



LOUISIANA STUDENTS' RIGHTS HANDBOOK

Second Edition



Students' Rights Handbook

A Guide for Public School Students in Louisiana

Second Edition, Revised & Updated 2015

Created by the American Civil Liberties Union
Foundation of Louisiana

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INTRODUCTION

Dedication

Students have rights too! Unfortunately, they sometimes know too little about those rights and how to exercise them, especially in school. The ACLU of Louisiana dedicates this Students' Rights Handbook to all of the students and parents in Louisiana who have had the courage to stand up for their rights, especially those who have served as plaintiffs in ACLU-sponsored lawsuits.

What is the ACLU?

The American Civil Liberties Union is a non-partisan, non-profit membership organization dedicated to protecting and extending freedom, liberty, and equality to all people in the United States. Students are persons under the law and the ACLU supports their right to individual freedom on the same level as adults. The ACLU was founded in 1920, and the ACLU of Louisiana has existed since 1956.

The work of the ACLU consists of, but is not limited to, protecting and expanding the liberties and freedoms guaranteed by the U.S. Constitution, especially those included in the Bill of Rights. With a membership of over 500,000 nationwide, the ACLU accomplishes its goals by litigating in the courts, lobbying legislative bodies and educating the public on a broad array of issues affecting our liberties.

Disclaimer

We want this handbook to provide you, as a public school student, with a helpful overview of what you need to know about your rights. If you are a private school student, you generally must abide by the rules and regulations of your school. Private school officials have much more discretion under exemptions from the law than those at public schools. Consult with a private attorney if you have any questions about rights as a private school student, and do not necessarily rely on any of the information provided in this handbook.

Because laws are complex and constantly change, you should not consider this book a complete statement of students' liberties. The material is for basic informational purposes only. It is not meant as legal advice, nor should you rely on this information instead of seeking the advice of an attorney.

You should also familiarize yourself with your school's policies, which should be available at your school's main office or at the office of your local School Board. Many of these policies are also available online. For more current information on policies and practices at your school, consult with a trusted counselor or teacher.

Also, consider attending School Board meetings to become involved in setting policies that affect your rights.

A person's rights may vary from case to case because of small, subtle details. Only a lawyer, who has taken the time to become fully aware of the facts and the applicable law in a given case, can provide you with sound legal advice. Because the law imposes time limits on most legal actions, 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 may direct you to a lawyer experienced in the law relevant to your case.

If you feel your rights have been violated, contact an attorney or the ACLU of Louisiana at once. You can contact the ACLU of Louisiana via the "Complaints" page of our web site at www.laclu.org. Please note that if the student is a minor (under the age of 18) a parent must consent to, and participate in, any lawsuit. (Also note that due to the volume of complaints that the ACLU receives, we can handle only a very small percentage of those cases. Please do not assume that we can help you even after you contact us).

A Note on the Court System

Civil rights laws are found not only in the U.S. Constitution and other federal and state laws, but also in judicial opinions issued by the courts that analyze and apply those laws. Those courts have a complicated hierarchy, but for most civil rights purposes, it breaks down as follows:

The United States Supreme Court has the last word on the U.S. Constitution and all other federal laws, as well as for state or local laws that may violate either the U.S. Constitution or other federal laws. The Supreme Court can also rule on whether the federal Circuit Courts of Appeals or a particular state's highest court have correctly applied either the U.S. Constitution or federal laws.

Immediately below the United States Supreme Court, the thirteen United States Circuit Courts of Appeals – each of which covers a different area of the country – decide issues that arise in their particular states. For example, the United States Fifth Circuit Court of Appeals covers Louisiana, Texas and Mississippi. So if you win a case in one of the federal courts of those three states, the other side may appeal the result to the Fifth Circuit.

Within each state, a number of Federal District Courts apply the U.S. Constitution and other federal laws to cases that arise in their designated geographic areas. Louisiana has three such areas: the Eastern District of Louisiana, which covers New Orleans and the surrounding parishes; the Middle District of Louisiana, which covers Baton Rouge and the surrounding parishes, and the Western District of

Louisiana, which covers pretty much everything west or north of Lafayette. Federal district courts are where federal lawsuits begin. When you first file a lawsuit under federal law, you file it in federal district court, and if you have a trial, that's where it'll be.

State supreme courts, such as the Louisiana Supreme Court, have the last word on state laws, unless those laws violate either U.S. Constitution or federal law. For example, if the Louisiana Supreme Court incorrectly decides a matter of U.S. Constitutional law, either the U.S. Supreme Court or a federal district court in Louisiana can correct it. However, if it's just a question of state law, it will be decided in the state courts. Like the federal courts, each case starts in a district court in a specific geographic area, then can go up on appeal to a Court of Appeals for a larger area, and, if the Louisiana Supreme Court decides to hear it, it can end at that court.

Importantly, the authority of a court is limited to its geographic area. For example, decisions made by the U. S. District Court for the Eastern District of Louisiana determine what is legal in New Orleans and its surrounding parishes, but not in the City of Shreveport, which is in the Western District of Louisiana. The U. S. Fifth Circuit Court of Appeals reviews the decisions of all the district courts within its area – Texas, Louisiana and Mississippi – and thus can bind all of the federal district courts in those areas with one opinion. However, the Fifth Circuit's opinions are not binding in, for example, California, which is in the Ninth Circuit.

The United States Supreme Court's opinions on matters of U.S. Constitutional and federal law bind every single court in the country.

A Note on Legal Citations

A case citation is like a street address, telling you where to locate a particular court opinion. Reported cases are compiled in sets, called "reporters," which may be accessed in a library or via the Internet. Throughout this handbook, you will see legal citations, like *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). *Tinker* is a famous U.S. Supreme Court case about student free speech rights. Both "*Tinker*" and "*Des Moines Indep. Cmty. Sch. Dist.*" are the names of the parties; 393 is the reporter volume number; "U.S." refers to the U.S. Supreme Court Reporter; 503 is the number of the first page of the opinion; and "1969" is the year the case was decided. "*Id.*" refers to the same exact citation as immediately before, and "*Id.* at 503" (or some other number) refers to the same publication or opinion, but at a new page number.

You will also see statutory laws referenced throughout this handbook. Louisiana's education laws are found in Title 17 of Louisiana's Revised Statutes, with citations like La R.S. 17:123. "La" refers to Louisiana; "R.S." is an abbreviation for Revised

Statutes; 17 is the statutory title number; and 123, as an example is the section number within the specific title. All of Louisiana's laws are available online at <http://www.legis.la.gov/legis/lawsearch.aspx>

As related to the Louisiana State Constitution, Art. stands for Article; § stands for Section.

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THE RIGHT TO A PUBLIC EDUCATION

May My School Place Limits and Restrictions On My Constitutional Rights?

Yes, public schools may place limits on your Constitutional rights. Though earlier Supreme Court decisions recognized that students are entitled to constitutional liberties, subsequent case law has placed restrictions on these rights. The Bill of Rights safeguards the fundamental rights of individuals, including students, and the ACLU has worked vigorously to defend and extend the legal protections of students in a variety of cases.

In 1969, the Supreme Court decided the landmark students' rights case of *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). Mary Beth Tinker, a 13-year-old Des Moines junior high school student, was suspended from school for wearing a black armband to school in protest of the Vietnam War. Represented by the ACLU, Tinker sued, claiming that the suspension violated her First Amendment rights. The Supreme Court agreed, noting famously that students "do not shed their rights at the schoolhouse gate." *Tinker* recognized that students have certain guaranteed liberties that school officials can't take away. As Justice Abe Fortas stated: ***"In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution."***

Since *Tinker*, the Supreme Court and lower courts have changed their tune. School officials do need to provide a reasonably safe and orderly environment for learning, and *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (allowing a school to search a student's purse for contraband, as long as the school has reasonable suspicion of wrongdoing), signaled a trend in court decisions to expand school officials' control. Why has this happened? Many school officials feel that they need greater discipline to deal with children who act out. More recently, many schools have implemented strict policies that call for police involvement in student disciplinary matters. That said, schools are still the safest place in the country for most children—safer overall than the homes where students live, the cars in which students ride, and the neighborhoods where students live.

State and federal law give substantial leeway to school officials in creating and enforcing school policies. However, your school's rules may not take away any right that is guaranteed by the Constitution, Congress, the state legislature, or the courts. Students must be afforded the protection of certain fundamental rights – free speech, freedom to publish, freedom to complain to school officials, and fair treatment if accused of wrongdoing.

Do I Have the Right to a Free Public Education?

Yes, but not necessarily completely free. The Louisiana Constitution states: “The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.” Art. 8, §1. However, there is no explicit requirement that the state provide a completely free education.

May My School Charge Me for Books & Supplies?

No. “The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels.” La. Const. Art. VIII §13; *see also*, La. Rev. Stat. Ann. § 17:351. Additional funds for teaching equipment, materials, and supplies may be available from an “Academic Improvement Fund.” The state legislature deposits money into the “Academic Improvement Fund,” which is “available exclusively for programs which provide opportunities to students to acquire the skills to achieve academic success and become employable, productive, and responsible citizens.” La. Rev. Stat. Ann. § 17:351.

That said, many charter schools require some fees from each student in order to defray the cost of uniforms, school supplies, extracurricular activities, field trips, and other items. Some feel that those fees prevent low-income families from enrolling their children at such schools, so public and charter schools should be mindful when imposing mandatory fees. As more parents contest these supplemental costs, their constitutionality will be further clarified.

Who Runs the Public Schools?

Various state and local actors play a role in running public schools, including the Louisiana legislature, the State Board of Elementary and Secondary Education (BESE), the Louisiana Department of Education, and local school boards.

The Louisiana legislature passes laws relevant to public school governance, including curriculum, accountability, and employment requirements. The legislature also appropriates funding to the Minimum Foundation Program (MFP) and delegates certain power to local school boards, like the ability to levy taxes.

The state Board of Elementary and Secondary Education (BESE), created by the Louisiana Constitution, is comprised of eleven members. La. Const. Art. VIII, § 3. BESE determines administrative policies for the public schools of the state such as mandatory participation in the Louisiana Educational Assessment Program (LEAP), and has the authority to grant charters. However, BESE has no control over the business affairs or staffing decisions of local school boards, unless a school is

deemed to be “failing.” La. Const. Art. VIII, § 3(A). BESE is also required to approve private school curriculums, but only to make sure they meet minimum state educational requirements. La. Const. Art. VIII, § 4.

The Louisiana Department of Education (DOE) is responsible for implementation of BESE’s policies and relevant state laws. La. Const. Art. VIII, § 2. The State Superintendent of Education, appointed by BESE for a term of four years, is the DOE’s administrative head. The DOE allocates funds to districts, establishes a statewide curriculum, and provides ancillary educational services, such as transportation and nutrition. The DOE is also responsible for overseeing the Recovery School District which governs “failing” schools.

Local school boards are elected by the residents of a district, as required by the Louisiana Constitution. La. Const. Art. VIII, § 9. Though still bound by BESE, the local school board may set policies specific to the schools in their district. The local school board has the authority to levy taxes for funding, and may grant charters to school operators within their district.

What Are Charter Schools?

In addition to the right to attend traditional public schools, students may choose to enroll at a charter school. Charter schools continue to increase in popularity. For example, during the 2011-12 school year, 78% of New Orleans public school students were enrolled in charter schools.

Charter schools are public schools under contract – called a “charter” – between a public agency and community groups. Charter schools are free and open to any student who lives within the jurisdiction of a particular school board (for example, a student who lives in Orleans Parish may choose to attend any charter school administered by the Orleans Parish School Board, but may not attend a charter school in Jefferson Parish, which is governed by the Jefferson Parish School Board), regardless of which district *within that parish* that student normally would be sent to school. They are independent public schools with the freedom to be more creative in structuring the school environment and lesson plans, while remaining accountable for improved student achievement. Charter schools, like all public schools in Louisiana, receive state funds as part of the Minimum Foundation Program (MFP), which is a per-student allocation of funds to schools based on enrollment.

Charter schools are based on 3 principles:

- *Choice* - Parents may choose the school their child attends. If too many students apply to a particular school, admission may be subject to a lottery system.
- *Flexibility* - Charter schools have broader freedom concerning lesson

plans, the structure of the school day, and staffing decisions to meet the specific needs of students.

- *Accountability* - Charters are authorized through a performance-based contract. Schools are liable to parents, to the state and to lenders in a multi-tiered accountability system. This helps to create quality schools with high achievement statistics.

Each charter school has a local nonprofit board of directors that oversees the school. The board of directors must comply with open meeting requirements, just as traditional public schools must do. They must provide a forum for parents and community members to discuss the school policies. Charter schools must also comply with policies set by their authorizer, either the local school board or the BESE.

Like traditional public schools, charter high school students must demonstrate competency in every required course to graduate, as provided by the State Board. La. Rev. Stat. Ann. § 17:3996(E). Moreover, a charter school must comply with the same state and federal laws and regulations regarding civil rights and individuals with disabilities as traditional public schools. La. Rev. Stat. Ann. § 17:3996(C).

For more information about charter schools, you may visit the website of Louisiana's Association of Public Charter Schools at <http://lacharterschools.org>.

Who Is Required to Attend School?

Louisiana law requires that all children must attend public school between their 7th and 18th birthdays. La. Rev. Stat. Ann. § 17:221(A)(1). There are certain exceptions:

- A child who graduates from high school prior to his or her 18th birthday. La. Rev. Stat. Ann. § 17:221(A).
- A child who is mentally, physically, or emotionally "incapacitated to perform school duties," as certified by an appropriate medical professional. La. Rev. Stat. Ann. § 17:226(1).
- A child who is home-schooled in an approved program. La. Rev. Stat. Ann. § 17:236.1(B)-(C).
- After the sixteenth birthday, at the request of his or her parent or guardian, a child may be allowed to attend an Alternative Education Program or a vocational-technical education program instead of public school. If the student has no parent or guardian responsible for his or her school attendance, the request may be made by the superintendent of the school system where the student is enrolled. On such request, the superintendent will determine whether the student can make the requested transfer and shall develop and implement an individualized plan of education for such

- student if so. La. Rev. Stat. Ann. § 17:221(F).
- A child at least sixteen years of age may enroll in an adult education program approved by the State Board of Elementary and Second Education as long as he meets the program's attendance requirements. La. Rev. Stat. Ann. § 17:221(I). When that child is at least seventeen years old and has successfully completed the program, he will receive a Louisiana High School equivalency diploma and considered finished with mandatory education. La. Rev. Stat. Ann. § 17:221(K).
 - A child under the age of seventeen and attending or seeking admission to a National Guard Youth Challenge Program in Louisiana. La. Rev. Stat. Ann. § 17:221(G).
 - A child legally emancipated by marriage or judicial act. La. Rev. Stat. Ann. § 17:221.
 - A child who attends a private day school. La. Rev. Stat. Ann. § 17:221(A)(1).
 - A child expelled from school as a result of disciplinary action. La. Rev. Stat. Ann. § 17:416.
 - A child needing temporary absence because of serious personal illness or serious illness of a family member. Medical problems require appropriate certification. Absence is permitted for up to one week following the death of an immediate family member. Or, absence is permitted for up to 5 school days per school year of a student is visiting with a parent prior to the parent's deployment or during the parent's leave when the parent is a member of the United States Armed Forces or the National Guard. Finally, a school must excuse absences required by a child's religious faith, for the observance of special and recognized holidays. La. Rev. Stat. Ann. § 17:226(2)(a)-(e).

Violations of compulsory attendance laws may result in juvenile or family court for the student and his or her parents. There is a possibility of intervention, monitoring, or even removal of the child from home. This type of court action generally only applies when a child is "habitually" tardy or absent from school. A student becomes "habitually" tardy after five unexcused absences or tardies within one school semester. La. Rev. Stat. Ann. § 17:233(B)(1)(a). The principal or principal's designee must notify the parent or guardian in writing immediately upon the student's third unexcused absence or tardy within one school semester. The principal or principal's designee shall also meet with the parent or guardian to discuss their legal responsibility to enforce the student's attendance and penalties that may occur if the student becomes "habitually" tardy or absent. The parent or guardian must sign a receipt of this legal notification. La. Rev. Stat. Ann. § 17:233(B)(1)(C).

ACLU Note: Students attending a *nonpublic* (private) school may also be considered "habitually" tardy or absent. The same requirements of parental warning after the third unexcused absence or tardiness apply. The student's principal should keep a

written record showing the dates of absences or tardiness and dates and results of school contacts with the home. La. Rev. Stat. Ann. § 17:233 (B)(2).

For an initial violation of attendance requirements, a parent or guardian of a student in kindergarten through eighth grade may be fined up to \$50 or required to complete at least 25 hours of community service. La. Rev. Stat. Ann. § 17:233 (B)(d)(i). Subsequent offenses by parents of students in kindergarten through eighth grade will be fined up to \$250 dollars and/or imprisoned up to thirty days. The parent will be under probation and required to complete 40 hours of community service, parenting classes, family counseling sessions, or similar programs approved by the court, or suspension of any of the parent or guardian's state-issued recreational license/s. The same penalty exists for the first and subsequent violations by parents of minor students in the ninth grade through graduation. La. Rev. Stat. Ann. § 17:221(A)(2).

Finally, a student less than 18 years old who is "habitually" absent or tardy, or a dropout, may not receive a driver's permit, or may have a current license suspended. La. Rev. Stat. Ann. § 32:431.1(C)(1)(a). The denial or suspension shall remain in place until the minor reaches 18 years old or otherwise complies with attendance requirements, whichever occurs first. La. Rev. Stat. Ann. § 32:431.1(C)(1)(b).

May My School Keep Out Homeless Children?

No. A public school may not deny an education to a child who resides within the district, but has no permanent address, has been abandoned by his or her parents, or is in foster care. La. Rev. Stat. Ann. § 17:238.

Must My School Provide for Special Education Needs?

Yes, both federal and state laws recognize that students with disabilities may have special educational needs. 20 U.S.C. 1400(d)(1)(A); La. Rev. Stat. Ann. § 17:1941. Public schools are required to provide a free, appropriate curriculum in the least restrictive environment. Education is available to all special needs students, from age three through 21.

If you are a student with a disability, state law provides certain ways for you and your parents to make sure your school meets your special education needs. Services of the Special School District, including Louisiana special schools and Special School Programs, will be available to all eligible students who are Louisiana residents. La. Rev. Stat. Ann. § 17:1945(A)(2)). The Louisiana Schools for the Deaf and Visually Impaired, and the Louisiana Special Education Center, referred to as Louisiana Special Schools, are residential schools established to provide such academic, vocational, and other related services as may be required by law. La. Rev. Stat. Ann.

§ 17:1945(B)(1). These Schools shall provide appropriate education services for qualifying students in any state-operated facility that provides only a general education program. La. Rev. Stat. Ann. § 17:1945(C)(1)(a). Each school has an annual deadline for admission, and parents applying for their qualifying students' admission after that deadline will be admitted as long as there are sufficient resources to meet the needs of the children enrolled prior to the deadline and the additional children. La. Rev. Stat. Ann. § 17:1945(B)(2).

DISCIPLINE

What Kind of Discipline is Allowed in School?

Generally

Louisiana law allows a teacher or principal to discipline a student:

- For conduct in school, on school playgrounds, on the street or school bus while traveling to or from school, or during recess or intermission.
- For conduct that is disruptive, disorderly, disrespectful, disobedient, or dangerous; which violates school rules; or which interferes with the educational process. The statute lists specific offenses which may support a suspension or expulsion and includes a “catch-all” covering “any other serious offense” La. Rev. Stat. Ann. § 17:416, or “for good cause.” La. Rev. Stat. Ann. § 17:223(B).

You cannot be disciplined for the use of force on another person when you were not the aggressor and did not cause the problem yourself, and it can “be reasonably concluded” that your use of force was “more probably than not” only to prevent a forcible offense and was no more than was “reasonable and apparently necessary” La. Rev. Stat. Ann. § 17:416(H)(1).

Forms of discipline may include, but are not limited to:

- Oral or written reprimands
- Referral to counseling sessions, which may include conflict resolution, social responsibility, family responsibility, peer mediation, and stress management
- Written notice to parents of disruptive or unacceptable behavior
- Immediate removal from the classroom to the principal

Discipline by principals may include, but is not limited to:

- In-school suspension
- Out-of-school suspension

- Suspension of school bus privileges
- Detention
- Expulsion
- Assignment to an alternative school

Illegal Drugs

When found guilty by a school hearing committee, the following minimum punishments are imposed for the possession of, knowledge of and intentional distribution of, or possession with intent to distribute any illegal drug on school property, on a school bus, or at a school sponsored event:

- Students 16 years of age and older face at least two years of expulsion. La. Rev. Stat. Ann. § 17:416(C)(2)(a)(ii).
- Students under 16 years of age and in grades 6-12 face at least one year of expulsion. La. Rev. Stat. Ann. § 17:416(C)(2)(b)(ii).
- Students in kindergarten through 5th grade shall be referred to the local public school board through a recommendation for action by the superintendent. La. Rev. Stat. Ann. § 17:416(C)(2)(c)(ii)

Firearms

When found guilty by a school hearing committee, the following minimum punishments are in effect for possessing a gun on school grounds, on a school bus, or carrying a gun at a school-sponsored event:

- Students 16 years of age and older face at least two years of expulsion, and may be referred to the District Attorney for appropriate action. However, the superintendent may modify the length of minimum expulsion in writing on a case-by-case basis. La. Rev. Stat. Ann. § 17:416(C)(2)(a)(i).
- Students under 16 years of age and in Grades six through 12 face the same penalty. They may be expelled for at least two years, and may be referred to the District Attorney for appropriate action. The superintendent may modify the length of minimum expulsion in writing on a case-by-case basis. La. Rev. Stat. Ann. § 17:416(C)(2)(b)(i).
- Students in kindergarten through 5th grade face at least one year of expulsion, and may be referred to the District Attorney for appropriate action. The superintendent may modify the length of minimum expulsion in writing on a case-by-case basis. La. Rev. Stat. Ann. § 17:416(C)(2)(c)(i).

When May the School Suspend or Expel a Student?

Procedural Requirements

The Constitution guarantees students at least some “due process” before disciplinary measures are imposed. That means that a school must follow certain procedures before it can suspend or expel you. The due process is limited, but you are generally entitled to receive notice prior to any suspension or expulsion. The notice must include the facts concerning your suspension or expulsion, and the basis for any accusations. Telephone notice is sufficient for suspensions, but expulsions require a certified written letter. La. Rev. Stat. Ann. § 17:416(A)(3)(b)(i)). The notice must also provide an opportunity to explain your side. A date and time must be set for a readmission conference, which should occur within five school days. If your parent or guardian fails to attend the conference, truancy laws apply.

A student may appeal suspension or expulsion to the city or parish superintendent or superintendent’s designee, who must conduct a hearing. At the hearing, you may be represented by any person you choose. If you are facing expulsion, consider contacting a lawyer as soon as possible. If you cannot afford to pay a lawyer, you should consider contacting a program that provides free legal services to low income households. Appeals to the city or parish school board must be made within 5 days of the initial decision to suspend or expel. After the local board’s decision, appeals must be made within 10 days to the state district court for the parish in which your school is located .

However, a student whose presence at school poses a continued danger to any person or property, or an ongoing threat of disruption to the academic process by means of an alleged battery and/or assault on any school employee, shall be immediately removed from the school premises without the benefit of the procedure described above; the notice and hearing shall follow as soon as practicable. La. Rev. Stat. Ann. § 17:416(A)(1)(vii)(aa). No student suspended in this manner will be considered for readmission to the school where the allegedly assaulted and/or battered school employee is assigned before all hearings and appeals of the violation are completed. La. Rev. Stat. Ann. § 17:416(A)(1)(vii)(bb). Unless the school system has no other school of suitable grade level for the removed student, the student will be re-assigned to another school. La. Rev. Stat. Ann. § 17:416(A)(1)(vii)(cc).

Readmission

During the expulsion term, a student may not be admitted to any public school in any other state system without the approval of that system’s school board. State law does not require alternative education programs for suspended and expelled students.

A public school in the same school system from which you were expelled may choose to readmit you before period of expulsion is over, if you were expelled for possessing a firearm, knife, or other dangerous weapon, or for possession, distribution, selling, giving, or loaning illegal drugs. For this to occur, the superintendent must also recommend in writing that your expulsion be cut short. Early admission may also be possible under a written agreement between the school board, student, and student's parent or guardian. Under this contract, you may be immediately removed without the benefit of a hearing for violations of the written terms. La. Rev. Stat. Ann. § 17:417 (C)(2)(d)(i).

A student suspended for ten days or less must be assigned missed schoolwork for completion during suspension. He or she will receive partial or full credit for its satisfactory and timely completion, as determined by the teacher. La. Rev. Stat. Ann. § 17:416 (A)(3)(b)(ii)(e).

if you were suspended for damage to property, readmission may be barred until you pay for the damage, or until the superintendent orders your readmission without payment. La. Rev. Stat. Ann. § 17:416(A)(3)(b)(ii)(d).

Disability

Disabled students are entitled to additional procedural protections if their school attempts to suspend or expel them. These protections include a “stay put” provision, requiring that disabled students remain in current placements pending any review proceedings. Or, if a disabled student is applying to enroll in a public school for the first time, they must be admitted until proceedings are over. See the Federal Education of the Handicapped Act. 20 U.S.C. 1400 *et seq.* You should consult with an attorney who is familiar with these federally mandated protections if you are confronted with a disciplinary action.

What Are Alternative Education Programs?

Alternative programs offer different styles of instruction, to increase the likelihood that unmotivated, unsuccessful students, or students with behavioral problems remain in school and receive a high school diploma. To that effect, some alternative programs hold students to strict standards of behavior in highly structured, controlled environments, although other variations are permitted. La. Rev. Stat. Ann. § 416.2(C).

Students suspended for at least ten days or expelled for possessing a firearm, knife, or other dangerous weapon, or for possession, distribution, selling, giving, or loaning illegal drugs on school grounds, a school bus, or actual possession at a school sponsored event, may be re-enrolled in an alternative education program. La.

Rev. Stat. Ann. § 416.2(A)(1); (G). These programs must be approved by BESE. La. Rev. Stat. Ann. § 416.2(D)(2)(d).

The parent or legal guardian of a student in an alternative public school program must ensure the student's attendance. Or, the parent or guardian may face the same penalties for habitually absent or tardy students at traditional public schools. La. Rev. Stat. Ann. § 416.2(A)(3)(b). For details concerning these penalties, see the above section titled, *"Who Is Required to Attend School?"*

Alternative schools must give students an opportunity to earn credit in an attempt to graduate on time. La. Rev. Stat. Ann. § 17:416.2 (D)(3)(b)(i)(dd). Thus, a student suspended more than ten days, or expelled and receiving instruction at an alternative school site, must be assigned work by a certified teacher and receive credit for its satisfactory and timely completion, as determined by the teacher. The work assigned must be aligned with the curriculum used at the school from which the student is suspended or expelled. La. Rev. Stat. Ann. § 17:416 (A)(3)(b)(ii)(e).

Alternative education services must be provided free of charge to students. However, a school system is not required to provide transportation for any student suspended for at least ten days or expelled for school and placed in an Alternative setting if doing so will result in additional transportation costs to the school system. La. Rev. Stat. Ann. § 17:416(E).

A variety of alternative education services are also provided in the form of academic, behavioral, and mental interventions to encourage on-time graduation. These are available to students who are suspended, expelled, or at high risk for dropping out or entering the juvenile justice system. La. Rev. Stat. Ann. § 17:416 (D)(3)(b)(a)-(dd).

May My School Take Away My Driver's License?

Yes. If you are (1) between 14 and 18 years old and (2) have been suspended, expelled, or placed into an alternative school (3) for at least ten days (4) due to sale or possession of drugs, alcohol, or any other illegal substance, the possession of a firearm, or an infraction involving assault or battery on a member of the school faculty or staff, your school is required to report your offense to the Louisiana Office of Motor Vehicles, which will revoke your driver's for one year. La. Rev. Stat. Ann. § 17:416.1(D)(1)-(3).

Is Physical (Corporal) Punishment Allowed?

Parish and city school boards are permitted to use corporal, or physical, punishment at their discretion. La. Rev. Stat. Ann. §§ 17:223(A); 416.1(B). In order to do so, however, the school must adopt written procedures, and the punishment is required

to be reasonable in light of the offense. La. Rev. Stat. Ann. § 17:223(A). If you believe that physical punishment is excessively utilized at your school, your parents may have grounds to file a lawsuit. Most public schools in Louisiana using corporal punishment allow a child's parents to "opt out" of the use of physical punishment on their child in a manner detailed in the school's handbook. Typically, the parent must sign an opt out form. *Id.*

FREEDOM OF EXPRESSION

Do I Have Free Speech Rights in School?

Yes, but not to the same extent as when you are not in school. Freedom of speech is guaranteed by the First Amendment of the United States Constitution and by Article I, Section 7 of the Louisiana Constitution. This right generally extends to speech by students in school setting, with significant exceptions for time, place and manner restrictions by school officials, as discussed in this section.

The constitutional rights of students in public school are not the same as those of adults. Students' rights are limited because of the unique characteristics of the school environment. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, (1969). While school officials may punish student speech that occurs "inside the schoolhouse gate" for certain valid reasons, the First Amendment limits their authority to regulate student speech occurring off campus. See *Morse v. Frederick*, 551 U.S. 393, 405 (2007) and *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 682-83 (1986). This means that some speech that might normally be punishable if made on school grounds is protected when made outside of school.

Student speech is considered to occur "on campus" if it happens at school, on a school bus, or at a school event. The U.S. Supreme Court held that a student displaying a banner in 2001 with the message "Bong Hits 4 Jesus" outside a public event in which the school participated could be disciplined for speech promoting illegal drug use. *Morse*, 551 U.S. at 396-97. The students were not on school grounds, yet the school justified its punishment of these students based on the "special characteristics of the school environment." *Id.* at 393. A school may also limit student speech through reasonable school-wide policies, against cyberbullying, for example. This is a valid exercise of a school's power to place limits on student expression that causes a substantial disruption in the school environment.

Your school may not discipline you for expressing an idea or political viewpoint in class or during school activities, as long as you do not disrupt educational activities. Up until 1986, the burden of proof for disruption rested with school authorities. However, the burden shifted to the student under *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986). Now, students are required to show that they were not

disruptive. Unfortunately, this often means that a “disruption” may be treated as anything that does not suit the administrator’s tastes. *Id.* at 686. This rule applies whether you express yourself verbally, through written materials, or symbolically through badges or buttons. Even though these rights exist, schools sometimes violate them and students may have still have to sue to protect rights that exist.

Administrators may not ban your publication just because it criticizes school officials. Generally, criticism of school officials and their policies clearly falls into the free speech zone. The law only allows the prohibition of speech which is “libelous” or “slandorous.” These are highly technical terms that 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 making a reasonable effort to determine if it is false or not). *See e.g. Brown v. Connor*, 860 So.2d 27 (La. App. 5 Cir. 2003). Nothing true that you say or write can ever be libelous. 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 considered.

You may disagree with school policies or express your opinion on any other matter, but courts have upheld the right of school authorities to restrict free expression. In order to prevent “disruption” of the daily educational process, your school may impose “reasonable” restrictions on when, where, and how you can express yourself. In the most obvious case, if you screamed at someone during class, your expression would clearly be disruptive and could result in punishment. For example, a New Jersey court has held that students could be punished for lewd and obscene chants during a school basketball game that were “loud, offensive, disruptive, and disturbing to neighboring spectators,” *State v. Morgulis*, 110 N.J. Super. 454, 459 (App. Div. 1970).

Although your school may not prevent you from expressing your political views, it can limit the form of your expression in order to teach you and other students “the boundaries of socially appropriate behavior.” *Bethel*, 478 U.S. at 675. A student, for instance, may be punished for using sexual references in a speech at a school assembly, even if the speech contains no obscenity and would be legal if uttered outside school. The U.S. Supreme Court has ruled that the school has the right to prohibit vulgar or offensive speech that is inconsistent with the “fundamental values of public school education.” *Id.* at 685-86. However, the Court did not define these “values.” *Fraser*; *See also Gano v. Sch. Dist. No. 411 of Twin Falls County, State of Idaho*, 674 F. Supp. 796, 798-99 (D. Idaho 1987) (holding that suspending a student for wearing a T-shirt depicting school administrators in a drunken stupor was constitutional). Your school may take into account the age and maturity of students in determining what speech to restrict. *Hazelwood*, 484 U.S. at 260; *See also Baxter by Baxter v. Vigo County Sch. Corp.*, 26 F.3d 728, 738 (7th Cir. 1994) (holding that an elementary school may prevent student from wearing protest T-shirts).

Additionally, the First Amendment does not protect speech that fits within the legal definition of “obscenity.” In 1973, the Supreme Court established three conditions that must exist for a work to be deemed “legally obscene:” It must (1) appeal to the average person’s prurient interest in sex, (2) it must depict sexual conduct in a “patently offensive way” as defined by community standards, and (3) taken as a whole, it must lack serious literary, artistic, political or scientific value. *Miller v. California*, 413 U.S. 15 (1973). Attempts to apply the “Miller test” have demonstrated the impossibility of formulating a precise definition of obscenity.

May My School Newspaper Be Censored?

Yes, for certain reasons. Your school may review and control the content of the student newspaper, yearbook, literary magazines, and on-campus videos and radio broadcasts. It can ban publication of material it considers to substantially interfere with schoolwork or that might intrude on the rights of other students.

In 1988, the U.S. Supreme Court permitted a principal to remove a student-written article from a school newspaper because he thought it was unfit for publication. The Court considered the school to be the actual publisher of the newspaper and allowed the principal to control and censor the newspaper as long as his actions were “reasonably related to legitimate pedagogical [educational] concerns.” *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

Your school can also edit any article in the school newspaper for being ungrammatical, poorly written, inadequately researched, biased, prejudiced, vulgar, profane, or unsuitable for immature readers. *Hazelwood*, 484 U.S. at 271.

Your school can’t control student publications that are not sponsored or funded by schools, not done as a part of a class or school project, or that are done on your own time with your own resources. Your school can’t require you to submit “underground” or off-campus publications for approval before you distribute them. *Burt v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. Bd. of Ed.*, 160 F.2d 1355 (7th Cir. 1972); *Eisner v. Stanford Bd. of Ed.*, 440 F.2d 803, (2d Cir. 1971).

Your school can, however, restrict the time, place and manner of distribution. *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993). For example, a school can limit passing out flyers in hallways to before and after school and during lunch to protect students and maintain a proper educational environment. *Riseman v. Sch. Comm. of Quincy*, 439 F.2d 148 (1st Cir. 1971). A school can also restrict materials that are obscene or libelous. *Fujishima*, 160 F.2d at 1359. Accordingly, school officials were allowed to prohibit the running of a cartoon depicting stick figures in various sexual positions in a New York high school. *R.O. ex rel. Ochshorn v. Ithaca City Sch. Dist.*, 645 F.3d 533 (2d Cir. 2011), cert. denied, 132 S.

Ct. 422 (2011).

The United States Supreme Court permits your school to set standards for the school newspaper that might even be higher than commercial newspapers, but promote “a civilized social order.” *Hazelwood*, 484 U.S. at 272. For example, your school may ban school newspaper articles which support drug and alcohol use or sexual activity among students. *Id.*

May My School Punish Me For Joking About School Violence?

Several types of speech are not protected by the Constitution, whether they occur inside or outside of the school setting. No one may engage in speech with the hope of inciting “imminent lawless action,” where such action likely will result.

Brandenburg v. Ohio, 395 U.S. 444, 447 (1969). This applies whether someone is communicating an idea or political viewpoint during a class discussion or protesting a government or school policy outside of class. Nor may anyone make false personal attacks. If you know that you are making a false personal attack with reckless disregard for the truth, you may face liability for defamation if the attack causes harm.

Sometimes, school officials may try to punish students who make provocative statements or joke about school violence. They may argue that the student is making a “terroristic threat.” To reach the level of a “threat,” you must have intended for others to interpret your speech 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. That person must have a reasonable fear for his or her safety. In 2004, a Louisiana student’s suspension was reversed after he was punished for a “threat.” *Porter v. Ascension Parish Sch. Bd.*, 393 F.3d 608, 615 (5th Cir. 2004). In *Porter*, a student has drawn a depiction of a school bombing. Two years later, his little brother found the drawing, took it without the student’s permission, and brought it to school. The Court found that the speech did not occur on campus and was not directed at campus. *Id.* This case points out how speech brought into the school by the creator is considered more of a threat than if unintentionally brought in by another.

Another example of increases in student punishment for would-be minor offenses is the suspension of a kindergartner for saying, “I’m going to shoot you.” *S.G. v. Sayreville Bd. of Educ.*, 333 F.3d 417, 422 (3d Cir. 2003). The court upheld the school’s decision because a balance has to be struck between the student’s rights and the school’s role in promoting “socially appropriate behavior.” *Id.* (quoting *Fraser*, 478 U.S. at 681).

May My School Tell Me What to Wear?

Yes. Louisiana law allows school boards to establish dress codes. La. Rev. Stat. Ann. § 17:416.7. Parents are entitled to written notice of the code's specifications and the effective date at least sixty days before the effect date of the policy. *Id.* Parents are also entitled to written notice of a dress code's modifications at least sixty days prior to the effective day. *Id.* Also, the school must display the uniform for a reasonable period prior to the proposed effective date of its enactment, whether the policy is new or modified. *Id.* Courts usually side with school officials, and have held that dress codes must balance your right to dress as you wish against the school's interest in carrying out its educational mission.

Note, however, that a dress code is legal only if it is carefully written to promote goals like health, safety, and "classroom decorum." *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437 (5th Cir. 2001).

Schools may also require students to wear uniforms. La. Rev. Stat. Ann. § 17:416.7. Mandatory uniform requirements, unlike most dress codes, tell students what they must wear rather than what they cannot wear. Because they are more restrictive than dress codes, mandatory uniform rules are more likely to infringe on what parents and students consider their rights. Such policies must give parents sufficient notice of the dress code's specifications and the effective date. The same time frames apply to notification regarding uniforms as with the dress codes, *supra*. La. Rev. Stat. Ann. § 17:416.7.

Schools may also dictate other aspects of personal appearance, such as hair length and ear piercings. *Karr v. Schmidt*, 460 F.2d 609, 612 (5th Cir. 1972). However, if hairstyle, hair length or other aspects of personal appearance are mandated by your sincerely-held religious beliefs, the school must make an exception. *A.A. v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010); *see also* La. Rev. Stat. Ann. § 13:5233 (The Louisiana "Preservation of Religious Freedom Act").

Note: The Educational Testing Service conducted a study called "Order in the Classroom: Violence, Discipline, and Student Achievement." Among other things, the 50-page study concludes that "[t]he notions that school uniforms and zero tolerance for gangs would reduce school disorder and consequently improve student academic performance were not supported...The schools in the study that required school uniforms did not have levels of delinquency significantly different from schools that did not require school uniforms..." The full study can be found at: <http://www.ets.org/research/perc/pic/>.

May My School Make Me Say the Pledge of Allegiance?

No. Your school cannot punish you if you refuse to salute the flag or say the Pledge

of Allegiance. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943); *Sherman v. Comm. Consol. Sch. Dist. 21*, 980 F.2d 437 (7th Cir. 1992). School officials also cannot force you to stand during the pledge or leave the room if you refuse to recite the pledge. However, Louisiana law does require instruction about the flag of the United States, including “patriotic customs” like the Pledge of Allegiance. La. Rev. Stat. Ann. § 17:262.

CLUBS & ACTIVITIES

May My School Limit Which Clubs Meet At School?

Under the federal Equal Access Act of 1984, secondary school student groups may not be denied access to school facilities for meetings if the public school allows “non-curriculum related” groups to meet on school property before or after school during non-instructional time. 20 U.S.C. §§ 4071 *et seq.* In other words, if the school has allows some clubs to meet, it may not discriminate against any group based on the religious, political, or philosophical nature of group activities.

A student group is “non-curriculum related” if the subject matter of the group is not taught in a regularly offered course; the subject does not concern the body of courses as a whole; and participation is not required for a course and does not result in course credit. *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 239-40 (1990). For example, a French club at a school that teaches French or participation in a school orchestra as part of an orchestra class is not “non-curriculum related,” so these examples don’t trigger the requirements of the Equal Access Act. On the other hand, a scuba diving club, chess club, and service club working with special education classes are “non-curriculum related” unless these subjects are taught in a regularly offered course at your school, the subject matter concerns your school’s body of courses as a whole, and participation is required for graduation. See *Mergens*, 496 U.S. at 226 (finding that the mentioned groups were non-curriculum related student groups). An ACLU club, a Gay-Straight Club or a Bible study club would usually qualify as a non-curriculum related club as well. Although the school might have the authority to ban all non-curriculum clubs, they can’t dodge the law’s requirement by declaring all clubs curriculum-related.

In providing access to student groups, the school must ensure that the meetings are voluntary and student-initiated; the meetings are not sponsored by the school, the government, or their agents or employees; the meetings do not interfere with school activities; and people from outside the school do not direct, conduct, control, or regularly attend the activities of the student groups.

In addition, school and government personnel can attend the club meetings, but they may not participate in or endorse activities of religious clubs. The law does not require the school to provide any funding for student group meetings other than

those arising from the use of school space. In all cases, however, the school must permit equal access to all campus media for clubs to announce their meetings.

LIBRARY & CLASSROOM BOOKS

May My School Restrict Library and Classroom Books?

Although the ACLU considers book or Internet censorship in the schools a serious violation of students' (and teachers') rights, the law itself is unclear. A school's authority to regulate classroom texts is much broader than the government's authority to regulate outside of the classroom because of the school's duty to teach "community values" in the classroom. Accordingly, schools may select books that are consistent with those values. Whether a school has overextended that power rests on specific facts related to a school official's reason for restricting or removing books. School officials cannot pull books off library shelves simply because they dislike the ideas in those books. See e.g. *Bd. of Educ. v. Pico*, 457 U.S. 853 (1982).

In *Pico*, the Supreme Court ruled that school officials violated the First Amendment by removing several books from junior high school library shelves because officials found them too controversial. 457 U.S. at 853. The plurality stated that the First Amendment includes the "right to receive ideas," especially in the context of a school library, where "a student can literally explore the unknown." *Id.* at 869-70. School officials, said the Court, may not engage in the "narrowly partisan suppression of ideas" by removing books from the library. *Id.* at 854.

However, some courts question whether the First Amendment applies to school board decisions to remove books from school libraries. For example, in *ACLU v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1234 (11th Cir. 2009), the court decided that removing a book was valid because school officials can regulate speech in school-sponsored expressive activities as long as their actions are reasonably related to legitimate school concerns. *Id.* at 1201; citing *Hazelwood*, 484 U.S. at 273.

Regardless of this split, courts view school libraries as the main place where students exercise their freedom "to inquire, to study and to evaluate, to gain new maturity and understanding." *Id.* at 868. Still, schools have leeway based on "legitimate goals" about what books they select for the libraries, textbooks (within the list approved by the state) for the curriculum, or material on the required reading list. *Id.* But once in the library, for instance, an authorized school official can only remove a book by following certain procedures (due process) if it is "pervasively vulgar," or if it is not "educationally suitable." *David S. v. Ouachita Parish School Board*, 1999 (ACLU case); *Campbell v. St. Tammany Parish Sch. Bd.*, 64 F.3d 184, 188-89 (5th Cir. 1995), *quoting Pico*, 457 U.S. at 871.

INTERNET USE

May My School Limit My Internet Use On Campus?

The escalating number of computers used by students and schools and the popularity of the Internet have added yet another dimension to the censorship issue. The U.S. Supreme Court held that the Internet is the most participatory form of mass speech yet developed and is entitled to the highest protection from governmental intrusion within the school context. *Reno v. ACLU*, 521 U.S. 844, 863 (1997). Thus, the use of filters on school library & classroom computers presents another unclear but developing area of the law. A school that uses filters on library computers to keep out content that minors have a legal right to access – for example, websites for gay and lesbian teens or websites about contraception, abortion, or prevention of sexually transmitted diseases – may be open to challenge. *See e.g. Reno*, 521 U.S. at 863. School policies that limit students' access to the Internet to curricular use or prohibit access to materials that are illegal for minors to obtain (such as hard core pornography) are tougher to challenge.

May My School Limit My Internet Use Off Campus?

While schools may punish lewd and obscene speech or speech promoting illegal drug use that occurs in school or at a school event, they may not necessarily punish the same speech if made by a student on a home computer. The Constitution limits school officials in their ability to punish students for expressive activity done on the student's own time and off-campus.

School authorities may punish a student for off-campus speech only if they reasonably believe that off-campus student speech will cause a material and substantial disruption on school grounds. *J.S. v. Blue Mt. Sch. Dist.*, 650 F.3d 915 (3rd Cir. 2011) (majority opinion). Substantial disruption means more than just a "remote apprehension of disturbance," but a "specific and significant fear of disruption." *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 211 (3d Cir. 2001). Thus, most criticism and personal attacks against school employees are beyond the reach of school disciplinary authorities unless they are made on campus. In two significant cases, the U.S. Court of Appeals for the Third Circuit held that school districts could not punish students for using their home computers to publish fake MySpace profiles of their principals containing sexually explicit and otherwise offensive content. *Blue Mt. v. Hermitage Sch. Dist.*, 650 F.3d 205 (3rd Cir. 2011). The Court ruled that the school's authority to police students did not extend to off-campus speech.

Conversely, the Fourth Circuit Court of Appeal upheld a school punishment against a West Virginia high school student who created and invited classmates to a

questionable MySpace group. *Kowalski v. Berkeley County Sch.*, 652 F.3d 565, 567 (4th Cir. 2011) *cert. denied*, 132 S. Ct. 1095, 181 L. Ed. 2d 1009 (U.S. 2012). The group was called “S.A.S.H.” which represented “Students Against Shay’s Herpes,” The group existed to make fun of Shay, a student at the school; the page’s content included pictures and comments ridiculing Shay for her insinuated infection. *Id.* at 568. Unlike the Third Circuit, the Fourth Circuit in *Kowalski* decided that *Tinker* applies to off-campus speech - becoming the first appeals court to do so. The judges unanimously held that Kowalski’s MySpace group, aimed at another student, created a substantial disruption that warranted discipline. *Id.* at 572. Similarly, the Second Circuit Court of Appeals ruled that there was no violation when a school punished a student for an off-campus, online post which was intended to cause a substantial in-school disruption. *Doninger v. Niehoff*, 527 F.3d 41 (2d Cir. 2008). Although the student’s post was created off-campus, the Court found it reasonably foreseeable that other school students would view her blog and that school administrators would become aware of it, given the circumstances, and that the posting “foreseeably create[d] a risk of substantial disruption in the school environment.” *Id.* at 50; *quoting Wisniewski v. Weedsport Cent. Sch. Dist.*, 494 F.2d 34, 40 (2d Cir. 2007).

Given the uncertainty of the extent of students’ First Amendment rights in cyberspace, both on and off campus, they should be careful about what they post on social networking websites, and **report to the ACLU any school discipline related to off-campus internet speech.**

The law in this area is still evolving, and some courts have been more willing than others to allow punishment for off-campus speech targeting school administrators. See e.g. *Doninger*, 527 F.3d 41. Courts might also hold off-campus speech targeting students to a different standard than speech targeting school officials. See e.g. *Kowalski*, 652 F.3d 565. North Carolina enacted the first statute criminalizing the online intimidation or tormenting of teachers. The law prohibits students from creating fake online profiles for teachers. Moreover, it makes it a crime to post real images or make any statement online that provokes harassment of educators, even when those photos or statements are true.

In 2010, Louisiana’s legislature created the crime of cyber-bullying. La. Rev. Stat. Ann. § 14:40.7. Cyber-bullying is defined as the transmission of any electronic textual, visual, written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen. La. Rev. Stat. Ann. § 14:40.7(A). “Electronic textual, visual, written, or oral communication” is defined as communication of any kind made through the use of a computer online service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or online messaging service. La. Rev. Stat. Ann. § 14:40.7(B)(2). Violating these provisions results in a fine of up to \$500, up to 6 months imprisonment, or both

when the offender is seventeen or older. La. Rev. Stat. Ann. § 14:40.7(D)(1)-(2). Younger offenders' punishment falls under Title VII of the Children's Code. La. Rev. Stat. Ann. § 14:40.7(D)(2).

In addition to criminalizing cyber-bullying, the Legislature amended the law to include prohibitions against student conduct such as harassment, intimidation, and bullying. Louisiana now punishes some electronic communications, including but not limited to a "communication or image transmitted by email, instant, message, text message, blog or social networking website through the use of a telephone, mobile phone, pager, computer, or other electronic device." La. Rev. Stat. Ann. § 17:416.13(C)(1)(b). Every public school in Louisiana must have a policy that addresses the nature, extent, causes, and consequences of cyber-bullying, and have Students must receive a written version of this policy within ten days of enrollment and the school must report all documented incidents of cyber-bullying to the Department of Education.

Therefore, under Louisiana law, schools may restrict the content of Internet and electronic speech by students, even if done off campus.

RELIGION

Do I have Religious Freedom in School?

Yes. The First Amendment provides that "Congress shall make no law respecting an *establishment of religion*, or prohibiting the *free exercise* thereof." U.S. Const., Amdt. 1. Those two clauses – the "Establishment" Clause and the "Free Exercise" Clause, form the basis of your religious freedom. Under the Free Exercise clause, you have the right to worship as you see fit, with only limited restrictions. Under the Establishment Clause, the government cannot pick one true religion, favor one religion over another, or favor religion over nonbelief.

Article I, § 8 of the Louisiana Constitution provides similar protections, and lastly, the Louisiana Preservation of Religious Freedom Act makes most government restrictions on religious exercise very difficult to uphold. In the school context, those laws ensure that schools may neither tell students how to worship, who or what to worship, or whether to worship at all, nor may schools participate in or sponsor worship, or favor one religion over another. And while school prayer is one of the more controversial and confusing areas of students' rights, there are a few basic rules:

- While at school, you are free to practice your religion and express yourself religiously without interference by school officials.
- At the same time, student religious freedom does not override the First

Amendment's ban on government endorsement of religion, so your school cannot participate in or endorse religious activity.

- Similarly, your religious freedom does not override the school's interest in an orderly educational environment, so your religious expression may not disrupt educational activity or harass other students who do not wish to listen to your message.

May I Say a Private, Silent Prayer in School?

Yes. The First Amendment gives you the right to pray individually or in groups or to discuss religious views with your peers, so long as they are not disruptive of an educational activity. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). Also, you have the right to read a religious book, say grace before meals, pray before tests, and discuss religion with other willing student listeners. In the classroom, you have the right to pray quietly, except when school activities require you to be actively engaged. See e.g. *Doe v. Sch. Bd. of Ouachita Parish*, 274 F.3d 289, 294 (5th Cir. 2001) For example, you may not decide to pray just as a teacher calls on you.

In informal settings, such as the cafeteria or in the halls, you may pray either silently or aloud, subject to the same rules of order that apply to other speech in these locations. However, the right to engage in voluntary prayer does not include, for example, the right to have a captive audience listen to you or to force other students to participate. For example, you cannot take over a classroom, an assembly, or any other school sponsored activity and give a prayer or a sermon.

May a School Official Lead or Sponsor Prayer in Schools?

No. The Constitution forbids school-sponsored prayer in order to protect those whose convictions differ from government-sanctioned beliefs. Public schools may not conduct prayer or Bible reading sessions, *even if* students who do not want to participate are permitted to remain silent or leave the classroom. *Abington Sch. Dist. v. Schempp*, 374 U.S. 203, 224-25 (1963).

Moreover, schools and school officials cannot organize or participate in student prayer. Public school personnel cannot lead students in prayer or in Bible-reading sessions. *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington*, 374 U.S. at 203 (1963). The Supreme Court has held that a state statute requiring the reading, without comment, at the beginning of each school day of verses from the Bible and the recitation of the Lord's Prayer by the students in unison violated the First Amendment's Establishment Clause. *Meltzer*, 548 F.2d at 573; citing *Abington*, 374 U.S. at 203.

Nor may a public school hold a prayer at a graduation ceremony, even when attendance at the event is voluntary. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290,

308 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992). Indeed, in the public school context, the Supreme Court has sustained almost every challenge to government-sponsored religious expression or involvement in the public schools. *Doe v. Tangipahoa Parish Sch. Bd.*, 631 F. Supp. 2d 823, 834 (E.D. La. 2009).

In 2000, the US Supreme Court ruled that a school's practice of allowing students to offer prayers over the school's public address system before athletic events violated the First Amendment. In *Santa Fe v. Doe*, 530 U.S. at 308 (2000). The Court noted that its ruling also applied to "non-denominational" prayers. *Id.* at 308. This rule stands today - if a student would reasonably perceive the activity as a government endorsement of prayer in public schools, then the school has violated the Establishment Clause. *Id.* at 308.

An exception may exist for a "moment of silence" under certain circumstances in Louisiana and a growing number of other states. In 1985, the Supreme Court ruled that "non-sectarian" prayers, school-led prayers from which students may opt out, and "moments of silence" designed to substitute for organized prayer are banned. *Wallace v. Jaffree*, 472 U.S. 38 (1985); *Weisman*, 505 U.S. at 610 (Souter, J. concurring). In 2009, however, the Fifth Circuit interpreted *Wallace* to uphold a Texas statute mandating one minute of silence following the pledge of allegiance in all Texas schools, due to its secular purpose of allowing for all types of thoughtful contemplation that was supported by its legislative history. *Croft v. Gov. of Tx.*, 530 F. Supp. 2d 825 (N.D. Tex. 2008), *aff'd*, 562 F.3d 735 (5th Cir. 2009).

Schools that permit non-curriculum-related student clubs must also permit religious groups to organize and meet in school facilities. Religious school groups must be student-led, and their message may not be endorsed or sponsored by the school or its employees. See *O.T. v. Frenchtown Elem. Sch. Dist. Bd. of Educ.*, 465 F.Supp. 3d 369 (D.N.J. 2006). Other federal courts have ruled that school personnel may not supervise or participate in student-initiated prayers before athletic events or practices. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).

May I Lead Other Students in Prayer?

It depends. You have the right to speak to and attempt to persuade your peers about religious topics, just as you do with regard to political topics. If you and the other students are not in class or a school-sanctioned event and if the prayer is truly voluntary to all participants, it may be legally permitted as a part of the free exercise of religion. However, if other students are subjected to the prayers, it may violate the religious rights of those students.

Two federal courts, including one ruling in an ACLU case, held that schools may not leave it up to students to decide whether to include prayer at a graduation ceremony. *Blackhorse*, 84 F.3d at 1471; *Harris v. Joint Sch. Dist. No. 241*, 62 F.3d 1233

(9th Cir. 1995); *Citizens Preserving America's Heritage, Inc. v. Harris*, 515 U.S. 1154 (1995). These courts stated that a school may not turn over to students the decision whether to conduct a prayer at a school-sponsored function when the school itself may not organize such a prayer.

In 2001, the Fifth Circuit affirmed the district court's decision in a Louisiana case brought by the ACLU, striking down a state law permitting non-sectarian "student-initiated voluntary prayer" during student assemblies, student sporting events, and other school-related student events. *Doe v. Ouachita*, 274 F.3d at 289.

Other federal court cases have ruled that student religious group may not read prayers over the school's intercom system because other students are forced to listen to them. *Abington*, 374 U.S. at 223-26 (1963); *Hall v. Bd. of Sch. Comm'rs of Conecuh County*, 656 F.2d 999, 1000 (5th Cir.1981); *Meltzer v. Bd. of Pub. Instruction of Orange County, Fla.*, 548 F.2d 559, 574 (5th Cir. 1977) *on reh'g*, 577 F.2d 311 (5th Cir. 1978).

Do the Words "Under God" in the Pledge of Allegiance Violate the First Amendment?

No. Courts have held that even though the pledge of allegiance includes the phrase "under God," it doesn't violate the Establishment Clause because that statement doesn't favor one religion over any other. *Croft v. Perry*, 624 F.3d 157 (5th Cir. 2010); *Freedom From Religion Found. v. Hanover Sch.*, 626 F.3d 1 (1st Cir. 2010); *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007 (9th Cir. 2010); *Myers v. Loudoun Cnty. Pub. Sch.*, 418 F.3d 395 (4th Cir. 2005). Even in these circumstances, it is important to remember that the First Amendment prohibits both the endorsement of one religion over another, as well as the endorsement of religion over non-religion. *Epperson v Ark.*, 393 U.S. 97, 106 (1968).

May a School Teach Biblical Creationism?

No. In 1987, the U.S. Supreme Court threw out Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science Act," La Rev. Stat. Ann. § 17:286.1-286.7, which required the teaching of creationism alongside evolution, holding that the law violated the Establishment Clause. *Edwards v. Aguillard*, 482 U.S. 578 (1987).

Additionally, schools cannot put a religious disclaimer on the teaching of evolution. *Freiler v. Tangipahoa Parish Bd. of Educ.*, 185 F.3d 337, 341 (5th Cir. 1999). There, the Fifth Circuit found unconstitutional a requirement that teachers read a statement, before any lesson on evolution, that "the lesson to be presented, regarding the origin of life and matter, is known as the Scientific Theory of Evolution and should be presented to inform students of the scientific concept and not

intended to influence or dissuade the Biblical version of Creation or any other concept.”

In 2008, Louisiana’s legislature passed the Science Education Act. La. Rev. Stat. Ann. § 17:285.1(A). This law allows the use of supplemental materials in public school science classes. However, the LSEA does not permit the teaching of creationism.

Because public schools cannot teach creationism, some have attempted to teach an alternate religious theory known as intelligent design, which argues that life could not have developed through ordinary biological processes, and that it therefore must have had a creator. At least one school district’s attempt to teach intelligent design has been ruled unconstitutional because it is really a religious belief *Kitzmiller v. Dover Area Sch. Dist.* 400 F. Supp. 2d 707 (M.D. Pa. 2005).

Must School Officials Protect Me From Religious Harassment At School?

Yes. You have the right not to be subject to religious harassment. School officials should stop student religious speech if it turns into religious harassment aimed at a student or a small group of students. One of the relevant questions in drawing this line is determining whether an objective observer would perceive the activity as a state endorsement of prayer in public schools. *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. at 308; *citing Wallace*, 472 U.S. at 73, 76 (O'Connor, J., concurring); *see also Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 777 (1995) (O'Connor, J., concurring in part and concurring in judgment). You may approach other students and invite them to attend church, but it is harassment to keep inviting them if they ask you to stop.

It is also important to note that courts might be stricter about religious speech in elementary school classrooms than for older students. *Morgan v. Swanson*, 659 F.3d 359, 387 (5th Cir. 2011) *cert. denied*, 132 S. Ct. 2740, 183 L. Ed. 2d 614 (U.S. 2012) and *cert. denied*, 132 S. Ct. 2740, 183 L. Ed. 2d 614 (U.S. 2012).

May I Celebrate Religious Holidays at School?

Schools may include the study of religious holidays in elementary curricula as opportunities for teaching about religions. *Morgan*, 659 F.3d at 359. Such study may serve an academic goal of educating students about history and cultures, as well as the traditions of many different religions within a pluralistic society. *Id.* Schools may not celebrate religious holidays, but may teach about the meaning of these holidays, as long as they are done for a legitimate educational purpose and have a generally secular (non-religious) effect. *Id.* at 410.

In elementary school, natural opportunities arise for discussion of religious holidays while studying different cultures and communities. In high school, students of world

history or literature have opportunities to consider the holy days of religious traditions. Indeed, the Supreme Court in *Abington* went so far as to suggest that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. 374 U.S. at 225. Such study does not violate the First Amendment as long as it has neither the purpose nor the primary effect of advance or inhibit *religion itself*. *Meltzer*, 548 F.2d at 577; *citing Abington*, 374 U.S. at 222. In any case, officials or teachers may teach about religious holidays, but not observe or celebrate religious holidays.

Recognition of and information about holidays may focus on how and when they are celebrated, their origins, histories and generally agreed-upon meanings. When presented objectively as part of a secular program of education that neither promotes nor inhibits religion, learning about religions can foster understanding, tolerance and mutual respect for differences in belief, including those who adhere to no religious doctrine. *Abington*, 374 U.S. at 222. Teachers may not, however, use the study of religious holidays as an opportunity to proselytize or inject personal religious beliefs into the discussions.

Illustrating these points, an elementary school student's private conversation and decision to share a "Jesus" pencil, a ticket to a local church play, or a candy-cane shaped pen with a card explaining the Christian origin of candy canes with another student during the school's "winter party" did not constitute school endorsement of religion. *Morgan*, 659 F.3d at 411.

Schools often conduct Christmas programs and display Christmas trees, menorahs and other religious symbols, even though such displays appear to violate the constitutional principle of neutrality. As U.S. Supreme Court Justice Sandra Day O'Connor stated in the case of *Lynch v. Donnelly*, such displays "send a message to non-adherents that they are outsiders... and an accompanying message to adherents that they are insiders." 465 U.S. 666, 688 (1984) (O'Connor, J., concurring). Thus, the Court held that a municipality's display of a crèche surrounded by poinsettias and two decorated evergreen trees sent a "patently Christian message" and was, therefore, unconstitutional. *Allegheny Cnty. v. Pittsburgh ACLU*, 492 U.S. 573, 601 (1989). In the same case, however, the Court upheld another municipal display of a Christmas tree, menorah, and sign saluting liberty and conveying general holiday greetings. *Id.* at 613-14. The Court's decision was based on its determination that, taken as a whole, the scene created a secular theme, although it recognized that the menorah was a religious symbol. *Id.* at 614.

The Court did specifically suggest in the case of *Allegheny County v. Pittsburgh ACLU* that "when located in a public school, such a display [of a tree and a menorah] might raise additional constitutional considerations." 620 n. 69.

Therefore, even with respect to the holiday season, the guiding principle remains

that government must maintain a course of neutrality between religions as well as between religion and non-religion. Accordingly, schools should keep in mind that an attempt to include all religions in such celebrations is not adequate since many students either do not have any religious beliefs, or follow faiths (such as Islam) that do not have any holidays around Christmas.

May Religious Music Be Played At School?

Yes, religious music may be sung or played at school, as part of the academic study of music. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 407 (5th Cir. 1995). School concerts may include religious songs that are played as part of a secular music program including a variety of selections that are non-religious. *Id.*; citing *Abington*, 374 U.S. at 255. . The use of art, drama, or literature with religious theme is permissible if it serves a sound educational goal in the curriculum but not if used as a vehicle for promoting religious belief. However, concerts must avoid programs dominated by religious music, especially when these coincide with a particular religious holiday. For example, a public school cannot have a religious theme song for the school choir, even if the students themselves vote on the choice. *Id.* at 413. The Court in *Duncanville* ruled that a school's theme song consisting entirely of calls for God's blessing could not help but reinforce religious belief and suggest that the school favored religion. *Id.*

May We Receive Religious-Based Assignments?

The school may teach *about* religion, but it may not teach religion. The history of religion, comparative religion, the Bible or other scripture may be permissible public-school subjects, when studied as literature. The Bible, however, may not be taught as history. *Gibson v. Lee Cnty. Sch. Bd.*, 1F. Supp. 2d 1426 (M.D. Fla. 1998). Serious problems in setting up and teaching a specific course that complies with these laws—without promoting and endorsing a particular religion—and in finding a certified teacher to lead the course.

Students can study religion for its influence on history, literature, and culture, but students' reading and class time cannot be used to teach that one religion is better than another one or to insult any religion. *See Student Religious Expression in Public Schools: U.S. Department of Education Guidelines*, viewable at <http://www.freedomforum.org/publications/first/findingcommonground/B10.USDeptGuidelines.pdf>. It is also permissible to study the influence of religion on art, music, literature, and social studies. *Id.*

You may express your personal religious beliefs in reports, homework, and artwork. Teachers may not reject or correct such submissions simply because they include a religious symbol or address religious themes. Likewise, teachers may not require you to modify, include, or erase religious views in your assignments, if they are truly

relevant. Your work should be judged by ordinary academic standards of substance, relevance, and grammar. Teachers may also refuse to allow religious remarks that are irrelevant to the subject at hand. In a discussion of Hamlet's sanity, for example, a student may not interject views on creationism.

The law gets more problematic on public expressions of religious views in the classroom. Schools must carefully steer between the student speaker's right to speak about religious subjects and the student listener's right to be free of unwelcome religious promotion or persuasion in a public school classroom. *Santa Fe v. Doe*, 530 U.S. at 307. Although public schools may teach about religious holidays, including the religious aspects, and may celebrate the secular aspects of holidays, schools cannot observe holidays as religious events or promote such observance by students. *Id.*

Religious or anti-religious remarks made in the ordinary course of classroom discussion or student presentations are permissible. But if a class assignment calls for an oral presentation on a subject of the student's choosing, and the student responds by conducting a religious service, the school has the right – as well as the duty – to prevent itself from being used as a church. *Id.* at 312. Other students are not voluntarily in attendance and cannot be forced to become unwilling listeners or a congregation in a church-like setting. *Id.*

May Students Distribute Religious Literature?

You have the right to distribute religious literature to schoolmates, subject to reasonable time, place, and manner or other legal restrictions imposed on the distribution of all non-school literature. *Morgan*, 659 F.3d at 413 (5th Cir. 2011). Thus, a school may confine distribution of all literature, including anti-religious material, to a particular table at certain times. Outsiders may not be given access to the classroom to distribute religious or anti-religious literature. *Good News Club*, 533 U.S. at 119. *Good News Club* held that after school hours, the school building may be used for religious services, because it did not bear the imprimatur of the school when students' parents had option of sending their children to services or not.

Are "See You at the Pole" Student Groups Permissible?

Yes. Student participation in before or after-school religious events, such as "see you at the pole," is permissible. School officials, however, acting in an official capacity, may neither discourage nor encourage participation in such an event. A school official cannot promote such an event in writing or verbally, and participation of any official would be questionable in that it could give the impression of school endorsement.

May Students Be Excused from Religiously Objectionable Lessons?

Schools have substantial discretion to excuse individual students from lessons that are objectionable to that student or to his or her parent on the basis of religion. *Abington*, 374 U.S. at 275. Schools can exercise that authority in ways that would stop many conflicts over curriculum content. If a particular lesson is proven to burden a student's free exercise of religion and if the school cannot prove a compelling interest in requiring attendance, the school would be legally required to excuse the student. *Id.*

May Students Wear Religious Garb?

Yes. A student may wear religious clothing. *Morgan*, 659 F.3d at 414. Religious or political messages by students may only be censored if the school can reasonably forecast a "substantial disruption," *Tinker v. Des Moines*, 89 S.Ct. 733 (1969), or if the content is vulgar *Bethel Sch. Dist. v. Fraser*, 106 S.Ct. 3159 (1986), or if it advocates illegal use of drugs. *Morse v. Frederick*, 127 S.Ct. 2618 (2007). Students may wear religious attire, such as yarmulkes and headscarves, and they may not be forced to wear gym clothes that they regard, on religious grounds, as immodest. *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 294 (5th Cir. 2001).

May Students Be Released from School to Attend Off-Premises Religion Instruction?

Schools have the discretion to dismiss students to off- premises religious instruction, provided that officials do not encourage or discourage participation or penalize those who do not attend. *Good News Club*, 533 U.S. 98 at 110; *Zorach v. Clauson*, 343 U.S. 306 (1952). Schools may not allow religious instruction by outsiders on premises during the school day. *Id.* at 130-31.

May Schools Teach Religious Values?

Schools may teach civic virtues including respect for the rule of law, honesty, good citizenship, courage, respect for the rights and freedoms of others, respect for persons and their property, civility, the dual virtues of morality and tolerance, sportsmanship, and hard work. *Id.* at 108. While many religions teach some or all of these values, they may not be taught in public schools as religious tenets. *Id.*

SEARCH & SEIZURE

What Are My Rights Regarding Searches in School?

One area in which your rights in school are most different from those outside the

school setting is search and seizure. The Fourth Amendment of the U.S. Constitution protects against “unreasonable searches and seizures” of persons and personal property. To conduct a search in most cases, police must get a warrant based on “probable cause.” The police have probable cause when they reasonably believe that they will find items connected with criminal activity in the area they wish to search. Probable cause doesn’t need to meet the “beyond reasonable doubt” standard used to establish guilt in criminal cases and can be based on information that is not admissible in court. *U.S. v. Ventresca*, 380 U.S. 102, 108 (1965); citing *Jones v. U.S.*, 362 U.S. 257, 272 (1960). There are several major exceptions to the requirements for probable cause and warrants, including searches of objects in “plain view,” *Horton v. Ca.*, 496 U.S. 128, 129 (1990), and searches which occur with consent. *Ga. v. Randolph*, 126 S.Ct. 1515, 1518 (2006).

In public schools, however, searches are much more permissible. In one case, the U.S. Supreme Court acknowledged that the Fourth Amendment applies in public schools, but then went on to virtually strip students of their privacy rights in school. *T.L.O. v. N.J.*, 469 U.S. 325 (1985). In *T.L.O.*, the Court upheld as reasonable the search of a student's purse to determine whether the student, accused of violating a school rule by smoking in the lavatory, possessed cigarettes. The search for cigarettes uncovered evidence of drug activity held admissible in a prosecution under the juvenile laws

The court specifically said that schools are not surrogates for your parents (the theory of *in loco parentis*), and therefore, they don’t have the same legal authority to search you and your property as your parents do. The Court also recognized that schools are required to maintain security for an “environment in which learning can take place.” *Id.* at 340; see also *Tarter v. Raybuck*, 742 F. 2d 977 (6th Cir. 1984). This concern, the court ruled, justifies lower standards for searches in schools.

Does a Principal Or Teacher Need a Warrant to Search Me?

No. School officials do not need a warrant or probable cause to search you or your property while on school grounds. They can act based only on “reasonable grounds,” taking into account “all the circumstances” for suspecting that the search will produce evidence that you have violated the law or school rules. *T.L.O.*, 469 U.S. at 326. The search itself must be reasonably related to the objectives of the search and must not be excessively intrusive in light of your age, sex and the nature of the alleged offense. *Id.* These standards apply to both searches of persons (for instance, pat-down searches and requests that you empty your pockets) and of property (such as backpacks, lunch bags, purses, or cars on school grounds).

Under the general rules for searches in schools, school officials cannot search your property unless they reasonably suspect that you have contraband or evidence of illegal activity. *T.L.O.*, 469 U.S. at 342. Moreover, a search ordered by a school

official, even if justified at its inception, becomes unconstitutional when “excessively intrusive in light of the age and sex of the student and the nature of the infraction.” *Id.*

May I Be Strip Searched?

Generally, no, you may not be strip searched by your school. Strip searches by school officials are regarded as so intrusive that they cannot be legally justified. *Doe v. Renfrow*, 631 F. 2d 91 (7th Cir. 1980). In addition to the reasonableness factor discussed above in *T.L.O.*, the scope of the search must also be reasonable—“the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” 469 U.S. at 342.

The majority of situations do not give rise to a legal strip search. In *Safford v. Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377 (2009), the Supreme Court held that an assistant principal’s reasonable suspicion that a middle school student was distributing contraband drugs did not justify a strip search where the student was directed to pull out her bra and the elastic band of her underpants. The principal knew the pills in question were prescription-strength pain relievers, making the nature of the drugs a limited threat, the principal had no reason to suspect that large amounts of drugs were being passed around or that individual students were receiving a great number of pills, and nothing suggested that the student was hiding common painkillers in her underwear. *Id.* at 376.

One federal court, however, has upheld one strip search, when school officials had suspected a student of hiding drugs. In that case, the court was careful to point out the factors which created a reasonable suspicion in the minds of school officials, as well as the facts that the search of the student, a male, was performed by male school officials in the boys’ locker room, that there was no cavity search, and that the student was allowed to wear a gym uniform while his clothes were searched. *Cornfield by Lewis v. Sch. Dist. No. 230*, 991 F.2d 1316 (7th Cir. 1993).

May My School Search An Entire Class or Group to Find One Suspect?

No, your school may not search an entire class or group to find one suspect. The law says there must be reasonable suspicion that an individual student or students to be searched have violated school rules. *Safford*, 557 U.S. at 371. Information that some students are using drugs should not justify a search of everyone in the class, at a football game, or at the prom. Unfortunately for civil liberties, not all courts agree on the need for “individualized” suspicion before a larger group is searched.

Do I Have To Agree to a Search By School Officials?

You can say no to a search by school officials. You always have the right to refuse to be searched and, if exercising that right, make it clear that you are refusing. You should not, however, physically resist a search even if you refuse or think it's illegal. Just remember that 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 anything he or she finds can be used against you in a disciplinary or criminal proceeding.

May Evidence Found in an Illegal Search Be Used Against Me?

Evidence seized in an illegal search cannot be used against you in a criminal or juvenile proceeding. *State v. Taylor*, 50 So.3d 922, 925 (La.App. 4 Cir. 2010). This is true regardless of whether the search was conducted by the police or a school official. *T.L.O.*, 469 U.S. 325. Mixed rulings have come down on whether such evidence can be used by school officials in disciplinary proceedings. Any time that you believe an illegal search has occurred, you may want to consult with an attorney as soon as possible to protect your rights.

Are Lockers Private?

School officials are not supposed to search your locker unless they have reasonable suspicion that they would find something against the law or school rules. Searching a student's locker must be reasonably related to the objectives of the search and must not be excessively intrusive in light of the student's age, sex, and the nature of the alleged offense. One Court ruled that a report made by two students to a school official that another student possesses a gun at school constitutes reasonable suspicion to search the student and his locker. *Commonwealth v. Carey*, 407 Mass. 528 (1990).

Some school districts may try to get around this by saying that the locker belongs to the school, so school officials can have access to it. Even though that doesn't completely take away your privacy from a locked locker, you may want to avoid keeping anything in a locker that you do not want the school or police to see.

When consent is granted to a search, officials may conduct the search only within the boundaries of the consent. Kate R. Ehlenberger, *The Right to Search Students*, 59.4 UNDERSTANDING THE LAW (Dec. 2001/Jan. 2002). If a student consents to the search of her purse, for example, an administrator may not search her locker unless the search of the purse provides probable cause or reasonable suspicion to search the locker. *Id.*

While normally reasonable suspicion is required for individual searches, there is an exception to this rule for individual lockers. School officials may conduct random or blanket searches as a preventive measure. *Id.* The legality of a random preventive search, without individualized suspicion, depends on whether the search is

warranted by a compelling school interest or special need. *Ehlenberger*. The most common need articulated by schools is the prevention of drug abuse. Accordingly, the most controversial random search is the use of drug-sniffing dogs in schools. *Id.* This situation is discussed below in the “Drug Testing” Section.

May My School Use Metal Detectors?

Louisiana law permits random searches of students, non-students, and their personal effects, with the use of metal detectors. This is permissible, provided there is no deliberate touching during the process. La. Rev. Stat. Ann. § 17:416.3(A)(2)(b) (students) and 17:416.6 (non-students entering a school).

One state court has declared that requiring students to pass through metal detectors satisfied the “reasonableness standard” for school searches. The court noted that the purpose of metal detectors is “to protect and maintain a proper educational environment for all students.” The court also observed that because all students had to walk through the metal detectors, none was singled out for special suspicion or harassment. Finally, the court stated that the intrusion by metal detectors is minimal. *People v. Pruitt*, 662 N.E.2d 540, 547 (1st Dist. 1996).

May My School Use Police Officers to Search Students?

An increasing number of schools rely on law enforcement officers to maintain security and order. Even if the police are called into your school, the limits on their right to search students are the same as their right to search adults on the streets. Police need more justification than a school official – in general, a warrant and “probable cause.” *Picha v. Wielgos*, 410 F. Supp. 1214, 1221 (N.D. Ill. 1976).

If there is an emergency, however, the police can search without a warrant in order to prevent harm or the destruction of evidence. *Ky. v. King*, 131 S. Ct. 1849, 1853-54 (2011). The police can stop and frisk people if they have a reasonable suspicion that they are breaking the law and that the suspects are armed. *Terry*, 392 U.S. at 10. Also, they can search people after they lawfully place them under arrest. *Id.*

The way a law enforcement officer may legally conduct a search of a student on school premises may depend on the relationships between the officer, the school, and the search itself. When a police officer is assisting in a search initiated by school officials, the search is subject to the “reasonable suspicion” standard that applies to the school officials, rather than the stricter “probable cause” standard that applies outside the school environment. *Tarter*, 742 F.2d at 977, 982; *Widener v. Frye*, 809 F.Supp. 35 (S.D. Ohio 1992). No case has fully addressed whether the “fruits” of a search that would not have been permitted under the typical police officer’s “probable cause” standard in a criminal proceeding, but the Tenth Circuit made clear that there is no justification for easing the usual requirement of probable cause

and instead applying the T.L.O. reasonableness standard when the police are involved in a seizure that is not designed to maintain school order or security.

In *Jones v. Hunt*, the Tenth Circuit has considered which of these two standards applies when a school administrator assists police officers to de facto arrest a student on school grounds for a purpose other than maintaining order on school property. The Tenth Circuit there held that the relevant Fourth Amendment standard is not the *T.L.O.* standard where a joint police officer-school administrator seizure is not for the purpose of maintaining order on school property. *Jones*, 410 F.3d 1221, 1228 (10th Cir.2005). The *Jones* court reasoned that in *T.L.O.*, concerns for allowing school administrators to maintain security and order justified easing the usual Fourth Amendment requirements of probable cause and a warrant. *See id.* at 1228; *see also T.L.O.*, 469 U.S. at 340.

Other Encounters with the Police

You may encounter the police away from, or on your way to and from school. The following is a brief overview of your rights during such an encounter.

- **General Advice:** In any encounter with the police, remember an important principle— remain calm and act politely. Any interaction with the police can become an unwanted confrontation if you overreact, so do not try to flee or physically resist, do not interfere with or obstruct the police in their investigation, and do not argue with a police officer.

Additionally, if the police tell you that they have a warrant, ask politely to see it. If the police do not have a warrant and ask you to consent to a search, **clearly and politely state that you do not consent.**

Ask if you are under arrest or free to go; if the police say you are free to go, you are not required to comply with any further requests.

Keep good mental notes of every important item—date, time, place, officers' names, badge numbers, physical description, squad car numbers, verbal exchanges, etc.

- **Vehicle Stops:** If stopped in your car, upon the officer's request, show your driver's license, registration, and proof of insurance. If you are given a ticket, sign it; otherwise, you can be arrested. You can fight the case in court later.
- **Other Temporary Stops:** Short of arresting you, the police may subject you to a temporary "stop." The police may stop you only if they have reasonable suspicion (a lower level of suspicion than probable cause) that you are presently involved in or about to commit a felony. *U.S. v. Hensley*, 469 U.S.

221 (1985); *Terry v. Ohio*, 392 U.S. 1 (1968). Moreover, if an officer develops reasonable suspicion of additional criminal activity during his investigation of circumstances that originally caused him to make the stop, he may further detain the student/s for a reasonable time, while appropriately attempting to dispel this reasonable suspicion. *U.S. v. Pack*, 612 F.3d 341, 350 (2010).

If the police lawfully stop you, they can frisk you for weapons if they have reason to believe that you are armed and dangerous and that a frisk is needed to protect themselves and other people. If you are in your car when the police stop you, they may search the passenger compartment for weapons. *Mich. v. Long*, 463 U.S. 1032 (1983).

- **Arrests:** You may be arrested if the police have a warrant for your arrest, or if they have probable cause to believe that you have violated the law. *Chimel*, 395 U.S. at 754. If you are arrested, tell the police nothing except your name and address – no explanations, excuses, or stories. Make your defense later based on what you and/or your lawyer decide is best. Ask to see a lawyer immediately. Do not talk to the police without a lawyer. If you are unable to pay for an attorney, you have a right to a free one (except in minor traffic offenses), and you can ask the police how to contact an attorney. However, it's best to know someone ahead of time, when possible.

Ask to make a phone call. You have the right to make phone calls after arrest and immediately after being booked: (1) to a lawyer (the police may not listen to this call); (2) a bail bondsman; (3) a relative or any other person.

If your rights are violated by the police, avoid trying to deal with it at the scene. Discuss the matter with an attorney later, or file your own written complaint with the Internal Affairs or Public Integrity Department, so you can avoid leading questions during an interrogation. This is not complete advice, so always consult with a lawyer.

- **Interrogation:** If you are questioned while in police custody, the police must first notify you of your rights during questioning. The notice, called a *Miranda* warning, must state the following: (1) You have the right to remain silent. *Miranda v. Ariz.*, 384 U.S. 436, 440 (1966); (2) Anything you say can and will be used against you in court. *Id.* at 469; (3) You have the right to consult with a lawyer and to have the lawyer present during questioning. *Id.* at 470. (4) If you cannot afford an attorney, you can ask the court to appoint one for you. *Id.* at 472.
- **Searches:** If you are arrested, the police can lawfully search only your person and the areas in your immediate control. *Id.* at 763. This rule is based on the need for the police to prevent the arrestee from getting access to a weapon or

destroying evidence. Any packages found on your person, including wallets, purses, and packs of cigarettes, are subject to search, even if you are arrested for a traffic violation. *U.S. v. Robinson*, 414 U.S. 218, 224 (1973).

You may refuse to give consent to any search of yourself, your car, or your house. If you do consent to a search, it can affect your rights in court.

If the police say they have a search warrant, ask to see it.

Do not interfere with or obstruct the police because you can be arrested for it.

- **Vehicle Searches:** If the police wish to search your car or something in it (but do not have grounds to arrest or stop you), they typically need probable cause to conduct the search. They do not, however, need a search warrant. *Chambers v. Maroney*, 399 U.S. 42 (1970); *Carroll v. U.S.*, 267 U.S. 132 (1925). If the police have probable cause to search a car, they can inspect every part of the vehicle, including any containers which are in it. *U.S. v. Ross*, 456 U.S. 454 (1981). If the police have probable cause to search a container in the car, they can seize and search only the container without a warrant. *Ca. v. Acevedo*, 500 U.S. 565 (1991).

If you are arrested while in your car, police may search your vehicle while you are unsecured and within reaching distance of the passenger compartment at the time of search, and when it is “reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Ariz. v. Gant*, 556 U.S. 332, 343 (2009); quoting *Thornton v. U.S.*, 541 U.S. 615, 632 (2004). *Gant*’s search incident to arrest scenario only applies to officer’s searches of an automobile pursuant to a lawful arrest. *U.S. v. Steele*, 353 F. App’x 908, 910-11 (5th Cir. 2009). **Otherwise**, an officer must have probable cause that the car has evidence of contraband or other criminal activity to search the car after a stop. *Id.*; *U.S. v. Hinojosa*, 392 F. App’x 260, X (5th Cir. 2010).

NOTE that you do not have to answer a police officer’s questions, but you must show your driver’s license and registration when stopped in a car.

DRUG AND ALCOHOL TESTING

Do I Have To Take a Drug or Alcohol Test?

If there is reasonable suspicion that a student is or recently was on campus while under the influence of alcoholic beverages or controlled drugs, schools may test for

substance abuse with the assistance of law enforcement. Such a test may be administered on school grounds, after consent has been obtained from the student's parent or legal guardian. La. Rev. Stat. Ann. § 14:403.1.

Random drug and alcohol testing generally conflicts with the Fourth Amendment, which prohibits unreasonable searches. The reasonableness of a search is determined by weighing the degree of intrusion upon individual privacy against the school interest involved. *New Jersey v. T.L.O.*, 469 U.S. 325, 326 (1985). A school need not obtain a warrant or establish probable cause to search a student. However, a 'reasonable' search typically requires individualized suspicion, evidence that a specific student has violated the law or school rules. *Id.* at 340-41.

Despite this traditional requirement, the United States Supreme Court has approved suspicionless drug and alcohol testing of students in certain circumstances. In *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995), the Court authorized random drug testing of student athletes as a condition of their participation in athletics. Later, in an ACLU case *Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls*, 536 U.S. 822 (2002), extended the use of suspicion-less testing to all students participating in competitive extracurricular activities, even the chess club. In these cases, the Supreme Court held that suspicion-less drug testing is a reasonable means of furthering a school's interest in deterring drug use for student competitors and athletes, and does not violate the Fourth Amendment. *Pottawatomie*, supra, 536 U.S. at 837.

Courts have yet to address whether suspicion-less drug testing of Louisiana students would be legal in other situations, outside the context of extracurricular competitors and athletes. Several schools have adopted the questionable practice of Breathalyzing *all* students entering proms, homecoming dances, and other events. In Vermillion Parish, for example, if a student tests positive for alcohol, he or she will be detained until release to a parent or guardian. This policy of suspicion-less testing across for *all* students has not been challenged in Louisiana. However, the ACLU believes that suspicion-less drug testing of an entire student body goes far beyond the reach authorized by the Supreme Court in *Vernonia* and *Pottawatomie*.

Under What Circumstances May Student Athletes Be Drug Tested?

As mentioned above, the Supreme Court permits random testing of student athletes without individualized suspicion. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995). Though individualized suspicion is a traditional element of a 'reasonable' search under the Fourth Amendment, it is not required for drug tests of student athletes. Under *Vernonia*, school officials may administer a drug test even when there is no reason to suspect that a specific student has violated the law or school rules. *Id.*

In holding that suspicion-less drug testing of student athletes is reasonable, the Supreme Court examined several factors, including:

- The nature of the privacy interest affected by the search, *Id.* at 654,
- The degree of intrusion into personal privacy, *Id.* at 658,
- The importance of the relevant school interest, *Id.* at 660,
- The immediacy of the school interest, *Id.* at 662
- How well the search addresses the school interest. *Id.* at 663.

In justifying the *Vernonia* decision to permit random testing of student athletes, the Court found that schools have a valid interest in preventing drug abuse among students, and a responsibility to protect their health and well-being. *Id.* at 664. Further, the Court noted that athletes have a lesser expectation of privacy than the general student body. *Id.* at 657. Student athletes are voluntary participants in the program, which usually includes communal dressing and showering. Additionally, students under the influence of drugs may have impaired judgment, slow reaction time and a lessened perception of pain. Because the school-wide substance abuse problem was largely fueled by the “role model” effect of athletes’ drug use, the Court found that the urinalysis testing was a justified intrusion into individual privacy. *Id.* at 661.

ACLU Note: We disagree with the *Vernonia* decision and believe that the Supreme Court ruling concerning student athletes should not be used in support of similar testing for other extracurricular activities. Court challenges to such policies have met with mixed results.

May My School Use Dogs to Look For Drugs?

The Fifth Circuit Court of Appeals held that a dog’s sniffing of cars and lockers does not constitute a search within the purview of the Fourth Amendment, but dogs’ sniffing of children’s persons does constitute a search under the Fourth Amendment, and that in a school setting, individualized reasonable suspicion is required in order for the sniffing to be constitutional. *Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 481 (1982). Conversely, some lower courts have held that when a dog is used to sniff a student, it is a search that must be reasonable under all of the circumstances. The ACLU still believes that any search must be based on individualized suspicion.

SCHOOL RECORDS

What Are My Rights Concerning My School Records?

The federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232(g),

allows parental access to school records, but limits access to school records by third parties. However, the USA Patriot Act, H.R. 3162, October 2001, allows federal law enforcement to obtain a secret court order for the release of information if the United States Attorney General certifies that the information is relevant to a terrorism investigation. These provisions allow law enforcement officials to cast an even broader net for student information without any particularized suspicion of wrongdoing.

When these student record anti-privacy proposals are combined with other information-sharing provisions contained in the USA PATRIOT Act, highly personal student information will be transmitted to many federal agencies that could lead to adverse consequences far beyond the stated goal of fighting terrorism.

Your parents have a right to inspect and review your educational records, which are anything that contains information directly related to you and is maintained by either the school or an agent for the school. 20 U.S.C.1232g(1)(A). Your parents must be given access within a “reasonable” period of time, but no later than 45 days of your request. *Id.* School system policies may give you greater rights by setting shorter limits. *Id.* You have the right to a hearing to challenge the content of your records and to have an opportunity to delete incorrect information or to insert an explanation. *Id.* at (1)(D)(2).

A school may, but is not required to, release to third parties only so-called “directory” information: name, address, weight and height of a member of an athletic team, dates of attendance, telephone number, date and place of birth, major field of study, participation in officially recognized activities & sports, degrees and awards, and most recent previous school attended. 20 U.S.C.1232g(a)(5)(A). All other information is private and confidential and cannot be released without the written consent of the student’s parent, the student (if 18 or older), or by judicial order or to certain limited agencies or school officials. 20 U.S.C.1232g(b)(1); (h)(2). Act 789 passed by the 2001 Louisiana Legislature excludes from public records law the directory information of students’ names, addresses, and phone numbers. Parents and age of majority students may request in writing that the school not release the excluded information voluntarily without written permission.

Information in the record that is inaccurate, misleading or otherwise in violation of privacy or other rights can be challenged in two ways. A parent or adult student may request that the school district either (1) insert an explanation or additional data to correct any false impression or (2) expunge or correct misinformation. 20 U.S.C.A. § 1232g(a)(2).

Generally, a school may not release records containing personally identifiable information to third parties without the written consent of the parents or the adult student. 20 U.S.C.A. § 1232g(b)(1). There are four principal exceptions to this rule:

(1) local school officials who have a legitimate educational interest; (2) officials from other schools in which the student plans to enroll; (3) representatives of the United States Comptroller General and Secretary of Education; and (4) state educational authorities. *Id.* Schools must keep on file a copy of any request for the records made by anyone other than local school officials. 20 U.S.C.A. § 1232g(b)(4)(A).

The U.S. Supreme Court has held that peer grading—when a student scores another student’s test or assignment as the teacher reads out the correct answers—does not violate FERPA’s confidentiality requirements, because an assignment graded by a peer is not an educational record as it is not yet recorded in the teacher’s grade book. *Owasso Indep. Sch. Dist. v. Falvo*, 534 U.S. 426 (2002).

DISCRIMINATION

May My School Discriminate On Race Or Religion?

No. School segregation based on race, color, nationality, or religion violates the Fourteenth Amendment of the U.S. Constitution, and Title VI of the federal Civil Rights Act of 1964.

If you believe that you have been subject to discrimination on the basis of race, color, nationality, or religion, you may take your complaint directly to your school’s superintendent or file a discrimination claim in court.

May My School Discriminate Based On Sex?

Both federal and state laws forbid public schools from discriminating against students on the basis of sex. Federal Title IX states:

[With limited exceptions,] no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance... 20 U.S.C. § 1681.

Title IX requires schools to provide equal athletic opportunities to male and female students, including as measured by a) whether the selection of sports and levels of competition accommodate the interests and abilities of students of both sexes; b) whether there are differences in the facilities, equipment, supplies, and game and practice schedules; and c) coaching provided to male and female students. Title IX has led to an explosion in the number of female students who participate in school athletics: More than five million female students took part in student athletics throughout the country in 1994, compared to fewer than 300,000 in 1970. Donald T. Kramer, *Legal Rights of Children*, §§ 25.45, 2d ed. 1994.

May My School Discriminate Against LGBT Students?

In 1996, the U.S. Supreme Court recognized that gay men and lesbians can have equal rights granted by the state, and it struck down a Colorado law that prevented state and local government from banning discrimination on the basis of sexual orientation. *Roemer v. Evans*, 517 U.S. 620 (1996).

In 2015, the U.S. Supreme Court ruled that same-sex couples may marry in all 50 states, on the same terms as opposite sex couples. *Obergefell v. Hodges*, 576 U.S. ____ (2015). This ruling struck down all state laws that banned same-sex marriage as well as the federal Defense of Marriage Act, part of which had been invalidated by the prior decision *U.S. v. Windsor*, 570 U.S. ____ (2013).

And while only a few lower courts have addressed LGBT rights in the public school context, we can offer guidance on some issues:

- **Harassment:** LGBT students do not have to tolerate harassment or abuse by their peers because of their sexual orientation, and public schools are required under federal law to remedy the abuse of LGBT students. A federal appeals court has decided that school officials in Wisconsin could be held responsible for not punishing the classmates of a Wisconsin student who repeatedly harassed and physically harmed the student because he was gay. *Nabozny v. Podlesney*, 92 F.3d 446 (7th Cir. 1996).
- **Privacy:** A school may not “out” an LGBT student who wishes to keep his or her sexual preference or gender identity private. *See, generally, Sterling v. Borough of Minersville*, 232 F.3d 190 (3d Cir. 2000) (the parent of a gay teenager who committed suicide after being “outed” by local police had the right to sue the police department for violating her son’s privacy).
- **Gay-Straight Alliances:** A gay-straight alliance (GSA) is just like any other extracurricular club, and like most extracurricular clubs, is protected by the Equal Access Act. As long as you follow club-formation rules when starting a GSA, your school cannot treat the GSA differently from any other club.
- **School Dances:** LGBT students have the right to bring same-sex dates to homecoming, prom or other school social events. *Fricke v. Lynch*, 491 F.Supp. 381 (Dist. R.I. 1980).

The rights of LGBT students are likely to expand in coming years, as the right to marriage is further interpreted.

For an in-depth look at the rights of lesbian, gay, bisexual, and transgender students,

go to <https://www.aclu.org/know-your-rights/lgbt-high-school-students>.

How May I Fight Discrimination and Harassment On Campus?

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. Schools can also be held liable for failing to take action against student-to-student sexual 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.

Discrimination and harassment at school are not just illegal. They're unjust. You and your fellow students can organize against injustice at school and in your community. Here are some key steps to take:

- Report any incident of discrimination or harassment to a teacher or school administrator. Find a counselor or teacher who can give you emotional support as well as information.
- Write everything down! Keep a record of everything that happens and save every note, letter, or report that you write. If there are witnesses to the discrimination, have them write down what they heard or saw.
- Talk about the problem. Make sure that other students know what is going on, and build support among them.
- Educate yourself. Learn about your school's policies. If they are unable to properly address the discrimination or harassment, put together a campaign to change them so that they can solve the problems of racism, sexism, or homophobia. Your campaign may take you to the school board, city council, or even the state legislature.
- If the problem persists, contact the ACLU or an attorney.

SEX EDUCATION, ABORTION, & STIs

Does My School Have to Offer Sex Education?

No. Louisiana schools are not required by law to offer courses in sexuality education, including information about sexually transmitted infections, including HIV. La. Rev. Stat. Ann. § 17:281. Schools may choose to integrate this subject matter into an existing course of study, like Biology, Science, or Physical Education. When sex education is offered, any student may be excused at the option and discretion of a parent or guardian. Schools may offer sex education in grades seven

and above, except in Orleans Parish where such instruction may begin in grade three. All schools with a sex education program must extend instruction to any student who is a parent or is pregnant, regardless of grade level.

The major emphasis of sex education programs in Louisiana public schools shall be to encourage sexual abstinence between unmarried persons, and to disseminate factual information concerning the human reproductive system. Depending on the educational policies in effect, instruction may include the study of STDs, pregnancy, childbirth, puberty, menstruation, and menopause, as well as parental responsibilities under the child support laws of the state. Public schools are prohibited from including religious beliefs in the instruction and from questioning students about their religious or moral beliefs. La. Rev. Stat. Ann. § 17:281; *see also Coleman v. Caddo Parish Sch. Bd.*, 635 So.2d 1238 (La. App. 2d Cir. 1994).

ACLU Note: Realistically, a significant portion of American teenagers are sexually active. Statistics show that 6% of teens across the United States have sex by the age of 15, 48% by the age of 16, 61% by the age of 18, and 71% by the age of 19.¹ Further, Louisiana has the 8th highest teen pregnancy rate in the nation,² and has among the highest AIDS and STI (sexually transmitted infection) rates in country.³ Nevertheless, the State of Louisiana requires abstinence-only instruction in public schools choosing to provide a Sex Education program.

Do I Need My Parents' Consent to get Birth Control?

No. You have the right to information, counseling, and contraceptives as part of your constitutionally protected right of personal privacy. Your parents' consent is not required. *Carey v. Population Services Intl.*, 431 U.S. 678, 679, (1977). Your school is not obligated to provide you with this information, so if you want it you should consult a private doctor or health clinic.

Is Abortion Legal?

Yes. You have the right to an abortion, however, if you need an abortion, it is, from a legal standpoint, best to have it performed as early as possible. In 2012, the pro-life "Hear the Heartbeat" act heightened the requirements to receive an abortion. This law requires abortion facilities to make the fetus' heartbeat audible for the mother at least 24 hours prior to an abortion. However, the pregnant woman may request and sign an opt-out form. Additionally, S.B. 708 expands the "Ultrasound Before

¹ Guttmacher Institute, *Facts on American Teens' Sexual and Reproductive Health* (June 2013), available at <http://www.guttmacher.org/pubs/FB-ATSRH.html#1>.

² Guttmacher Institute, *US Teenage Pregnancies, Births and Abortions: State Trends by Age, Race and Ethnicity* (2008), available at <http://www.guttmacher.org/pubs/USTPtrendsState08.pdf>

³ National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Louisiana State Profile (2010), available at http://www.cdc.gov/nchhstp/stateprofiles/pdf/Louisiana_profile.pdf

Abortion” law, requiring abortion facilities to place the ultrasound screen in view of the woman. Still, she then has the choice of whether to view the ultrasound images.

However, even though it isn’t a good idea to wait so long, you may still get an abortion after the first 24 weeks if your doctor feels that it is necessary to preserve your life or health. However, the Louisiana legislature has passed laws restricting access to abortion such as “informed” consent and waiting period requirements. A woman must receive a lecture from a doctor, nurse, counselor, or social worker that tells her about her options and urges her not to have an abortion until she contacts agencies that assist with pregnancy, adoption, and childcare. The woman must then wait 24 hours before she has the abortion. No public money can be used to provide facilities for an abortion or to provide women on state medical assistance with access to an abortion, unless the procedure is medically necessary. La. Rev. Stat. Ann. § 40:1299.34.5.

If you have additional questions about pregnancy or abortion, contact a doctor or other qualified healthcare professional.

Do I Need My Parents’ Permission to Get an Abortion?

Yes, if you are a minor. In Louisiana, minors under the age of eighteen must obtain the consent of at least one parent or legal guardian before a physician has the legal authority to perform an abortion. La. Rev. Stat. Ann. § 40:1299.35.5(A)(1). There are a few exceptions:

- The teen may go before a judge and receive permission from the judge to have an abortion without the parent’s permission (also known as Judicial Bypass). La. Rev. Stat. Ann. § 40:1299.35.5(B); *Ohio v. Akron Ctr. For Reproductive Health*, 110 S.Ct. 2972, 2974 (1990); *State in Interest of A.V.P.*, 108 So.3d 1204, 1206 (La.App. 5 Cir. 1/29/13). This means that you can avoid getting parental consent, if a court finds that you are mature and well informed enough to make your own decision. Or, a court may determine that it is in your best interest to have an abortion. *Causeway Med. Suite v. Ieyoub*, 109F.3d 1096, 1112 (5th Cir., 1997). Regardless of the court’s decision, they cannot notify your parents of your desire to have an abortion. *Id.* The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. *Id.* at 1105.
- Teens who are legally emancipated do not need to have permission from a parent or guardian, La. Rev. Stat. Ann. § 40:1299.35.5(A).
- If there is a medical emergency and the pregnant teen needs an abortion, the

parent does not have to give permission. *Bellotti v. Baird*, 443 U.S. 622, 653 (1979) (Blackmun, J., concurring). The statute was construed to require that every minor who wishes an abortion must first seek the consent of both parents, unless a parent is not available or unless the need for the abortion constitutes a medical emergency. *Id.*

Do I Need My Boyfriend's Permission to Get an Abortion?

No. If pregnant, you do not need the permission of your child's father to have an abortion.

May I Put My Baby Up For Adoption Without My Parents' Permission?

In order to put a child up for a private adoption, un-emancipated minors must have the consent and participation of their parents. La. Child. Code Ann. art. 1113(A). If your parents refuse or cannot be located, the court may allow you to proceed with the adoption if it finds that you are "sufficiently mature and well informed to surrender [your] child or that the surrender is otherwise in [your] best interest." La. Child. Code Ann. art. 1113(C). However, to surrender your baby to an adoption agency, parental consent is not required. La. Child. Code Ann. art. 1113(E).

May My Parents or Boyfriend Force Me To Have an Abortion?

No. Even if others pressure you, you have the right to choose against an abortion. In fact, it is a crime in Louisiana to coerce a minor into having an abortion.

May School Officials Make Me Leave School If I Become Pregnant or Forbid Me to Participate in Certain Activities?

No. Federal law prohibits discrimination on the basis of marital status and pregnancy. Title IX, U.S.C.A. § 1681 (1972). In 2012, Delhi Charter School in Delhi, Louisiana eliminated a policy that required female students even suspected of being pregnant to submit to a pregnancy exam and forced them out of school if they refused or tested positive. The school rescinded the policy after receiving a letter from the ACLU challenging the policy's constitutionality. The policy even allowed the teacher to select the physician giving the test. If the student is pregnant, according to the policy, "the student [would] not be permitted to attend classes on the campus of Delhi Charter School...and [would] be required to pursue a course of home study."

The law requires any pregnant student to attend school with no limitations other than those required by her health, just as any other student. She must also be allowed to return to school as soon as she is medically able to do so.

May I Receive Medical Treatment Without My Parents' Knowledge or Permission?

Yes. Louisiana law states that a minor can give consent to receive medical treatment, including treatment for a sexually transmitted disease and for substance abuse. La. Rev. Stat. Ann. §§ 40:1095(A)(1); 1096(A)-(B). The consent of your parent or guardian is not required. However, the doctor may inform your parents of the treatment you need or have received, even if you object. La. Rev. Stat. Ann. §§ 40:1095-1096; § 40:1065.1.

May School Officials Force Me to Take An HIV Test?

Generally, no. You cannot be forced to take an HIV test unless:

- By a health care provider or health care facility in relation to the procuring, processing, distributing, or use of a human body or human part, including organs, tissues, eyes, bones, arteries, blood, semen, or other body fluids, for use in medical research or therapy, or for transplantation to individuals, La. Rev. Stat. Ann. § 40:1300.13(E)(1),
- For purposes of accredited scientific or medical research. Any testing must be performed in such a manner that the identity of the test subject remains anonymous and may not be retrieved by any researcher unless specifically authorized, La. Rev. Stat. Ann. § 40:1300.13(E)(2),
- On a deceased person, when the HIV-related test is conducted to determine the cause of death or for epidemiological purposes, La. Rev. Stat. Ann. § 40:1300.13(E)(3),
- You are in the custody of the Children and Family Services and officials have a reason to believe that you are HIV-positive. La. Rev. Stat. Ann. § 40:1300.13(E)(4),
- Your doctor reasonably believes that the test is “necessary in order to properly diagnose or treat [your] medical condition and documents such reason in [your] medical record.,” La. Rev. Stat. Ann. § 40:1300.13(E)(5), or
- You have been arrested, indicted, or convicted of rape or incest and the court requires you to take an HIV test. La. Rev. Stat. Ann. § 40:1300.13(E)(6),

If HIV diagnostic testing is offered as part of a routine medical screening in health care settings, substance abuse treatment facilities, mental health treatment facilities, or correctional settings, you must be informed orally or in writing that HIV testing shall be performed unless you decline. La. Rev. Stat. Ann. § 40:1300.13(A). Oral or written information must include an explanation of HIV

infection and the meanings of positive and negative test results, and you must have a chance to ask questions. *Id.* Consent for HIV testing shall be incorporated into your general informed consent for medical care on the same basis as are other screening or diagnostic tests; you do not have to sign a separate consent form for HIV testing. *Id.* If you decline testing, it will be noted in your medical record. *Id.*

If you choose to take an HIV test, you must be provided an opportunity to remain anonymous by the use of a coded system with no correlation or identification of the individual's identity to the specific test request or results. La. Rev. Stat. Ann. § 40:1300.13(C). If you test positive, you will be referred to a health care provider for appropriate HIV-related primary medical care. La. Rev. Stat. Ann. § 40:1300.13(D).

May I Go To School If I Have HIV or AIDS?

Yes, regular attendance requirements apply to students who have HIV or AIDS.

EMANCIPATION OF MINORS

What does “Emancipation” mean?

If you are emancipated, it means that even if you are under 18, you are legally treated as an adult. *Held v. Wilt*, 610 So. 2d 1103, 1104 (La. Ct. App. 1992). Your parents have no responsibility for what you do and no legal authority over you. Nor are your parents responsible for your actions. *Id.*

How May I Emancipate Myself?

There are three kinds of emancipation: (1) Judicial Emancipation, (2) Emancipation by Marriage, and (3) Limited Emancipation by Authentic Act. La. Civ. Code Ann. art. 365.

Judicial Emancipation

A court can grant full or limited emancipation of a sixteen or seventeen year old, for good cause. La. Civ. Code Ann. art. 366. A finding of “good cause” may be warranted where there is excessive ill treatment, or where the parents refuse support or serve as a corrupt example for the minor. La. Civ. Code Ann. art. 366(i).

Full judicial emancipation confers all effects of majority on the person emancipated, unless otherwise provided by law. La. Civ. Code Ann. art. 366. In other words, if you are fully emancipated you become a full adult. Limited judicial emancipation confers

the effects of majority (adulthood) only as specifically stated in the judgment of limited emancipation, unless otherwise provided by law. *Id.*

The court may alter or suspend its decision to grant emancipation, again for good cause. La. Civ. Code Ann. art. 370. This judgment would not have a retroactive effect; acts stand that were made by the minor prior to date when emancipation is effectively terminated. *Id.* On termination, the minor would be back under the same authority as before emancipation, unless otherwise ordered by the court for good cause shown. *Id.*

Emancipation by Marriage

Full emancipation by marriage is effective upon marriage. La. Civ. Code Ann. art. 367. Even if you get divorced before turning 18, you remain fully emancipated. *Id.*

Limited Emancipation by Authentic Act

An authentic act is a special type of writing signed by a notary and two witnesses and signed by your parents so that you will be treated like adult for a specific thing or things only, effective upon signing. La. Civ. Code Ann. art. 368. This would be a good option if you are sixteen or seventeen and you need to be able to sign a contract for your job or a lease for your apartment. The act shall be executed by the minor, and by the parents of the minor, if parental authority exists, or by the tutor of the minor, if parental authority does not exist. *Id.* All other effects of minority shall continue. *Id.*

ACLU Note: Due to the complexities of the law with regard to emancipation of minors in Louisiana, you should consult with a private attorney if you are looking to emancipate yourself. Generally, your parents' permission is required, unless they have mistreated or neglected you.

CONCLUSION

Are My Rights in Danger?

One of the essential functions of public schools is to teach you and your fellow students how to be active, knowledgeable, and responsible citizens. Schools can teach this lesson, but at the same time, they must respect your individual rights. Your rights are not unlimited; schools still need to maintain order and discipline in order to foster a proper educational environment. You therefore need to know what your rights are and how far they go. We hope this short booklet has given you a start in this learning process.

In spite of the Supreme Court's ringing endorsement of students' rights in the landmark *Tinker* decision, constitutional violations occur in public schools as elsewhere across the country.

Teachers and administrators have a responsibility to provide a safe environment for the students that is conducive to learning. They also have a responsibility to respect each student's individual rights. These two missions are compatible. Students have rights, too, so get informed, and join in the fight for your rights!

How May I Fight for My Rights?

There are many things that students can do if they believe their schools are violating their rights or those of other students. Unless you speak up – in an organized, responsible, well-thought-out way – the school may continue to abuse students' rights. It's up to you and your fellow students to work to bring about any changes you feel are needed. Here are some ideas:

- Contact the ACLU and ask for help. In Louisiana, visit our website at www.laclu.org. Other groups, may be willing to offer free legal aid to low-income individuals civil issues.
- Have other students sign a petition to protest your school's policies. Bring the signed petition to the principal or other administrators, ask them to respond in writing, and print the response for the student body and community to see (in the school newspaper or your own newsletter). Write letters to the editor of your local newspaper.
- Organize a meeting of students (off-campus, if necessary) to discuss how the school is violating students' rights and what changes are needed. At the meeting, design a plan of action, which might include writing a letter of complaint to the school board and school officials, sending out letters notifying parents of the violations, or distributing flyers to alert other students to the problem.
- Enlist the help of sympathetic teachers or parents for advice on how to address the problem.
- Lobby school board members, attend school board meetings and speak out at those meetings

How Do I File a Complaint with the ACLU of Louisiana?

Our complaint form is at our website, <https://www.laclu.org/complaint.php>. We will review your complaint to see if we can help. Remember that we can help only a

small portion of the people who seek our help and we can't answer inquiries from people we can't help, so you should seek help from other lawyers as well.

APPENDIX

The Bill of Rights of the U.S. Constitution

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

Second Amendment: A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Third Amendment: No soldier shall, in time of peace, be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Seventh Amendment: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment: The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Other Rights Embodied in the Constitution

Thirteenth Amendment: Neither slavery nor involuntary servitude... shall exist within the United States, or any place subject to their jurisdiction....

Fourteenth Amendment: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of laws, nor deny to any person within its jurisdiction the equal protection of the laws....

Fifteenth Amendment: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude....

Nineteenth Amendment: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.