

KNOW  
YOUR  
RIGHTS

**STUDENTS &  
THE FIRST  
AMENDMENT**

# TABLE of CONTENTS

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<b>INTRODUCTION</b>	<b>1</b>
<b>FREEDOM OF RELIGION</b>	<b>3</b>
PRAYER IN SCHOOL	
TEACHING RELIGION	
HOLIDAY DISPLAYS	
<b>FREEDOM OF THE PRESS</b>	<b>5</b>
SCHOOL-SPONSORED NEWSPAPERS	
INDEPENDENT NEWSPAPERS	
DISTRIBUTION OF LITERATURE	
<b>FREE SPEECH &amp; EXPRESSION</b>	<b>7</b>
FREE SPEECH IN SCHOOL	
FREE SPEECH OUTSIDE OF SCHOOL	
OATHS AND PLEDGES	
DEFAMATION, THREATS, INCITING VIOLENCE	
VULGAR OR DRUG-RELATED SPEECH	
CENSORSHIP	
Q&A: SCHOOL, INTERNET & LIMITS TO FREE SPEECH	
Q&A: DRESS CODES	
<b>FREEDOM OF ASSEMBLY</b>	<b>19</b>
STUDENT GROUPS & CLUBS	
PROTESTS & DEMONSTRATIONS	
Q&A: SCHOOL WALKOUTS	
<b>FREEDOM TO PETITION</b>	
<b>22</b>	

# INTRODUCTION

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This booklet is about the First Amendment rights of K-12 public school students in Rhode Island. Keep in mind that school policies on issues that may affect your exercise of First Amendment rights can vary from district to district, so you should check your student handbook for details.

## WHAT IS THE FIRST AMENDMENT?

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- **FREEDOM OF RELIGION**

Freedom of religion means the right to practice whatever religion we choose – or no religion at all – without the government getting involved or promoting religion itself.

- **FREEDOM OF THE PRESS**

Freedom of the press is the right to publish and distribute information to others.

- **FREE SPEECH AND EXPRESSION**

The right to free speech is the right to speak our mind, share ideas and beliefs, and express ourselves.

- **FREEDOM OF ASSEMBLY**

The right to peacefully assemble means we have the right to gather in groups and to peacefully protest.

- **FREEDOM TO PETITION**

The right to sue the government for violating our rights, and to lobby for laws and policies that we believe in.



# FREEDOM OF RELIGION

There are two parts to the First Amendment right to the “freedom of religion.” The first part is that the government cannot do things that promote religion or have a religious purpose. This means that public school officials – who are part of the government – must be neutral when it comes to religion and may not endorse or impose any religious ideas on students. The second part of this right is that everyone has a right to practice the religion of their choice – or no religion at all – without the government interfering. In public school, this means that students are

free to practice their religion as long as they do not disrupt school activities or violate the rights of others. This includes wearing religious symbols or clothing, talking about their faith with others, and inviting others to join religious groups.



Debbie Weisman, plaintiff. *Lee v. Weisman* (1992)

## PRAYER IN SCHOOL

In line with the two components of religious freedom described above, students have the right to pray alone or in groups among themselves, and to discuss their religious views with their peers as long as they are not disruptive and don't force other students to participate. Students can also hand out religious literature in school as long as they obey school rules about distributing written materials.

### CASE: *LEE V. WEISMAN*

The rule against public school-sponsored prayer in public schools was reaffirmed by the U.S. Supreme Court in a famous case called *Lee v. Weisman*, which ruled that prayer at a Rhode Island public school graduation violated the Constitution. Although the school tried to navigate around the First Amendment by allowing only nonsectarian prayers that included all beliefs, the Court ruled that making school-sponsored prayers less “religious” did not change the coercive nature of reciting prayers at a public school (and hence government-sponsored) event.

However, school officials – whether teachers or administrators – are not allowed to encourage or lead classes in prayer or try to persuade students to participate in religious activities. In a case from Rhode Island, the U.S. Supreme Court ruled that schools could not have prayers – even so-called non-denominational ones – at graduation ceremonies. And in a more recent Rhode Island case, a court ruled that a school could not maintain a prayer mural that had been displayed for many years in the school auditorium. It is not enough to tell students that they don’t have to participate in prayer or other religious exercises; it is no business of public schools to be involved in any way in religious exercises.

## TEACHING RELIGION

Although schools cannot promote religion, teaching about it is fine. Thus, students can study religion for its influence on history, literature, and culture. In doing so, however, school officials may not preach their religious beliefs to students, and schools cannot design curricula that promote some religious views over others.

## HOLIDAY DISPLAYS

With respect to the holiday season, the guiding principle is that government should be neutral between religions as well as between religion and no religion. Accordingly, an attempt to promote religious holidays by including all religions in school celebrations is not adequate since many students either do not have any religious beliefs or they follow faiths that do not have a “holiday” season. Of course, schools can celebrate holidays by putting up decorations and displays, but they must be careful not to promote a religion in particular by emphasizing those holiday symbols that have religious meaning. However, if a display is mostly non-religious, it is probably okay. For example, a nativity scene by itself would probably not be permitted, but a display including several items, like a Christmas tree, a Menorah and snowflakes would be lawful.

### *CASE: Kennedy v. Bremerton School District*

In this 2022 case, the U.S. Supreme Court ruled that it was unconstitutional for a school district to discipline a high school football coach for privately praying at midfield at the end of football games. Because the decision was focused on the particular facts of the coach’s praying activities, its impact on the Court’s longstanding decisions banning school prayers remains unclear.

# FREEDOM OF THE PRESS

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## SCHOOL-SPONSORED NEWSPAPERS

In 2017, the RI legislature passed a law – the Student Journalists’ Freedom of Expression Act – that promotes a free and responsible student press in schools. The law reversed an unfortunate 1988 Supreme Court decision (*Hazelwood v. Kuhlmeier*) that gave school officials wide discretion to censor “school sponsored” student newspapers. The *Hazelwood* decision has had a chilling effect on student journalism across the country.

The 2017 law gives students, rather than school administrators, the right to decide the content of the school newspaper or other school-sponsored media. Thus, students can write about topics that are unpopular or controversial without being subject to discipline or censorship. Of course, some types of speech – such as libel or obscenity – remain prohibited in school and other settings. The law also bars schools from taking action against school media advisors for protecting student journalists from administrative censorship.

## INDEPENDENT NEWSPAPERS

In the case of non-school-sponsored publications, the school has even less control. School authorities do not have the right to review the contents of underground publications before

### *CASE: THE INDEPENDENT PRESS V. BRUNELLE*

This successful federal lawsuit against the Chariho School Committee affirmed that a student could sell an alternative newspaper on school premises. Dissatisfied with his school-sponsored paper, the student took it upon himself to publish his own. When his school disciplined him for distributing his paper at school, he contacted us and we successfully sued the district for violating his First Amendment rights.

distribution. Students may distribute underground newspapers on school grounds before and after school and between classes, subject to reasonable restrictions on time, place, and manner of distribution. A Rhode Island court case protects the right of students to not only distribute, but also to sell, their underground newspaper in school. In addition to First Amendment protections, the 2017 law specifically protects “independent journalists” from being sanctioned for their activities.

## DISTRIBUTION OF LITERATURE

Students do not need permission to bring written materials, including leaflets, newspapers or announcements, into the school building. However, in order to hand them out, students must follow the school's lawful rules regarding distributing materials, and the school's restrictions must apply equally to all non-school student literature. Generally, school rules that allow leafleting in hallways, but not in class, are considered reasonable, and schools may require someone to hand out leaflets instead of leaving them in big piles for people to pick up.



Schools may require someone to hand out leaflets instead of leaving them in big piles for people to pick up.

# FREE SPEECH & EXPRESSION

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Public school students have a right to free speech. This means that they are generally free to speak their minds and express their ideas, even if school officials and/or other students find their ideas controversial or don't like them. Criticism of the school or its teachers or the discussion of politics, for example, are generally protected – both inside and outside of school.

## FREE SPEECH AT SCHOOL

Student speech that occurs at school, on a school bus, or at a school event is “at school.” A landmark U.S. Supreme Court case, *Tinker v. Des Moines* (1969), established that students have the right to free speech at school unless their speech would cause a “material and substantial disruption” to class or school activities or would infringe on the rights of others.

Speech does not create a material and substantial disruption simply because it draws attention, makes people angry, is controversial, or a school official doesn't like it. In the *Tinker* case, for example, three public school students were suspended from school for wearing black armbands to protest the Vietnam War. The Court found that the students could not be disciplined for peacefully expressing an idea, because their behavior – wearing armbands in symbolic protest – did not disrupt educational activity or interfere with the rights of others. That said, school officials are allowed to impose reasonable restrictions on when, where, and how free speech activities can take place in order to prevent disruption of educational activities.

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## FREE SPEECH OUTSIDE OF SCHOOL

School officials are limited in their ability to punish students for ideas expressed on the student's own time and outside of school. They may sanction a student for off-campus speech only if they can make the case that it will cause a material and substantial disruption on school grounds or in school activities. More information on free speech in the context of out-of-school internet activity is provided below in "Q&A: School, the Internet & Limits to Free Speech."

## OATHS & PLEDGES

Schools cannot punish students for refusing to salute the flag, recite the Pledge of Allegiance, or stand during the National Anthem. In all these instances, students can remain silently seated. Furthermore, students do not have to give officials a reason for not participating, and they do not need a parent's permission to exercise this right.

Students also cannot be forced to take oaths as a condition of attendance or participation in school-sponsored activities – including sports teams. In one case, for example, the ACLU successfully challenged a school district practice that barred students from extra-curricular activities if they refused to sign an oath condemning drug and alcohol use. While the students could be required to agree not to take illegal drugs, the school violated their First Amendment rights by essentially forcing them to take a position on whether the drugs should be illegal.

### CASE: *LYMAN V. KELLNER*

In this case, we favorably settled a suit on behalf of students who were not allowed to participate in the school's extra-curricular activities – including sports – because they refused to sign an oath condemning drug and alcohol use.

### CASE: *GLUCKMAN V. SHEEHAN*

In this lawsuit in Rhode Island, the court reaffirmed that the First Amendment of the U.S. Constitution protects students from being punished for remaining quietly seated while the *Pledge of Allegiance* is recited in class.

## DEFAMATION, THREATS OR INCITING VIOLENCE

The right to free speech – by students, and private individuals more generally – does have some limitations. Historically, freedom of speech has not included speech that directly advocates others to commit violence nor has it included threats intended to cause someone to legitimately fear for their safety. Defamation – spoken or written falsehoods about someone that causes them actual harm – and obscenity are other areas where speech has historically been limited.

## VULGAR OR DRUG-RELATED SPEECH

Courts have ruled that schools are allowed to limit students' use of vulgar or lewd speech on campus. In 1986, a high school student in Washington state challenged his suspension for using sexual innuendo in a speech at a school assembly. The case, called *Bethel School District v. Fraser*, went all the way to the U.S. Supreme Court. The Court said that schools may discipline students for speech that is



Sign. *Morse v. Fredrick* (2007).

vulgar or lewd and used in an inappropriate school setting. In a case called *Morse v. Frederick*, a student in Alaska was suspended for holding up a banner at a school-sponsored event that read “Bong Hits 4 Jesus.” The U.S. Supreme Court said that the school could limit the student’s speech because it advocated illegal drug use and did not include any serious comment on social or political issues.

### *CASE: PARENT V. JOHNSTON SCHOOL COMMITTEE*

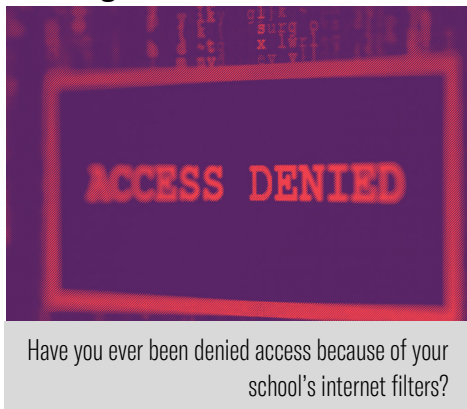
When a Johnston high school student was suspended solely because school officials thought his free write composition was “violent,” we successfully sued the school district challenging his suspension on First Amendment grounds.

# CENSORSHIP

The right to freedom of expression includes the right to access ideas and information. The basis for this is that information is critical to the free expression of ideas. This means there are some limits on what schools can censor. This applies to the books that a school library makes available and to the Internet filtering software that schools use.

## INTERNET CENSORSHIP

School computers are usually equipped with filtering software that prevents students from accessing content that officials consider inappropriate for a school setting. Unfortunately, these filters often filter out too much - like sites that provide information about sexual health or sexual identity. Although no court has decided whether a school can censor access to web pages on the Internet, the U.S. Supreme Court has held that the Internet is a participatory form of mass speech and is entitled to protection from governmental intrusion. This suggests that the Internet deserves at least as much protection from censorship as a school library, for example.



## STATE LAW MANDATES SCHOOLS TO HAVE INTERNET FILTERING POLICIES

In 2016, the RI Legislature passed a law requiring all school districts to have policies on their use of Internet filtering systems. The policy must state why a specific category of website is blocked and outline a process to request a site be unblocked. As part of the law, districts must also maintain a public record of requests to unblock sites.

## CENSORSHIP OF LIBRARY BOOKS

The right to freedom of expression includes the right to access ideas and information. In *Board of Education v. Pico* (1982), the U.S. Supreme Court said that a school couldn't remove books from the library simply because it disagreed with the ideas expressed in them.

## CENSORSHIP OF CURRICULA

As for classroom texts and curricula materials, the school's authority is very broad. However, RI law does prohibit discrimination in classroom or school practices, including things like stereotyping in textbooks and other course material.

# Q&A: SCHOOL, THE INTERNET & LIMITS TO FREE SPEECH

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## IS MY SCHOOL ALLOWED TO MONITOR OR CENSOR MY ONLINE ACTIVITY OUTSIDE OF SCHOOL?

With certain exceptions, your school cannot censor things that you post during off-school hours while using a personal email address or account, and on a private computer with a private internet connection. That includes the right for you to share information that is critical of the school or school officials on social media, or via your personal email.

As recently as 2021, the Supreme Court affirmed this view when they ruled that a Pennsylvania public school violated the First Amendment for disciplining a student for a Snapchat she posted on a Saturday while off-school premises. The student, Brandi Levy, was removed from the junior varsity cheerleading team after she posted a snap of her and a friend with their middle fingers extended accompanied by the text “fuck school fuck softball fuck cheer fuck everything.” In its ruling, the court affirmed that the student’s snap was protected speech under the First Amendment, as it was posted off of school grounds and not at a school-related activity, and did not cause a substantial disruption.

However, the Court suggested that off-campus speech might not be protected where the speech involved severe bullying, threats aimed at teachers or students, or the outside use of school computers. Here in Rhode Island, for example, the Department of Education ruled that a student could be disciplined for writing a sexually explicit song about a teacher and posting it online when copies of the song were then brought to school by other students.

If your post demonstrates that you broke school rules, the school can discipline you. For example, you could get in trouble if you post a video of yourself and friends smoking on school property. On the other hand, we successfully represented a student who was disciplined for circulating a photo of a teacher unlawfully smoking on school property.

## CAN I GET IN TROUBLE FOR SOMETHING I TEXT, EMAIL OR POST ONLINE WHILE I AM IN SCHOOL?

As a public school student, you have a constitutional right to free speech. You have the right to express your opinions and beliefs in school, even if they are controversial, as long as you do so in a way that doesn't disrupt class or other school-related activities.



That said, if you are using a school computer or email account, school officials can monitor your activity, and any online activity using school computers, internet access, or email accounts that violates school policies, creates a disruptive learning environment, or violates others' rights could result in disciplinary action. Also, some schools have rules limiting the use of cell phones during the school day, and those rules can be enforced.

## CAN I GET IN TROUBLE FOR “SEXTING”?

It is illegal for anyone under the age of 18 in Rhode Island to engage in “sexting.” That term is defined in Rhode Island law as the transmission, via cell phone or similar devices, of certain nude images of yourself – specifically, graphic photos of your genitals or pubic area. If the act of sexting causes a disruption to your school's learning environment, the school can discipline you.

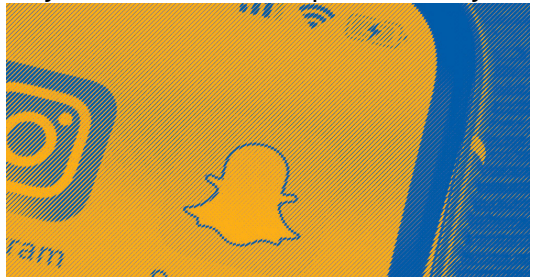
Rhode Island law states that sexting constitutes a status offense – which means you can be sent to Family Court to face a judge, but you will not face criminal penalties or a prison sentence. However, because of the way the law was written, it technically allows minors who engage in sexting to be charged with child pornography instead. The ACLU believes such a charge could be legally challenged.

**IT IS  
ILLEGAL  
FOR  
ANYONE  
UNDER 18  
IN RI TO  
ENGAGE IN  
SEXTING.**

## WHAT ARE THE LAWS REGARDING CYBERBULLYING?

Bullying is a very serious problem. No student has the right to say things, online or elsewhere, that put you in reasonable fear of harm to yourself, your siblings or even your belongings. However, the ACLU believes that the state law governing bullying is so broadly worded that it could unfairly be used to punish a student's right to free speech. That is because Rhode Island law defines bullying (and cyberbullying) to include any communication by a student that, among other things, causes another student "emotional harm," even if there was no intent to cause harm. The law also allows schools to punish students for "bullying" happening inside and outside of school, and even encourages police intervention in many cases.

If you use technology, including social media, to threaten or spread lies about other students or teachers, you could face discipline under your school's anti-bullying policy. In some instances, however, punishment for cyberbullying may violate your constitutional rights. You can contact the ACLU of RI for guidance if you feel you were unfairly punished.



In some instances, being punished for cyberbullying may violate your constitutional right to free speech.

## Q&A: DRESS CODES

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### CAN I WEAR CLOTHING THAT COMMUNICATES A POLITICAL OR RELIGIOUS MESSAGE?

Yes. In the 1969 case of *Tinker v. Des Moines*, one of the most well-known student rights' cases considered by the U.S. Supreme Court, the Court ruled that students had a constitutional right to wear a black armband to school to protest U.S. involvement in the Vietnam War. Since then, courts have continued to hold that students generally have a right to express political views through their clothing. This can include, for example, wearing clothing that endorses or criticizes a politician or, as in more recent cases, wearing t-shirts concerning gay rights. Additionally, schools cannot prohibit students from wearing clothes that are in observance of their religion, such as a Muslim wearing a hijab in school.

### CAN MY SCHOOL RESTRICT CERTAIN MESSAGES ON MY T-SHIRT?

As a general rule, schools cannot bar you from wearing clothing simply because they disapprove of the message that the clothing conveys. However, schools can prohibit you from wearing clothing with “indecent” or other messages that may cause a disruption.

Of course, students and school officials can often disagree about what may or may not be disruptive. For example, in 1998, the Rhode Island ACLU successfully challenged the suspension of a student for wearing a rock band t-shirt with the numerals “666” on it. On the other hand, although the ruling might come out differently today, a Virginia court ruled two decades ago that a school could decide to ban as “vulgar” a t-shirt with the phrase “Drugs Suck.” If you think you were unfairly disciplined for something you wore to school, you should contact the ACLU.



## HOW MUCH CAN MY SCHOOL REGULATE WHAT ELSE I WEAR?

There is no simple answer. Back in 1972, in a case called *Gardner v. Cumberland School Committee*, the Rhode Island Commissioner of Education held that school districts are limited to regulating the dress of pupils to situations where “it presents a clear and present danger to the student’s health and safety, causes an interference with school work, or creates a classroom or school disorder.” In that case, the Commissioner overturned a school policy that barred a student from wearing a maxi-coat to school.

But for policies that are seemingly less arbitrary — such as bans on all hats, showing your undergarments or similar restrictions — courts will be more inclined to defer to a school’s determination whether the clothing is disruptive or interferes with school activity. However, if there is a social, political or religious message associated with what you are wearing, the courts will be more sympathetic. For example, in Pennsylvania, the ACLU won a lawsuit against a school policy that banned students from wearing breast cancer awareness bracelets that said “I <3 boobies.”

### *CASE: AGIN V. PORTSMOUTH SCHOOL COMMITTEE*

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In this lawsuit, Patrick Agin was a senior at Portsmouth High who wanted his yearbook to include a photo of himself in medieval costume with a sword. Even though the photo was not violent, the principal denied Agin’s request based on the school’s “zero tolerance” policy because he felt the photo was “inappropriate.” Our complaint on Agin’s behalf was referred to the state Commissioner of Education, who ruled in Patrick’s favor.

### *CASE: PARKER V. WESTERLY SCHOOL COMMITTEE*

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When a Westerly student was suspended for wearing a rock band t-shirt with “666” on it, we filed a formal complaint with the RI Department of Education, which determined that the school had violated the student’s First Amendment right to wear the shirt to school.

## CAN MY SCHOOL BAN "GANG-RELATED APPAREL?"

Based on documented safety and disruption concerns, a school could probably ban particular types of clothing that were directly associated with gang activity. However, any policies along those lines would have to be clearly and reasonably drafted, and specific as to what was not allowed. One federal appeals court struck down a school policy barring “gang-related activities such as display of ‘colors,’ symbols, [or] signs,” as unconstitutionally vague, and another court threw out a school policy against gang-related attire that was applied to a student who wore rosary beads to school.

## CAN MY SCHOOL PUNISH ME IF I DYE MY HAIR OR HAVE BODY PIERCINGS?

In the 1970’s, a federal appeals court with jurisdiction over Rhode Island ruled in favor of a student who had been suspended for violating a school rule banning long hair on boys; one could argue that the same rights apply to students who dye their hair. On the other hand, removable body piercings may be held to not fall within the realm of constitutionally protected expression at school. However, the ACLU believes that to punish you for your hairstyle or body piercings, your school should have to show that they were disruptive or caused a valid health or safety risk.

## CAN MY SCHOOL REQUIRE ME TO WEAR A UNIFORM?

There is no direct case on this issue in Rhode Island, but the ACLU believes that forcing students to wear uniforms infringes on their right to free speech and expression, and violates the standards set out in the previously mentioned Gardner case. However, schools can promote a voluntary student uniform policy, which a number of schools in Rhode Island have instituted.

**YOU CAN'T BE  
PUNISHED  
MORE  
HARSHLY FOR  
VIOLATING A  
SCHOOL  
POLICY  
BECAUSE YOU  
WERE DOING IT  
IN PROTEST.**

## ARE THERE ANY OTHER LIMITS ON SCHOOL DRESS CODES?

Yes. Dress codes that have a discriminatory impact on the basis of sex are likely illegal. For example, a court recently ruled that a school violated a federal law known as Title IX, which prohibits sex discrimination in education, by allowing boys, but not girls, to wear pants or shorts. State education guidelines in Rhode Island also specifically provide that students should be allowed to dress in accordance with their gender identity. And if a dress code barred students from wearing hats in school, it would probably be illegal to ban students who wear head coverings for religious reasons.

## CAN I BE PUNISHED FOR PROTESTING MY SCHOOL'S DRESS CODE POLICY?

You have the right to peacefully protest against a dress code policy you consider unfair or restrictive, but that does not mean you can violate the policy or engage in other activity that is legitimately banned in school. At the same time, you can't be punished more harshly for violating a school policy simply because you were doing it in protest.

In a Rhode Island case, Cumberland high school students walked out of school one day to protest a new dress code. Although the school had the right to punish the students for walking out of school and missing classes, they were given a longer suspension than if they had simply skipped class. The state Commissioner of Education held that it was illegal for school officials to punish the students for missing school to participate in a political protest more harshly than if they had missed school for any other purpose.

# **FREEDOM OF ASSEMBLY**

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## **STUDENT GROUPS & CLUBS**

In 1984, Congress passed the Equal Access Act, which made it unlawful for schools to bar certain student-run groups - including religious ones - from meeting after school if school facilities are available to other student-run groups. This means that students can form a religious club or a gay-straight alliance and are free to meet at school during non-instructional time if the school allows other types of clubs to meet on campus.

## **PROTESTS & DEMONSTRATIONS**

Because of the possibility that in-school protests can be disruptive, the courts have restricted student demonstrations on school property - particularly if they occur during school hours or in a school building. As a result, schools may have reasonable rules regulating the time, place and manner of group demonstrations. Outside of school, students have the right to assemble and express themselves in groups - via marches, protests or other forms of peaceful demonstration.

Keep in mind that if you encourage students to miss class, block a hallway, or make a lot of noise while others are studying, it will likely be considered a disruption. But you should be able to organize a peaceful, orderly protest at lunch, or before or after school.

## Q&A: SCHOOL WALKOUTS

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### CAN I BE DISCIPLINED FOR PARTICIPATING IN A WALKOUT?

Because the law requires you to attend school, the administration can take corrective action against you for missing class, even if you do it to participate in a political protest. But there are two important limitations on what school officials can do to you. First, a state law bars schools from issuing out-of-school suspensions because you are truant or late to class. The same limitation should apply to walkouts.

In addition, the school cannot punish you more harshly for missing school to participate in political protest than for missing school for any other purpose. For example, if detention is the typical punishment for unexcused absences, that would be an appropriate penalty if you leave school to attend a protest. But the school could not give you a lengthier detention because you were involved in a walkout as opposed to just skipping class. You also should be given the same right to make up work as any other student who has an unexcused absence for the particular classes you miss.

### WHAT SHOULD I DO IF SCHOOL OFFICIALS THREATEN TO BLOCK SCHOOL EXITS TO PREVENT A WALKOUT?

Blocking or locking exits to the school can pose serious health and safety concerns for students and staff. If the school administration threatens to lock the doors to prevent a walkout, students should immediately notify their parents and the district superintendent's office.

#### *CASE: ANDERSON V. CUMBERLAND SCHOOL COMMITTEE*

This was an official complaint to the RI Department of Education against the Cumberland School District on behalf of a group of high school students who were suspended for demonstrating in front of the school in opposition to a new dress code. Because the students didn't like the dress code, they skipped school and formed a protest. As it turns out, the students were punished more harshly for protesting than they would have been if they had just skipped school. Because of this, the ACLU of RI successfully sued on the grounds that they were effectively punished for exercising their right to protest.

# FREEDOM TO PETITION

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Broadly speaking, the “right to petition” means that people have the right to ask the government to change things that they don’t like – and do so without fear of punishment. In practice, this means that people have the right to sue the government if it does something that we think is wrong – and lobby the government to pass laws that we believe in.

Importantly, the right to petition makes it possible for us to protect our other rights, and seek changes when our rights have been violated. Without this right, the cases highlighted in this pamphlet may not have been possible.

The right to petition also allows the ACLU of RI to go before the Rhode Island General Assembly, our State’s legislative forum, and provide evidence and arguments to support the passage of laws that protect our rights – including the rights of students.

JANUARY 2023

# ACLU

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