

KNOW  
YOUR  
RIGHTS

**STUDENTS &  
DISCIPLINE**

# TABLE of CONTENTS

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INTRODUCTION	3
THE BASICS	5
SUSPENSION	9
SEARCHES, DRUGS, WEAPONS	12
SCHOOL RESOURCE OFFICERS	15
PRIVACY	17
FOR PARENTS & LEGAL GUARDIANS	18

# INTRODUCTION

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This booklet answers some frequently asked questions regarding school discipline policies. The information here applies specifically to K-12 public school students in Rhode Island. Keep in mind that district policies on these issues will vary, and more information on a specific policy can generally be found in the school's student handbook.



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**THERE ARE  
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Students maintain certain constitutional rights when they are in public school, and as a result, there are limits on what conduct the school can regulate and how students can be punished.

NOTE: For the purposes of this brochure, “at school” can mean many things. Depending on the school district and the conduct at issue, it can mean activity on school grounds, on a school bus, at a school activity or event (even if it is not held on school premises), and even at an “official” school bus stop. Many, but not all, student handbooks include their definition of “school grounds.”



# THE BASICS

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## WHERE CAN I FIND MY SCHOOL'S DISCIPLINE POLICY?

Discipline policies are usually spelled out in the student handbook, which the school should provide to each student at the beginning of the school year. Many student handbooks are also available online. Every school district must also have a written discipline code, so if you can't find it, ask for a copy.

## WHAT ARE THE REASONS MY SCHOOL CAN DISCIPLINE ME?

The purpose of school rules is to create a safe and effective learning environment for all students. Under Rhode Island law, you can be disciplined for a number of things. Infractions can be related to disrupting the learning environment or violating the law itself (such as assault, theft, or the possession of alcohol, illegal drugs, or weapons).

## ARE THERE ANY RESTRICTIONS ON HOW THE SCHOOL CAN DISCIPLINE ME?

Schools are generally limited to disciplining you for activities that take place at school or that directly affect school activities. In recent years, more and more court cases have begun to address the question of the extent to which schools can punish students for off-campus conduct that may have an effect on the school environment.

There are also limits on the types of discipline that can be imposed. For example, corporal punishment (the use of physical disciplinary action such as spanking, hitting, or paddling) are illegal in Rhode Island. In addition, as explained later, expulsion from school is not allowed, and the use of "zero tolerance" penalties is also prohibited.

**EVERY  
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## ARE THERE DIFFERENT RULES FOR DISCIPLINING STUDENTS WITH DISABILITIES?

Everyone is required to follow the same rules at school, but sometimes students with disabilities have additional rights relating to school discipline. School officials are required to follow through with a “manifestation determination” if a child with a disability is facing more than ten days of school suspension within an academic year. This means that it must be determined if the student’s behavior was in any way linked to their disability or if the behavior was a result of the school’s failure to implement the student’s Individual



Sometimes students with disabilities have additional rights when it comes to school discipline.

Education Plan (IEP). The results of this determination may have an impact on the punishment that can be imposed on the student.

## CAN I BE PUNISHED FOR EXERCISING MY RIGHT TO FREE SPEECH?

Students retain their right to free speech in the public school setting, but that doesn't mean you can say whatever you want anytime you want. For example, you can be disciplined for violating a bullying policy that bars students from threatening or repeatedly harassing other students, even if it's "just words." On the other hand, a bullying policy that punishes you for causing another student "emotional harm," a very vague and open-ended standard, probably violates your free speech rights.

You are generally free to express your political views on buttons and T-shirts. In that vein, a court upheld the right of students to wear breast cancer awareness bracelets that said "I <3 boobies"; on the other hand, the U.S. Supreme Court approved the discipline of a student who gave an off-color school auditorium speech. In short, many of these issues are evaluated on a case-by-case basis and may not have simple answers.

Schools are much more limited in trying to discipline you for comments you make outside the school setting, such as on Facebook or other social media, unless they can demonstrate that it caused disruption in school. If you think your free speech rights were violated at school because you were punished for something you said, then you should contact the ACLU or an attorney.

I AM NOT A CITIZEN OF THE UNITED STATES. DO I HAVE THE SAME RIGHTS AS OTHER STUDENTS IN MY SCHOOL?

Yes. Under the law, you have the right to be enrolled in your local public school regardless of your immigration status, and you have the same rights as other students at your school. For this reason, you can't be suspended or otherwise punished solely based on your immigration status. In fact, your school cannot ask you for a green card, social security number, or other proof of citizenship in order for you to attend your local public school.

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# SUSPENSION

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ARE THERE ANY STANDARDS FOR DECIDING WHAT MISCONDUCT CAN GET ME SUSPENDED?

Yes. Although it is often ignored, Rhode Island law prohibits schools from suspending students out of school unless the student is a threat to students, teachers, or administrators or has repeatedly impeded or interfered with the ability to learn and has not responded to other corrective measures.

IF MY SCHOOL WANTS TO SUSPEND ME, DO I GET A HEARING FIRST?

Generally, yes. In 1974, the U.S. Supreme Court ruled that students are guaranteed certain “due process” rights when facing suspension from school, even for short periods of time. If your suspension is for ten days or less, your school must, at the very minimum, inform you of the rule they are accusing you of breaking, provide an explanation of the evidence they have against you if you deny the charge, and offer you an opportunity to tell your side of the story. These minimal rights must be provided to you except in very limited emergency circumstances. The same Supreme Court decision also mandated that more detailed procedures be followed for longer-term suspensions.



In Rhode Island, you must be afforded a formal hearing before any removal from school that would last more than ten days.

In Rhode Island, you must be afforded a formal hearing before any removal from school that would last more than ten days. The school must give you reasonable notice of the time and place of the hearing in order to give you an opportunity to prepare. You are allowed to have an attorney or other advocate represent you at your hearing, but you must secure that individual yourself. At this hearing, you have the right to call and cross-examine witnesses and to present your side of the story. Your school is required to provide you with a written transcript of the

proceedings and a written copy of their final decision. If you are not satisfied with the decision, further appeals are available.

Your student handbook should outline the procedure for appealing a suspension. Schools generally do not have to give you a hearing, formal or informal, for minor punishments such as an after-school detention.

## IS MY SCHOOL ALLOWED TO TRANSFER ME TO AN ALTERNATIVE SCHOOL FOR DISCIPLINARY REASONS?

Yes. Rhode Island law allows for any student with serious disciplinary infractions (usually offenses involving violence or bringing weapons to school) to be placed in an alternative education program.

## I WAS SUSPENDED. IS MY SCHOOL ALLOWED TO KEEP ME FROM ATTENDING MY GRADUATION OR PARTICIPATING IN EXTRA-CURRICULAR ACTIVITIES?

Within reason, your school has the right to use exclusion from extracurricular activities or events, such as athletic games, academic clubs, class trips, prom, or graduation as a disciplinary action. However, they cannot withhold your diploma nor can the punishment be excessive in relation to the offense.

## CAN I BE SUSPENDED FOR HAVING TOO MANY UNEXCUSED ABSENCES?

Rhode Island law prohibits schools from suspending you solely for unexcused absences or lateness. However, after too many absences, you may be designated as truant and referred

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to a local truancy court. The ACLU has a brochure outlining your rights if you are referred to truancy court, and you and your parents are encouraged to consult it before signing away any rights you have by agreeing to participate in the court.

**UNDER RI  
LAW, A  
SCHOOL  
DOES NOT  
HAVE THE  
RIGHT TO  
FORMALLY  
EXPEL A  
STUDENT.**

WHAT HAPPENS TO MY RIGHT TO RECEIVE AN EDUCATION IF I AM SUSPENDED FOR A LONG PERIOD OF TIME?

You are still entitled to receive an education under those circumstances. School districts in Rhode Island are required to adopt a continuing education plan for any student who is removed from school for ten days or more.

CAN I BE PERMANENTLY EXPELLED FROM SCHOOL?

No. Under Rhode Island law, a school does not have the right to formally expel a student. While, as noted above, under some circumstances you can be removed from a particular school setting, the school district has a continuing responsibility to provide you an education in an alternative setting.

DOES THE SCHOOL HAVE TO TELL MY PARENT OR GUARDIAN THAT I AM BEING SUSPENDED?

If you are under the age of 18 and are being suspended, your school is required to notify your parents or guardians of your punishment and the reason for your punishment. In order to address families where English is not the primary language, this communication must be conducted in your parents' or guardians' primary language.

# SEARCHES, DRUGS, WEAPONS

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## WHEN CAN SCHOOL OFFICIALS OR POLICE SEARCH ME IN SCHOOL?

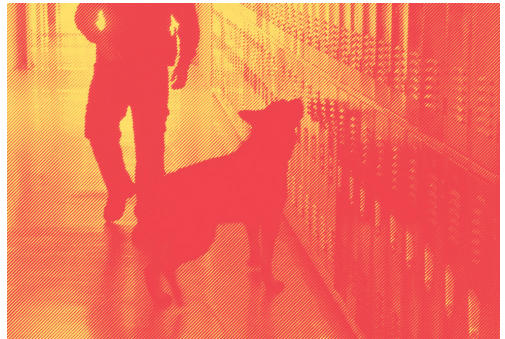
In order to search you or your property, including your backpack or purse, school officials must have “reasonable suspicion” that you have broken a school rule or law. If school officials ask if they can search you or your belongings, you have the right to say no. However, you should never physically resist a search even if you think the search is illegal. If you voluntarily agree to a search even in the absence of reasonable suspicion, any evidence found on you can probably be used against you in either disciplinary or criminal proceedings. Police have less freedom than school officials when it comes to searching you. The police generally need “probable cause” or a warrant in order to search you or your belongings. However, if the police deem the situation an emergency, they may be able to search you without a warrant.

## CAN SCHOOL OFFICIALS SEARCH MY LOCKER WITHOUT MY CONSENT?

Because school officials tend to view lockers as school property, they may not need “reasonable suspicion” in order to search your locker, especially if you have been given advance notice of the school’s policy and they allow you to be there during the search. However, school searches cannot be performed in an arbitrary or discriminatory manner.

## IS THE SCHOOL ALLOWED TO BRING IN DRUG-SNIFFING DOGS?

Over the years, some schools have collaborated with local police departments to bring drug-sniffing dogs to school. The ACLU strongly opposes this practice for many reasons (they are ineffective, and they don’t belong in a school environment, among other things). However, courts have generally allowed this practice



School officials tend to view lockers as school property.

to the extent that the dogs are used to search school property, such as

school lockers. However, if police were to use drug dogs to sniff you or your personal belongings, this would likely be considered a violation of your privacy rights.

## BUT WHAT IS "REASONABLE SUSPICION"?

Unfortunately, there is no clear definition of "reasonable suspicion." However, we can say that "reasonable suspicion" must be based on facts and not merely on rumors, hunches, or curiosity. "Probable cause,"



Breath test.

another term that is very difficult to define, is a higher standard than "reasonable suspicion."

## CAN MY SCHOOL MAKE ME TAKE A URINE TEST FOR DRUGS OR A BREATHALYZER TEST FOR ALCOHOL?

It depends. In 2002, the Supreme Court ruled that schools can require students

participating in extracurricular activities to submit to drug tests. The decision met with a lot of opposition and, as far as we are aware, public school districts in Rhode Island have shunned the practice. However, a number of school districts have begun using breathalyzers on students attending school dances or similar outside activities. While, like drug testing, this practice is probably not illegal when confined to those situations, any breathalyzer testing must be conducted by the school in a fair and non-discriminatory manner.

Additional legal questions would arise if the testing is conducted by, or in conjunction with, police officers. In any event, drug or alcohol testing outside of voluntary extra-curricular activities would almost certainly be a violation of your rights. If you think you were unfairly singled out or if you think a drug or alcohol test was administered improperly, you should contact the ACLU or an attorney.

## CAN SCHOOLS HAVE "ZERO TOLERANCE" POLICIES FOR DRUGS AND WEAPONS?

For a number of years, many public schools imposed “zero tolerance” policies that resulted in automatic suspensions for specified periods of time for violating school alcohol, drug and weapons policies. However, this “one size fits all” process that failed to take individual circumstances into account was of great concern to many. Furthermore, there is no evidence that “zero tolerance” policies make schools safer or improve student behavior. In 2006, the state legislature passed a law barring mandatory “zero tolerance” penalties, instead requiring that each case be examined individually.

## CAN BANS ON WEAPONS AND DRUGS INCLUDE SUCH INNOCENT THINGS AS PLASTIC KNIVES OR GIVING A FRIEND A COUGH DROP?

In Rhode Island, the ACLU has successfully challenged a number of overbroad anti-drug and anti-weapons school policies. In 1999, for example, the ACLU successfully overturned a ten-day suspension of two first grade students for having brought a toy ray gun to school. In another case, the Commissioner of Education overturned the suspension of a child for bringing a plastic knife to school for his lunch. The ACLU also finds problematic any policies banning unapproved student possession of aspirin, antacids, or other over-the-counter medications. If you think you were unfairly disciplined under such a policy, you should consult with the ACLU or a private attorney.

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# SCHOOL RESOURCE OFFICERS & POLICE

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IS A SCHOOL RESOURCE OFFICER (SRO) THE SAME AS A POLICE OFFICER?

School resource officers, sometimes called SROs, are usually police officers who work full-time or part-time at school. However, their responsibilities and authority vary greatly among school districts and even among individual schools. In addition to playing a security role, SROs may give talks in classes, monitor the lunchroom and study hall, or carry out other tasks assigned by the principal.

**ANYTHING YOU SAY TO SCHOOL OFFICIALS CAN BE GIVEN TO THE POLICE AND USED IN CRIMINAL PROCEEDINGS AGAINST YOU.**

Because they generally work directly for their police department, not the school system, and are able to exercise police powers, the ACLU believes that SROs should legally be treated as police officers, not as school officials, when it comes to determining their authority to conduct searches or interrogations of students. For the same reason, we believe SRO authority should be limited to addressing criminal activity, not disciplinary matters.

DO I HAVE TO ANSWER IF A SCHOOL OFFICIAL OR A POLICE OFFICER QUESTIONS ME ABOUT CRIMINAL ACTIVITY?

You should first remember that anything you say to school officials can then be given to the police and used in criminal proceedings against you. If a school official is questioning you about any matter that could also be a crime, you have the right to request that your parent or guardian be called. Even if the school official is annoyed by the delay, politely tell them that you would like a trusted adult's advice before continuing your conversation. Unlike the police, school officials are not required to read you your "Miranda rights" if they question you about possible criminal activity.

If you are in the eighth grade or lower, RI law requires that your school principal get oral consent from your parent or guardian before law enforcement officers can question you. If the school administration can't reach your parent or guardian after an hour, the law says that you can choose a school official of your choosing to be there while they question you. But even if someone is there with you, you don't have to answer any questions by the police.

If you are in the ninth grade or higher and under the age of 18, you directly have the right to request that a parent, guardian or other adult family member be present when you are being questioned by the police. If after an hour the school administration cannot reach an adult of your choosing or if the adult can't be present, you have the right to have a school official of your choice be present at your questioning.



# PRIVACY

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## CAN I GET DISCIPLINARY ACTIONS CLEARED FROM MY PERMANENT RECORD?

Every student has a record that may include grades, teacher evaluations, medical records, disciplinary reports, attendance records, behavior reports, and standardized testing results. A federal law, called the Family Educational Rights and Privacy Act, or “FERPA,” grants you (if you are 18 or over) or your parents access to these records. Rhode Island has a similar statute.

You have the right to request changes to your records, or their removal, if they are inaccurate, misleading, or in violation of your privacy. This includes your right to request that any inappropriate disciplinary components of your record be expunged. You should put this request in writing and keep a copy of it for yourself. Even if the records are not changed at your request, the law requires that the school allow you to enclose a written statement commenting on any contested portions of your record.



Generally, your educational records are private, and schools must get permission to share your records with anyone outside of the district.

## WHO ELSE CAN ACCESS MY STUDENT RECORDS?

Generally, your educational records are private, and schools must get permission from your parent or guardian if they want to share your records with anyone outside of the school district. However, FERPA contains a number of exceptions to this requirement. For instance, the school doesn't need to get your consent to share your records with other relevant school officials, to another school system or college where you plan to enroll, or to law enforcement under certain limited situations.

# FOR PARENTS & LEGAL GUARDIANS

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## WHAT SHOULD I DO IF MY CHILD IS FACING SCHOOL DISCIPLINE AND I DON'T AGREE WITH IT?

There are several reasons you may not agree with your child's school discipline. You may think your child is innocent, that your child was denied due process, that the punishment is unfair or inappropriate, that the school rule at issue is unconstitutional, or that your child was unfairly singled out for disciplinary action. You have the right to appeal disciplinary actions you disagree with, and your child's student handbook should outline the procedure for doing so. If you decide to file an appeal, there are a few immediate steps you should take. First, you should gather all relevant information regarding your child's situation, including both your child's side of the story and the school's version. You should also take careful notes of all meetings or conversations with school administrators, keep copies of letters or emails from and to the school, document a timeline of events, and secure a copy of the rule your child is accused of breaking, the evidence against them, and the procedures for filing your appeal.

**PARENTS HAVE THE RIGHT TO APPEAL DISCIPLINARY ACTIONS THEY DISAGREE WITH. THE STUDENT HANDBOOK SHOULD OUTLINE THE PROCEDURE FOR DOING THIS.**

## IF MY CHILD IS SUSPENDED, WHAT CAN I DO TO KEEP THEM UP TO DATE WITH SCHOOL WORK?

If it is a short-term suspension, then you should be sure to communicate with the school's administration and with your child's teachers about getting make-up assignments and tests so that your child does not fall behind. If your child is given a long-term suspension, the school is responsible for arranging another way to continue your child's education outside the classroom, which may include an alternative school or community-based program.

## SHOULD I GET MY CHILD AN ATTORNEY?

Without knowing the particulars of any individual case, it is hard to determine whether an attorney should be consulted. A general rule, however, is that if there is any reason to believe the police are involved, or may become involved, with a school discipline issue, you should get in touch with an attorney as soon as you can. An attorney can help protect your child's rights and will be the most knowledgeable about developing a legal strategy to address the situation. If you decide to get an attorney for a suspension hearing, this must be done at your own expense. Advocates, such as counselors, psychologists, retired educators, and parent support organizations, are another resource that may be able to speak with you about your child's rights.



If there is reason to believe the police are involved, or may become involved, with a school discipline issue, parents should consult with an attorney.

The information in this brochure should not be taken as legal advice.  
If you have additional questions, or feel your rights may have been  
violated, please contact the ACLU of Rhode Island.

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128 Dorrance Street, Ste 400  
Providence, RI 02903  
(401) 831-7171  
[www.riaclu.org](http://www.riaclu.org)  
[info@riaclu.org](mailto:info@riaclu.org)