EDUCATION LAW CENTER | FACT SHEET

STUDENT RIGHTS TO FREE SPEECH & EXPRESSION IN PUBLIC SCHOOLS

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The First Amendment protects the rights of students to express themselves in public schools.[1] Students are entitled to speak out, write articles, form groups, hand out flyers, and petition school officials. There are some important limits, however. Schools can prohibit certain forms of expression, including speech that substantially and materially disrupts the school environment, violates the rights of others, or is lewd or vulgar. This fact sheet focuses on student rights and does not address government and school-sponsored speech.

DO STUDENTS HAVE FIRST AMENDMENT RIGHTS IN SCHOOL?

Yes. Students have the right to share their opinions and ideas — known as "freedom of expression." This includes all forms of "speech" and communication, such as speaking aloud, writing on paper or in online chat platforms, wearing T-shirts with messages or protest armbands, gathering in protest and petitioning officials,[2] and expressing themselves through hairstyles, including protective hairstyles[3] and head coverings.[4]

Students also have the right to refuse to say the Pledge of Allegiance or refuse to salute the flag. If they do refuse, their school may not tell their parents.[5] In addition, school districts cannot impose school rules that are so vague they may trample on a student's right to free speech.[6]

ARE THERE LIMITS TO STUDENT FREE SPEECH & EXPRESSION?

Yes. Students have the right to express themselves in school, within certain limits. A school may restrict expression that:

- Causes or is reasonably forecast to cause a "substantial and material disruption."
- Threatens serious harm to the school or community.
- Encourages illegal actions.
- Contains lewd, vulgar, or profane language.
- Would violate someone else's rights.[7]

Caselaw makes clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate"[8] and that the First Amendment should be applied "in light of the special characteristics of the school environment."[9]

WHAT CONSTITUTES A "SUBSTANTIAL AND MATERIAL DISRUPTION"?

This is a high standard. Schools must show that speech was more than just uncomfortable, unpleasant, or unpopular — that it reasonably can be forecast to interfere with the school's work and discipline or the rights of others.[10] That standard may also apply to online communications, depending on the circumstances.[11]

CAN SCHOOLS PUNISH STUDENT EXPRESSION MADE OUTSIDE OF SCHOOL? WHAT ABOUT SOCIAL MEDIA AND INTERNET SPEECH?

Sometimes. Unfortunately, there is no bright-line rule indicating when schools may regulate "off-campus" speech. The U.S. Supreme Court found that a student could not be punished for saying "F* school … F* cheer" in her social media story because it occurred outside of school, school hours, and school-sponsored activities. The post did not identify the school directly, did not target any student or school staff with vulgar or abusive language, and was transmitted through a personal device to a limited circle of contacts.[12] However, the court indicated that certain types of "off-campus" speech may justify a school response. They include "serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices."[13] Whether a school can punish off-campus speech will depend on the situation.

Beyond those certain types of speech, students have the right to speak outside of school or in social media content, even if their speech is vulgar, crude, or offensive. Finally, remember that the First Amendment only protects against the actions of "state actors," such as public schools. There can be non-school consequences for speech, such as harassment lawsuits, removal of social media accounts, or retaliation by employers and others.

CAN SCHOOLS RESTRICT SPEECH ON THE GROUND THAT IT IS VULGAR OR PROFANE?

Yes. The U.S. Supreme Court has ruled that school districts may categorically restrict vulgar, lewd, profane, or plainly offensive speech in schools, even if it would not be obscene outside of school.[14] In addition, courts have restricted speech that, while not explicitly vulgar or profane, is reasonably understood to represent a vulgar or profane message.[15] These cases are determined on a case-by-case basis in light of all surrounding circumstances.[16]

ARE STUDENT EXPRESSION RIGHTS DIFFERENT IN A VIRTUAL SCHOOL?

This issue is new and still evolving, but the U.S. Supreme Court has indicated that schools may regulate some student speech that takes place off-campus during virtual school activities, although precisely when this is authorized remains unclear.[17] For example, a student who makes lewd comments in a chat box while attending online school may be subject to discipline.

WHAT IF THE SCHOOL PROVIDES A COMPUTER FOR A STUDENT TO USE FOR VIRTUAL SCHOOL AT HOME?

Check the school's computer-use policy and any agreement that students or parents are required to sign. If the school district provided a student's computer for virtual instruction, not using that school computer for personal activity is safest. For more information on a student's right to privacy in virtual learning, see federal guidance on student privacy rights.[18]

IS STUDENT CLOTHING AND HAIR CONSIDERED "EXPRESSION"?

Yes. A public school may require a uniform or establish a dress code.[19] However, the uniform or code may not conflict with a student's constitutional rights or constitute unlawful discrimination. This applies to all public schools, including charters.[20] Students have the right to wear clothing containing controversial messages, subject to student speech limitations described on the first page of this fact sheet.[21]

Students have the right to wear political messages, such as "Black Lives Matter" shirts, armbands, or buttons, unless those items are plainly lewd or cause a substantial disruption at school.[22] Also, students have the right to wear their hair and facial hair in any style or length they want, except when a substantial government interest unrelated to length or style requires otherwise for non-discriminatory reasons and all criteria for such restrictions comply with the law.[23]

AS A BLACK STUDENT, DO I HAVE A LEGAL RIGHT TO WEAR MY HAIR IN LOCS AS AN EXPRESSION OF MY IDENTITY, CULTURE, AND HERITAGE?

Yes. Under the Pennsylvania CROWN Act adopted in 2025, your locs and all protective hairstyles are legally protected.[24] This provision is part of the Pennsylvania Human Relations Act (PHRA), which explicitly prohibits racial discrimination based on protective hairstyles, including but "not limited to hairstyles such as locs, braids, twists, coils, Bantu knots, afros, and extensions."[25]

Affirming school dress codes are necessary for students to thrive. Importantly, the Pennsylvania Human Relations Commission's (PHRC) C.R.O.W.N. Protections explainer lists "creating policies that restrict how students can wear their hair" as being one of several "examples of hair discrimination."[26] To learn more about these protections, check out ELC-PA's fact sheet, CROWN Act Prohibits Racial Discrimination.

DO I HAVE A RIGHT TO USE RELIGIOUS HEAD COVERINGS?

Yes. Discrimination based on religious head coverings and "hairstyles historically associated with religious creeds," are also considered illegal discrimination on the basis of religion under the CROWN Act.[27]

It is important to note that the law is still developing in these areas, and students' specific rights to cultural expression through hair and dress at school are not always clear in all contexts. Parents and caregivers should review school dress codes for clarification and consider advocating for more affirming policies. To learn more and advocate for needed reforms, check out these ELC-PA fact sheets: How to Create Equitable, Affirming Codes of Conduct and The School Board, Its Power, and How to Advocate.

DO STUDENTS HAVE THE RIGHT TO MEET AND TO PROTEST?

Yes. Students have the right to "assemble" (to meet) with other students about non-school issues if their school allows other groups to meet about non-school issues. If a chess club is allowed to meet, a Gay Straight Alliance or Black student organization must also be allowed to meet.[28] Students also have the right to protest and petition school officials, so long as doing so does not substantially disrupt the school environment or violate other categories of speech.[29] In addition, schools also may not punish students for simply attending protests on their own time.[30]

Students can, however, be punished for meeting or attending a protest if doing so means missing class or leaving the building without permission and this is against school rules, as in the case of a school walkout.[31] To avoid violating students' rights to free speech and assembly, students who walk out to protest cannot be disciplined more severely than students who left the building or skipped class for a different reason. Punishing students more severely for walking out to engage in political activity would violate core First Amendment rights.[32] Students also have the right to criticize a school's decision to prevent students from participating in a walkout, such as by going to the media on their own time.[33]

Some schools have policies or adopt procedures governing student protests. Recognizing the value of student protests as a vital way to facilitate civic engagement and participation in democracy, many schools have worked with students to permit student walkouts. Before attending a protest, a student should check their school's policies to see whether the absence would be excused and under what conditions (e.g., bring a signed permission note from a guardian explaining that the protest is educational).

CAN STUDENTS PUBLISH AND DISTRIBUTE WRITTEN SPEECH?

Yes. Students have the right to publish articles in a school newspaper, even if they criticize the school or its officials, unless the material is false and hurts someone's reputation, encourages unlawful activity, interferes with another individual's rights, or materially and substantially interferes with the educational process.[34]

Students have the right to hand out materials at school, including on bulletin boards or posting online through a chat box or school portal, so long as the school generally allows posting of student materials in those places, unless the materials are inappropriate, are likely to cause a serious disruption, or advocate illegal drug use.[35] Outside of school, students have the same free speech rights as anyone else to hand out materials to peers and others, subject to the restrictions on off-campus speech that are outlined above on page 2.

DO STUDENTS HAVE A RIGHT TO EXPRESS THEIR RELIGIOUS VIEWS AT SCHOOL?

Yes. The Free Speech Clause and Free Exercise Clauses of the First Amendment[36] work in tandem to allow freedom of expression of religious views, while the Establishment Clause prohibits the government from compelling religious participation or favoring one religion over another.[37] The First Amendment safeguards religious expression and may require schools to provide accommodation for certain religious expression while in school.[38]

Under new guidance issued by the Department of Education in 2026,[39] "school officials should allow members of the public school community to act and speak according to their faith, as long as these criteria are met:

- They respect the rights of others.
- The school itself does not engage in religious activities or speech as an institution.
- The school does not favor secular views over religious ones or one religion over another."[40]

I WAS SUSPENDED FOR MAKING A THREAT, BUT I WAS JUST JOKING. CAN MY SCHOOL DO THAT?

True threats are not protected by the First Amendment, and school officials take them very seriously.[41] Even if an alleged threat does not disrupt or infringe upon the rights of others, school officials may punish you if you intended your statement to be a serious expression of intent to harm.[42] But if you were clearly joking, they may not.[43]

If your school does try to exclude you because of something you said or posted, you do have a due process right to challenge that discipline before it is imposed. See ELC-PA's fact sheets on suspensions and expulsions.

The Education Law Center-PA (ELC-PA) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC-PA advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ+ youth, children experiencing homelessness, and children at the intersection of multiple underserved identities.

ELC-PA's publications provide a general statement of the law. But every situation is different. For information and advice about how the law applies to a particular situation, please contact ELC-PA's Helpline — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or an attorney of your choice.

[1] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.").
[2] *Tinker* at 506; U.S. CONST. amend. I; 22 Pa. Code § 12.9(c) ("Students may use publications, handbills, announcements, assemblies, group meetings, buttons, armbands and any other means of common communication, provided that the use of public school communications facilities shall be in accordance with the regulations of the authority in charge of those facilities.").
[3] 43 PA. STAT. AND CONS. STAT. § 954(bb) (West 2026) (defining protective hairstyles including but "not limited to such hairstyles as locs, braids, twists, coils, Bantu knots, afros and extensions."); *See also* 16 Pa. Code § 41. 206 (defining sex discrimination), and § 41.207 (defining race discrimination), adopted by 53. 24. Pa. Bull. 3188 (June 17, 2023), available at https://www.pacodeandbulletin.gov/secure/pabulletin/data/vol53/53-24/53-24.pdf .
[4] 43 PA. STAT. AND CONS. STAT. § 954 (dd) (West 2026) (defining "religious creed" to include head coverings and hairstyles historically associated with religious creeds); *See also* 16 PA. CODE § 41.205 (defining religious creed discrimination).
[5] 22 Pa. Code § 12.10; *Circle Sch. v. Pappert*, 381 F.3d 172, 174 (3d Cir. 2004) (holding that state law requiring school officials to notify guardians of students who declined to recite the pledge of allegiance or salute the flag violated the students' First Amendment right to free speech).
[6] *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 216 (3d Cir. 2001) (ruling that vague anti-harassment policy, even when narrowly read, prohibited "a substantial amount of non-vulgar, non-sponsored student speech" and was unconstitutionally overbroad in violation of student rights).
[7] *See* 22 Pa. Code § 12.9(b)("Students shall have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens serious harm to the school or community, encourages unlawful activity or interferes with another individual's rights."); *Tinker*, 393 U.S. at 514 (speech that might reasonably be forecasted to or does substantially disrupt not protected); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 675 (1986) (use of sexual or extremely inappropriate language may be considered disruptive); *Sypniewski v. Warren Hills Reg'l Bd. Of Ed.*, 307 F.3d 243, 253 (3d Cir. 2002) (school could not ban shirt with the word "redneck" in a school with racial tensions because it had not caused a disruption).
[8] *Tinker*, 393 U.S. at 506.
[9] *Morse v. Frederick*, 551 U.S. 393, 397 (2007); *Nielsen v. Ann Arbor Pub. Schs.*, 803 F. Supp. 3d 566, 597 (E.D. Mich. 2025) (First Amendment rights of students in public schools "are not automatically coextensive with the rights of adults in other settings," and must be "applied in light of the special characteristics of the school environment.") (citations omitted).
[10] *Tinker*, 393 U.S. at 513-14.
[11] S*ee, e.g., J.S. v. Blue Mt. Sch. Dist.*, 650 F.3d 915 (3d Cir. 2011) (student created internet profile of her middle school principal; court ruled that while vulgar and offensive, this did not cause the type of "substantial disruption" that justified student's suspension); *Layshock v. Hermitage School District*, 650 F.3d 205 (3d Cir. 2011) (district violated free-speech rights of high school senior by suspending him for 10 days for creating a parody of principal online).
[12] *Mahanoy Area Sch. Dist. v. B.L. by & through Levy*, 594 U.S. 180, 191 (2021).
[13] *Mahanoy* at 188.
[14] *Fraser*, 478 U.S. at 688 (noting that student speech at high school assembly nominating a peer for class office through references to graphic and explicit sexual metaphor would have been protected speech in a public forum).
[15] *B.A. v. Tri Cnty. Area Schools*, 156 F.4th 782, 798 (6th Cir. 2025) ("[A] school may prohibit students from wearing a slogan reasonably understood as profane or vulgar") (appealed to the Supreme Court Mar. 26, 2026).
[16] *See, e.g., B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 308 (3d Cir. 2013) (en banc) (while schools may restrict ambiguous speech that a reasonable observer could interpret as lewd, vulgar, or profane, the speech should be protected where it "could also plausibly be interpreted as commenting on a political or social issue.").
[17] *Mahanoy* at 189–190.
[18] Student Privacy Policy Office's *FERPA and Virtual Learning Related Resources* (March 2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20

032020_FINAL.pdf. *See also* letter of concern from ACLU to Gov. Wolf, *Re: Ensuring Privacy Protections in Remote Learning for All Students During COVID-19 School Closures* (May 11, 2020), https://www.aclupa.org/app/uploads/2020/03/aclupa_online_learning_letter_5-11-2020.pdf.

[19] 22 Pa. Code §12.11(a).

[20] *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 130-31 (4th Cir. 2022) (finding that school's requirement that girls wear skirts was "based on blatant gender stereotypes" in clear violation of the Equal Protection Clause and Title IX).

[21] *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d at 322 (3rd Cir.).

[22] *Id.* at 320 (breast cancer awareness bracelets referencing "boobies" were not plainly lewd, and school district's ban on the bracelets was not reasonable exercise of its authority to prohibit lewd or vulgar speech nor did bracelet fall within the purview of other exceptions); *Tinker*, 393 U.S. at 509; 22 Pa. Code § 12.9(h) ("The wearing of buttons, badges or armbands shall be permitted as another form of expression within the restrictions listed in [22 Pa. Code § 12.9(c)]").

[23] *See* 22 Pa. Code § 12.11(b) (codifying that "students have the right to govern the length or style of their hair, including facial hair. Any limitation of this right must include evidence that the style causes disruption or constitutes a health or safety hazard. If a health or safety hazard is presented, a covering shall be used."); *see also* Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 953; 16 Pa. Code § 41.207 (defining racial discrimination), adopted by Pennsylvania Bulletin, Vol 53, No. 24. June 17, 2023, effective 8/16/2023, available at https://www.pacodeandbulletin.gov/secure/pabulletin/data/vol53/53-24/53-24.pdf; *see also Arnold v. Barbers Hill Indep. Sch. Distr.*, 479 F.Supp.3d 511, 528-29 (S.D. Tx. 2020). *See generally* 43 PA. STAT. AND CONS. STAT. § 955(bb)(1)(i)-(iv) (setting forth strict limits that "employers must demonstrate" in order to adopt a "rule or policy that impacts traits historically associated with an individual's race," including protective styles, by requiring that each such regulation is necessary for health or safety, is adopted for non-discriminatory reasons, is specifically tailored to both the employee's position and job activities, and is applied equally to all employees).

[24] 43 PA. STAT. AND CONS. STAT. § 954(bb) (West 2026).

[25] Id.

[26] PA. HUM. REL. COMM'N, *C.R.O.W.N. Protections* (n.d.), https://www.pa.gov/content/dam/copapwp-pagov/en/phrc/phrc-outreach/english/hair%20discrimination.pdf (last accessed on June 26, 2026).

[27] 43 PA. STAT. AND CONS. STAT. § 954(dd) (West 2026).

[28] *See, e.g., Straights & Gays for Equality v. Osseo Area Sch. Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008) (finding Equal Access Act prohibited school from denying meeting of non-curricular gay equality group when other noncurricular groups were permitted to meet); Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211 (3d Cir. 2003) (school could not deny a Bible Club permission to meet during non-instructional time when other non-curricular related clubs met).

[29] *See, e.g., Tinker*, 393 U.S. at 506, 514; 22 Pa. Code § 12.9(b) ("Students shall have the right to express themselves unless the expression materially and substantially interferes with the educational process, threatens serious harm to the school or community, encourages unlawful activity or interferes with another individual's rights.").

[30] *See J.S. ex rel. Snyder v. Blue Mountain School Dist.*, 650 F.3d 915, 932 (3rd. Cir. 2011) ("[A] student's free speech rights outside the school context are coextensive with the rights of an adult.").

[31] *See* 24 Pa. Stat. Ann. § 13-1327.

[32] *See Tinker*, 393 U.S. at 506; *Cox v. Louisiana*, 379 U.S. 559, 574 (1965) ("[O]ur constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest."). *See also Rosenberger v. Rector & Visitors of Univ.* Va., 515 U.S. 819 (1995) ("Viewpoint discrimination is . . . an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

[33] *See Tinker*, 393 U.S. at 509 (holding that school officials may not prohibit speech based on "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint").

[34] 22 Pa. Code §12.9(b) and (g); *See also Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

[35] 22 Pa. Code §12.9(c); 22 Pa. Code § 12.9(f) (explaining the standards to which bulletin boards in schools must conform). *See Morse v. Frederick*, 551 U.S. 393 (2007).

[36] "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech." U.S. Const. Amend. 1
[37] *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523 (2022).
[38] *See e.g., Karen B. v. Treen*, 653 F.2d 897, 904 (5th Cir. 1981), aff'd, 455 U.S. 913, 102 S. Ct. 1267, 71 L. Ed. 2d 455 (1982) ("If a student's religion required him or her to utter an audible prayer at the beginning of each school day, the Free Exercise Clause would require the school to accommodate that requirement.").
[39] U.S. Dept Educ., *U.S. Department of Education Issues Guidance on Prayer and Religious Expression in Public Schools*, (Feb. 5, 2026), https://www.ed.gov/about/news/press-release/us-department-of-education-issues-guidance-prayer-and-religious-expression-public-schools.
[40] *Id.*
[41] *Watts v. United States*, 394 U.S. 705, 708 (1969).
[42] *J.S. by M.S. v. Manheim Twp. Sch. Dist.*, 263 A.3d 295, 316 (Pa. 2021).
[43] *J.S.* at 317.