

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA

YOU HAVE THE RIGHT TO...NOT REMAIN SILENT



A KNOW-YOUR-RIGHTS GUIDE TO SOME OF THE
MOST IMPORTANT QUESTIONS YOUTH HAVE
ABOUT THEIR CIVIL LIBERTIES

TABLE OF CONTENTS

INTRODUCTION	1
FREEDOM OF EXPRESSION	2
CLUBS & ACTIVITIES	4
LIBRARY & CLASSROOM BOOKS	6
PLEDGE AND PRAYERS	7
DRESS CODES	8
SCHOOL RECORDS	9
DISCRIMINATION	10
HEALTH & MEDICAL CARE	12
BILINGUAL EDUCATION	14
SPECIAL EDUCATION	14
ACCESS TO BASIC EDUCATIONAL RESOURCES	15
SCHOOL ATTENDANCE	15
SEARCHES	16
PUNISHMENT	18
TROUBLE WITH THE LAW	19
MILITARY	20
EMANCIPATION OF MINORS	21

INTRODUCTION

KNOW YOUR RIGHTS!! ASSERT YOUR RIGHTS AND ORGANIZE!

Knowledge of your rights is an important tool for protecting yourself against abuses by police, school officials, and other adults. Contrary to what you may think, youth actually have a lot of rights under state and federal laws.

For instance, according to the United States Supreme Court's ruling in 1969, "It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech or expression at the schoolhouse gate." And youth have a lot of other rights besides the First Amendment provision of free speech and expression.

Ever wondered if you have to say the Pledge of Allegiance? Is the principal or newspaper advisor allowed to censor what you write? What about the school censoring your off-campus website? What rights do you have when school officials want to search you? Can the school say you're not allowed to start a gay-straight alliance club? Do minors need parental consent to get birth control pills? Is your teacher allowed to say you can't wear a certain shirt because it's "controversial"?

Read this brochure for answers to these and other legal questions you may have about your rights as a youth and a student. The law can be confusing, and the ACLU is here to assist you if your rights have been violated. Be a watchdog for your own rights and those of your friends. Knowing your rights makes you all the more powerful and can help you realize the constitutional freedoms that you are guaranteed.

We know there are many challenging questions students face every day - and we have not covered them all here. You can find out more about civil liberties from our website: www.aclunc.org. And if you think your school is not complying with the law or you need advice about your rights at school, you can call the ACLU's legal counselors at (415) 621-2488.

GAIN KNOWLEDGE. ORGANIZE. RISE UP AND DEMAND YOUR RIGHTS.

*This information was published in November 2006. Laws cited here might be changed by the courts, Legislature or Congress. Before relying on this information, please double check that the particular law has not changed. If you have specific questions, please contact the ACLU or a lawyer. In general, the information provided in this brochure applies to students' rights in public schools and may not be the same for students in private schools. Private school students can call the ACLU or a lawyer to find out more about their rights.

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FREEDOM OF EXPRESSION

WHAT IS FREEDOM OF SPEECH?

Freedom of speech is a guarantee of the First Amendment of the U.S. Constitution. It protects what you say, what you write, and your right to meet freely with other people in clubs, organizations, rallies and demonstrations. It applies to everyone in the United States. The California Constitution has a similar—and even broader—guarantee (Article 1, Section 2) that protects freedom of speech for everyone in the state.

DO I HAVE A RIGHT TO FREEDOM OF SPEECH WHILE I AM IN SCHOOL?

Yes. You do not surrender your constitutional rights when you enter school.

Freedom of speech and freedom of the press in general are guaranteed by the First Amendment of the U.S. Constitution. But in California, there are also two special laws that specifically protect students' rights of freedom of speech and freedom of the press at school.

These laws are found in the California Education Code—Section 48907 and Section 48950. They are important ones to remember!

For example, Section 48907 gives a special guarantee against censorship of public school newspapers and yearbooks, “underground” (or unofficial) newspapers, handing out leaflets, wearing buttons, and posting notices on school bulletin boards. Although Section 48907 applies only to public schools, Section 48950 extends free speech protection to private high schools in most circumstances.

CAN THE SCHOOL PLACE LIMITS AND RESTRICTIONS ON THESE ACTIVITIES?

Yes. Even under the First Amendment and California Education Code 48907, a public school can adopt reasonable rules which regulate the “time, place and manner” of exercising these free speech rights. The same is true for private schools under Section 48950.

The school is not allowed to prohibit or censor speech or press activities by students based on its content (what you are saying), unless what you are saying falls within one of these three exceptions:

1. it is legally “obscene”;
2. it is libelous or slanderous (that is, it is untrue and harms someone’s reputation, and you are careless, or you know, or should have known, that it is untrue when you write or say it); or
3. it creates the immediate danger of causing students to commit an act that is unlawful or in violation of school rules, or that would cause a substantial disruption of the orderly operation of the school.

So, even if your principal or teachers believe that an article or leaflet is in “bad taste,” or is controversial, divisive, or expresses a political point of view that is against school policy, they still cannot censor what you say or write unless it also falls within the three exceptions above. The law is clear about one thing: outside the classroom itself, school officials cannot just impose their own version of good taste and decency on what students say or write. However, you can certainly avoid some problems if you can say what you want to say without using profanity or sexual references.

WHAT CAN WE DO IF THE SCHOOL DOES TRY TO CENSOR US?

California Education Code Section 48907 also requires each school district to put in writing the rules controlling speech and press activities.

So, if you are faced with a school official who is trying to limit what you say or write, you should ask to see those written rules to determine whether the school official is following the rules they are required to follow.

But remember: sometimes exercising your free speech rights involves risks. Sometimes “reasonable people”—like you and the school principal, for example—can disagree as to what is “disruptive” or “libelous.” And school officials do not always follow the law on this. You may be acting within your rights, but you may have a struggle in school or even need to go to court.

There are key steps you can take to fight censorship. Be sure to get in writing your school policies regarding banned expression. Show Education Code sections 48907 and 48950 to school officials and ask them

for a written response as to why they still want to ban the expression. Get petitions signed by other students, parents and teachers (especially journalism or yearbook advisors, debate coaches, history and government teachers or others who really understand the First Amendment). Write an article in the school paper. Lobby at school board meetings and ask parents, community and youth advocates and First Amendment experts to join you. Tell your local newspaper about the controversy.

CAN SCHOOL OFFICIALS BAN SPEECH WHICH THEY CLAIM IS FALSE?

Again, there is no simple answer. The law only allows the prohibition of speech which is “libelous” or “slanderous.” These are also highly technical legal terms which generally cover writing or saying something that you know, or should know, is false, that injures someone’s reputation, and that you are careless in writing (by not finding out whether it is false or not).

Nothing that you say or write can be libelous if it is true. Also, only facts can be false—your opinion can never be libelous. The line between a fact and



an opinion, however, is not always clear. Finally, there are sometimes privacy considerations that should be taken into account. These considerations are often a matter of good journalism but occasionally there are legal concerns as well. If in doubt, you may want to consult with an attorney or privacy expert.

CAN THEY BAN OUR PUBLICATION JUST BECAUSE IT CRITICIZES SCHOOL OFFICIALS?

No. Criticism of school officials and school policies is clearly free speech, unless it violates the libel laws.

Instead of censoring what you say, school officials should try to get their message across with their own article in the school paper or some other response. The only time school officials may be able to justify banning your article is if they can prove that it will lead to an immediate and major disruption at the school. However, just thinking that an article on drugs or gang activity might be bad for the school's reputation is not a good enough reason for censorship.

CAN SCHOOL OFFICIALS PREVENT ME FROM EXPRESSING MY OPINION BECAUSE THEY THINK IT IS TOO CONTROVERSIAL?

No. School officials may believe that articles or leaflets about such topics as racism, gay rights, drugs on campus, or teenage pregnancies are too controversial for student publications. However, they cannot censor those topics unless there is clear evidence that the article will incite students to commit unlawful acts or to disrupt the school. Even if the article would provoke strong disagreement or upset some students, they still cannot censor it.

Criticism of your school, criticism of students, teachers or school officials, or discussion about serious problems that have occurred at other schools is generally protected.

CAN I BE PUNISHED FOR SAYING OR WRITING SOMETHING PROVOCATIVE AT SCHOOL?

Sometimes school authorities will try to punish students who make provocative statements or joke about school violence. They may argue that the student is making a "terrorist threat."

In order to be considered a "threat," you must intend that others take your words as a threat. In addition, your words must be so clear and convincing that they would cause another person to really believe that you intend to carry out the threat—and therefore to have a reasonable fear for his or her safety.



CAN MY SCHOOL STOP SPEECH THAT IT SAYS IS "HARASSMENT"?

Schools have a duty to maintain a safe environment for all students. While students have a right to voice even offensive opinions, the school has a duty to step in when students use words as a weapon against each other. Conduct (including verbal conduct) that is intentionally intimidating or demeaning on the basis of sex, race, ethnicity, sexual orientation, gender

identity, disability, religion and other categories and that is so severe and pervasive as to substantially interfere with a student's educational benefits, opportunities, performance or physical or psychological well-being constitutes harassment. Schools must respond to complaints about harassment by other students by stopping the harassment when it happens, providing staff and student training on tolerance and respect for all members of the community, consistently issuing appropriate discipline to harassing students, or a combination of approaches.

DO SCHOOL OFFICIALS HAVE MORE POWER TO CONTROL OUR PUBLICATION IF IT IS SCHOOL-SPONSORED OR BEARS THE SCHOOL'S NAME?

No. In California, our law is clear that freedom of speech and press applies to official school publications that are written by students, even if the school pays the costs of producing the newspaper. (That means that only articles that are "obscene, libelous or substantially disruptive" can be censored.) The law also says that student editors, and not teachers or administrators, are the ones responsible for assigning and editing articles. However, the journalism advisor can require that the newspaper conform to professional standards of English and journalism.

WHAT ABOUT MY WEBSITE?

Websites are also protected by Education Code sections 48907 and 48950 and the First Amendment. If a school allows students or clubs to use school facilities (computers, servers, etc.) the same rules apply as for school-sponsored newspapers.

Generally speaking, school officials do not have the right to punish students for material on websites created outside of school with no use of school facilities. However, sometimes school officials will claim that what you say on your own website is "related to school attendance"—in other words that it has an impact on what happens at school. There is no clear law on this, although generally courts have been protective of off-campus websites. In addition, school officials may try to punish you for what you say on the website if you talk about it at school or call it up on a computer at school. Again, the law is not yet clear on this, and each case must be examined individually. ★

CLUBS & ACTIVITIES

CAN A SCHOOL REFUSE TO ALLOW AN AFTER-SCHOOL CLUB TO MEET AT THE SCHOOL OR USE SCHOOL FACILITIES SUCH AS BULLETIN BOARDS BECAUSE THE GROUP'S VIEWS ARE UNPOPULAR OR CONTROVERSIAL?

No. Part of the right to free speech includes the right to form your own groups and clubs—they can be anything from a political group to a cooking club. The right of a particular group to use school rooms, bulletin boards or other facilities cannot not depend on its point of view, unless the school can establish that the group's activities will result in a disruption at the school.

There is also a federal law (the Equal Access Act) which makes it unlawful for a school to deny "equal access" to school facilities to any student group that wants to hold a meeting based on what will be discussed. For example, your school can't prevent you from holding a meeting just because you invite a controversial speaker.

However, a school can adopt a policy that limits school facilities to student groups that address issues related to the school's curriculum. If they do that, they can bar access to all non-curriculum-related groups. A curriculum-related student group is one that addresses issues that are studied in classes offered by the school. So, if your group has been denied access to the school (i.e., you are told that you cannot have a meeting), you should check to see if other similar groups have been given access to do what you want to do. Even if you can't have your meeting on school grounds, you can still hand out fliers about your group or about a planned meeting or post notices about the meeting on school bulletin boards that are open to students.



CAN A SCHOOL BAN GAY STUDENT CLUBS OR A GAY-STRAIGHT ALLIANCE ON CAMPUS?

If a school allows other extra-curricular clubs to meet on campus, it must also allow gay clubs or gay-straight alliances to meet. Even if the school only allows curriculum-related clubs, if the topics the GSA will

address are also covered in classes offered by the school, the GSA must be allowed to meet.

CAN STUDENTS START NON-CURRICULAR CLUBS ON CAMPUS?

It depends on whether the school has allowed students to have any non-curricular clubs. The school may prohibit all student clubs that are not directly related to school classes. However, if the school permits some students to form non-curricular clubs, it cannot discriminate simply because of the political, philosophical or religious content of the meetings.

CAN STUDENTS BRING IN SPEAKERS TO TALK ABOUT POLITICAL ISSUES? HOW ABOUT DURING ELECTION TIME? CAN THE SCHOOL DEMAND THAT SOMEONE OF AN OPPOSING VIEWPOINT ALSO SPEAK?

In general, if the school allows students an opportunity to bring in guest speakers, it cannot prohibit political speakers, even if their views are controversial. The school may not require that all sides of a controversy be aired at one session.

However, during a political campaign, California law makes it a crime to use school resources or facilities "for the purpose of urging the support or defeat of any ballot measure or candidate." (Ed. Code Section 7054.) The school can only present a "fair and impartial" summary of the issues on the ballot. During a campaign, therefore, the school may insist that both sides be represented if speakers are planning to address specific measures or candidates on the ballot.

DO STUDENTS HAVE THE RIGHT TO HAVE A RALLY OR DEMONSTRATION AT THE SCHOOL?

Peaceful demonstrations are considered free speech, so a school should not be able to prohibit them unless they would disrupt the school.

The problem is that many court decisions have gone against students who wanted to hold demonstrations on school property or during school hours. Courts often find such activities disruptive because they can interfere with the regular school programs (especially if they are inside the school) and because students might cut class to attend them. However, school authorities should not be able to prevent students from participating in a demonstration that is held off campus and after school hours. Also, if the school allows some students and student groups to hold activities on campus and during school hours, it cannot prevent other students from doing so based on a disagreement with the subject matter of the activity, unless the school can also show the activity creates a substantial risk of disruption.

ARE WE ALLOWED TO WALK OUT OF CLASS?

The same rules that apply to missing school without parental permission apply here. Schools may not, however, impose a harsher penalty because you were engaging in a political protest than they would if you were cutting class for any other reason. Also, the school can't suspend a student for walking out of class if it's the student's first offense because the Education Code says suspension is a penalty of last resort and not to be used to discipline tardiness, truancy or absences from school.

CAN THE SCHOOL PREVENT US FROM DISTRIBUTING LEAFLETS AT SCHOOL?

Your school cannot prohibit leaflets dealing with controversial topics, unless it can show that the leaflet would cause a disruption in the school. They also can't have a blanket rule prohibiting all "disruptive leaflets," or a rule requiring students to get approval of written materials before passing them out. If they want to stop you from distributing a leaflet, the school must show that your specific leaflet would result in a major disruption at the school. They also can't just ban all leaflets that have to do with a specific topic, so, for example, a rule that prohibits all leaflets about abortion—for or against—is not valid.

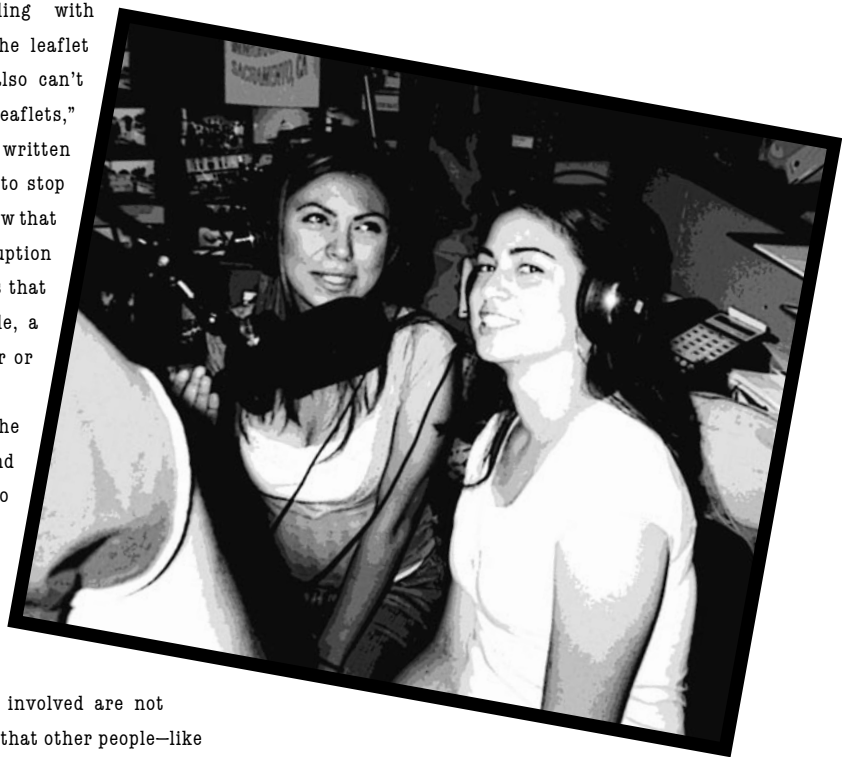
As with any free speech activity, however, the school can adopt "reasonable time, place and manner" rules. So, they may not allow you to leaflet in classrooms or narrow corridors (where it might disrupt the flow of traffic.) But they can't completely prohibit leafleting or setting up information tables inside the school if there is a lobby or other area where it can be done without interfering with foot traffic and if the persons involved are not missing classes or study periods. If you can show that other people—like the student government or the PTA—set up tables and their tables are not considered disruptive, then yours should not be either.

Also, if a school official tries to stop you because students are throwing your leaflets on the floor, you might suggest that the official should try to stop people from littering—and you could help by picking up any leaflets you see—rather than to stop the leafleting. This is how the law works on public sidewalks.

CAN WE COLLECT MONEY FOR POLITICAL CAUSES OR SELL LITERATURE ON SCHOOL GROUNDS?

State law limits solicitation of students on campus by teachers and outside organizations, but allows students to collect money from each other for any "otherwise lawful purpose." Since collecting money for political causes is generally recognized as a part of protected freedom of speech, it should not be prohibited at school. The right of students to sell underground newspapers on public school campuses has been upheld in court.

However, if you want to collect money for some cause, you should be prepared to argue that it is not disruptive. One way of doing that is to show that school officials allow other kinds of money raising and sales, such as raffles, fundraisers for student government, bake sales or sales of yearbooks or school rings. ★





LIBRARY & CLASSROOM BOOKS

ARE SCHOOL OFFICIALS ALLOWED TO TAKE BOOKS OFF THE SCHOOL LIBRARY SHELVES OR OUT OF READING CLASSES BECAUSE THEY DON'T LIKE THEIR IDEAS OR THEIR LANGUAGE?

Although the ACLU considers book censorship in the schools to be a serious violation of students' (and teachers') rights, the law itself is very unclear. It seems to be based on the school official's reason for restricting or removing the books.

On the one hand, courts have said that school officials cannot remove books from school library shelves or classrooms simply to suppress the ideas they contain. On the other hand, courts have allowed school officials to remove books from classrooms or reading lists for "legitimate goals,"—either because the language is inappropriate or because the books don't advance the school's educational goals, or for other curricular reasons.

It is harder for a school to justify removing materials from the school library than from

the classroom because schools have a broad right to set classroom curriculum, but less of an interest in limiting students' voluntary exploration of library materials.

The censorship of many books and magazines has been challenged legally by students, teachers and school librarians in California. The freedom to read is something worth fighting for!

HOW DOES THIS AFFECT OUR USE OF THE INTERNET ON SCHOOL COMPUTERS?

The United States Supreme Court has said that libraries do not, as a general rule, violate the First Amendment when they use blocking

software to limit Internet access. In fact, schools that receive federal funds may be required by the Children's Internet Protection Act to use blocking software to prevent student access to obscene and pornographic material. However, school libraries may not use blocking software to favor one viewpoint over another, such as a filter that allows access to anti-choice websites but blocks access to pro-choice websites. ★



PLEDGE & PRAYERS



DO WE HAVE TO SAY THE PLEDGE OF ALLEGIANCE?

No. The courts say that students have the right to sit silently during the flag salute and Pledge of Allegiance as a protest against government policies (such as the death penalty or abolishing affirmative action) or in opposition to the words of the Pledge.

Over 60 years ago, the U.S. Supreme Court declared that a compulsory flag salute (Pledge of Allegiance) violated an individual's constitutional right to free expression. As long as you do not disrupt the pledge, you may refuse to participate. You do not need your parents' permission to opt out of saying the pledge.

CAN SCHOOL OFFICIALS SPONSOR PRAYERS OR OTHER RELIGIOUS EXERCISES IN SCHOOL?

No. The U.S. Supreme Court ruled that school prayers and Bible readings are unconstitutional because they go against students' rights to practice their own form of religion—or none at all. Prayers and Bible reading are not allowed even if they are nondenominational or voluntary. In a class, you may study different prayers and religious books if they are part of a course such as history or literature, and do not promote any particular religion.

WHAT ABOUT PRAYERS OR RELIGIOUS REFERENCES AT OUR GRADUATION OR OTHER SCHOOL CEREMONIES?

The school authorities and the student body cannot allow either a religious leader or a student to give a prayer at graduation ceremonies or at extracurricular school activities such as sporting events. At the same time, the Constitution allows a speaker to include a brief religious reference in a public address, as opposed to a sermon or prayer.

WHAT ABOUT A MOMENT OF SILENCE?

It depends on what the purpose of the moment of silence is, and how it is carried out. If the only purpose or effect is to promote religion then it is probably forbidden by the Constitution. On the other hand, if the purpose has nothing to do with religion—for example, to remember someone who has died or to think about world peace—then it is probably O.K.

CAN THE SCHOOL ALLOW CHRISTMAS PROGRAMS OR OTHER TYPES OF RELIGIOUS PAGEANTS OR DISPLAYS?

The school may not display religious symbols on school property. Sometimes, however, it's not clear whether an exhibit clearly sends a religious message. Certainly, a cross or Nativity scene would be impermissible. However, a class might have a temporary Day of the Dead display in October as a cultural learning experience, despite the inclusion of religious artifacts.

Because schools may teach about religion—as opposed to indoctrinating religion—most courts allow students to sing religious music. However, a school might go too far and offend the Constitution if, for example, it conducts lengthy rehearsals for months in the fall for a Christmas assembly dominated by Christian songs.

CAN STUDENT GROUPS HOLD RELIGIOUS MEETINGS ON SCHOOL PROPERTY?

High school students can, during non-class hours, if other student groups are also allowed to meet there. The law about this (the federal Equal Access Act of 1984) requires that the meetings be student-initiated; school staff may not sponsor religious clubs, although they may be present to ensure order. People from outside the school may not lead, control, or regularly attend the meetings—although they may be invited speakers.

IS IT LEGAL FOR STUDENTS TO HOLD PRAYER RALLIES AROUND THE FLAGPOLE?

Yes. Students may hold informal prayer rallies on school grounds before or after school.

MAY STUDENTS HAND OUT RELIGIOUS MATERIALS IN SCHOOL?

Yes. Students can distribute religious materials on the same terms that students hand out other written materials. However, schools need to be careful not to create the impression that they are sponsoring or endorsing religion or particular religious views. They can do so by making clear that the school does not endorse student speech, but they must limit religious speech if disclaimers are inadequate to prevent an impression of official endorsement. ★

DRESS CODES

CAN THE SCHOOL TELL ME I CAN'T WEAR CERTAIN KINDS OF CLOTHES IN SCHOOL?

The way you dress is one of the ways you express yourself -- so the way you dress should be protected by the same constitutional guarantees of privacy, liberty and free speech that protect the things you say and write. However, the courts don't like to interfere with the authority of school officials to impose dress codes.

School officials usually justify dress codes and grooming rules by saying that they are necessary to prevent distraction or disruption, to prevent gang activity or to promote safety. Even though the school's rules might be based on unfair stereotypes and have nothing to do with reality, it is still unlikely that a court would overturn a school's dress code, unless it feels it really doesn't make sense or discriminates against certain students. There are limits, however. For example, a school dress code that has a blanket prohibition on clothing with any message whatsoever or that allows school logos but no others, may be open to challenge as violating students' rights to free expression. School dress codes must be specific enough that students know what is permitted and not permitted. Therefore, broad statements like "no gang-related apparel" are not okay because they are too vague. Students should not be left to figure out what the school considers "gang-related."

WHAT IF THE SCHOOL ONLY ENFORCES THE DRESS CODE AGAINST CERTAIN STUDENTS?

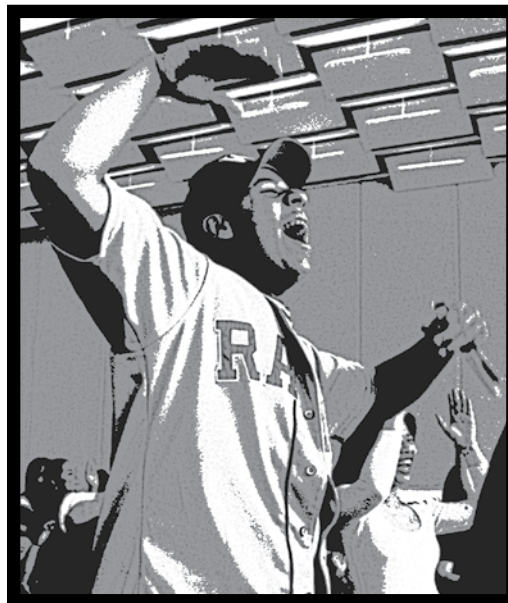
School rules must be enforced uniformly. For example, if your school only stopped students of color from wearing clothes it considered "gang related," it would be engaging in race discrimination, which is against the law.

CAN A SCHOOL'S DRESS CODE KEEP US FROM WEARING T-SHIRTS THAT HAVE CERTAIN SLOGANS OR MESSAGES ON THEM?

When a school's dress code is used to ban clothes because they have certain slogans, then it really becomes an issue of free speech and not just personal appearance. The school should not ban any slogans unless they are libelous, obscene or somehow very disruptive.

Some schools try to use their dress code to prohibit students from wearing T-shirts that advertise certain beer companies. The school officials argue that these T-shirts encourage drinking and since underage drinking is prohibited by state law and school rules, the students shouldn't be able to wear the shirts. The problem with this argument is that it doesn't make the distinction between speech (having a beer slogan on a T-shirt) and conduct (students drinking beer). When

they argue that wearing such T-shirts is the same as actually drinking beer, they ignore the basic principles of freedom of speech. The problems of drinking at schools should be dealt with through education and counseling, and not by censorship.



CAN THE SCHOOL MAKE ME WEAR A SCHOOL UNIFORM?

Although schools are allowed to adopt school uniform policies, there are certain rules that schools must follow in doing so. One of the most important rules is that schools must allow parents to opt out of having their children wear school uniforms. Parents may opt out of the uniform policy for any reason, or no reason at all. The law does not permit the school to decide whether the reason is good enough. Nor can the school discriminate against students who do not participate in the school uniform policy or provide rewards to students who do wear uniforms, such as special treats for the class with the largest number of students wearing uniforms. In addition, schools that have adopted uniform policies must have in place a program to assure that students whose families cannot afford to buy uniforms are able to get uniforms if they want them.

CAN A SCHOOL SAY I CAN'T WEAR MY HAIR IN A CERTAIN WAY OR SAY I CAN'T HAVE A BEARD OR A MUSTACHE?

The length or style of your hair is an even more personal decision than what you wear, because you can change your clothes when you leave school. However, the courts don't like to interfere with the school's authority, and usually say that school rules against growing beards and limiting hair length are permissible. ★

SCHOOL RECORDS



WHAT IS IN MY SCHOOL RECORDS?

Every school makes a record of each student's academic and personal progress from the time he or she enters school until graduation. This record may include progress reports, grades, achievement scores, I.Q. tests, disciplinary reports, medical records, psychological and psychiatric reports, and evaluations by teachers and school administrators.

DO I HAVE A RIGHT TO SEE MY FILES?

Federal law guarantees the rights of parents of students and students themselves who are 18 or older to inspect their files. California law allows students who are 16 years old or who have completed the 10th grade to have access to their files. Under California law, if you make a request to see your school record, the school has to respond in 5 days.

HOW CAN I GET CERTAIN INFORMATION TAKEN OUT OF MY RECORD?

If you think that certain information in your file is inaccurate, misleading or inappropriate, your parents should make a written request asking the district superintendent to either remove it or to include a statement challenging its contents. If you are over 18, you can make the request yourself.

CAN INFORMATION IN MY SCHOOL RECORDS BE GIVEN TO OTHER PEOPLE WITHOUT MY PERMISSION?

It depends. First of all, if you are under 18, it's your parents' permission

that matters. Your parents can authorize the release of your school records even if you want to keep the information private. Second, there are some people who are allowed to review your records even without your parents' permission. These include school staff with legitimate educational interests, other schools to which you apply or transfer, and those who provide financial or student aid. In addition district attorneys and probation officers may obtain access to these records in connection with criminal investigations, investigations of probation violations, and in connection with truancy mediations.

WHAT ABOUT THE MILITARY AND OTHER GROUPS?

The 2002 "No Child Left Behind Act" requires school districts receiving certain federal funding to give students' names, addresses, and phone numbers to branches of the United States military for recruitment purposes. The law also requires, however, that schools give students and parents the opportunity to insist on "prior written parental consent" before disclosing student information. This means your parent or guardian has the right to tell the school not to give out your information to the military. It also means that you can tell the school not to give out this information unless it has your parent or guardian's signature. Additionally, schools must allow military recruiters the same access to students as they allow for representatives from institutions of higher education and employers.

Other groups and agencies can get some of the information about you—your name, birth date, birthplace, address, phone number, dates of attendance and awards. If you are over 18, you can request that even this kind of information not be released, and if you are younger your parent can make such a request. ★

DISCRIMINATION

ARE SCHOOLS ALLOWED TO OFFER CERTAIN SPORTS PROGRAMS ONLY TO BOYS OR GIRLS?

No. There is a federal law (Title IX of the Education Amendments of 1972) that says schools that receive federal funds may not discriminate against boys or girls in interscholastic, club or intramural sports programs. This means that girls cannot be denied access to most sports programs offered to boys and vice-versa.

California law also prohibits discrimination and specifies that public school sports programs provide girls an equal opportunity to participate, including access to facilities and training.

Some schools make exceptions for contact sports and for teams formed on the basis of competitive skill. Courts generally uphold separate teams for girls and boys when schools provide opportunities in the particular sport for both sexes.

WHAT ABOUT OTHER KINDS OF CLASSES AND PROGRAMS?

U.S. law (Title IX of the Civil Rights Act) and California law (Education Code, Sections 221.5 and 221.7) forbid sex discrimination in academic and other school programs. All courses and other school-related activities must be open to both boys and girls.

WHAT CAN WE DO IF THE SCHOOL OR PEOPLE AT THE SCHOOL ARE RACIST?

Both the U.S. and the California Constitutions prohibit actions by a school system or school officials that discriminate against students on the basis of race or national origin. If you feel that you or another student is being discriminated against, you should talk to a teacher or another school official, find out if there is a complaint procedure at your school (there should be), and make sure that the matter is investigated and addressed.

WHAT CAN WE DO IF THE SCHOOL OR PEOPLE AT THE SCHOOL ARE HOMOPHOBIC?

In 1999, the California Legislature passed a law that prohibits discrimination in schools that receive public funding on the basis of sexual orientation or gender identity. This includes discrimination against students who are perceived as lesbian or gay. The ACLU has successfully brought cases for students against school districts that failed to prevent gay students from harassment by other students and from staff. Under the terms of the settlements in these cases, the school districts had to institute anti-homophobia and tolerance trainings for staff and students.

You can encourage your school to arrange for preventive trainings on issues of respect and safety for lesbian, gay, bisexual, and transgender students and staff.



CAN I BRING A SAME SEX DATE TO THE SCHOOL PROM?

Schools in some communities have tried to stop students from bringing dates of the same sex to the prom or other school social events. California prohibits schools from discriminating on

the basis of sexual orientation or gender, including gender identity. That means schools must allow students to choose their own dates, regardless of their sex, gender or gender identity. A federal court has also ruled that prohibiting a gay student from bringing his date to the prom violated his federal constitutional right to freedom of speech.

HOW CAN WE FIGHT AGAINST HARASSMENT ON CAMPUS? ARE SCHOOL OFFICIALS LIABLE FOR NOT PREVENTING OR EFFECTIVELY INTERVENING IF STUDENTS REPORT SEXUAL, RACIAL, OR ANTI-GAY HARASSMENT TO THEM?

If you have been the subject of harassment, you should report it to a school

official who has the authority to take action. Under federal law (Title IX) schools can be held liable for teacher-student sexual harassment if the student reports the harassment to a school official and that official refuses to take action against the harasser. Under both federal and state law, schools can also be held liable for failing to take action against student-to-student harassment. In these cases, however, not only do you have to report the harassment, you must also show that the school failed to remedy the situation, their response was unreasonable, and it deprived the student of an educational opportunity.

WHAT RIGHTS DO I HAVE AS A TRANSGENDER YOUTH?

In most California schools, youth are explicitly protected from discrimination on the basis of gender identity and/or sexual

orientation under the California Student Safety and Violence Prevention Act. This law mandates that school personnel protect students from harassment and discrimination and provide students with equal access to all educational opportunities.

Being discriminated against for your gender identity may include the following: not having access to appropriate bathrooms or locker rooms, school personnel refusing to refer to you by the pronoun that corresponds to your gender identity, and not being allowed to wear clothes that other students can wear because you are dressing in gender non-conformative ways.

For free legal advice about these or other issues, contact the Transgender Law Center at (415) 865-0176 or by email info@transgenderlawcenter.org. ★

ORGANIZE! FIGHTING RACISM, SEXISM, HOMOPHOBIA AT SCHOOL

Discrimination and harassment at school are not only illegal—but unjust. You and your fellow students can organize against injustice at school and in your community. **HERE ARE SOME KEY STEPS TO TAKE:**

1. Report any incident of discrimination or harassment to a teacher or school administrator. Find an advocate: often there will be a counselor or teacher who can give you emotional support as well as information.
2. Write down everything that happens. Save all the notes, reports, letters or articles you write. Have witnesses write down what they heard or saw.
3. Speak out against injustice. Educate your fellow students about what is going on and build support among them.
4. Educate yourselves. Find out what your school policies are. If they are not strong enough to address the discrimination or harassment, organize a campaign to change it to more strongly address issues of racism, sexism or homophobia. Advocate for anti-bias programs for students and staff, and changes to the curriculum that educate students about societal discrimination. Your campaign may take you to the school board, city council or even the state Legislature.
5. If the problem is pervasive, contact the ACLU or an attorney.

HEALTH & MEDICAL CARE



ARE STUDENTS ENTITLED TO LEARN ABOUT HIV/AIDS, BIRTH CONTROL, PREGNANCY AND ABORTION AT SCHOOL?

All California schools must provide information about HIV/AIDS transmission. Schools are not otherwise required to offer classes in sex education. Students may choose not to attend sex education classes, and parents may send in written notice prohibiting their children from attending sex education classes.

If schools conduct sex education classes that discuss sexual intercourse, they must provide accurate, up-to-date information about all forms of birth control. In addition, sex education curricula and teaching must be medically accurate and free of gender bias and race bias. California law requires that sex education classes be accurate and objective because many schools were using courses that discourage teenagers from having sex by frightening them with false information about sex.

DO I NEED MY PARENTS' CONSENT TO GET BIRTH CONTROL? WILL MY PARENTS BE TOLD?

You do not need your parents' consent for birth control information, condoms, or prescription birth control drugs such as pills and injections. In general, birth control counseling and distribution are both completely confidential. But there are a few situations where child abuse laws require clinic staff to report very young teenagers or teenagers engaging in sex with significantly older partners. If the staff asks you about your age and the age of your partner, or other details of your activity, it's a good idea to ask them what their policy is about keeping this information confidential.

HOW CAN I PAY FOR BIRTH CONTROL, ABORTION OR CHILDBIRTH?

Some health insurance policies cover these costs. However, if you are on your family's policy, and you use it to pay for medical services or supplies, your parents may find out that you are using birth control or seeking other kinds of reproductive health care. If you are concerned about this, call the company to find out how they handle such matters.

Medi-Cal also will pay for prescription birth control (such as the pill, injections, diaphragm and IUD), abortions and prenatal care and delivery for teens when their own incomes (not including their parents' incomes) qualify. Another program that pays for family planning services only is Family PACT. You do not need your parents' permission, and neither Medi-Cal nor Family PACT will contact your parents. Many clinics and doctors will assist you in obtaining coverage. Call 1-800-942-1054 to find out more about Family PACT, or contact the Medi-Cal office in your area for information about Medi-Cal.

IS ABORTION LEGAL?

Yes. California law, the Reproductive Privacy Act, guarantees everyone the right to choose or refuse abortion. Generally, abortion is safer early in pregnancy. Although it is not advisable to wait, you may still obtain an abortion late in pregnancy if your doctor decides that it is necessary to preserve your life or health.

WHERE CAN I GO TO FIND OUT WHETHER I AM PREGNANT AND TO GET AN ABORTION OR CARE DURING MY PREGNANCY?

There are family planning clinics that provide birth control information, counseling and pregnancy testing. Some clinics also perform abortions and provide prenatal care. You may call Family PACT (1-800-942-1054) for referral information or check your local yellow pages for clinic information.

DO I NEED MY PARENTS' PERMISSION TO GET AN ABORTION? WILL MY PARENTS BE TOLD IF I HAVE AN ABORTION?

No.

DO I NEED MY BOYFRIEND'S CONSENT TO GET AN ABORTION?

No.

CAN I PUT MY BABY UP FOR ADOPTION WITHOUT MY PARENTS' PERMISSION?

Yes. In California, just as you can obtain birth control and an abortion without your parents' consent, you can choose to put your baby up for adoption without their permission. If you are considering adoption, you can get counseling and information from agencies that are listed in the yellow pages under "Adoption."

CAN MY PARENTS OR MY BOYFRIEND FORCE ME TO TERMINATE MY PREGNANCY?

No. Just as the law protects your right to have an abortion without your parents' knowledge or consent, it also protects your right not to have an abortion, even if others pressure you.

CAN SCHOOL OFFICIALS MAKE ME LEAVE SCHOOL IF I BECOME PREGNANT, OR FORBID ME FROM PARTICIPATING IN CERTAIN ACTIVITIES?

No. Under federal law, a school may not discriminate against a student on the basis of her pregnancy, childbirth, termination of pregnancy, or recovery from procedures related to pregnancy or abortion. Many California schools have special programs for pregnant and parenting students.

CAN I RECEIVE MEDICAL TREATMENT WITHOUT MY PARENTS' PERMISSION?

It depends. Although parental consent is required for most medical treatment for minors under the age of 18, some of the things you want to keep private can be treated without your parents' knowledge. If you are 12 or older, you can be treated for sexually transmitted diseases (such as syphilis, gonorrhea, herpes, etc.), sexual assault, alcoholism, drug abuse, or obtain mental health counseling, without your parents' permission. No matter how old you are, you may obtain pregnancy counseling, prenatal care, contraception, or abortion without their permission.

To be on the safe side, you should ask the clinic whether your parents will be told. For most services, clinic

staff will not involve your parents. But it is possible, especially for sexual assault, mental health, and alcoholism treatment—so it is best to find out the clinic's policy.

The Department of Public Health gives treatments for some of these diseases and conditions for free.

Also, according to state law (Education Code 46010.1), school authorities may excuse students in grades 7 through 12 from school for confidential medical services without the consent of the student's parent or guardian. It is a good idea to find out about your school's policy of notifying parents of students' absences for health care.

CAN I BE TESTED OR TREATED FOR HIV WITHOUT MY PARENTS' KNOWLEDGE OR PERMISSION?

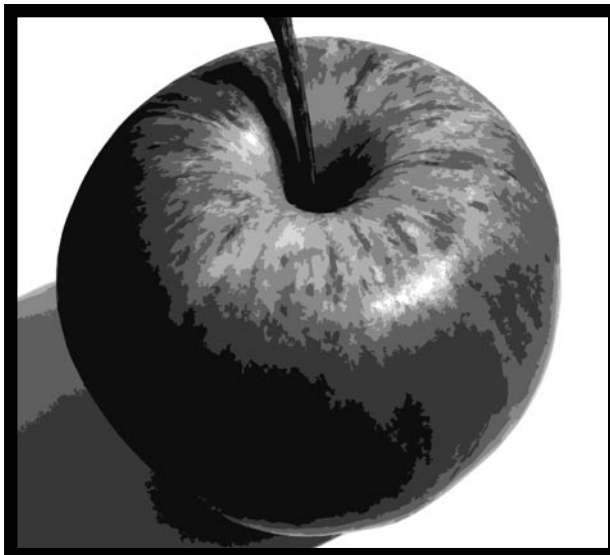
Yes, as long as you are 12 or older; if you are 12 or older, your HIV-status may not be reported to your parents without your permission. Under California law, young people under 12 must obtain parental permission to be tested or treated for HIV, the virus that causes AIDS. In addition, a parent may authorize a test or treatment for HIV for a child under 12, even if the child doesn't want to be tested or treated. Minors over 12 years old who are in the foster care or youth probation systems have the same rights as other minors with regard to HIV testing and treatment; if they are under 12 years old, the juvenile court's permission is required for HIV testing and treatment.

CAN SCHOOL OFFICIALS OR EMPLOYERS FORCE ME TO TAKE AN HIV TEST?

No. They may only test you if you give them permission to do so.

CAN I GO TO SCHOOL IF I HAVE HIV OR AIDS?

Absolutely. Schools cannot discriminate against other students who have HIV or students who are related to someone with HIV. In addition, students with HIV should not be excluded from extracurricular programs. Students are not required to report their HIV status to schools, but in situations where there is a potential for transmission (e.g., bleeding injuries), it may be advisable to inform the school. Schools must ensure the confidentiality of students' medical conditions. ★



BILINGUAL EDUCATION

DO NON OR LIMITED ENGLISH SPEAKING STUDENTS HAVE A RIGHT TO BE EDUCATED IN THEIR OWN LANGUAGE?

Up to a point. Under both state and federal law, schools have an affirmative duty to provide appropriate programs to address the language needs of students whose primary language is not English or who are limited English proficient (LEP). Schools must ensure that these students learn academic English and have equal access to the curriculum. In California, how this dual obligation is carried out is governed to a large degree by Proposition 227 which places some restrictions on bilingual education programs.

HOW HAS PROPOSITION 227 LIMITED BILINGUAL EDUCATION PROGRAMS?

Under Proposition 227 (passed by California voters in 1998), LEP students who do not know English well enough to perform ordinary classroom work in English are supposed to be taught in a "sheltered English immersion" program where nearly all the instruction is in English. Students are supposed to be transferred into mainstream English language classrooms as quickly as possible, with the goal being one year. However, the actual practice varies from district to district, as the one



year goal is often not realistic. LEP students are entitled to special services to address their language needs until it is determined that they can participate equally in a mainstream classroom with native English speakers.

A court has concluded that Prop. 227 "vests decision-making over the method of LEP instruction exclusively with individual parents of LEP students. . ." Parents are able to exercise this right by obtaining individual waivers to permit their child to be taught in a bilingual education classroom provided certain criteria are met. Schools are required to provide parents written notice of their right to apply for a waiver and teachers are free to recommend to parents that they apply for a waiver. Schools which do not provide the required notice, respond to requests for waivers in a timely manner, or adequately justify a denial of a waiver request may be subject to legal action.

Federal law requires that schools which focus first on teaching LEP students English must also take steps to ensure that any deficit in the students' academic knowledge be addressed so that ultimately these students do not fall behind in knowledge of academic subjects. Again schools which fail to meet this requirement may be subject to legal action. The federal No Child Left Behind Act does not mandate a particular approach to teaching LEP students, and does not prohibit the use of bilingual programs. ★

SPECIAL EDUCATION

DO SCHOOLS HAVE TO PROVIDE SPECIAL HELP TO STUDENTS WITH LEARNING OR PHYSICAL DISABILITIES?

Yes. Under both state and federal law, schools must provide students with disabilities with special educational programs and

services so that they can obtain an education appropriate to their needs and, to the extent practicable, participate in mainstream classes alongside their peers without disabilities. The law also requires that schools have ramps or other structures allowing students with physical disabilities easy access to all parts of the campus. ★

ACCESS TO BASIC EDUCATIONAL RESOURCES



WHAT ARE THE MINIMUM STANDARDS FOR PUBLIC SCHOOL EDUCATION IN CALIFORNIA?

In May 2000, the ACLU, along with other organizations, brought a lawsuit on behalf of students attending public schools in California that lacked even the most basic resources for learning. The lawsuit, called *Williams v. California*, challenged the state's failure to provide all California students with basic educational necessities. In order to settle the case, the state agreed to implement new standards and accountability for textbooks, teachers and facilities. Under the Williams settlement, students have a right to:

- State- or District-approved textbooks or other instructional materials to use in class and at home;

- Textbooks or instructional materials that are current, have all their pages, and are readable and not falling apart;
- Credentialed, permanent teachers with competency in the subject area of the class (for English learners, this means teachers with specialized training); and
- Classrooms and other facilities that do not pose a danger to students' safety and health.

WHAT CAN I DO IF MY SCHOOL HAS UNSAFE FACILITIES, UNTRAINED TEACHERS OR INSUFFICIENT MATERIALS?

Under the Williams settlement, schools are required to have a complaint process through which students, parents, teachers, and any other interested person or organization can complain about inadequate instructional materials, misassigned teachers, or unsafe facilities conditions such as broken windows, gas leaks, heating failures, pest infestation, or structural damage. Notice of the complaint process must be posted in every classroom.

For more information about the Williams case and settlement, visit www.decentschools.org, call the toll-free Williams information hotline 1-877-532-2533, or contact Brooks Allen at (408) 569-5895 or ballen@aclu-sc.org. ★

SCHOOL ATTENDANCE

AT WHAT AGE CAN I LEAVE SCHOOL LEGALLY?

In California, education is compulsory until you graduate or reach the age of 18; you must attend a school or an appropriate continuation program. There are some exceptions, including for students who attend private school or receive other instruction, some students who work or attend occupational training programs, and students who have completed certain levels of education.

CAN SCHOOL OFFICIALS EVER PREVENT ME FROM ATTENDING?

Anyone living in California who is between the ages of 6 and 18 has the right to a free public education. You may not be barred from attending school simply because of physical disability, pregnancy, marriage, homelessness or immigration status. Schools also must admit children of migrant farmworkers, even if they attend school for only part of the year.

You can be suspended or expelled from school for a number of reasons—like violating a serious school rule or being arrested. If a student is expelled, the District must offer some type of educational program. Many districts have their own community day school programs. If not, students can go to the county community program. In reality, many parents and students do not feel good about these programs and many opt for independent study. However, the District must offer an option that is not independent study.

You can also be barred from school temporarily if you have a contagious disease.

IF I AM 18 YEARS OLD, CAN I EXCUSE MYSELF FOR MY ABSENCES OR DO I STILL HAVE TO GET A PARENT OR GUARDIAN'S PERMISSION?

The California Education Code (section 46012) gives a student who is 18 years old the same ability to excuse his or her absences that a parent or guardian has. ★

SEARCHES

CAN THE PRINCIPAL OR A TEACHER SEARCH ME?

Yes, but only under certain specific circumstances, because you don't give up your right to privacy when you go to school. Under the law, if a school official wants to search you, there are two requirements. First, before he or she searches you, there must be a "reasonable suspicion," based on facts, that the search will produce evidence that you are violating the law or a school rule. For example, the principal would have to have specific information that would lead a reasonable person to believe that a student is carrying a weapon, drugs or cigarettes. Second, the way he or she searches you should be "reasonable" based on your age and what is being searched for.

These restrictions apply to physical searches of a student's person (i.e., pat down of clothes, emptying pockets) and any personal belongings, including backpacks, lunch bags, or cars (if they are on school grounds).

Strip searches of students by school officials are absolutely prohibited.

CAN SCHOOL OFFICIALS PULL ME OUT OF CLASS TO QUESTION ME WITHOUT "REASONABLE SUSPICION"?

The California Supreme Court has ruled that students may be questioned without schools having "reasonable suspicion" as long as the school isn't acting arbitrarily or questioning for purposes of harassment.

WHAT DO YOU MEAN BY "REASONABLE SUSPICION"?

Unfortunately, there is no clear way of defining "reasonable suspicion." But at least we can say that it must be a suspicion based on facts and not on a hunch, rumor or curiosity. For example, a principal stopped a student who was out of class without permission, and asked to look at a bag with an odd-looking bulge that the student was holding behind his back. The student refused unless the principal showed him a warrant. The California Supreme Court ruled that these facts did not add up to a reasonable suspicion that a search of the bag would produce evidence of anything unlawful (even though the student did have marijuana in the bag).

In another example, after a student had violated a school disciplinary rule, a teacher searched a student's purse in order to find out the student's name without first asking the student, who was known to be nearby, what her name was. A court ruled that the teacher did not have "reasonable suspicion" to justify the search. On the other hand, if the student had engaged in serious misconduct, and the teacher had

no other way of identifying the student, a court would be more likely to find that the teacher had reasonable suspicion to search the purse for some sort of identifying document.

CAN THE SCHOOL SEARCH THE ENTIRE STUDENT BODY OR AN ENTIRE CLASS JUST BECAUSE THEY SUSPECT ONE STUDENT?

No. Since the law says that there must be a reasonable suspicion that the individual student or students to be searched are violating school rules, information that some students are using drugs should not justify a search of everyone in the class, or at a school football game, or at the prom.

Not all courts agree, however, that there must always be "individualized" suspicion before a larger group is searched.

ARE OUR LOCKERS PRIVATE?

Even though school officials are not supposed to search your locker unless they have reasonable suspicion that they would find something that is against the law or school rules, some school districts try to get around this by having a rule that says that the locker belongs to the school and so school officials can have access to it. Even though that doesn't completely take away your privacy from a locked locker, it is wiser not to keep anything in a locker that you don't want the school or the police to see.

CAN THE SCHOOL MAKE ME TAKE BLOOD OR URINE TESTS FOR DRUGS OR BREATHALYZER TESTS FOR ALCOHOL?

Although all three of these tests are considered "searches," there are no clear answers about when or whether schools can require students to submit to them. In 1996, the United States Supreme Court ruled that student athletes may be required to submit to random urine drug tests. Then, in the Earls case, in 2002 the Court held that schools are allowed to require urine tests for all students voluntarily involved in non-athletic extracurricular activities, such as a choir, debate or chess club.

You can still fight invasive practices such as random drug testing or breathalyzer tests. Organizations like the American Academy of Pediatrics, the National Association of Social Workers, and the National Education Association think it's important for youth to have confidentiality and autonomy and that drug tests are inaccurate in detecting some drugs. Many youth advocates such as teachers, social workers and doctors point to research showing that random drug testing is harmful to youth because involvement in extracurricular activities often reduces substance abuse. Also, some schools are



refusing to drug-test students and are repealing their drug-testing policies.

You can make a difference. Raise student awareness about why such practices violate your privacy. Have students sign a petition protesting the use of such searches, deliver the petitions to your administration, ask for a written response and publish it in the school newspaper. Do the research to find out how much drug testing costs and show how that money could be put to better use. Ask why the school is spending so much money and violating the privacy of the whole student body to catch a few offenders. Alert parents, taxpayers, and the media about this questionable use of education funds. Propose alternatives to the problem that would address the underlying issues of drug use, alcoholism, and students' safety. Lobby members of the school board, and prepare sympathetic parents and students to testify against such searches.

WHAT IF THEY ASK ME TO AGREE TO BE SEARCHED?

You can say no. You always have the right to refuse to be searched, and you should make it clear that you are refusing. However, you should not physically resist a search even if you think it is illegal.

Remember: if the principal asks if you agree to a search and you say yes, you can turn an illegal search into a legal search. That means that anything he or she finds can be used against you in a disciplinary or criminal proceeding.

CAN EVIDENCE THAT THEY FIND IN AN ILLEGAL SEARCH BE USED AGAINST ME IN COURT OR BY THE SCHOOL?

Evidence seized in an illegal search cannot be used against you in a criminal or juvenile proceeding, regardless of whether the search was conducted by a school official or the police. But, in California, the courts have ruled that evidence from even an illegal search can be used by the school in disciplinary proceedings. (By the way, this is not true for students in public colleges or universities—illegally seized evidence cannot be used against them by the school.)

DO POLICE HAVE THE SAME RIGHT TO SEARCH STUDENTS AS SCHOOL OFFICIALS?

No. Even if police are called into your school, the limits on their right to search students are generally the same as their right to search adults on the public streets. In most situations, police need more justification than a school official—under the Fourth Amendment to the U.S. Constitution, they need a warrant and “probable cause.” If there is an emergency, though, police can search without a warrant in order to prevent harm or the destruction of evidence. Also, police can stop and frisk someone if they have a reasonable suspicion that they are breaking the law and that the suspect is armed, and they can search someone after they lawfully place them under arrest. Some courts have said, however, that when police are simply assisting school administrators, a lesser standard may apply. This issue has not been definitively resolved.

CAN OUR SCHOOLS BRING IN DRUG-SNIFFING DOGS FOR SEARCHES?

The Supreme Court has ruled that a sniff of unattended personal belongings is not a search. Some lower courts have held that when a dog is used to sniff the student herself, it is a search that must be reasonable under all of the circumstances. The ACLU believes this means that the search must be based on individualized suspicion. The ACLU has also challenged school policies that require students to leave belongings in a classroom so that dogs can be brought in to sniff them. Importantly, the California Attorney General has issued an opinion saying that such policies are unconstitutional. No court has yet ruled on this. ★

PUNISHMENT

IS IT LEGAL FOR A TEACHER OR SCHOOL OFFICIAL TO HIT A STUDENT?

No! Under California law (Education Code Section 49001), it is against the law for any school employee to inflict corporal punishment on a student.

WHAT ARE THE GROUNDS FOR SUSPENSION AND EXPULSION IN CALIFORNIA?

A school may suspend or expel students for the following reasons: being habitually disobedient; damaging or stealing school or private property; knowingly receiving stolen property; threatening or causing physical injury to others; possessing weapons or other dangerous objects; possessing imitation firearms; selling or bringing drugs or alcohol to school; doing something legally "obscene;" being involved in "habitual profanity and vulgarity;" disrupting school activities; intentionally defying the legitimate authority of school officials; smoking in school; or hazing (which means initiating students into a group in a manner likely to result in physical or psychological harm). You may also be expelled for engaging in acts of sexual harassment, for hate violence, or for creating an intimidating or hostile educational environment.

But, under California law, school officials are supposed to try to correct bad behavior—rather than suspend or expel you -- unless a student's presence causes danger to people or property or threatens to disrupt school activities.

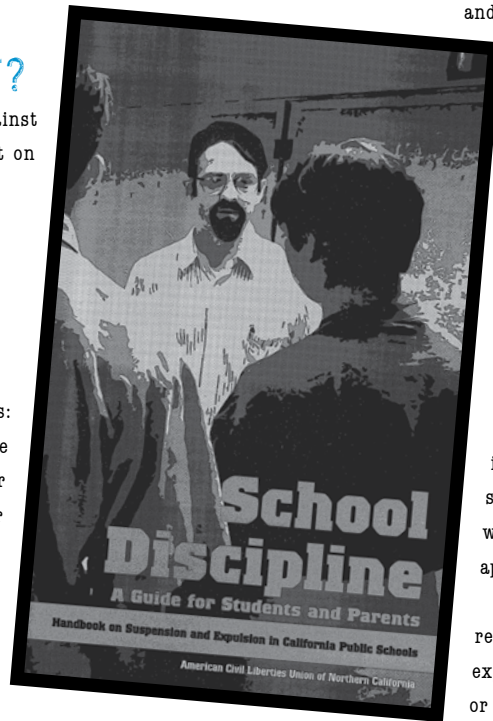
School boards must expel for possessing, selling or furnishing a firearm, possessing explosives, brandishing a knife at another person, sexual assault—either actual or attempted—and selling controlled substances.

Check out "School Discipline: A Guide for Students & Parents," an ACLU handbook on suspension and expulsion in California public schools. This publication is available on the ACLU-NC's website www.aclunc.org.

ARE THERE PROCEDURES THE SCHOOL MUST FOLLOW TO SUSPEND OR EXPEL ME?

You may be suspended for no longer than 5 consecutive school days, and no more than 20 school days in one school year. Before you can be suspended, your principal must meet with you to discuss the situation—except in cases of emergency. Even under emergency conditions, however, the principal must meet with you within two school days of the suspension order. Also, the principal must notify your parent or guardian that you have been suspended.

A teacher also has the right to suspend you from class for the day of the suspension and the following day for any of the reasons listed above. The principal must be notified immediately of the suspension,



and the school must call your parent or guardian for a conference.

Expulsion lasts for longer than 5 days, and may only be ordered by your school board upon recommendation of your principal. Expulsion may not last beyond the end of the semester following the semester in which you committed the acts resulting in expulsion, unless the school district provides you with a procedure for a yearly appeal.

If your school principal recommends that you be expelled, you and your parent or guardian are entitled to a hearing to challenge the

expulsion. The hearing will be arranged by your local school board. A transcript must be made of the hearing, and the final expulsion order must be made by the local school board at a public meeting. You may appeal the order to the county board of education.

ARE POLICE ALLOWED ON OUR SCHOOL CAMPUS? DO THEY HAVE SPECIAL RESTRICTIONS?

The law states that schools must notify parents, except in cases of child abuse by the parent, if a student is taken off campus. However, there currently is no state law requirement that schools or police notify parents when students are questioned on campus by police. Students should know that they can exercise their right to remain silent when questioned by police and should ask to have a parent or other trusted adult present before talking to police. However, schools and police officers don't have to honor the request.

CAN THE SCHOOL PUNISH ME FOR OFF-CAMPUS BEHAVIOR?

According to the Education Code, a student may be suspended or expelled only for conduct that is related to school activity or school attendance. That includes, however, conduct that occurs on school grounds, while going to or coming from school, during the lunch period (even if the student is having lunch off-campus), and during, or while going to or coming from, a school-sponsored activity. ★

TROUBLE WITH THE LAW

DO I HAVE TO ANSWER IF A SCHOOL OFFICIAL OR POLICE OFFICER ASKS ME ABOUT CRIMINAL ACTIVITY?

Even at school, you always have a constitutional right to remain silent when questioned by either school officials or the police. Of course, there are times when nothing bad would come of answering a few questions, and you have to use your own judgment. As a general rule, it is probably better to not speak with officials about possible unlawful activity until you have spoken to your parents and/or a lawyer, and you should make it clear that you do not want to talk until you have done so. However, by refusing to answer questions by school officials you could provide school officials with grounds to discipline you.

When police confront suspected law breakers, they generally must inform them of their right to remain silent, their right to a lawyer, and the fact that what they say can be used against them—before they question them. But when a school official questions you, he or she does not have to first “read you your rights” and anything you say to that official can be used against you.

The law requires that parents be notified when police arrest a student at school. It does not require that school officials notify your parents or permit them to be present when you are being questioned by the police. Generally speaking, however, you should nevertheless ask to have a parent, some other trusted adult, or a lawyer present before agreeing to talk to the police.

WHAT IF I AM STOPPED BY A POLICE OFFICER AWAY FROM SCHOOL?

You should ask politely if you are free to leave. If told you are free to leave, go. If not, if requested, produce identification and identify yourself.

If the officer asks about any crime that you are a suspect in, always ask for an attorney immediately. Never try to talk your way out of it.

If the officer “Mirandizes” you (tells you that you have a right to remain silent, you have a right to have an attorney present...), always ask for an attorney and do not talk to the officer further about anything other than your identification (if asked).

If the officer asks if he or she can search your pockets, car, house, etc., you can always say no (politely). If the officer asks why you will not agree to a search, tell the officer that you were advised not to. You never know what someone may have inadvertently dropped in your car, your room or your possessions.

IS IT ILLEGAL TO BELONG TO A GANG?

It is illegal to hang out with others for the purpose of committing a crime. However, mere association with others without a criminal



purpose is constitutionally protected.

With the passage of Proposition 21, law enforcement only needs to show that a youth is an “active participant,” not a member, in a “criminal street gang” in order to impose greater penalties for gang crimes (which includes promoting, furthering, assisting in, or benefiting from gang crimes). Even youths with no criminal background may be arrested under this law.

ARE CRIMINAL PROCEEDINGS AGAINST YOUTH DIFFERENT FROM THOSE AGAINST ADULTS?

Yes, in some ways. In most cases in California, anyone under the age of 18 comes under the jurisdiction of the juvenile court rather than the regular criminal court system. But there are exceptions: if a minor is 16 or older (or in some cases, 14 and older) and accused of certain crimes, he may face adult criminal proceedings. Adult proceedings generally subject defendants to longer sentences, and in many situations, juveniles tried as adults may be held in adult facilities. Youth who go through juvenile proceedings cannot be committed to the California Youth Authority past the age of 25.

Minors can be arrested for the same reasons as adults. In addition, they can be brought into the juvenile court system if they are deemed to be beyond parental control, or habitual delinquents, truants or runaways. Depending on the acts they commit, whether they have a prior record, and what their home life is like, juveniles may be sentenced to juvenile prison terms, periods of probation, or be required to participate in appropriate counseling, educational or rehabilitative programs.

WHAT ARE MY RIGHTS IF I AM ARRESTED AS A JUVENILE?

Because juvenile proceedings are not “criminal” in nature, youth do not have certain due process rights, or the right to a jury trial.

If you are arrested, the police officer must warn you that anything you say may be used against you, that you have the right to remain silent, and the right to a lawyer during any questioning or court proceeding (the officer “Mirandizes” you). If you cannot afford a lawyer the court will appoint one for you. In addition, you have the right to know the specific charges against you.

TO BE CONTINUED →

IF I AM ARRESTED, CAN I BE LOCKED UP PRIOR TO A HEARING?

You must be released to the custody of your parent, guardian, or a responsible relative unless it is determined that they cannot properly care for you, are unable to supervise you properly, or pose a danger to you. You can be locked up (“detained”) if the judge thinks it is necessary for your protection or the protection of another person or property; that you are likely to leave the area of the court; that you have violated a previous court order; or that you are physically a danger to the public. As a general matter, you must be released from detention within 48 hours (excluding weekends and holidays) unless charges are filed against you.

WILL MY SCHOOL BE NOTIFIED?

Usually, yes. School officials will be notified if you are convicted of a crime involving a curfew, gambling, alcohol, drugs, tobacco, weapons, certain sex

offenses, assault or battery, theft, vandalism, or graffiti. In some cases, school officials legally can prevent you from returning to school.

CAN I HAVE A JUVENILE RECORD SEALED OR DESTROYED?

Yes, under certain circumstances. You may petition to have your records sealed or destroyed when you reach the age of 18, or 5 years after the jurisdiction of the juvenile court has ended or you were first ordered to appear before a probation officer—whichever happens first. When the court decides whether to grant your request, it considers the nature of your crime and whether it believes that you have been rehabilitated. In addition, some sealed records may be destroyed permanently, either five years after they are sealed, or when you turn 38. Under some circumstances, however, records may never be destroyed.

Proposition 21, passed in 2000, significantly limits the ability of many juveniles to seal their records. ★

MILITARY

DO I NEED TO REGISTER FOR THE MILITARY?

No, if you are female; probably yes, if you are male. All male citizens and most male non-citizen residents of the United States born in 1960 or later are required to register with the Selective Service System within 30 days (before or after) of turning 18. If you’ve missed the deadline, you’re technically in violation of law; you should therefore contact a trained military counselor (who, in most cases, will simply advise you to go ahead and register). Registration requires filling out a form and establishing your identity. Currently, there is a procedure for doing this online. Right now, military service is not mandatory so registration does not mean that you will be drafted. However, according to the Selective Service System, the purpose of registration is to have the names and addresses of those who might be called in the event of a draft.

WHAT HAPPENS IF I REFUSE TO REGISTER?

Non-registration is a felony (punishable with jail, a fine or both) and can have major repercussions on your future employment, education and eligibility for government benefits. If you are considering non-registration, you should find out as much as you can about the consequences before you make your decision. If you are not a U.S. citizen, you may lose your right to naturalization and be deported from the United States.

I SIGNED UP IN HIGH SCHOOL TO JOIN THE MILITARY, BUT NOW I’VE CHANGED MY MIND. CAN I GET OUT?

Most high school students join the military through the “delayed entry

program,” which means you can sign up while you are still in school but do not go to boot camp until you graduate. If you change your mind about the military before you enter boot camp, you can usually get out of your enlistment contract. If you change your mind after boot camp, you can still get out but it is much more difficult. In either case, you need to contact a trained military counselor (like the Central Committee for Conscientious Objectors or a lawyer) to discuss your situation. Although a recruiter may threaten to punish you if you try to get out of the military, a recruiter is not a police officer and has no power to arrest or punish you.

HOW DO MILITARY RECRUITERS FIND ME?

Go to the section on “School Records” to read about one way military recruiters get your contact information.

DOES THE MILITARY HAVE A RIGHT TO RECRUIT STUDENTS AT MY SCHOOL?

Under the federal No Child Left Behind Act, schools that receive federal funding must allow military recruiters on campus at the same rate that they allow other employers and institutions of higher learning on campus. But, your school does not have to allow military recruiters more access than other employers, universities, and colleges have. If you object to the presence of military recruiters at school, you can work with other students, parents, and members of your community to lobby your school administration to limit military recruiters on campus.

You can also pass out fliers at school with your own views about military recruiting, and you can inform students of their right not to have their contact information disclosed to the military. Go to the section on “School Records” for more information about “opting out” of disclosing your contact information to the military. ★

EMANCIPATION OF MINORS

WHAT DOES EMANCIPATION OF MINORS MEAN?

Emancipation of minors means that even if you are under 18 your parents no longer have any legal authority over you nor responsibility for your acts.

A minor (person under 18) may become emancipated if you enter into a valid marriage or you are on active duty in the armed forces. It can also happen if your parents abandon you or give up their parental rights. In addition, you may file for emancipation under the Emancipation of Minors Law. The result of this kind of emancipation is that you will assume most of the powers, rights and responsibilities that an adult has, and your parents will no longer be responsible for supporting you financially.

WHAT IS THE PROCEDURE UNDER THE EMANCIPATION OF MINORS LAW? WHAT ARE THE REQUIREMENTS FOR EMANCIPATION?

A young person who is at least 14 years old may petition the Superior Court of the county in which he or she lives. The petitioner must state that she is willingly living apart from her parents with their permission and is supporting herself financially in a legal manner. The court will notify your parents or guardian and the district attorney or your probation officer, if you are on probation. The court will then decide whether granting you emancipation is in your best interests. If the court declares you emancipated, your DMV identification will show that you are emancipated, so people can treat you as an adult when you do things like apply for a job or enroll in college.

The court may later set aside your emancipation, if it finds that it didn't know important facts when it granted it, or if you later cannot support yourself financially and become dependent upon public assistance. ★



WHAT IS THE AMERICAN CIVIL LIBERTIES UNION?

The American Civil Liberties Union (ACLU) is a national non-profit organization founded in 1920 to protect individual rights and personal freedoms as outlined in the Bill of Rights and the U.S. Constitution. The ACLU of Northern California defends people's rights in the courts, the legislature and Congress, and the streets. The ACLU is actively involved in fighting against race discrimination, police brutality, language discrimination, curfews, homophobia, censorship, and the death penalty.

The ACLU-NC sponsors the Howard A. Friedman First Amendment Education Project which organizes youth conferences and rallies, sponsors investigative summer trips on controversial issues, and sends youth speakers into the schools to educate their peers about their rights. For more information about the Friedman Project, check out our website at www.aclunc.org/youth.

The ACLU is a membership organization. We welcome and encourage students to join at a special discount rate of only \$5 a year. When you become a member of the ACLU-NC, you will receive our newspaper, the ACLU News, to learn more about current issues and how you can be active in the fight for civil liberties. What's more, you will be supporting an organization that fights for the constitutional rights of all people.

To join, go to www.aclunc.org/support/become_a_member.shtml, or fill out the form below.

\$5 Student Membership \$20 Regular Membership

SIGN ME UP AS A MEMBER OF THE ACLU!

\$5 Student Membership \$20 Regular Membership

Name _____

Address _____ City _____ State _____ Zip _____

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Become an ACLU Activist! Check this box to receive email action alerts on civil liberties issues.

SEND THIS FORM AND PAYMENT TO:

Membership Department ★ ACLU of Northern California
39 Drumm St. ★ San Francisco, CA 94111

Or register online at
www.aclunc.org/support/become_a_member.shtml

