidays, as long as its focus is educational and not religious.

Schools may erect holiday displays, convene holiday assemblies, and sponsor concerts as long as they do not give the impression of endorsing religion. For example, it might be acceptable for schools to include Christmas trees or Chanukah menorahs or other holiday symbols in activities, since the courts have said these are not necessarily religious symbols.<sup>25</sup>

Schools may hold holiday concerts or activities, so long as they do not give the appearance of endorsing religion. The context of the event – music selection, what the school says about the



program, and location of the concert – will determine whether the holiday program offends the First Amendment.

If the majority of the concert includes overtly religious songs or all of the religious songs in the program are from only one religion, then the concert might not be considered neutral.

If the choir teacher's instruction or the concert program explains that the selection of the material in the concert was for the teaching quality of the material, its artistic merit or its historical significance, then the purpose of the selection is less likely to be viewed as religiously based. However, if the program notes indicate that the music was chosen because of its religious connections or preferences, then the concert may not be considered neutral.

The way that the concert is advertised to the general public or promoted at school may have an effect on whether the concert is viewed as an endorsement of religion. If the concert is performed at a religious institution, then audience members may be more likely to view their attendance at the concert as a form of religious worship. The presence or absence of religious leaders as part of the concert is another factor in whether the concert is seen as endorsing religion.

If a program does give the impression of promoting religion, allowing students to opt out of such programs is not an adequate compromise, since the school would still be promoting religious beliefs.

# Search and Seizure

In most circumstances, a search by police requires a search warrant, which is advance written permission from a judge. Police must base their search on **probable cause** (see box below).

The Fourth Amendment's search and seizure restrictions apply to public schools, but, despite this, the courts give school officials and police more leeway to conduct searches in school.<sup>1</sup> Courts balance a student's privacy rights against the school's interest in safety and student discipline.<sup>2</sup> The invasiveness of a search must be reasonably related in scope to the circumstances that justified the search, and it must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.<sup>3</sup>

## Definitions

**Probable cause** — Reasonable grounds to suspect that a person has committed a particular crime or that a place contains specific items connected with a crime. Under the Fourth Amendment, probable cause – which amounts to more than a bare suspicion but less than legal proof – must be shown before an arrest warrant or search warrant may be issued.<sup>4</sup>

**Reasonable suspicion** — A carefully considered presumption, based on specific facts and circumstances, that a person is probably involved in criminal activity. Before an officer can act on this level of suspicion, he must have enough knowledge to lead any reasonably cautious person to conclude that a crime has been (or is about to be) committed by the suspect.<sup>5</sup>

At the level of “probable cause,” an officer may arrest a suspect; using “reasonable suspicion,” the officer may stop and detain the suspect but may not arrest him.

This means that students often have less protection against unreasonable searches and seizures at school than in other places.

Courts have said that school officials can search students in public schools if there is a **reasonable suspicion** to search.

There are two types of reasonable suspicion.

- **Individualized suspicion** is when a school official has a reasonable belief that you personally might be doing something illegal.



- **Generalized suspicion** is when school officials are concerned that there might be illegal activity somewhere in the school. This means that student drug tests or metal detectors are allowed when there is a general concern about students using drugs or carrying weapons. However, some courts have ruled that without **any** evidence of illegal activity, the search is unconstitutional.<sup>6</sup>

## Property searches

Schools are responsible for keeping you safe and providing you with the best possible education. This allows school officials some flexibility to conduct searches of the school grounds to ensure safety.

## Lockers

Ohio law allows schools to search student lockers. Schools can create a written policy that permits principals or other school officials to search any locker and the contents inside it when they have a general concern that they might find evidence of a crime or a violation of a school rule.<sup>7</sup> Schools may also put up notices that lockers are subject to “random search at any time.”<sup>8</sup> As long as the notices are in an obvious place, schools may conduct these searches. Some courts have questioned whether random locker searches are constitutional, since these policies allow schools to search lockers without reasonable suspicion.<sup>9</sup>

You should check to see what your school’s policy is on locker searches. Even if a school does not have a written locker search policy, school officials may still search a locker and its contents in an “emergency situation.”<sup>10</sup> The



search is permissible if it is “reasonably necessary” to prevent property damage or a threat to someone’s health and safety.<sup>11</sup>

## **Backpacks and purses**

School officials may search your backpack or purse if they have a reasonable suspicion that you are breaking the law or violating a school rule.<sup>12</sup>

## **Cell phones**

In 2009, the Ohio Supreme Court ruled that police must get a search warrant before they are allowed to search the contents of your cell phone.<sup>13</sup> The Court recognized that modern cell phones contain a great deal of personal information and users have a high expectation of privacy. If police fear the cell phone owner might destroy evidence, the Court said that they should seize the phone to prevent the destruction of evidence until a search warrant is obtained.

Since this is new law, it is unclear if search warrants are also required for in-school searches of student cell phones by people other than police officers. Schools are allowed to place reasonable rules on using cell phones during school, such as requiring that phones be turned off during class.<sup>14</sup>

## **Cars**

Student cars parked in a school parking lot are subject to search. An Ohio court said that it was okay for police to search a car without a warrant in the school parking lot, because there was probable cause to believe they would find evidence of a crime.<sup>15</sup>

In that case, the school first allowed police officers to bring dogs in to sniff lockers for drugs.<sup>16</sup> Next, the dogs sniffed in the parking lot, and alerted the officers to a specific car.<sup>17</sup> Police officers opened and searched the vehicle and found drug paraphernalia inside.<sup>18</sup> Since the police had probable cause after the dog sniffed the car, it was okay to search the car even though the student was inside the school.<sup>19</sup>

## **Strip searches and searches of one's person**

Except in very rare circumstances, strip searches or searches of inner clothing that would expose a student's body are unconstitutional.<sup>20</sup> The only way a school might be able to justify an invasive search is if the school has evidence that the student is hiding an item that is dangerous and the school must have reason to believe that the item is hidden in the student's inner clothing.<sup>21</sup>



Schools should have individualized suspicion before searching a student, and the invasiveness of the search must be proportional to the severity of the infraction.<sup>22</sup> In 2009, the Supreme Court ruled that the strip search of a 13-year-old middle school student who was suspected of having prescription painkillers was unconstitutional, because the offense was not serious enough to justify such an incredibly invasive search.<sup>23</sup>

If a school official searches you without proper suspicion, the courts will weigh your privacy rights, the intrusiveness of the search, and the school's safety concerns.<sup>24</sup>

### **Searches of the general student population**

To search the student population as a whole, school officials must have a *general* suspicion of wrongdoing. This means that school officials may search students and their belongings at random even if they have no precise evidence that a specific student has broken the law or school rules.

Searches without individualized suspicion are legal when:

- the student's interest in privacy is weak;
- the search does not intrude too far on that interest;
- the school has legitimate safety concerns.

### **Canine searches**

The U.S. Supreme Court ruled that the use of drug-sniffing dogs for inspecting personal belongings is not a "search" under the Fourth Amendment. The Court said that being sniffed by a dog is not an intrusive way to find illegal items, such as drugs, so it should not be in the same category as a search.<sup>25</sup> Drug-sniffing dogs are legal inside a school, and school officials do not need individualized suspicion to allow the police to search you with a dog.<sup>26</sup>

### **Drug testing**

In 1995, the Supreme Court ruled that athletes can be tested for drugs without individualized suspicion. The Court said that student athletes are used to being in locker rooms and showers together where there is not an expectation of privacy, and that urine samples are not an intrusive search. The Court also said the school's efforts to stop illegal drug use justify urine testing for student athletes.<sup>27</sup> A policy requiring that all students participating in extracurricular activities get drug tested has also been ruled constitutional.<sup>28</sup>



### **Metal detectors**

Schools must have a general safety concern to justify the use of metal detectors.<sup>29</sup> For example, school officials may be concerned about students bringing weapons such as knives or guns into the building.<sup>30</sup> One court that allowed metal detectors in school relied on the fact that students are all subject to the metal detectors without discrimination, and that the search itself is not intruding too much on student privacy rights.<sup>31</sup>

### **Police in schools**

Sometimes schools rely on police for security and order. The way a police officer can legally search a student depends on the relationship between the officer, the school, and the search.

When a police officer is helping school officials with a search, then the officer may require only a reasonable suspicion of wrongdoing, instead of needing “probable cause” or specific evidence of a crime, as they would outside of a school.<sup>32</sup> It is not clear whether the evidence found in one of these searches could be used in a criminal trial.<sup>33</sup>

### **Interrogations**

School officials have a right to question you when they suspect wrongdoing. However, you have rights too. For example, you have the right to remain silent or to ask for your parent to be present. If you are a minor, then a parent or guardian can be present during the questioning, but this is not required.<sup>34</sup>



Sometimes police officers will be asked to interrogate students. You have constitutional rights when being questioned by the police in school. For example, you have what are called “Miranda rights,” and in many cases the police must first advise you of your rights.

The Miranda warning includes the following:

- You have the right to remain silent;
- Anything you say can and will be used against you in court;
- You have the right to consult with a lawyer and to have the lawyer present during questioning; and
- If you cannot afford a lawyer, you can ask the court to appoint one for you.<sup>35</sup>

The U.S. Supreme Court recently said that if you wish to invoke your Miranda rights, such as your right to remain silent, you have to tell the person questioning you that you are invoking your right to remain silent.<sup>36</sup>

The police *must* stop interrogating you if you request a lawyer. However, police do not have to stop questioning you if you ask that your parent or guardian, probation officer, or parole officer be present.<sup>37</sup>

# Discrimination

The Fourteenth Amendment guarantees “equal protection of the law” to all citizens.<sup>1</sup>

This extends to students, protecting them from discrimination based on their race, color, nationality, ethnicity, sex, gender, religion or disability.

## Bullying and harassment

Harassment and bullying are unfortunately common occurrences in schools. Two-thirds (65%) of teens report that they have been verbally or physically harassed or assaulted during the past year because of their appearance, gender, sexual orientation, gender expression, race/ethnicity, disability, or religion.<sup>3</sup>

Harassment and bullying can take on many forms, such as name-calling, physical violence, and sexual intimidation.

Ohio law requires public school districts to have a policy on how the school will address bullying and harassment.<sup>4</sup> The law requires that the policy include what conduct qualifies as bullying; procedures to report and investigate bullying incidents; notification of parents whose students were involved in the incident; strategy for protecting the victim of the bullying; and disciplinary procedures for bullying.<sup>5</sup> Unfortunately, the state law is relatively new, and it is unclear if schools will be penalized for not having or enforcing an anti-bullying policy.

There are also federal laws that prohibit discrimination and harassment based on race, gender, and disability.<sup>6</sup> Title VI of the Civil Rights Act of 1964 prohibits discrimination or harassment based on race, color, or national origin.<sup>7</sup> Title IX of the Educa-

## WHAT WOULD YOU DO?

*Miguel speaks Spanish and has trouble with English. The classes at his public high school are all in English, and the school does not provide him with any instruction in Spanish. Is that acceptable?*

No. If the school is not providing him with adequate instruction because of his language, they are violating the law.<sup>2</sup>

tion Amendments of 1972 prohibits discrimination or harassment based on sex.<sup>8</sup> Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibit discrimination or harassment based on disability.<sup>9</sup>

Students can sue a school district for ignoring their complaints of bullying and harassment. The U.S. Supreme Court has ruled that schools may be liable under these federal laws for failing to address harassment by students or teachers in school.<sup>10</sup>

### **Sexual harassment**

Title IX, a federal law, protects students from sexual harassment. Sexual harassment is unwelcome sexual conduct serious enough to violate school rules, and in some cases, state and federal law. The harassment may come from a fellow student or a teacher, administrator, or other school staff person. The conduct can be male-on-female, female-on-male, male-on-male, or female-on-female. Sexually explicit flirting and joking among genuinely consenting students is not considered unwelcome and therefore is not harassment, although schools can limit such behavior if it becomes disruptive.<sup>11</sup>



Students and parents are responsible for informing school officials promptly about harmful or offensive behavior. School officials who have been told about severe sexual misconduct, either student-on-student or adult-on-student, but do not take action, can be sued for damages. Title IX also forbids teachers, coaches or school officials from retaliating against students who report sexual misconduct.<sup>12</sup>

### **Discrimination based on sexual orientation or gender identity**

In 1996, the U.S. Supreme Court recognized that the government cannot write laws that discriminate against LGBT (lesbian, gay, bisexual and transgender) people.<sup>13</sup> But in practice, discriminatory behavior occurs too frequently, particularly in schools, where LGBT students are targets for harassment and bullying. As a result, LGBT youth often do not feel safe at school.<sup>14</sup>

## **KNOW YOUR RIGHTS!**

*Marisa wants to go to the prom with her girlfriend, but the prom committee refused to sell her a ticket. She complained to the principal, and he said that same-sex couples may not attend the prom together. Can the school forbid her from attending prom with her girlfriend?*

Maybe. If you attend a public school you have a constitutional right to bring a same-sex date to the prom. In 1980, a federal court in Rhode Island decided that Aaron Fricke could go to his senior prom with a boy, and that the school had to protect the couple's safety.<sup>18</sup> And in 2009, another federal court in Mississippi found that Constance McMillen's First Amendment rights were violated when her school cancelled prom rather than let her attend with a girl and wear a tuxedo.<sup>19</sup> However, despite those courts' decisions, public schools have continued to prohibit students from bringing their same-sex dates to school dances.

The ACLU believes that Marisa has the right to associate with whomever she wants under the First Amendment, and that discrimination based on sexual orientation denies individuals the equal protection of the laws under the Fourteenth Amendment. If heterosexual students can take whomever they want to prom, Marisa should be able to have that choice too. The ACLU has intervened in some of these cases.

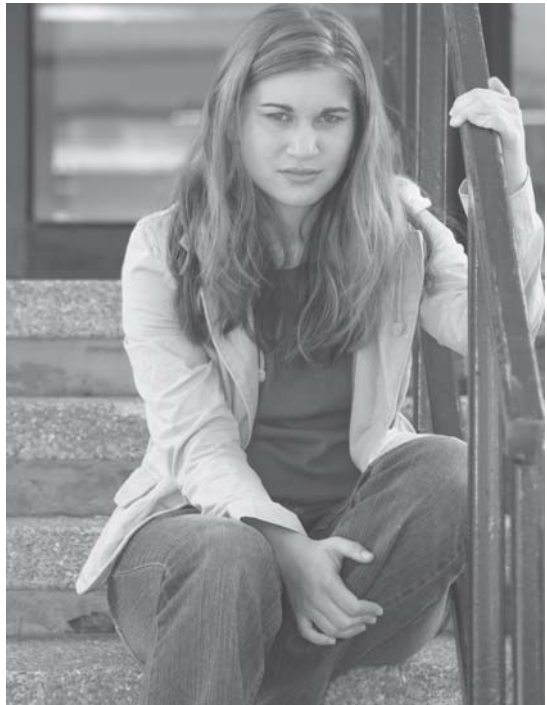
In 2004, Ohio ranked 39<sup>th</sup> out of 50 in a survey evaluating states for protective measures for LGBT youth.<sup>15</sup> Ohio does not have a safer schools law, nor antidiscrimination laws that include LGBT people, nor hate crime laws that cover sexual orientation and gender identity.<sup>16</sup> However, even without these laws present, an Ohio court ruled that school officials could be held responsible for not punishing a student who is harassing another student because of his or her sexual orientation.<sup>17</sup>

Further, Ohio's local governments and schools can write protection for LGBT persons into their laws and policies. Check to see if protections for LGBT people are included in your school's policies or your community's local ordinances.

### **Gender discrimination**

Courts have interpreted the Fourteenth Amendment's equal protection clause to also protect gender. However, courts do not treat discrimination based on gender with the same harsh review that they treat discrimination based on race.

The law requires that boys and girls have equal athletic opportunities. Many courts have held, however, that separate teams for boys and girls are allowed as long as the school provides students of



both sexes the chance to participate in the sport. Some courts have also held that boys and girls may always be separated in contact sports.<sup>20</sup>

By contrast, public schools are not allowed to offer academic courses that are just for boys — like shop, or just for girls — like home economics.

### **Pregnancy**

Schools cannot discriminate against students who are pregnant, are married, or who have children. If you are pregnant, school officials cannot keep you from attending classes, graduation ceremonies, extracurricular activities or any other school activity. Some schools have special classes for pregnant girls, but they cannot make you attend if you would prefer to be in regular classes.<sup>21</sup>

# Discipline

When a student violates school rules or school policy, the consequences might range from a simple warning to permanent expulsion. School policy must explain which offenses may result in suspension or expulsion.

If a school wants to suspend or expel a student – punishments that usually result in a loss of credit for tests, assignments, or entire classes – they must follow certain procedures.

## Suspension

Under Ohio law an out-of-school suspension:

- may last no longer than 10 days;<sup>1</sup>
- must be issued by the district superintendent or principal, however the board of education may grant an assistant principal and other administrators the power to suspend;<sup>2</sup>
- may not go into effect until the superintendent or principal does both of the following:<sup>3</sup>
  - gives the student written notice of the intent to suspend and the reasons why the suspension has been suggested as punishment;
  - gives the student an informal hearing to challenge the reasons for the suspension and to explain the student's actions.

In the case of an in-school suspension, the superintendent does not need to provide notice or a hearing *before* the suspension begins.<sup>4</sup> However, the superintendent must give written notice to the student or student's parents as soon as possible.<sup>5</sup> The notice must explain that there has been a suspension and that there is a right to an appeal.<sup>6</sup>

The school may immediately suspend students who are continually disruptive or present a threat of danger. The superintendent must send notice to the student and parents as soon as possible, and the hearing must be held within three days from

the initial suspension or removal.<sup>7</sup> The school cannot suspend students for nonspecific offenses, so there must be a policy readily available that details which offenses are punishable by suspension.<sup>8</sup>

### **Temporary expulsion**

Under Ohio law an expulsion which is temporary:

- may last up to 80 days or for the days remaining in the term or semester when the offense happened;<sup>9</sup>
- is mandatory for one year if the offense involves possession of a firearm at school;<sup>10</sup>
- may be up to one year if the offense involves possession of a knife at school;<sup>11</sup>
- may not go into effect until the superintendent or principal



does both of the following:<sup>12</sup>

- gives the student written notice of the intent to expel and the reasons why;
- gives the student an informal hearing to challenge the reasons for the expulsion and to explain the student's actions (the hearing cannot be earlier than three



school days or later than five school days after the student receives the notice).<sup>13</sup>

### **Permanent expulsion**

A superintendent may extend a student's suspension beyond the 80-day limit if the student is age sixteen or older and if a criminal proceeding against the student is pending.<sup>14</sup> A school's administration may permanently expel a student if the student is age sixteen or older and has been convicted of a criminal offense.<sup>15</sup> In some cases, a superintendent can ask a court to permanently exclude a student from attending any public school in Ohio.<sup>16</sup>

### **Appealing a suspension or expulsion**

You and your parent or guardian can challenge your suspension or expulsion at an appeal hearing.<sup>17</sup> The notice of suspension that you receive from the school will specify the manner and time frame in which you can notify the school board that you want to appeal.<sup>18</sup> After considering your case, the school board may decide to approve, reject, or change the suspension or expulsion.<sup>19</sup>

## **KNOW YOUR RIGHTS!**

*Derrick has received an out-of-school suspension because he violated the school's code of conduct. He and his parents want to appeal the suspension. Derrick's father believes that under Ohio law he has two weeks to notify the school board of his plan to appeal. Does Ohio law require schools to allow students two weeks to notify the school board of a desire to appeal a suspension?*

No. Ohio law states that the school has the power to determine in what manner and time frame the student must notify the school of appeal.<sup>20</sup> Only in the case of an **expulsion** does Ohio law require that the school give the student at least fourteen days to reply.<sup>21</sup> Derrick has received a suspension, so the school may set its own time frame of when he must appeal. The school is required to inform the student of the manner and time limits for appeal in the school's notification of suspension.<sup>22</sup> Derrick should read the notification of suspension to find out when he must send his notice of appeal to the school.

## **Disabled students**

If you have a disability, you are entitled to other procedural protections in the event that your school tries to suspend or expel you. These protections include a “stay-put” provision that requires that a student remain in school while waiting for a hearing.<sup>23</sup> All provisions can be found in the federal Education of the Handicapped Act.<sup>24</sup> If the school has started disciplinary action, you should consult an attorney familiar with these federal laws.

## **Corporal punishment**

Corporal punishment is the use of physical punishment, such as paddling, in schools. Corporal punishment is banned in Ohio *public schools*.<sup>25</sup> Under Ohio law, corporal punishment may still be used in private schools as long as the punishment is reasonable.<sup>26</sup> Also, at both public and private schools, teachers are allowed to use an amount of force that is reasonable and necessary to control a student fight or confiscate weapons and other dangerous objects.<sup>27</sup>

## **Clearing student records**

Once you have reached the age of 22, or if the school revokes your permanent expulsion, all school districts that have records regarding your permanent expulsion must remove and destroy reference to it.<sup>28</sup> At this time, you can send a written request to the superintendent of the school to verify that the records have been destroyed.<sup>29</sup>

# Student Records

There are two kinds of school records:

- Directory information which shows a student's name, address, telephone number, date and place of birth, major field of study, participation in sports, awards received, dates of attendance and graduation, and the name of the most recent school attended.<sup>1</sup>
- Any other written or recorded information maintained by a school which concerns a student and by which the student might be identified.

Directory information can be shared if, for example, the school creates a student phone directory. However, your parents can request that the school not re-

lease your directory information.<sup>2</sup> All other student records are private and confidential, meaning they cannot be released without your parents' written consent or, if you are 18 years or older, your own written consent.<sup>3</sup> A school may lose federal funding if it has a policy of releasing education records (other





than directory information) without a parent's written consent.<sup>4</sup>

You and your parents have the right to access and copy your own school records. A school risks losing federal funding if the school denies a student's parent access to the student's records.<sup>5</sup> Schools may charge for copies, though the amount charged cannot be more than the actual cost to the school to make the copies.<sup>6</sup> Statements you may have made in confidence to school officials, doctors, and psychologists must be kept private – unless your life or the life of another student is in danger.<sup>7</sup>

Ohio law allows some people to access your student records. They include: school personnel who have a current educational or administrative interest in the information;<sup>8</sup> a records custodian of another school to which you transfer;<sup>9</sup> someone who has obtained a court order for release of the records;<sup>10</sup> law enforcement officials;<sup>11</sup> persons with the consent of your parents or guardian;<sup>12</sup> and anyone designated by state or federal law.<sup>13</sup>

# School Fees

Ohio public school districts must provide each school-age child living within its jurisdiction a free public education.<sup>1</sup> Schools are required to provide students with necessary materials such as textbooks and electronic textbooks free of charge.<sup>2</sup> School boards may charge students for any other educational materials,<sup>3</sup> but not for administrative costs such as copying.<sup>4</sup> Schools may not charge fees for educational materials to those students who qualify for the federal free lunch program based on financial need.<sup>5</sup> If you are not exempt from paying fees and fail to pay them, then the school can withhold your grades and credits.<sup>6</sup>

# Military Recruitment

The U.S. military has launched an aggressive campaign to recruit high school students for the armed services.<sup>1</sup> Congress has allowed this to happen by creating two laws that permit military recruitment. One law is contained in the No Child Left Behind Act of 2001,<sup>2</sup> and the other is known as the “Hutchinson Amendment,”<sup>3</sup> which was modified by the National Defense Authorization Act of 2002.<sup>4</sup> Under these laws, the military can in most cases recruit in high schools. They are also allowed to approach high schools for release of student directory information.

## On campus

Schools must allow military recruiters on campus if they allow other recruiters, such as colleges and prospective employers, on campus.<sup>5</sup> The school must permit the military to meet with students where the other recruiters meet. If a school allows the military to advertise in the school’s newspaper, then the school must also allow humanitarian organizations such as the Peace Corps to advertise in the school’s paper.<sup>6</sup>

The Equal Access Act protects the rights of any student group that is critical of the military, as long as other student groups are also allowed on campus to voice their opinions.<sup>7</sup>

## Release of student information

Federal and Ohio laws **require** schools to disclose student names, addresses, and telephone numbers (“directory information”) to the military upon request.<sup>8</sup> While there are no specific penalties under the law if a school refuses, the government can withhold money from the school.<sup>9</sup> Because of this provision, unless a student or a parent “opts out,” the school must give the information to the military.

“Opting out” means that you or your parents notify your school that you do not want any of your directory information sent to the military for recruiting purposes. Under federal and Ohio law, you or your parent may opt out by requesting **in writing** that the school not give any information to the military.<sup>10</sup> Your school must comply with your request.<sup>11</sup>

However, if you are a minor who wishes to opt out, and your parent decides to release the information, the school follows your parent’s choice, not yours.

It is important to understand that if you or your parents do not “opt out,” the school is obligated to send your records to the military if recruiters request your information.<sup>12</sup>

## **Armed Services**

### **Vocational Aptitude Battery (ASVAB)**

The ASVAB is a test that the military uses as a recruiting method.<sup>13</sup> It was developed by the Department of Defense and is administered in high schools. The ASVAB tests basic subjects such as general science, paragraph comprehension, and arithmetic reasoning. After students take the test, the schools release their scores to military recruiters. The recruiters use the

## **KNOW YOUR RIGHTS!**

Dante is a sophomore and does not want his records given to the military. His parents told him that his records cannot be disclosed without their consent and that the military only receives information about juniors and seniors in high school. Can the military access information about students other than juniors and seniors without parental consent?

Yes. Military recruiters can access the records of a sophomore without first getting parental consent. There is nothing in the federal or state laws that limit the military to collecting information from junior and senior high school students only.<sup>15</sup> In fact, Ohio law allows the military to get information from sophomores, too.<sup>16</sup> The school is required to give the military Dante’s information unless he opts out. Dante should “opt out” if he does not want his records released.

scores to determine who is qualified to enlist in the armed services, and in which military branch to place the qualifying student.

The ASVAB is voluntary. Students are not obligated to take the test. It is a good idea to talk to your parents about the ASVAB and the consequences of sending your scores and personal information to the military. If your school does not require parental consent for the ASVAB, you should understand that you do not have to take the test, and that by signing the waiver, you are giving the school permission to transfer your scores and personal information to military recruiters.



# The Last Word

As a student, you have the power to make change. Student activists all over the country have been successful in challenging school policies or actions that violate the Constitution. You may consider starting an ACLU chapter at your school, or finding another way to educate students about the issues that you feel are important.

If you think that your rights as a student have been violated, you might want to consult a parent or guardian. Or seek out a teacher, counselor, or even your principal. For outside help, consider contacting a lawyer or the ACLU of Ohio.

We hope that this guide has helped you to understand some of the basic civil liberties issues that affect students. For more information, and for updates on your evolving legal rights, visit our website at [www.acluohio.org](http://www.acluohio.org).



# Notes

## Freedom of Speech and Expression

- <sup>1</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).
- <sup>2</sup> *Bethel School District No. 403 v. Frasier*, 478 U.S. 675 (1986).
- <sup>3</sup> *Nixon v. N. Local Sch. Dist. Bd. of Educ.*, 383 F. Supp. 2d 965 (D. Ohio 2005).
- <sup>4</sup> *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
- <sup>5</sup> *Morse v. Frederick*, 127 S.Ct. 2618 (2007).
- <sup>6</sup> *Miller v. California*, 413 U.S. 15 (1973).
- <sup>7</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).
- <sup>8</sup> Equal Access Act, 20 U.S.C. §§ 4071 et seq.
- <sup>9</sup> *Bd. of Educ. Of Westside Community School v. Mergens*, 496 U.S. 226 (1990).
- <sup>10</sup> Equal Access Act, 20 U.S.C. §§ 4071 et seq.
- <sup>11</sup> See, e.g., *Boyd County High School Gay Straight Alliance v. Bd. of Educ. of Boyd County, Ky.*, 258 F. Supp. 2d 667 (E.D. Ky 2003); *Colin ex rel. Colin v. Orange Unified School District*, 83 F. Supp. 2d 1135 (C.D. Cal. 2000).
- <sup>12</sup> See <http://www.acluohio.org/sga/LGBTStudents.asp>.
- <sup>13</sup> Equal Access Act, 20 U.S.C. §§ 4071 et seq.
- <sup>14</sup> Id. § 4071(c)(3).
- <sup>15</sup> For more information on GSAs, see Gay, Lesbian, and Straight Education Network at <http://www.glsen.org/cgi-bin/iowa/all/library/record/2342.html?state=what>.
- <sup>16</sup> *Boyd County High School Gay Straight Alliance v. Bd. Of Educ. Of Boyd County, KY.*, 258 F.Supp 2d 667 (E.D.KY 2003).
- <sup>17</sup> *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 266 (1988).
- <sup>18</sup> *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160 (7th Cir 1993).
- <sup>19</sup> See *Bacon v. Bradley-Bourbonnais High School Dist.*, 707 F. Supp. 1005 (C.D. Ill. 1989).
- <sup>20</sup> *Kincaid v. Gibson*, 236 F.3d 342, 346, n.5, 354, 349 (6th Cir. 2001).
- <sup>21</sup> *Hazelwood*, *supra*.
- <sup>22</sup> Id.
- <sup>23</sup> Id. at 271 (citing *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 509 (1969)).
- <sup>24</sup> Id. at 273.
- <sup>25</sup> Id. at 271.
- <sup>26</sup> *Kincaid*, *supra*.
- <sup>27</sup> *Draudt v. City of Wooster Dist. Bd. of Educ.*, 246 F. Supp.2d 820 (N.D. Ohio 2003)
- <sup>28</sup> *Kincaid v. Gibson*, 236 F.3d 342, 355 (6th Cir. 2001).
- <sup>29</sup> *Dean v. Utica Community Schools*, 345 F. Supp. 2d 799 (E.D. Mich. 2004).

- <sup>30</sup> *Shanley v. Northeast Independent School District*, 462 F.2d 960 (5th Cir. 1972).
- <sup>31</sup> *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988).
- <sup>32</sup> See id.
- <sup>33</sup> *O'Brien v. Westlake City Schools of Education*, No. 1:98CV 647 (E.D. Ohio 1998).
- <sup>34</sup> *Shanley v. Northeast Independent School District*, 462 F.2d 960, 969 (5th Cir. 1972).
- <sup>35</sup> *Reno v. ACLU*, 521 U.S. 844 (1997).
- <sup>36</sup> *Coy v. Bd. of Educ.*, 205 F. Supp. 2d 791, 800 (N.D. Ohio 2002).
- <sup>37</sup> *Coy v. Bd. of Educ.*, 205 F. Supp. 2d 791, 800 (N.D. Ohio 2002).
- <sup>38</sup> *Tinker v. Des Moines Indep. Community School District*, 393 U.S. 503 (1969); *Nixon v. N. Local School District Bd. of Educ.*, 383 F.Supp.2d 965 (D. Ohio 2005).
- <sup>39</sup> *Latour v. Riverside Beaver Sch. Dist.*, 2005 U.S. Dist. LEXIS 35919 (D. Pa. 2005).
- <sup>40</sup> *J.S. v. Bethlehem School District*, 569 Pa. 638 (Pa. 2002).
- <sup>41</sup> *J.S. v. Bethlehem School District*, 569 Pa. 638 (Pa. 2002); *Watts v. U.S.*, 394 U.S. 705 (1969).
- <sup>42</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 388 (1992).
- <sup>43</sup> *Coy v. Bd. of Educ. N. Canton City Schools*, 205 F.Supp.2d 791 (N.D. Ohio 2002).
- <sup>44</sup> [http://www.thenationalcampaign.org/sextech/PDF/SexTech\\_Summary.pdf](http://www.thenationalcampaign.org/sextech/PDF/SexTech_Summary.pdf).
- <sup>45</sup> O.R.C. 2907.321; O.R.C. 2929.11.
- <sup>46</sup> Id.
- <sup>47</sup> *Bd. of Educ. v. Pico*, 457 U.S. 853 (U.S. 1982).
- <sup>48</sup> Id.
- <sup>49</sup> Id.
- <sup>50</sup> *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 at 508 (U.S. 1969).
- <sup>51</sup> O.R.C. § 3313.665.
- <sup>52</sup> *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 389 (6th Cir. 2005).
- <sup>53</sup> *Castorina v. Madison County Sch. Bd.*, 246 F.3d 536, 546 (6th Cir. 2001).
- <sup>54</sup> *Guzick v. Drebus*, 431 F.2d 594 at 597 (6th Cir. 1970).
- <sup>55</sup> *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005).
- <sup>56</sup> *Stephenson v. Davenport Community Sch. Dist.*, 110 F.3d 1303 (8th Cir. 1997).
- <sup>57</sup> O.R.C. § 3313.665.
- <sup>58</sup> *Castorina v. Madison County Sch. Bd.*, 246 F.3d 536, 538 (6th Cir. 2001).
- <sup>59</sup> *Nixon v. N. Local Sch. Dist. Bd. of Educ.*, 383 F. Supp. 2d 965, 971 (D. Ohio 2005).
- <sup>60</sup> *Barber v. Dearborn Pub. Sch.*, 286 F. Supp.2d 847, 856 (E.D. Mich. 2003).
- <sup>61</sup> *Stephenson v. Davenport Community Sch. Dist.*, 110 F.3d 1303 (8th Cir. 1997).

## Religious Freedom

- <sup>1</sup> *Lee v. Weisman*, 505 U.S. 577 (1992) [543-44].
- <sup>2</sup> *Edwards v. Aguillard*, 482 U.S. 578 (1987).
- <sup>3</sup> *Id.* at 593.
- <sup>4</sup> *Kitzmiller v. Dover Area Sch. Dist.*, 400 F. Supp. 2d 707 (M.D. Penn. 2005).
- <sup>5</sup> *Id.* at 765.
- <sup>6</sup> See <http://dictionary.reference.com/>.
- <sup>7</sup> [Reference.dictionary.com](http://dictionary.reference.com/) (last viewed 7/20/06).
- <sup>8</sup> Ohio Rev. Code Ann, § 3313.602 (West 2009).
- <sup>9</sup> *West Virginia State Board of Edu. v. Barnette*, 319 U.S. 624 (1943).
- <sup>10</sup> *Engel v. Vitale*, 370 U.S. 421 (1962).
- <sup>11</sup> *Coles v. Cleveland Bd. of Educ.*, 171 F.3d 369 (6th Cir. 1999).
- <sup>12</sup> *Wallace v. Jaffree*, 472 U.S. 38 (1985) (O'Connor, concurring).
- <sup>13</sup> *Wallace v. Jaffree*, 472 U.S. 38 (1985); see also *Brown v. Gilmore*, 533 U.S. 1301 (2001).
- <sup>14</sup> *Washegesic v. Bloomingdale Public Schools*, 33 F.3d 679 (6th Cir. 1994).
- <sup>15</sup> *Stone v. Graham*, 449 U.S. 39 (1980).
- <sup>16</sup> O.R.C. 3313.601.
- <sup>17</sup> *Id.*
- <sup>18</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).
- <sup>19</sup> *Id.*
- <sup>20</sup> *Lee v. Weisman*, 505 U.S. 577 (1992).
- <sup>21</sup> *Doe v. Gossage*, 2006 U.S. Dist. LEXIS 34613 (D. Ky. 2006).
- <sup>22</sup> *Cheema v. Thompson*, 67 F.3d 883 (9th Cir. 1995). Later overruled on other grounds, see *U.S. v. Antoine*, 318 F.3d 919, 922 (Wash. 2003).
- <sup>23</sup> *Rusk v. Crestview School Dist.*, 379 F.3d 418 (6<sup>th</sup> Cir. 2004).
- <sup>24</sup> *Good News Club v. Milford Central School*, 533 U.S. 98 (2001).
- <sup>25</sup> *County of Allegheny v. American Civil Liberties Union*, Greater Pittsburgh Chapter, 492 U.S. 573 (1989).

## Search and Seizure

- <sup>1</sup> *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633 (2009); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- <sup>2</sup> *New Jersey v. T.L.O.*, 469 U.S. 325 at 340 (1985). *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633 (2009).
- <sup>3</sup> *Id.*
- <sup>4</sup> Black's Law Dictionary, published by West Publishing Group (1996).
- <sup>5</sup> *Id.*
- <sup>6</sup> *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004).
- <sup>7</sup> O.R.C. § 3313.20(B)(1)(a).
- <sup>8</sup> O.R.C. § 3313.20(B)(1)(b).
- <sup>9</sup> See, e.g., *In re Adam*, 697 N.E.2d 1100 (Ohio Ct. App. 1997).
- <sup>10</sup> O.R.C. § 3313.20(B)(2).
- <sup>11</sup> *Id.*
- <sup>12</sup> *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

- <sup>13</sup> *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, petition for cert denied, 562 U.S. 1377 (2010).
- <sup>14</sup> See *Coy v. Bd. of Educ. N. Canton City Schools*, 205 F.Supp.2d 791 (N.D. Ohio 2002).
- <sup>15</sup> *In re Dengg*, 724 N.E.2d 1255, 1259 (Ct. App. Oh. 1999).
- <sup>16</sup> *Id.* at 1256.
- <sup>17</sup> *Id.*
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633 (2009).
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.*
- <sup>23</sup> *Id.*
- <sup>24</sup> *Safford Unified School Dist. No. 1 v. Redding*, 129 S.Ct. 2633 (2009); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
- <sup>25</sup> *U.S. v. Place*, 462 U.S. 696 (1983).
- <sup>26</sup> *Doe v. Renfrow*, 451 U.S. 1022. (1981)(cert denied, Brennan dissent).
- <sup>27</sup> *Vernonia Sch. Dist. 47j v. Acton*, 515 U.S. 646 (1995).
- <sup>28</sup> *Bd. of Educ. v. Earls*, 536 U.S. 822 (2002).
- <sup>29</sup> *Doe v. Little Rock Sch. Dist.*, 380 F.3d 349 (8th Cir. 2004).
- <sup>30</sup> *People v. Pruitt*, 278 Ill.App. 3d 194 (Ill. App. Ct. 1996).
- <sup>31</sup> See *id.*
- <sup>32</sup> *Tarter v. Raybuck*, 742 F.2d 977 (6<sup>th</sup> Cir. 1984); *Widener v. Frye*, 809 F.Supp. 35 (S.D. Ohio 1992).
- <sup>33</sup> See *id.*
- <sup>34</sup> *Yarborough v. Alvarado*, 541 U.S. 652 (2004).
- <sup>35</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).
- <sup>36</sup> *Berghuis v. Thompkins*, 130 U.S. 2250 (2010)
- <sup>37</sup> *Fare v. Michael C.*, 442 U.S. 707 (1979).

## **Discrimination**

- <sup>1</sup> U.S. Const. Amend. XIV.
- <sup>2</sup> Title VI, Civil Rights Act, 42 U.S.C. § 2000d-1. See also *Lau v. Nichols*, 414 U.S. 563 (1974).
- <sup>3</sup> GLSEN, From Teasing to Torment: New National Report on School Bullying, <http://www.glsen.org/cgi-bin/iowa/all/library/record/1859.html?state=research&type=research> (last viewed 08/20/10).
- <sup>4</sup> O.R.C. 3313.666
- <sup>5</sup> *Id.*
- <sup>6</sup> To read more about these federal anti-discrimination laws or to file a complaint, visit the Office for Civil Rights of the U.S. Department of Education, <http://www2.ed.gov/about/offices/list/ocr/aboutocr.html>.
- <sup>7</sup> See 34 CFR 100
- <sup>8</sup> See 34 CFR Part 106

- <sup>9</sup> See 34 CFR 104 (Section 504), 28 CFR 35 (ADA Title II).
- <sup>10</sup> *Davis v. Monroe County Board of Educ.*, 526 U.S. 629 (1999). See also *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998), and *Williams v. Paint Valley Local Sch. Dist.*, 400 F.3d 360 (6th Cir. 2005).
- <sup>11</sup> U.S. Department of Education, Office of Civil Rights, *Frequently Asked Questions About Sexual Harassment*, <http://www.ed.gov/about/offices/list/ocr/qa-sexharass.html> (last viewed 08/20/10).
- <sup>12</sup> *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 629 (1999).
- <sup>13</sup> *Romer v. Evans*, 517 U.S. 620 (1996).
- <sup>14</sup> GLSEN, *From Teasing to Torment: New National Report on School Bullying* <http://www.glsen.org/cgi-bin/iowa/all/library/record/1859.html?state=research&type=research>
- <sup>15</sup> GLSTN, *State of the States 2004, A Policy Analysis of Lesbian, Gay, Bisexual and Transgender Safer Schools Issues*, [http://www.glsen.org/binary-data/GLSEN\\_ATTACHMENTS/file/374-1.pdf](http://www.glsen.org/binary-data/GLSEN_ATTACHMENTS/file/374-1.pdf) (last viewed 7/31/06).
- <sup>16</sup> *Id.*
- <sup>17</sup> *Schroeder v. Maumee Bd. of Educ.*, 296 F. Supp. 2d 869, 874 (D. Ohio 2003).
- <sup>18</sup> *Fricke v. Lynch*, 491 F. Supp. 381 (R.I. 1980).
- <sup>19</sup> *McMillen v. Itawamba Cty.Sch.Dist.*, N.D.Miss. 2010, Case No. 1:10cv61.
- <sup>20</sup> U.S. Department of Education, Office of Civil Rights, *Sex Discrimination: Overview of the Law*. <http://www.ed.gov/policy/rights/guid/ocr/sexoverview.html> (last viewed 8/2/06).
- <sup>21</sup> 34 C.F.R. §106.41.

## Discipline

- <sup>1</sup> O.R.C. §3313.66(A).
- <sup>2</sup> O.R.C. §3313.66(A).
- <sup>3</sup> O.R.C. §3313.66(A)(1) and (2).
- <sup>4</sup> O.R.C. §3313.66(A).
- <sup>5</sup> O.R.C. §3313.66(C).
- <sup>6</sup> O.R.C. §3313.66(D).
- <sup>7</sup> O.R.C. §3313.66(C) and (D).
- <sup>8</sup> *Wilson v. S. Central Local School Distr.*, 107 Ohio App.3d 610, 615 - 616 (1995); O.R.C. 3313.661.
- <sup>9</sup> O.R.C. §3313.66(B)(1).
- <sup>10</sup> O.R.C. §3313.66(B)(2)(a) and (b).
- <sup>11</sup> O.R.C. §3313.66(B)(3).
- <sup>12</sup> O.R.C. §3313.66(B)(6).
- <sup>13</sup> O.R.C. §3313.66(B)(6)(b).
- <sup>14</sup> O.R.C. 3313.66(F)(1).
- <sup>15</sup> O.R.C. 3313.66(F)(2).
- <sup>16</sup> O.R.C. 3313.662(A).
- <sup>17</sup> O.R.C. 3313.66(E).
- <sup>18</sup> O.R.C. 3313.66(D) and (E).

- 19 O.R.C. 3313.66(E).
- 20 O.R.C. 3313.66(E) and O.R.C. 3313.661(A).
- 21 O.R.C. 3313.661(A).
- 22 O.R.C. 3313.66(D).
- 23 *Honig v. Doe*, 484 U.S. 305, 323, 325 (1988); 20 U.S.C. §1415(j).
- 24 20 U.S.C. §1400 et seq.
- 25 O.R.C. 3319.41(A).
- 26 O.R.C. 3319.41(B).
- 27 O.R.C. 3319.41(C).
- 28 O.R.C. 3313.662(G)(2).
- 29 O.R.C. 3313.662(G)(2).

### **Student Records**

- 1 20 U.S.C. §1232g(a)(5)(A); O.R.C. 3319.321(B)(1).
- 2 20 U.S.C. §1232g(a)(5)(B); O.R.C. 3319.321(B)(2)(a).
- 3 O.R.C. 3319.321(B)(1).
- 4 20 U.S.C. §1232g(b)(1).
- 5 20 U.S.C. §1232g(a)(1)(A).
- 6 O.R.C. 3319.321(D).
- 7 O.R.C. 3319.321(B); O.R.C. 3319.321(D); O.R.C. 2151.14.
- 8 O.R.C. 3319.321(C).
- 9 *Id.*
- 10 O.R.C. 3319.321(B)(5)(b); O.R.C. 2151.14.
- 11 O.R.C. 3319.321(E).
- 12 O.R.C. 3319.321(B).
- 13 20 U.S.C. §1232g(b)(1).

### **School Fees**

- 1 O.R.C. § 3313.48 (1987).
- 2 O.R.C. §3313.642(A) (1999), O.R.C. § 3329.06. (2009).
- 3 *Id.*
- 4 *Association for the Defense of the Washington Local School District v. Kiger*, 42 Ohio St. 3d 116 (Ohio 1989).
- 5 O.R.C. §3313.642(B) (2009).
- 6 O.R.C. §3313.642(C) (1999); *State ex rel. Masse v. Board of Education of Gahanna-Jefferson Public Schools*, 76 Ohio St. 3d 584 (Ohio 1996).

### **Military Recruitment**

- 1 See, e.g., *Recruiter Access to High Schools in Brief*, April 4, 2005, [http://prhome.defense.gov/MPP/ACCESSION%20POLICY/docs/recruit\\_access\\_hs.pdf](http://prhome.defense.gov/MPP/ACCESSION%20POLICY/docs/recruit_access_hs.pdf) (last viewed July 2010).
- 2 20 U.S.C. §7231.
- 3 10 U.S.C. §503c.
- 4 28 U.S.C. §1782.
- 5 20 U.S.C. §7908(a)(3); 10 U.S.C. §503(c)(1)(A)(i)

- <sup>6</sup> San Diego Committee Against Registration and the Draft (CARD) v. Governing Board of Grossmont Union High School District, 790 F.2d. 1471 (9th Cir. 1986).
- <sup>7</sup> 20 U.S.C. §4071.
- <sup>8</sup> 20 U.S.C. §7908(a)(1), 10 U.S.C. §503(1)(A)(ii); ORC. §3319.321(B)(2)(b).
- <sup>9</sup> 20 U.S.C. §1234c(a).
- <sup>10</sup> 20 U.S.C. §7908(a)(2); 10 U.S.C. §503(c)(1)(B); ORC §3319.321(B)(2)(b).
- <sup>11</sup> 20 U.S.C. §7908(a)2).
- <sup>12</sup> ORC §3319.321(B)(2)(b).
- <sup>13</sup> Soldiers of Misfortune: Abusive U.S. Military Recruitment and Failure to Protect Child Soldiers, March 13, 2008, page 15, [http://www.aclu.org/files/pdfs/humanrights/crc\\_report\\_20080513.pdf](http://www.aclu.org/files/pdfs/humanrights/crc_report_20080513.pdf) (last viewed July 2010).
- <sup>15</sup> Policy Guidance – Access to High School Students and Information on Students by Military Recruiters, October 9, 2002, <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html> (last viewed July 2010); 20 U.S.C. §7908(a)(2); 10 U.S.C. §503(c)(1)(B).
- <sup>16</sup> O.R.C. 3319.321(B)(2)(b).



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