

ACLU of Utah Guidance on Free Speech in Public School Settings

“[E]ducation is perhaps the most important function of state and local governments. . . [the opportunity to receive an education] where the state has undertaken to provide it, is a right which must be made available to all on equal terms” Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483, 493 (1954).

Today, the ACLU of Utah is releasing updated guidance on free speech for students in school settings. This update is designed to complement the ACLU of Utah’s recently released guidance on First Amendment protections for teachers and educational professionals.

The First Amendment’s protections of freedom of speech and expression are fundamental to the preservation of a democratic society. Nonetheless, these protections are not absolute, and many times may conflict with the constitutional rights and promises of other individuals.

As the Supreme Court recognized in its 1969 *Tinker* case, “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”ⁱ Schools have the ability to regulate certain types of speech in school settings, but this power is not absolute. Though schools may impose some limits in classrooms, schools, and school sponsored events, First Amendment protections do not cease to exist in those settings.

With these considerations in mind, the ACLU of Utah recognizes that the exercise of free speech rights in school can sometimes clash with other fundamental civil rights and liberties. School districts should carefully balance these competing interests to ensure that all students have access to an equitable learning environment. We urge school districts, local education agencies, school boards, and those making policy decisions in K-12 settings to ensure that their policies reflect a welcoming and equitable environment for all students.

Simply providing the same facilities, textbooks, teachers, and curriculums does not satisfy these guarantees if students cannot equally participate and enjoy the educational environment.ⁱⁱ In other words, every student is entitled to an equitable experience in school.

It cannot be ignored that certain symbols, and phrases are the product of and representative of centuries of hatred and oppression of Black, brown, and Indigenous and LGBTQ+ communities. The presence of these phrases and symbols in school settings can and does cause emotional harm for students of these communities, impeding them from enjoying the full benefits of the educational environment. If a school district chooses to permit these symbols within school settings, we strongly urge them to also adopt a race and LGBTQ+ conscious curriculum that educates students, staff, and administrators on the history of these symbols and the role they have played in this country’s history. Likewise, we urge school districts and administrators to take special attention to ensure that tolerance of “speech” and symbols does not create an environment where bullying and hostility towards Black, brown, Indigenous and LGBTQ+ students is tolerated and enabled.

As school districts and educational institutions balance competing interests in making policy decisions, we urge them to take into account the importance of creating and protecting an equitable and supportive environment for all students, particularly those with marginalized identities. The right to an equitable environment in a K-12 setting is one of the many promises guaranteed by the U.S. constitution. In ensuring this constitutional right of students to have equitable experience in school settings, we hope that school administrators adopt policies that allow teachers and staff to feel comfortable sending inclusive messages in their schools to ensure that all students within their facilities feel welcome and entitled to similar experiences in K-12 settings as their peers. Ultimately, it is school districts’ responsibility to ensure that all students have an equitable educational experience and to actively address issues which impede students—particularly those that are most vulnerable—from exercising the right to a public education on equal terms.

While the First Amendment protections on speech may be very fact-specific, we urge schools and administrators to be thoughtful in the way they exercise their ability to discipline speech by staff, teachers, and students. Schools should make sure that their policies and curricula are aimed at inclusiveness and equity in the school environment. We urge all school districts to strive to ensure these constitutional promises and work to guarantee that all students are able to access a meaningful education.

ⁱ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 736, 21 L. Ed. 2d 731 (1969)

ⁱⁱ See *Lau v. Nichols*, 414 U.S. 563, 566 (1974)

KNOW YOUR RIGHTS

A Guide for Public School Students



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AMERICAN CIVIL LIBERTIES UNION

Utah

The **ACLU of Utah** is dedicated to protecting the constitutional rights of students and to helping students understand what their rights are in school.

WHAT ARE YOUR RIGHTS AS A PUBLIC SCHOOL STUDENT?

As a student, you have the power to make change. Student activists all over the country have been successful in challenging school policies or actions that violate the U.S. Constitution. Schools must balance the need to provide a safe and orderly educational environment against a student's rights.

Right to an Education

A public school education is available to all, free of charge, if you are a resident of Utah and your school district, or if you are over 18 and live in the state of Utah and have not completed high school and your class has not yet graduated. In fact, public high school in Utah is mandatory until the age of 18 with a number of exceptions outlined in the Utah Code.

Freedom of Speech and Expression

In school settings, it's natural to express who you are, what you like, and what you think. You might choose to express yourself by the way you dress, the music you listen to, the websites you create and read, and the politics in which you participate. The First Amendment protects all of these rights, and you do not give them up entirely when you walk through the schoolhouse doors. Schools, however, may limit certain speech and expressions by students as long as the school does so to further strong educational interests, mainly preventing disruptions and promoting safety and order.

Students: Know Your Protest Rights!

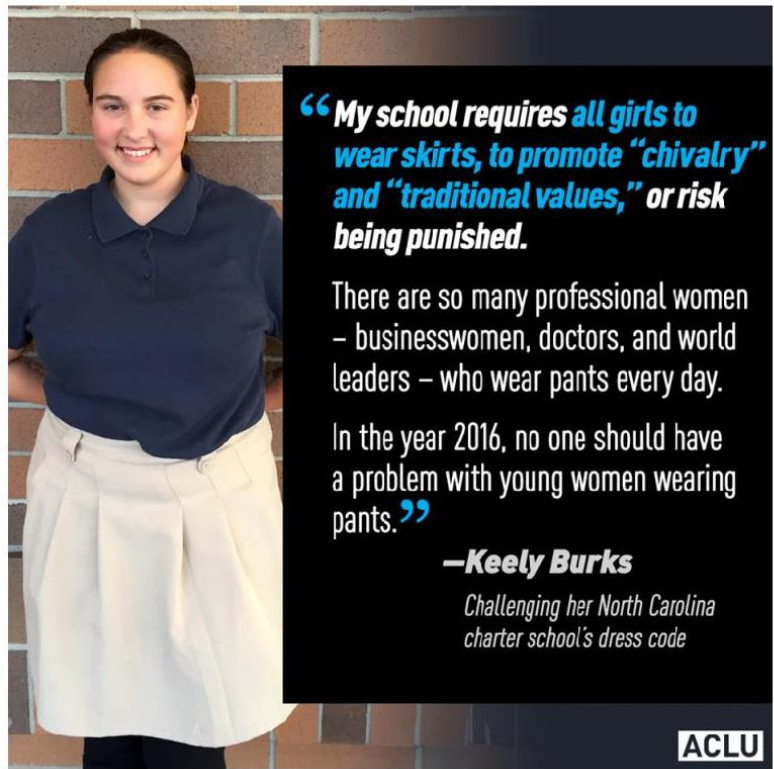
- Schools can't punish you for your speech unless it disrupts school.
- Schools can typically discipline you for missing class, but not because of the content of your protest.
- Schools can't punish you based on messages expressed by your clothing – unless they disrupt school.
- You have the right to wear clothing expressing your opinions if it doesn't disrupt school.
- Outside of school, you enjoy the same rights to protest and speak out as anyone else.

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Dress Codes

Clothes are a form of expression and you are generally free to dress as you would like at school. Just like other forms of expression, however, schools may impose restrictions on how students dress as long as those rules are related to goals such as preventing disruption and promoting order and safety. Disagreement with your school's dress code alone is not enough reason for a First Amendment challenge. Courts have said that dress codes must balance students' rights to dress as they wish against a school's interest in maintaining this safe and orderly environment. If you are concerned that something you wear might get you in trouble, check to see if there is a dress code and if the school actively enforces it. However, even the enforcement of this dress code must be done so equitably without discriminating against one group of students.



T-shirts & Apparel

School officials cannot ban t-shirts because they do not like the message. However, school boards can ban clothing with “indecent” speech or messages that could cause violence or disruption in school. Many courts have addressed what kinds of t-shirts are permissible in school. For example, generally, a school may not forbid you from wearing apparel that criticizes the President or that contains any other political message because the First Amendment covers political speech, even in school. However, courts agree that a school can make rules limiting speech with vulgar language, sexual innuendo, or messages that promote suicide, drugs, alcohol, or murder.





Student Clubs

Under the Equal Access Act, student groups in public high schools may not be denied access to school facilities for meetings if the school allows other “non-curriculum related” groups to meet on school property before or after school. The school may not discriminate against a group based on the religious, political or philosophical nature of its activities. Utah requires that a student have parental consent to join a club and that all clubs have faculty oversight, whether it is a curriculum or non-curriculum group or club.

Search and Seizure

The Fourth Amendment allows people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The Fourth Amendment’s search and seizure restrictions apply in public schools, but, the Courts give school officials and police more leeway to conduct searches in school. Courts balance a student’s privacy rights against the school’s interest in safety and student discipline. This means that students often have less protection against unreasonable searches and seizures at school, than in other places.



Know Your Rights: www.acluutah.org/kyr

In most circumstances, a search by police requires a search warrant, which is advance written permission from a judge that the police have reasonable grounds to suspect that a crime has been committed. Police then must base their search on probable cause.

Property Searches

Schools are primarily responsible for keeping you safe, and providing you with the best possible education, free from unnecessary disruption. This allows school officials some flexibility to conduct searches of the school and school grounds including the parking lots to ensure their students' safety. These searches can be based on information supplied by students, school employees, and the police.

Strip Searches and Searches of One's Person

Schools should have individualized suspicion before searching a student. Except in very rare circumstances, strip searches of students by school officials are unconstitutional.

If a school official searches you without proper suspicion, the courts will weigh your privacy rights, the intrusiveness of the search, and the school's safety concerns. You have a significant right to privacy regarding your body, and strip searches are highly invasive. In most cases, a school's suspicion warrants a strip search only if officials are looking for weapons or drugs, since these provide the most risk to the health and safety of students.

Discrimination

The Fourteenth Amendment guarantees "equal protection of the law" to all citizens. This includes students; protecting them from discrimination based on their race, color, nationality, ethnicity, or religion. Discrimination in public schools comes in many forms, and there are just as many different ways to address it. For some types of discrimination, the laws that we at the ACLU use to combat the discrimination are really clear and well-established. For others, the law is constantly changing and our work may be a little trickier. And for still others, there are few or no protections under the law at all.



Harassment and bullying

Freedom of speech does not protect all types of conduct that may be considered speech. Speech that rises to the level of harassment or bullying of other students is not protected and may be restricted and punished.

Harassment and bullying are unfortunately common occurrences in schools. Students may experience harassment or bullying for many reasons, such as their appearance, gender, sexual orientation, gender expression, race/ethnicity, disability, religion, or social viewpoints. Harassment and bullying take on many forms, such as name-calling, physical violence, and sexual intimidation and can be carried out by students or school employees towards students or school employees. Bullying and harassment are prohibited by Utah law on school property, at school related or sponsored events, on a school bus, at school bus stops or while traveling to a location or event.

Schools have the responsibility to address harassment and bullying to ensure that students have access to an equitable environment where they are able to learn and thrive.

Discipline

In Utah, it is recognized that every student in public school should have the chance to learn in an environment which is safe, conducive to the learning process, and free from unnecessary disruption. Therefore the school board has adopted conduct and discipline policies which they require each public school to send to students when they enroll. These policies must also be posted in plain view. If any changes are made during the school year those changes must be given to students, as well as posted in the school where everyone can see them.

Student Records

Directory information can be shared if, for example, the school creates a student phone directory or yearbook. All other information is private and confidential, meaning it cannot be released without your parent's written consent or, if you are 18 years or older, your own written consent.

Religious Freedom

The First Amendment guarantees the right to practice the religion of your choice.

Religion in School

Schools can teach about religion in the context of literature, history, or culture, but they cannot favor one religion over another, or, force anyone to believe in, observe, or practice a religion. Nor may schools conduct or promote religious

RELIGION IN SCHOOLS: WHAT'S ALLOWED

- ✓ Students can bring their own scripture
- ✓ Voluntary time to pray
- ✓ Religious clothing and dress
- ✓ Student-led clubs
- ✗ **School Sponsored Promotion of Religion**

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activities, including prayer or religious devotionals. As a student, you do have a right to express religious viewpoints and wear religious symbols, as long as those expressions don't disrupt school activity. Schools may not show favoritism in what religious expression they allow.

Religion and Free Speech

Contrary to popular myth, the Supreme Court has never outlawed “prayer in school.” As a student, you are free to pray on your own or in student groups, as long as such prayers are not disruptive and do not infringe upon the rights of others at school. But it can't be prayer for a captive audience, like at a school assembly, football game or graduation, or to compel other students to participate. School staff cannot be involved in student prayer or it becomes an endorsement by the school and therefore unconstitutional.

Public school officials are not allowed to lead students in prayer or Bible-reading sessions. They may not set aside time intended for prayer, even if a student can choose to “opt-out” of the prayer.



THE LAST WORD

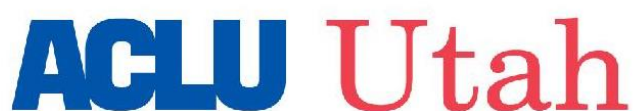
The First Amendment to the United States Constitution prohibits the government from infringing upon the freedom of speech that individuals enjoy in most public settings. Through the Fourteenth Amendment, state and local governments in Utah are required to guarantee these constitutional freedoms and promises.

Students retain free speech rights in schools and at school-sponsored events. Schools may, however, place limitations on those rights beyond those that government may impose outside of school.

This *Know Your Rights* handout covers students' speech and expressive rights in school settings. If you think that your rights as a student have been violated, you might want to consult a parent or guardian. Or, if you prefer, seek out a teacher, counselor, or even your principal. For outside help, consider contacting a lawyer or the ACLU of Utah by visiting our website at www.acluutah.org/kyr

Here's what you can do to protect your rights in school:

- Read your school's policy guide or student handbook. You can get a copy from your school's website, main office, or district.
- Talk to your parents, teachers or other school officials if you think someone's rights have been violated.
- Learn more about your rights. Contact a counselor, teacher, attorney, or the ACLU for more information. The ACLU of Utah has numerous publications available in print and online at www.acluutah.org/kyr
- Become a member of the ACLU. Student memberships can start at only \$5.00 a year. www.acluutah.org



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The ACLU is working to guarantee all students equal access to educational opportunities and resources in an educational environment free from gender-based stereotypes, violence, and harassment.

This information is excerpted from the ACLU of Utah's online *Students! Know Your Rights Guide* online at www.acluutah.org/kyr