



# KNOW YOUR RIGHTS! STUDENT WALKOUTS & POLITICAL SPEECH AT SCHOOL

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This information is current for California as of April 2006, and may be changed by the courts, Legislature or Congress. Additional local ordinances or policies may also apply. For specific questions, please contact the ACLU Complaint Counselors at 415-621-2488, or a lawyer. High school youth activists – get involved in our youth program at [www.aclunc.org/youth](http://www.aclunc.org/youth)

## **Q: What should I do if the school administration threatens to punish any students who participate in an upcoming walkout?**

Because the law requires you to attend school, the administration can take corrective action against you for missing school, even if you miss school to participate in a political protest. However, the school cannot punish you for missing school to participate in political protest more harshly than it punishes students for missing school for any other purpose. For example, you might have to serve detention for missing school to attend a protest if detention is the typical punishment for unexcused absences.

## **Q: Can I be suspended for walking out of school to attend a political protest?**

**Generally, no.** The law is clear that suspension is not an appropriate punishment for unexcused absences. Section 48900(v) of the California Education Code states: "It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities." Furthermore, the law is equally clear that, except with certain serious offenses (which do not include unexcused absences), suspension may only be imposed as a punishment of last resort. Section 48900.5 of the Education Code states that "[s]uspension shall be imposed only when other means of correction fail to bring about proper conduct." Thus, assuming you do not have a history of unexcused absences, your school must take steps to correct your behavior rather than suspend you for walking out of school to attend a protest.

For more information, check out "School Discipline: A Guide for Students & Parents," an ACLU handbook on suspension and expulsion in California public schools. This publication is available on the ACLU-NC's website at [www.aclunc.org/students/discipline.pdf](http://www.aclunc.org/students/discipline.pdf)

## **Q: What does it mean to be "truant"?**

Section 48260 of the California Education Code says that a student is a truant only if they are "absent from school without valid excuse three full days in one school year or tardy or absent for more than any 30-minute period during the schoolday without a valid excuse on three occasions in one school year, or any combination thereof." If this is your first or second unexcused absence or tardy in this school year, you cannot be reported as truant.

## **Q: How can I be punished for truancy?**

If you really are truant (see above), Section 48264.5 of the Education Code specifies how your school can punish you. After any truancy, you may be required to attend makeup classes on a weekend. In addition, after the first offense, a written warning can be put in your school file and given to the police. If you are truant a second time in the same year, you may be assigned to an afterschool or weekend study program. If you are cited for truancy a third time within that same year, you can be classified as a "habitual truant" and be required to attend a program designed to help you. If you are cited a fourth time, you can be made a ward of the court and you can be required to do community service or attend a program. If you are reported as truant, your parents can also be fined, up to \$100 for a first offense. Fines can increase with additional offenses.

If you are found away from your home and absent from school without a valid excuse, certain school employees or the police can assume temporary custody of you during school hours. If this happens, they must bring you to your parents or guardian, back to school, or to designated community center for counseling.

## **Q: What should I do if the school administration threatens to lock or block the school exits to prevent us from walking out of school in protest?**

Locking exits to the school can pose serious health and safety concerns for students and staff. In one instance, a local fire department responded to teachers' complaints about locked exits at a school by insisting that the administration unlock the exits to avoid a fire hazard. If the school administration threatens to lock students in your school to prevent walkouts, students should immediately notify their parents and the district superintendent's office.

## **Q: Can I organize a protest at school?**

It depends on the specific activities you have planned and when the protest will take place. Remember that your school can adopt reasonable rules which regulate the "time, place and manner" of exercising your free speech rights. Thus, you cannot organize a protest if it will substantially disrupt the orderly operation of the school or if it will create the immediate danger of causing students to commit an act that is unlawful or in violation of school rules. But you can organize a peaceful, orderly protest at lunch or before or after school, for example. However, the size of the demonstration, as well as other factors, may affect when and where the demonstration may occur. If you are in doubt about whether your plans for a particular protest are permissible, you should check your school district's written rules around speech regulations. If you still have questions, you should call the ACLU at (415) 621-2488.

## **Q: Am I allowed to express my political views while I am at school?**

**Yes.** The First Amendment of the U.S. Constitution and Article 1, Section 2 of the California Constitution guarantee freedom of speech and freedom of the press to all people, including students. In addition, two special laws in California specifically protect students' rights of freedom of speech and freedom of the press at school.

Section 48907 of the California Education Code gives a special guarantee that students have a right to express their political opinions. This includes, but is not limited to:

- wearing buttons, badges and other insignia (including armbands or message T-shirts)
- posting notices on school bulletin boards
- distributing petitions
- handing out other printed materials, such as leaflets
- writing in public school newspapers and yearbooks
- writing in "underground" (or unofficial) newspapers

Although Section 48907 applies only to public schools, Section 48950 (enacted in 1992) extends free speech protection to private high schools in most circumstances.

## **Q: Can my school place any limits on my ability to express my political views?**

Yes. Even though you have broad rights to express your views in a variety of ways, your school can adopt reasonable rules that regulate the "time, place and manner" of exercising these free speech rights. For example, the school could adopt a rule that prohibits the distribution of leaflets during class time. On the other hand, a rule prohibiting the distribution of leaflets during lunch period would not be permissible. The school is not allowed to prohibit or censor speech or press activities by students based on its content (what you are saying), unless what you are saying falls within one of these three exceptions:

1. it is legally "obscene";
2. it is libelous or slanderous (that is, it is untrue and harms someone's reputation, and you are careless, or you know, or should have known, that it is untrue when you write or say it); or
3. it creates the immediate danger of causing students to commit an act that is unlawful or in violation of school rules, or that would cause a substantial disruption of the orderly operation of the school.

So, even if your principal or teachers believe that something you say or write is controversial, divisive, in "bad taste," or expresses a political point of view that is against school policy, they still cannot censor what you say or write unless it also falls within the three exceptions above. The law is clear about one thing: outside the classroom itself, school officials cannot just impose their own version of good taste and decency on what students say or write. However, you can certainly avoid some problems if you can say what you want to say without using profanity or sexual references.

## **Q: Can school officials prevent students from expressing their opinions on a particular topic because they think the topic is too controversial?**

No. School officials may believe that talking about such topics as the war or the education budget cuts are too controversial. However, as described above, they cannot censor those topics unless there is clear evidence that the speech will incite students to commit unlawful acts or to disrupt the school. Even if discussion of the war would provoke strong disagreement or upset some students, school officials still cannot censor it. Criticism of your school, criticism of students, teachers or school officials, or discussion about serious problems either at school or elsewhere is generally protected.

## **Q: Can I be punished for saying or writing something provocative at school?**

Sometimes school authorities will try to punish students who make provocative statements or joke about violence. They may argue that the student is making a "terrorist threat." In order to be considered a "threat," you must intend that others take your words as a threat. In addition, your words must be so clear and convincing that they would cause another person to really believe that you intend to carry out the threat - and therefore to have a reasonable fear for his or her safety.

## **Q: Can I write about my political views (for example, my views on the war or budget cuts in our district) in a school-sponsored publication?**

Yes. In California, our law is clear that freedom of the press applies to official school publications that are written by students, even if the school pays the costs of producing the newspaper. (That means that only articles that are "obscene, libelous or substantially disruptive" can be censored.) The law also says that student editors, and not teachers or administrators, are the ones responsible for assigning and editing articles. However, the journalism advisor can require that the newspaper conform to professional standards of English and journalism.

## **Q: What can I do if the school tries to censor me?**

California Education Code Section 48907 requires each school district to put in writing the rules controlling speech and press activities. So, if you are faced with a school official who is trying to limit what you say or write, you should ask to see those written rules to determine whether the school official is following the rules they are required to follow.

But remember: sometimes exercising your free speech rights involves risks. Sometimes "reasonable people" -- like you and the school principal, for example -- can disagree as to what is "disruptive" or "libelous." And school officials do not always follow the law on this. You may be acting within your rights, but you may have a struggle in school or even need to go to court.

There are key steps you can take to fight censorship. Be sure to get in writing your school policies regarding banned expression. Show Education Code sections 48907 and 48950 to school officials and ask them for a written response as to why they still want to ban the expression. Get petitions signed by other students, parents and teachers (especially journalism or yearbook advisors, debate coaches, history and government teachers or others who really understand the First Amendment). Write an article in the school paper. Lobby at school board meetings and ask parents, community and youth advocates and First Amendment experts to join you. Tell your local newspaper about the controversy.