

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 disrupts the school environment, violates the rights of others, or is lewd or vulgar.

COVID-19 Considerations

The same standards governing freedom of expression in school also apply to students participating in remote learning.

DO STUDENTS HAVE FIRST AMENDMENT RIGHTS IN SCHOOL?

Yes. You have the right to share your opinions and ideas – known as “freedom of expression.” This includes all forms of “speech” and communication like speaking out loud, writing on paper or in online chat platforms, wearing t-shirts with messages or protest armbands, expressing yourself through a hair style, as well as gathering in protest and petitioning officials.²

You have the right to refuse to say the Pledge of Allegiance or refuse to salute the flag, and your school cannot tell your parents if you do.³

ARE THERE LIMITS TO STUDENT FREE SPEECH & EXPRESSION?

Yes. You have the right to express yourself in school with certain limited exceptions. Your right to express yourself may be limited by a school if your expression:

- causes a “substantial and material disruption” at school;
- threatens serious harm to the school or community;
- encourages illegal actions;
- contains lewd, vulgar, or profane language; or
- would violate someone else’s rights.⁴

WHAT CONSTITUTES A “SUBSTANTIAL AND MATERIAL DISRUPTION”?

This is a high standard. The school must show that the speech or expression is more than just uncomfortable, unpleasant, or unpopular, but that it interferes with the work that the school does,

the rights of others in the school, or a school's duty to safeguard students.⁵ This same standard applies to schools providing online instruction.

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

Outside of school, students enjoy essentially the same free speech rights as anyone else. Generally, schools only have the authority to regulate speech or punish students for speech that occurs in a "context owned, controlled, or sponsored by the school" (e.g. in school or at school-sponsored functions including extracurricular activities).⁶ A recent court decision clarified that students cannot be punished for outside-of-school speech based on a fear that it may disrupt school activities.⁷ Outside-school speech that threatens violence or harasses others may be treated differently.⁸

You have the right to create content online or post on social media outside of school and school-sponsored functions. If you create a social media post or online material outside of school, that speech cannot be punished by your school, even if vulgar, crude, or offensive.⁹ But the school may punish any speech or expressive conduct that is responding to or sharing speech made outside of school if that expression substantially and materially disrupts school functions.¹⁰ And remember that First Amendment protection only applies to 'state action' like that of a public school, so there can be non-school consequences for speech including prosecution for harassment, removal of your account on social media, or retaliation by employers and others.

ARE STUDENT EXPRESSION RIGHTS DIFFERENT IN A VIRTUAL SCHOOL?

This issue has not been directly addressed by the courts, but generally the same rules apply to virtual classes and activities.¹¹ For example, a student who made lewd comments in a chat box while attending online school could be subject to discipline.

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

Check your school's computer use policy and any agreement students or parents are required to sign. If the school district provided a student's computer for virtual instruction, it is safest to not use that school computer for any personal activity. For more information on a student's right to privacy in virtual learning, see federal guidance on student privacy rights.¹²

IS STUDENT CLOTHING AND HAIR CONSIDERED 'EXPRESSION'?

Yes. However, schools can require a uniform or establish a dress code that you must follow.¹³ If your school does not require you to wear a uniform, you have the right to wear clothing you choose. Clothing containing controversial messages is permitted unless it is inappropriate, promotes drug use or other illegal activity, disrupts learning, or creates a safety risk.¹⁴

You have the right to wear political messages on clothing, armbands and buttons, unless they "contain lewd language or cause a substantial disruption" at your school.¹⁵ You also have the right to wear your hair and facial hair in any style or length you want unless it causes a school disruption or poses a safety risk.¹⁶

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

Yes. School policies that prohibit hair styles such as locs, braids, twists, and knots, braided extensions, weaves, and wigs have been found to violate the right to expression and to constitute racial and sex discrimination.¹⁷

Federal legislation, [H.R. 5309](#), known as the CROWN Act (Creating a Respectful and Open World for Natural Hair) was introduced in 2019 and seeks to ensure protection against discrimination based on race-based hairstyles by extending statutory protections to hair textures and styles such as locs, braids, twists, and knots in both public schools and workplaces. While this legislation is still pending, many [states](#) have adopted CROWN Act laws, including California, Colorado, New York, New Jersey, Virginia, and Washington.

DO STUDENTS HAVE THE RIGHT TO MEET AND TO PROTEST?

Yes. You have the right to “assemble” (to meet) with other students about non-school issues if your school allows other groups to meet about non-school issues. For example, if the school allows a chess club to meet, they must also allow a Gay Straight Alliance or Black student organization to meet.¹⁸

You can’t be punished just for attending a protest, but if you miss class, you may be marked unexcused or disciplined if you left school without permission. Some schools have specific policies about allowing students to protest. Before attending a protest, check if your school has shared any information about whether your absence would be excused, and if so, what you need to do (e.g. bring a signed permission note from a guardian explaining that the protest is educational).

CAN STUDENTS PUBLISH AND DISTRIBUTE WRITTEN SPEECH?

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.¹⁹

You 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, likely to cause a serious disruption, or advocate illegal drug use.²⁰ Outside of school, you have the same free speech rights as anyone else to hand out materials to peers and others.

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

Threats are not protected speech. School officials take the threat of violence very seriously. If school officials believe you intended to carry out the threat, they can punish you.²¹ If the school is trying to exclude you from school or virtual learning because of something you said or posted, you have the right to due process to challenge this before discipline is imposed. See ELC’s fact sheets on [suspensions](#) and [expulsions](#).

The Education Law Center-PA (ELC) 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 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, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ U.S. Const. Amend. I.

² *Id.* See e.g., *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) (students wearing political arm bands against school policy protected by the First Amendment).

³ 22 Pa. Code § 12.10; *Circle School v. Pappert*, 381 F.3d 172, 174 (3d Cir. 2004) (holding that state law which required 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).

⁴ 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. 503 (political arm bands held not to be disruptive); *Bethel School District 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).

⁵ *Tinker*, 393 U.S. at 509; *Morse v. Frederick*, 551 U.S. 393 (2007) (finding no denial of First Amendment rights where school censored student speech that administrators asserted encouraged illegal drug use.) See also *Balancing School Authority and Student Expression**, 54 Baylor L. Rev. 623.

⁶ *B.L. v. Mahanoy Area Sch. Dist.*, 964 F.3d 170, 189-90 (3d Cir. 2020) (finding *Tinker* test regarding ‘substantial disruption’ did not apply to speech made outside of school and thus school could not punish student for Snapchat post referencing school cheerleading based on a fear of disruption to school activities); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 108 S. Ct. 562 (1988) (upholding school principal’s decision to censor stories about student pregnancies and divorced parents in school-sponsored student newspaper on ground that actions were reasonably related to legitimate pedagogical concerns).

⁷ *B.L.*, 964 F.3d at 189-90.

⁸ *B.L.*, 964 F.3d at 186,190 (taking no position on schools’ power to discipline out-of-school speech that threatens violence or harasses others but recognizing threats are not protected speech).

⁹ *B.L.*; *J.S. ex rel. Snyder v. Blue Mountain School Dist.*, 650 F.3d 915, 932 (3d Cir. 2011) (finding internet profile created on a home computer during a weekend which made fun of student’s principal and contained adult language and sexually explicit content did not cause a substantial disruption in school); *Layshock ex rel. Layshock v. Hermitage School Dist.*, 650 F.3d 205, 217 (3d Cir. 2011) (school could not punish student for making fake profile of principal outside of school).

¹⁰ *B.L.*, 964 F.3d at 190 (school could not punish in-school disruptive speech or expressive conduct including speech reacting or sharing controversial off-campus speech in a disruptive manner).

¹¹ Joseph O. Oluwole & Preston C. Green III, *Virtual Schools, Student Rights, and the First Amendment: Adjusting the Schoolhouse Gate to the 21st Century*, 17 N.C. J.L. & Tech. 221 (2015). Available at: <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1305&context=ncjolt>

¹² Student Privacy Policy Office's FERPA and Virtual Learning Related Resources (March 2020) available at https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20%20Virtual%20Learning%20032020_FINAL.pdf. See also Letter of Concern from ACLU to Governor Wolf Re: Ensuring Privacy Protections in Remote Learning for All Students During COVID-19 School Closures (May 11, 2020) available at https://www.aclupa.org/sites/default/files/wysiwyg/aclupa_online_learning_letter_5-11-2020.pdf.

¹³ 22 Pa. Code § 12.11(a).

¹⁴ See e.g., *Depinto v. Bayonne Bd. of Educ.*, 514 F. Supp. 2d 633 (D.N.J. 2007) (granting injunction allowing students to continue wearing buttons that, while controversial, were not vulgar, lewd, obscene, plainly offensive, profane and did not substantially interfere with the work of the school or impinge upon other students' rights).

¹⁵ *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)]").

¹⁶ "Students have the right to govern the length or style of their hair, including facial hair." 22 Pa. Code § 12.11(b). 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. *Id.* See also *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972)(finding that "mere unattractiveness in the eyes of some parents, teachers or students" cannot justify restrictions on hair styles and is not a justifiable part of the educational process).

¹⁷ See e.g., *Arnold v. Barbers Hill Independent Sch. Dist.*, No. 4:20-CV-1802 (S.D.Tex. Aug. 17, 2020)(granting injunction to prevent enforcement of school policy requiring a Black student to cut his locs or be prohibited from participating in regular classes and school activities and finding likely violations of First Amendment and laws prohibiting racial discrimination, available at <https://www.naacpldf.org/wp-content/uploads/PI-Opinion.pdf>.

¹⁸ 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 (3^d Cir. 2003) (school could not deny a Bible Club permission to meet during non-instructional time when other non-curricular related clubs met).

¹⁹ 22 Pa. Code §12.9(b). Schools have more authority to restrict content of a student newspaper that is school-sponsored. See e.g., 22 Pa. Code 12.9(g); *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260.

²⁰ 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"); 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.

²¹ See e.g. *R.L. v. Cent. York Sch. Dist.*, 183 F. Supp. 3d 625 (M.D. Pa. 2016) (bomb threat posted on Facebook and purported to be a joke, caused substantial disruption at school and, therefore, the school did not violate the student's free speech rights by imposing discipline).