

STUDENT RIGHTS TO FREE SPEECH AND 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.

DO STUDENTS HAVE FIRST AMENDMENT RIGHTS IN SCHOOL?

Yes. Students have the right to share their opinions and ideas – known as “freedom of expression.”² This includes all forms of “speech” and communication, like speaking aloud, writing on paper or in online chat platforms, wearing T-shirts with messages or protest armbands, expressing themselves through hairstyle, as well as gathering in protest and petitioning officials.³

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.⁴

ARE THERE LIMITS TO STUDENT FREE SPEECH AND EXPRESSION?

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

- causes or is reasonably forecasted to cause a “substantial and material disruption;”
- threatens serious harm to the school or community;
- encourages illegal actions;
- contains lewd, vulgar, or profane language; or
- would violate someone else’s rights.⁵

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 forecasted to interfere with the school’s work and discipline, or the rights of others.⁶ That standard may also apply to online communications, depending on the circumstances.⁷

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

Sometimes. Whether schools may restrict or punish “off-campus” speech will depend on the situation. Recently, 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.⁸ 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, including material maintained within school computers.”⁹ Applying this standard, recently a court held that a student’s off-campus Snapchat messages were not protected and could be punished by the school where the messages were “not merely profane but ... were actual threats” targeting primarily one student.”¹⁰ In another case, the court refused to dismiss a student’s First Amendment claim where her school punished her for an off-campus racially offensive social media post unless the school could prove it caused a substantial disruption at school.¹¹

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,” like public schools. There can be nonschool consequences for speech, such as harassment lawsuits, removal of social media accounts, or retaliation by employers and others.

ARE STUDENT EXPRESSION RIGHTS DIFFERENT IN A VIRTUAL SCHOOL?

This issue is new and still evolving, but the 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.¹² A student who makes lewd comments in a chat box while attending online school is likely to 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 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.¹³

IS STUDENT CLOTHING AND HAIR CONSIDERED ‘EXPRESSION’?

Yes. A public school may require a uniform or establish a dress code.¹⁴ But the uniform or code may not conflict with a student’s constitutional rights. This applies to all public schools,

including charter schools.¹⁵ If a school does not have a uniform or dress code, students have the right to wear clothing containing controversial messages, subject to student speech limitations described on the first page of this fact sheet.¹⁶

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.¹⁷ Finally, 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.¹⁸

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. Affirming school dress codes are necessary for students to thrive. School policies that prohibit hairstyles, such as natural hair, Afros, locs, braids, twists, knots, puffs, braided extensions, weaves, and wigs, have been found to be racially and sexually discriminatory, and in violation of the right to expression under the First Amendment.¹⁹

Importantly, regulations under the Pennsylvania Human Relations Act (effective Aug. 16, 2023) clarify that racial discrimination includes discrimination on the basis of “traits historically associated with race including hair texture and protective hairstyles,” including styles created using extensions or headbands/headwraps.²⁰ This means a school cannot punish or discipline a student for expressing their racial and cultural identity by wearing a protective hairstyle or for the way their hair grows from their head. ELC advocates against racist school grooming policies that target dress-based forms of cultural expression. To learn more about this issue, see ELC’s publication [We Need Supportive Spaces That Celebrate Us: Black Girls Speak Out About Public Schools](#).

On the national level, the [CROWN Act](#) (Creating a Respectful and Open World for Natural Hair Act of 2022) seeks to extend statutory protections to hairstyles and textures, such as locs, braids, twists, and knots, to protect against race-based discrimination in public schools and workplaces.²¹ The law has not yet passed through Congress, but 23 states have adopted their own CROWN laws, and many others have legislation pending.²²

DO STUDENTS HAVE THE RIGHT TO MEET AND TO PROTEST?

Yes. Students have the right to “assemble” (to meet) with other students about nonschool issues if their school allows other groups to meet about nonschool issues. If a chess club is allowed to meet, a Gay Straight Alliance or Black student organization must also be allowed to meet.²³

Students can, however, be punished for meeting or attending a protest if doing so means missing class without permission.²⁴ Some schools have policies allowing students to protest. Before attending a protest, a student should check their school’s policies to see if 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.²⁵

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.²⁶ 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 described on off-campus speech outlined above on page 2.

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.²⁷ 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.²⁸ But if you were clearly joking, they may not.²⁹

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'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, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC'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'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 *Id.*; U.S. Const. amend. I; Pa. Const. art. I, § 7; 22 Pa. Code § 12.9(a) (“The right of public school students to freedom of speech is guaranteed by the Constitution of the United States and the Constitution of the Commonwealth.”).

³ 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.”).

⁴ 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).

⁵ 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

513-4 (speech that might be reasonably be forecasted to or does substantially disrupt is not constitutionally protected); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 695 (1986) (use of sexual or extremely inappropriate language may be considered disruptive); *Sypniewski v. Warren Hills Reg'l Bd. Of Educ.*, 307 F.3d 243, 254 (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).

⁶ *Tinker*, 393 U.S. at 513-14.

⁷ See, e.g., *J.S. v. Blue Mt. Sch. Dist.*, 650 F.3d 915, 920 (3d Cir. 2011) (student-created internet profile of her middle school principal was vulgar and offensive, but did not cause the type of “substantial disruption” that justified student’s suspension); *Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 219 (3d Cir. 2011) (district violated the free speech rights of a high school senior by suspending him for creating an online parody of his principal that did not cause a substantial disruption).

⁸ *Mahanoy Area Sch. Dist. v. B.L.*, 141 S. Ct. 2038, 2047 (2021) (“These features of her speech, while risking transmission to the school itself, nonetheless ... diminish the school’s interest in punishing [her] utterance.”).
⁹ *Id.* at 2045.

¹⁰ *A.F. v. Ambridge Area Sch. Dist.*, No. 2:21-cv-1051, 2021 WL 3855900, at *6 (W.D. Pa. Aug. 27, 2021).

¹¹ *R.H. v. Borough of Sayreville Bd. of Educ.*, No. 21-19835, 2023 WL 3231214, at *7 (D.N.J. May 12, 2023).

¹² *Id.* at 2045-46 (“[W]e hesitate to determine precisely which of many school-related off-campus activities belong on such a list [of approved school restrictions on student speech].”).

¹³ Student Privacy Policy Office, U.S. Dep’t of Educ., *FERPA and Virtual Learning Related Resources* (Mar. 2020), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20Virtual%20Learning%20032020_FINAL.pdf. See also Reggie Shuford, ACLU of Pa., Letter to Gov. Tom Wolf Re: *Ensuring Privacy Protections in Remote Learning for All Students During COVID-19 School Closures* (May 11, 2020), https://www.aclupa.org/sites/default/files/wysiwyg/aclupa_online_learning_letter_5-11-2020.pdf.

¹⁴ 22 Pa. Code §12.11(a) (“The governing board may establish dress codes or require that students wear school uniforms.”).

¹⁵ *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).

¹⁶ *B.H. v. Easton Area Sch. Dist.* 725 F.3d 293, 302 (3d Cir. 2013) (holding that a school cannot restrict students’ First Amendment right to wear a bracelet that said “I ♥ boobies! (KEEP A BREAST)” because they were not plainly lewd, vulgar, or profane and worn in support of a breast cancer awareness campaign).

¹⁷ *Id.*; *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)]”).

¹⁸ 22 Pa. Code §12.11(b) (“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 of hair causes disruption of the educational process or constitutes a health or safety hazard. When length or style of the hair presents a health or safety hazard, some types of covering shall be used.”); *Arnold v. Barbers Hill Indep. Sch. Distr.*, 479 F.Supp.3d 511, 528-29 (S.D. Tex. 2020) (“There is scant evidence in the record tying the hair-length policy to any important or substantial government interest.”).

¹⁹ See *id.* at 531 (granting injunction to prevent enforcement of school policy requiring a Black male student to cut his locs or be prohibited from participating in regular classes and school activities). Read about the case here: <https://www.naacpldf.org/case-issue/arnold-family-v-barbers-hill-independent-school-district/>.

²⁰ See Protected Classes Under the PHRA and PFOA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <http://www.irrc.state.pa.us/regulations/RegSrchRsIts.cfm?ID=3350>.

²¹ For more on the CROWN Act, see <https://www.thecrownact.com/home>. The CROWN Act passed the U.S. House of Representatives in 2022 but failed to pass the Senate and will need to be reintroduced in a new legislative session.

²² A map of those states can be found here: <https://www.thecrownact.com/about>.

²³ 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).

²⁴ 24 P.S. § 13-1327 (compulsory school attendance).

²⁵ 22 Pa. Code § 12.9(b) and (g) (detailing the free expression and free press rights of students and school newspapers); *see also Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988) (schools may place “reasonable limitations” on student speech which members of the public might reasonably perceive to bear the “imprimatur” of the school).

²⁶ 22 Pa. Code § 12.9(c) (explaining the standards to which student free speech media in schools must conform); 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, 403 (2007) (holding that a school may restrict student speech via a banner at a school event when it is reasonably viewed as promoting illegal drug use).

²⁷ *Watts v. United States*, 394 U.S. 705, 708 (1969) (holding that the First Amendment does not protect true threats).

²⁸ *J.S. v. Manheim Twp. Sch. Dist.*, 263 A.3d 295, 316-322 (Pa. 2021) (holding that memes sent via social media were not a true threat under the First Amendment based on the speaker’s intent and did not rise to the level of *Tinker’s* required substantial disruption).

²⁹ *Id.* at 317 (finding that the speaker’s intent was to offer his opinion on another student, not threaten harm).