

# FACT SHEET

## Student Speech Rights in K-12 Public Schools

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The First Amendment and legal precedents established by the Supreme Court of the United States (SCOTUS) and lower district courts provide some guidance on what students and teachers can and can't express in public schools in the United States. Building administrators use discretion to interpret and apply what these mean in their local contexts. It is important for all stakeholders to understand the basic principles that need to be considered in these decisions. Here is a summary of guiding principles from case law.

Students may	Students may not
<ol style="list-style-type: none"><li>1. Opt out of standing for the pledge of allegiance or national anthem<sup>i</sup></li><li>2. Distribute materials about political or religious events and activities as long as you respect policies about "time, place, and manner"<sup>ii</sup></li><li>3. Wear clothes and symbols that represent your gender &amp; cultural identities<sup>iii</sup>.</li><li>4. Participate in walk-outs and silent protests<sup>iv</sup>, but may be subject to discipline due to unexcused absence policies</li><li>5. Express themselves freely on social media as long as they post using their own devices outside of school time and as long as it does not "substantially disrupt" the learning environment at school<sup>v</sup></li></ol>	<ol style="list-style-type: none"><li>1. "Substantially disrupt"<sup>vi</sup> the learning environment (<i>see Box A below</i>)</li><li>2. Engage in vulgar, lewd, obscene, or plainly offensive speech<sup>vii</sup> or make threats of physical violence</li><li>3. Use school-sponsored activities<sup>viii</sup> to express viewpoints that are not consistent with the pedagogical mission of the school (<i>see Box B below</i>)</li><li>4. Wear clothing that has words or symbols that have a history of inciting violence locally<sup>ix</sup> (racist, homophobic, anti-religious, etc.)</li><li>5. Damage school property (vandalism, graffiti, etc.) and expect to be protected by the first amendment</li></ol>

### A) What counts as a "material and substantial disruption"?

1. Interrupting class so that instruction or learning activities cannot continue
2. Threats of violence
3. Racially harassing conduct
4. Fights or violent behavior on school grounds
5. School must have evidence that a disruption will occur in order to limit speech. Prior events at the school and in the community may be sufficient (protests, targeted violence, etc.).

### B) What counts as "school-sponsored speech"?

1. School-run publications (newspapers, yearbooks, literary journals, etc.)
2. School-funded performing arts activities (plays, concerts, etc.)
3. Activities occurring at athletics events
4. Content occurring at other competitions/practices of school clubs and organizations (band, chorus, cheerleading, debate, chess, math club, etc.)
5. Expression occurring during field trips

Suggested citation: Meyer, Elizabeth J. (2019) *Student and Staff Speech Rights in K-12 Schools [Fact Sheet]*. National Center for Free Speech and Civic Engagement: Irvine, CA.

Teachers & Administrators may	Teachers & Administrators may not
<ol style="list-style-type: none"> <li>1. Take immediate action if a student’s expression constitutes a “true threat.”<sup>x</sup></li> <li>2. Take punitive action if student expression is causing a “material and substantial disruption”<sup>xi</sup></li> <li>3. Make decisions over curriculum and course content (consistent with district policies and procedures)<sup>xii</sup>.</li> <li>4. Restrict the “time, place, and manner” of student expressive activities<sup>xiii</sup> as long as the application of these policies is reasonable and nondiscriminatory.</li> <li>5. Enforce anti-bullying and non-discrimination policies to ensure student safety at school.</li> <li>6. Decorate your classroom, understanding that the school has a right to restrict certain displays if they are political or religious in nature<sup>xiv</sup>.</li> <li>7. Engage in political or religious activities as a private citizen on your own time<sup>xv</sup>.</li> </ol>	<ol style="list-style-type: none"> <li>1. Discipline a student for creating/sharing expression that they disagree with or dislike<sup>xvi</sup>.</li> <li>2. Use class time or school activities to express personally held political or religious views (spoken, posted, on clothing, etc.)<sup>xvii</sup>.</li> <li>3. Refuse to teach required curricula that go against their personal beliefs<sup>xviii</sup> (evolution, patriotic activities, LGBT-inclusion).</li> <li>4. Make curricular decisions without following district policies and procedures<sup>xix</sup>.</li> <li>5. Lead prayers or other religious or political activities as part of their official duties at school.</li> <li>6. Post on social media about students, school, work-related matters, or content that may impair their functioning as an educator<sup>xx</sup>.</li> </ol>

C) What counts as a “government speech”?
<ol style="list-style-type: none"> <li>1. All curricular content: materials, lessons, classroom displays, including teacher expression during school day, at official school events, and on school grounds.</li> <li>2. School mascots, logos, uniforms and other official publications that represent the policies, procedures, and views of the school and district.</li> </ol>

**Additional Resources<sup>xxi</sup>**

1. American Civil Liberties Union: Free Speech Rights in Public Schools
2. Anti-Defamation League: Unit plan - high school social studies
3. ASCD First Amendment Schools: FAQs
4. Bill of Rights Institute: Free speech lesson plans
5. National School Boards Association: “Coercion, Conscience, and the First Amendment”
6. National Center for Free Speech and Civic Engagement
7. Psychology Today: Gender and Schooling blog – “Free Speech vs. Hate Speech”

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## Endnotes

- i *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624 (1943)
- ii *Hedges v. Wauconda Community Sch. Dist.*, 9 F.3d 1295 (7th Cir. 1993)
- iii *Arocha v. Needville ISD*, 2010
- iv “Tinker standard” from *Tinker v. Des Moines* (1969)
- v *J. S. v. Bethlehem Area Sch. Dist.*, 757 A.2d 412 (Pa. Cmwlth. 2000)
- vi Tinker standard”
- vii “Fraser standard” from *Bethel v. Fraser* (1986)
- viii “Hazelwood standard” from *Hazelwood v. Kuhlmeier* (1988)
- ix *Castorina v. Madison County Sch. Bd.*, 246 F.3d 536 (6th Cir. 2001) and *West v. Derby Unified School District No. 260*, 99-2039 (2000)
- x *Lavine v. Blaine School District*, 257 F.3d 981 (9th Cir. 2001) cert. denied, 122 S. Ct. 2663 (2002)
- xi *Tinker*
- xii *Settle v. Dickson County School Bd.*, 53 F.3d 152 (6th Cir. 1995), cert. denied, 516 U.S. 989 (1995)
- xiii *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977).
- xiv *Lee v. York Cnty. Sch. Div.*, 484 F.3d 687, 700 (4th Cir. 2007) and *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966 n.12 (9th Cir. 2011)
- xv *Pickering v. Bd. of Education*, 391 U.S. 563 (1968)
- xvi *Boman v. Bluestem Unified Sch. Dist. No. 205*, 2000 U.S. Dist. LEXIS 5297, Case No. 00-1034-WEB, (Dist. Kan.) (Feb. 14, 2000)
- xvii *Miles v. Denver Public Schools*, 944 F.2d 773 (10th Cir. 1991)
- xviii *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F. 3rd 517 (9th Cir. 1994), cert. denied, 515 U.S. 1173 (1995), *LeVake v. Independent Sch. Dist. No. 656*, 625 N.W.2d 502 (Minn. App. 2001), cert. denied, 122 S. Ct. 814 (2002), *Palmer v. Board of Education*, 603 F.2d 1271 (7th Cir. 1979), cert. denied, 444 U.S. 1026 (1980).
- xix *Clark v. Holmes*, 474 F.2d 928 (7th Cir. 1972), cert. denied, 411 U.S. 972 (1973); *Webster v. New Lenox Sch. Dist. No. 122*, 917 F.2d 1004 (7th Cir. 1990) and *Kirkland v. Northside Independent Sch. Dist.*, 890 F.2d 794 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)
- xx *San Diego Unified Sch. Dist. V. Comm’n on Prof’l Competence*, 194 Cal. App. 4th 1454, 1458 (Cal. Ct. App. 2011), *Craig v. Rich Township High Sch. Dist.*, 736 F.3d 1110, 1113 (7th Cir. 2013), *Czaplinski v. Board of Educ. of Vineland*
- xxi Inclusion in this list is not an endorsement of these organizations’ viewpoints. They vary in their interpretation and motivations for protecting First Amendment issues. Please evaluate these materials carefully to determine if they are useful and relevant to the issues at your institution.

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