

YOU HAVE RIGHTS, TOO!

THE RIGHTS OF
YOUNG PEOPLE
IN KENTUCKY



ACLU
Kentucky

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INTRODUCTION

As a young person, you may assume you don't have many rights – but you do! Sometimes it's hard for young people to find out what those rights are, so this Youth Rights Handbook is intended to be a resource for you.

The ACLU of Kentucky recognizes that when it comes to our civil liberties, the rights of young people are just as important as those of adults. This Youth Rights Handbook is a tool created to give youth guidance when they have questions about their rights. Because young people spend so much time at school, much of the handbook focuses on students' rights and responsibilities while in school.

This handbook is dedicated to all of the young people and their parents who have had the courage to defend their rights when they have been threatened. Because of their courage to take a stand, we are all more secure in our civil liberties.

As a person who lives in the United States, it doesn't matter what your age, you have certain rights. So, what are the sources of those rights?

U.S. Constitution and the Bill of Rights

You will learn about your “constitutional rights” throughout this handbook. Public schools are required to follow the U.S. Constitution and Bill of Rights (the first 10 Amendments to the U.S. Constitution), as well as the Kentucky constitution.

Kentucky Revised Statutes

Laws passed by Kentucky legislators are another source of your rights. Many Kentucky statutes regulate public schools and student conduct. You can see the Kentucky Revised Statutes online at www.lrc.state.ky.us, under “Kentucky Law.”

Court cases

Some of your rights can also be found in court cases. Often, when students believe their rights have been violated, they take action in court. A decision from a court can create law about a student's rights or a school's conduct. You will find court cases about students' rights in many sections of this handbook.

WHAT IS THE ACLU?

The American Civil Liberties Union of Kentucky Foundation is a private, nonpartisan, non-profit membership organization dedicated to protecting and extending freedom, liberty, and equality to all people, including young people. ACLU staff members are dedicated to help preserve those rights instilled to all people by United States Constitution.

The national ACLU was founded in 1920 and the Kentucky affiliate was founded in 1955. Our focus has been to help set the national stage for the protection of civil liberties while ensuring their enforcement here in Kentucky. The work of the ACLU is based upon, but not limited to, protecting and expanding the liberties and freedoms guaranteed by the United States Constitution, especially those granted by the Bill of Rights. With a membership of over 1.5 million nationwide, the ACLU accomplishes its goals through litigation in both federal and state courts, lobbying of legislative bodies, and education of the public on a broad array of issues affecting our liberties.

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IS THIS HANDBOOK LEGAL ADVICE? NO

While we attempt to cover as much content as possible, this handbook is not a complete statement of your liberties or their limits; the material provided here is for informational purposes only. This handbook is to help you form a basic understanding of your rights. It is not meant to be, and should not be taken as, legal advice. You should not rely on this information in lieu of seeking the advice of an attorney. The legal issues surrounding civil rights and civil liberties are among the most complex in the law and change continuously with new court opinions, legislative decisions, and interpretations. The laws and legal cases used in this handbook came from our research prior to publication, so the law on the point in question may have changed since this was written.

A person's rights may vary from case to case because of small, subtle details. Only a lawyer who has taken the time to become fully aware of the facts and the applicable law in a given situation can provide you sound legal advice. If you feel your rights have been violated, contact an attorney or the ACLU of Kentucky. The law imposes time limits on most actions to vindicate your rights, so it is important to act quickly.

Unless otherwise noted, the information in this handbook applies to public schools. Private schools, generally speaking, have broader authority over their student bodies because they do not act on behalf of the state.

Whether your school is public or private, it is important that you get to know your school's policies. For more current information on those policies and practices at your school, talk with someone you trust like a counselor or teacher. This person can provide you with a copy of your school's policies and procedures handbook, which may also be found on your school's website.

FREEDOM OF EXPRESSION

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

— U.S. Constitution, First Amendment

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

— U.S. Supreme Court in *Tinker v. Des Moines Independent School District* (1969)

When it comes to your rights, the first place you should look is the Bill of Rights, contained in the first ten Amendments to the U.S. Constitution. The First Amendment alone includes five of your most fundamental rights. That is where you will find the rights that ensure your freedom of expression. The First Amendment stands for the idea that you have the right to express yourself without the fear of government censorship or retaliation.

The five rights explicitly included in the First Amendment are:

- Freedom of speech;
- Freedom of religion;
- Freedom of the press;
- Freedom to petition the government; and
- Freedom to peaceably assemble.

In addition to these five basic rights, the U.S. Supreme Court has stated that many of the Amendments in the Bill of Rights, including the First Amendment, imply a constitutional right of privacy.

These rights have been extended to the states and all levels, arms, and agencies of government through the Fourteenth Amendment. So, you are free not only from the federal government’s intrusion on these rights, but also from state and local government intrusion as well.

PROTECTED SPEECH

Does freedom of expression just apply to what I say with words?

Quick Answer: No. The First Amendment protects speech, expressive conduct, and some other actions.

Details: According to our courts, other forms of expression are protected under the First Amendment's umbrella of the freedoms of speech and association. These include, but are not limited to:

- Spoken and written words
- The use or display of symbols
- Messages on buttons and T-shirts
- Messages on the Internet
- Expressive clothing styles
- The right to join or refuse to join clubs and organizations
- The right not to salute the flag

Your right to not salute the flag is the only absolute right that falls under freedom of expression. In other words, there are no circumstances under which a school should take this right from you. All the rest are limited rights that can be somewhat restricted in a school setting.

Reason: Generally speaking, courts will allow a school to limit students' rights if the exercise of those rights interferes with the school's objectives of educating and protecting students.

The U.S. Supreme Court determined that requiring a student to salute the United States flag does not serve either of these goals, and so students are allowed to refuse to salute the flag during the Pledge of Allegiance.

Does my constitutional right to freedom of speech apply while I'm in school?

Quick Answer: Yes, but schools may limit this right in situations where the speech disrupts class work, involves substantial disorder or invasion of the rights of others, or takes place in a school-sponsored forum.

Details: In *Tinker v. Des Moines Independent Community School District*, the Supreme Court said, "Students do not shed their constitutional rights to freedom of speech or expression at the school house gate." However, the Court also made it clear that certain speech can be prohibited. For instance, if your speech interferes with the work of the school or the rights of other students, schools may prohibit it.

When it comes to school-sponsored speech, like a speech you give at a school assembly or something you write for the school newspaper, your school may restrict both what you say and how you say it as long as those restrictions are related to a legitimate educational concern. Your speech may even be limited when you are not in school but you are participating in an event or activity that is school-sponsored, such as school plays or student government elections. However, the school's interest in limiting certain types of speech and expression cannot be to prevent the expression itself. The school must identify a legitimate goal that is accomplished by limiting the expression.

Can the school make it mandatory for students to say the Pledge of Allegiance? Can students be punished for refusing to stand or recite the Pledge?

Quick Answer: No and no.

Details: The Supreme Court ruled that students cannot be forced to salute the flag. However, the government may encourage the recitation of the pledge. A Kentucky law mandates that local school boards establish procedures whereby students in all public

elementary and secondary schools may begin each day reciting the pledge, but the law also says that student participation in the recitation shall be *voluntary*. Students who do not wish to participate in the pledge of allegiance are allowed to remain in their seats during the recitation. KRS § 158.175; OAG 80-456.

Our school elections are coming up. Can students be prohibited from or be punished for criticizing the school administration or school administrators in campaign speeches?

Quick Answer: Yes. School elections are considered school-sponsored events and student speeches are subject to reasonable restrictions based upon legitimate educational concerns.

Details: In *Poling v. Murphy*, the Sixth Circuit Court of Appeals (the Federal Court of Appeals that includes Kentucky) held that school officials did not violate the First Amendment when they disqualified a student from student council elections for making “discourteous” and “rude” remarks about the assistant principal during a campaign speech at a school assembly. “Civility” was accepted as a legitimate educational concern.

The Supreme Court has noted that schools are entitled to exercise greater control over expressions when such expressive activities are sponsored by the school, as opposed to personal expressions of students that happen to occur on school premises.

Reason: The school has a legitimate interest in ensuring that participants in school-sponsored activities learn the lessons those events are designed to teach them. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

So, how do I know if what I’m doing is considered protected speech or expression under the First Amendment?

Answer: The U.S. Supreme Court created a test to determine whether conduct is speech under the First Amendment. To be considered speech:

a) Your conduct must be intended to convey a particularized message; and

b) There must be a great likelihood that the message was understood by those who saw it.

In other words, wearing a black armband to signify opposition to a war is First Amendment speech, while wearing a purple armband to match your skirt is arguably not protected speech.

Side Note: You must also remember that even when these two factors are present, the school may be able to prohibit certain types of speech or conduct that interfere with the school’s legitimate objectives in educating and protecting students. In other words, schools may be able to prohibit certain types of speech or conduct that the government could not prohibit in other settings outside of school.

So, if you don’t know if what you’re doing will be considered speech or expression, ask yourself these three questions.

- 1) Is what I’m saying or doing clear?
- 2) Does what I’m saying or doing convey a particular message?
- 3) Is it very likely those who see or hear it will understand the message?

If you answer yes to all three questions, then it is likely that your message is protected speech under the First Amendment, BUT schools and other government bodies can limit your right to free speech and expression in many circumstances.

Helpful Hint: The Supreme Court has said: “the First Amendment gives a high school student the classroom right to wear *Tinker’s* armband, but not *Cohen’s* jacket.” *Tinker* refers to students who wore black arm bands to protest the Vietnam War. *Cohen* refers to a person who wore a jacket with a phrase disapproving the Vietnam War while walking through a court house corridor. The phrase contained profanity and was seen by those in and around the courthouse. Although *Cohen’s* actions were ultimately protected by the First Amendment, it is pretty clear that such actions would not be protected in a school setting.

Read on...

FREEDOM TO ASSEMBLE

Some students who disagree with the new uniform policy in our school want to protest. Will our First Amendment rights protect our protest?

Quick Answer: Yes. But, this right is subject to limitations to maintain other students' right to learn.

Details: The First Amendment protects "the right of the people to peaceably assemble." However, this right is subject to reasonable and content-neutral "time, place and manner" restrictions. This means that your school officials can give you a certain time and place to protest, and even restrict the manner in which you protest in the allotted time and place. If you don't agree to those restrictions, you could be barred from conducting the protest or punished if you ignore the restrictions.

The Supreme Court held that made clear that school property may not be declared off limits for expressive activity by students. However, the Court, in the *Tinker* case and others, also limited the right of students to protest at school, allowing schools to restrict or punish protests that materially disrupt class work or involve substantial disorder or invasion of the rights of others. The Court draws the line for allowing protests at school at the point where the protest interferes with the rights of others to learn.

Are all types of groups, including religious groups, able to hold meetings on school grounds?

Quick Answer: It depends. Meetings must be student-initiated, student-led, and cannot be held while classes are scheduled.

Details: The right to form groups and associations is an aspect of a student's freedom of association. The Equal Access Act (EAA) of 1984 prohibits public secondary schools

that allow non-curricular student groups to meet at the school from denying equal access of other groups to hold meetings on the basis of "religious, political, philosophical, or other content of the speech at such meetings." In other words, once a public secondary school allows one non-curricular student group to meet, they are not allowed to prohibit other non-curricular student groups to meet on the basis of the group's religious, political or philosophical views. Such groups must be allowed to hold non-curricular meetings unless the group is a disruption to the school. The EAA not only applies to religious student groups but also protects groups such as the Gay Straight Alliance, or a student socialist club.

But there are some restrictions on the student groups using school property:

- *First*, the meetings must be student-initiated.
- *Second*, school staff may not participate in or lead the meetings, though assignment of faculty for custodial purposes (faculty sponsor) is permitted.
- *Third*, non-school personnel are not allowed to direct, control, conduct or regularly attend the meetings.
- *Fourth*, the groups may meet only during non-instructional time, and be non-disruptive.

Students at Boyd County High School in Ashland, KY, were struggling with anti-gay harassment, homophobia, and the use of anti-gay epithets. Federal District Court Judge David Bunning found, for example, that several students in English class said, “they need to take all of the f---ing fa---s out back in the woods and kill them.” In response to the harassment, a group of students decided to organize a Gay Straight Alliance, an organization of gay and straight students that promotes tolerance and understanding. The school district refused to allow them to meet, so they contacted the ACLU of Kentucky for assistance. The ACLU brought suit arguing that denying the group’s right to meet as a student organization violated the federal Equal Access Act. Judge Bunning agreed. The school then agreed to allow the group to meet and provide anti-harassment training to its students. *Boyd County High School Gay Straight Alliance v. Board of Education*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).



DRESS CODES

Can the school require students to follow a dress code? Can the school prevent students from wearing T-shirts because they object to the pictures or slogans on them?

Quick Answer: Yes, and maybe. It depends on the dress code’s purpose, the school’s consistency in applying the code, and the nature of the message.

Details: The Sixth Circuit Court of Appeals upheld a generic dress code that prohibited, among other things, jeans, flip-flop sandals, hats, chain wallets, visible body piercings other than in the ears, and “unnaturally colored hair,” such as green, blue, red, purple, or orange. *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381 (6th Cir. 2005). So, school districts can adopt a generic dress code, although they must make exceptions for religious dress.

Choice of clothing falls under conduct that may be protected speech if the student intends to convey a message, and, under the circumstances, the message is likely to be understood, just as an arm band can symbolize a viewpoint.

The Sixth Circuit Court of Appeals upheld the right of a student to wear a T-shirt bearing a Confederate flag. The Court held that there was no way a student’s personal choice of attire could be construed as “school-sponsored”, so the speech could only be restricted if it was disruptive. *Castorina v. Madison County Sch. Bd.*, 246 F.3d 536 (6th Cir. 2001). Your school cannot say it is okay for someone to wear a Confederate flag T-shirt, but ban other students for wearing a Malcolm X T-shirt. This would constitute viewpoint discrimination and would likely be prohibited by the courts. However, the Sixth Circuit also said that a school could ban Marilyn Manson T-shirts because the message was vulgar, offensive, and “contrary to the educational mission of the school.” *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465 (6th Cir. 2000). The Court found that the school’s actions in prohibiting the Marilyn Manson T-shirts were “because this particular rock group promotes disruptive and demoralizing values which are inconsistent with and counter-productive to education.”

I'm a guy with long hair and the teachers at my school don't like it. Can the school regulate a student's hair length?

Quick Answer: In Kentucky, probably.

Details: Although plenty of "long hair" school cases have been brought to court, no precise constitutional rule has emerged. The Sixth Circuit Court of Appeals upheld hair length restrictions in a couple of cases. Generally, the federal courts allow states to address issues of school dress restrictions, such as hair length, at a local or state level.

For example: One Kentucky court decision allowed a regulation to stand that regulated the length of male students' hair and prohibited female students from wearing jeans. *Dunkerson v. Russell*, 502 S.W.2d 64 (Ky. App. 1973). The court found that these regulations "raise no issue of constitutional dimensions." There are circumstances where a person's hair length could be considered speech, or expressive conduct, but remember the test, discussed above, for determining if what you are doing is considered protected speech.

Can the school adopt a mandatory school uniform policy without exceptions for freedom of expression and religion?

Quick Answer: No.

Details: Schools that mandate uniforms must make exceptions for attire worn on the basis of sincerely held religious beliefs. The school cannot question any student's claim for a religious exemption and cannot ask the student to prove the correctness of the religious belief or affiliation.

A uniform policy may prohibit expression through clothing, so long as the regulations are viewpoint neutral. This means the regulation cannot allow one viewpoint to be expressed while prohibiting another. For example, a school could not allow students to wear armbands in support of the Iraq war but discipline

students who wear armbands against the war, even though the school may be able to ban armbands altogether. The policy must not discriminate against one viewpoint either in the language of the policy itself, or in the way the policy is implemented. No matter what, the restriction the school sets must leave open alternative means of expression.

Can I go to school or to a school event such as the prom dressed like the opposite sex?

Answer: Kentucky courts have not ruled on this issue yet. A federal court in Ohio held that school officials did not violate high school students' First Amendment rights by prohibiting students from attending prom dressed in clothing of the opposite sex because the school's dress regulations were reasonably related to the educational purposes of teaching community values and maintaining school discipline. However, the Ohio case was decided in 1987. A federal court in Mississippi more recently (2010) ruled that the school district's decision to not allow an openly gay high school senior come to prom dressed in a tuxedo, and bring her girlfriend as her date, violated the student's First Amendment right of expression.

Side Note: Although the ruling in Mississippi is more recent, federal courts in Kentucky may view the Ohio decision more favorably because federal courts in Ohio and Kentucky are both part of the Sixth Circuit Court of Appeals.

BOOKS AND WEBSITES

Some of the parents on our PTA want to take *Catcher in the Rye* out of our library. Can the school censor what is in the school library?

Quick Answer: While a school can control what books come into its library, there are limits on removing books already there.

Details: A school can decide what books to house in its library. However, the Supreme Court placed limits on a school's ability to *remove* books from its library. The Supreme Court stated that the right to receive information and ideas is inherently corollary to the rights of free speech and expression. The ability of a school board to remove books from its libraries is restricted by its students' First Amendment rights of freedom of speech and expression.

School boards may not remove books from school libraries simply because they disprove of the ideas in those books. And they may not remove books to further particular political, national, or religious views, or to further what the school believes are correct matters of opinion.

Does the school have a right to block or censor certain websites? Can schools discipline students who access blocked websites?

Quick Answer: Probably and, if so, yes.

Details: Schools can probably put filters on all school computers without violating students' First Amendment rights. Certain Internet filtering programs have been held valid on university campuses and in government workplaces. However, courts are beginning to follow the model prescribed for the removal of books from school libraries. If this continues, a school may not prohibit information obtained from the Internet simply based on the school's disapproval of the viewpoint the website

communicates. A federal court outside of Kentucky stated that both the student and publisher of websites have standing to bring action regarding school policies that filter out content to students. In that particular case, publishers of a website that provided supportive resources for LGBT youths, and a student, brought an action against the school for Internet filtering software that prohibited the student from accessing the website. The court stated that the school could not use Internet filtering software which systematically blocked websites that portrayed a positive message about LGBT rights, while allowing websites which expressed a negative viewpoint, without violating the publisher's and student's First Amendment rights.

However: If a school policy *properly* prohibits students from accessing blocked sites, then students who violate the policy could be disciplined.

Some students at my school have created their own websites. Does the school have the right to discipline a student for the student's own off-campus conduct or website?

Quick Answer: Perhaps, depending on the content of the website.

The general rule appears to be that off-campus conduct by students is subject to discipline if it is materially disruptive to the school environment. KRS § 525.080 prohibits students from communicating harassing messages to or about another student, anonymously or otherwise, over the Internet in a manner where ". . . a reasonable person under the circumstances should know would cause the other student to suffer fear of physical harm, intimidation, humiliation, or embarrassment and which serves no purpose of legitimate communication."

Details: Neither the United States Supreme Court or the Sixth Circuit Court of Appeals has ruled on the issue of whether schools may regulate off-campus online speech by students. However, other Circuit Courts have, and the rule that seems to be developing is: student expressions that take place off-campus may be regulated without violating the student's First Amendment rights if school officials reasonably conclude that it will materially and substantially disrupt the work and discipline of the school or if such expression involves a substantial disorder or invasion in the rights of others. Further, courts seem to consider factors such as whether school computers are used to create or access the site and whether or not the publisher of the site coerces other students to view or become involved with it.

Examples of cases in other Circuits:

1) The Fourth Circuit Court held that school officials did not violate a student's First Amendment rights when she was suspended after creating and posting a webpage directed at sexually humiliating and shaming another student even though her conduct occurred off-campus on her personal computer. *Kowalski v. Berkeley County Schools*, 652 F.3d 565 (4th Cir. 2011).

2) The Eighth Circuit reviewed a case where two student siblings created a website to vent about school activities. One of the boys used a school computer to upload the files necessary to create the site. Soon after the website was created, the two brothers began posting racist comments and sexually explicit, degrading statements about their classmates. The court stated that the posts were directed at the school and therefore could reasonably be expected to reach the school or impact the school environment. *S.J.W. ex rel. Wilson v. Lee's Summit R-7 School District*, 696 F.3d 771 (8th Cir. 2012).

3) The Ninth Circuit ruled on a case where a high school student sent a series of increasingly violent and threatening messages from his home via his Myspace page. In the posts he bragged about weapons in his possession and threatened to shoot people at school on a specific date. The court held that the threat of a school shooting qualified as speech that might reasonably lead school officials to foresee a

substantial disruption or material interference with school activities, and therefore the school had a right to regulate such speech. *Wynar v. Douglas County School District*, 728 F.3d 1062 (9th Cir. 2013).

4) In a Pennsylvania case, the court upheld the permanent expulsion of an 8th grade student who created a website at his home entitled "Teacher Sux" showing the severed head of one teacher dripping with blood and another teacher morphing into Hitler; the court found that the website created disorder and significantly and adversely impacted the delivery of instruction. *J.S. v. Bethlehem Area Sch. Dist.*, 569 Pa. 638 (Pa. 2002).

The bottom line is: Before you add something to your website, ask yourself if it is likely to get back to school (it is!) and cause a true disruption to classes or to the rights of others.

Summary of Supreme Court Holdings:

Schools may censor student expression if it "materially disrupts class work or involves substantial disorder or invasion of the rights of others."

Schools may exercise editorial control over the style and content of student speech in school-sponsored activities [e.g. assemblies, newspapers] as long as their actions are reasonably related to legitimate educational concerns.

Schools may "prohibit the use of vulgar and offensive terms..." and the determination of what manner of speech is inappropriate properly rests with the school board.

Schools may not target speech for the particular views taken by a speaker on a subject if the subject matter itself is deemed appropriate.

FREEDOM OF RELIGION

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

**— U.S. Constitution,
First Amendment**

As a student, your rights to choose your religion and practice it receive a high level of protection. Along with the freedom of expression, the freedom of religion, i.e. whether and what to believe, is fundamental in the United States. The government may not try to make you believe in a religious point of view.

And generally, the government cannot forbid you from expressing a religious point of view.

Schools are held to an even higher standard than other government bodies when it comes to freedom of religion – the risk to students from even small acts of school-sponsored religious expression (like graduation prayers) is great, due to students’ age and mandatory school attendance.

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What Does Freedom of Religion Mean?

There are TWO parts of freedom of religion that you will find in the First Amendment of the U.S. Constitution: the free exercise clause and the establishment clause. Both clauses have tremendous impact on the personal freedom of religious practice.

- 1) The government, including your public school, cannot promote or establish one religion over another – this is called the “establishment clause”; and
- 2) The government can’t stop you from exercising your right to practice your religion – this is called the “free exercise clause”.

The bottom line is that students and school employees maintain their individual religious freedom during school hours, as long as the exercise of their beliefs does not interfere with the normal functioning of the school or the rights of others.

TEACHING RELIGION

In our world history class, our teacher is covering a lot of material about Christianity. Can public schools teach classes about religion?

Quick Answer: Yes, but there is a difference between teaching about religion, and endorsing or promoting religion.

Details: Schools are allowed to teach students about religion. Religious texts (such as the Bible or the Quran) may be used to study history, civilization, ethics, comparative religion, literature, or other similar kinds of classes. These classes are constitutional so long as they do not promote or favor one religion over another, or promote religious thought in general.

Teaching Religion in Kentucky Schools: In 2017, Kentucky passed a law that requires the Kentucky Board of Education to promulgate administrative regulations establishing an elective social studies course on Hebrew Scriptures, Old Testament of the Bible, the New Testament of the Bible, or a combination of Hebrew Scriptures and the New Testament of the Bible – this is known as the “Bible Literacy” law. The law requires that the course provide students with knowledge of biblical content, characters, poetry, and narratives that is helpful in understanding contemporary society and culture. The law allows teachers to teach students about religion using the Bible or other scripture for the secular study of the history of religion, the comparison of religions, the Bible as literature, the role of religion in the history of the United States, or other countries, and the influence religion has on art, music, literature, and social students.

Note: In order for a Bible Literacy class to be constitutional, it must be secular, objective, nondevotional, and it must not promote any specific religious view. The Bible cannot be taught as truth, or from a religious perspective, and a course that addresses the Bible must not disparage other faiths. The constitutionality of these classes will largely depend on what

happens in each individual classroom. If you believe a Bible Literacy class at your school is not objective or nondevotional – if it seems more like a Bible study than an academic approach to the Bible – contact the ACLU of Kentucky at (502) 581-1181 or info@aclu-ky.org.

Our biology teacher says God created the heavens and the Earth in seven days. Are teachers allowed to teach creationism in public schools?

Quick Answer: It depends. Generally, the Supreme Court will allow creationism to be taught only if the action or statute providing for the course has a secular (non-religious) purpose. In *Edwards v. Aguillard*, 482 U.S. 578 (1987), the Supreme Court struck down the Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act. The Court noted that the Act served “. . . no identifiable secular purpose,” and the “Act has as its primary purpose the promotion of a particular religious belief and is thus unconstitutional.”

Details: In theory, schools may teach biblical creationism in a neutral manner alongside other religious theories of origin in classes that cover several religions. However, federal courts have consistently struck down laws requiring teaching creationism in schools, even when those laws require creationism to be taught alongside evolution.

Some schools have attempted to teach “intelligent design” instead. “Intelligent design” is a theory claiming that the existence of life and the natural state of things are too complex to have happened naturally; therefore, some outside “intelligent” influence must have contributed to life and the development of the universe.

Although no Kentucky court has reviewed the issue, a federal court in Pennsylvania held that teaching “intelligent design” is

unconstitutional. The Pennsylvania school district's policy required that information about "intelligent design" be read to students along with a statement about the gaps in Darwin's Theory of Evolution. The court found the school district's policy violated the establishment clause, and found that the religious nature of "intelligent design" would be readily apparent to an objective observer. *Kitzmiller v. Dover Area Sch. Dist.*, 400 F.Supp. 2d 707 (M.D.Pa. 2005).

If your school teaches "intelligent design" you should talk to your parents or contact the ACLU of Kentucky.

The school board in my town won't allow evolution to be taught in our school because they say they listen to a higher authority than the Supreme Court. My parents don't think they can do that. Can they?

Quick Answer: No. Schools cannot adopt a policy that forbids the schools from including evolution in the curriculum.

Details: The ACLU brought national attention to the issue of teaching evolution in schools during the mid-1920s in a case known as the Scopes Monkey Trial. Although schools, students, and teachers did not immediately receive protection to teach evolution, the case brought the debate to the American people.

After decades of national debate, the Supreme Court ruled that states could not prohibit public schools from teaching evolution. *Epperson v. Arkansas*, 393 U.S. 97 (1968). This ruling applies to local school board decisions, because school boards are government agencies.

If your school or teacher refuses to teach evolution, you should talk to your parents or contact the ACLU of Kentucky.

RELIGIOUS SYMBOLS OR ATTIRE

Are students allowed to wear religious attire to school? What about where schools have dress codes or uniforms?

Quick Answer: Yes. Students may wear religious attire or symbols to school.

Details: Students are allowed to wear religious attire or symbols, such as a cross or a Star of David, to school. Schools may not discriminate against students who wear religious clothes or head coverings to school. Where schools have enacted dress codes or uniform policies, students may wear attire prescribed by sincerely held religious beliefs. A federal court in Texas found a school's prohibition on wearing rosaries as necklaces violated the students' First Amendment right of religious expression. That court also prohibited the school from requiring students to wear the rosaries under their shirts, out of sight. *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F.Supp. 659 (S.D.Tex. 1997).

Further, schools are not allowed to question the genuineness of the student's belief. In another Texas case, the court ruled that a student, who held a sincere religious belief that placed religious significance on having long hair, was entitled to wear his hair long, even though the dress code prohibited it. However, the court also allowed the school to require the student annually reapply for a religious exemption to the dress code. Just as students could not be forced to wear their rosaries under their shirts, the court found the school could not require the student wear his hair woven in a tightly wound braid and stuff his hair down the back of his shirt. *A.A. v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010).

My chemistry teacher wears a crucifix necklace every day to class. Are teachers allowed to wear religious icons like that?

Quick Answer: Yes, teachers may wear religious symbols or attire to school.

Details: Just like students, teachers do not shed their constitutional rights of freedom of speech or expression at the schoolhouse gate. For example, Roman Catholic nuns wearing religious habits and headdress may teach in public schools. Generally, teachers have the right to wear religious attire, but they cannot use this right to impose religious views on students or influence students to adopt their religious beliefs. A federal district court in Kentucky held that a public library employee's termination because of her refusal to remove a cross pendant violated the employee's free speech and free exercise rights. *Draper v. Logan County Pub. Library*, 403 F.Supp.2d 608 (W.D.Ky. 2003).

SCHOOL PRAYER

My little sister's 4th grade teacher leads a prayer every morning before they start class. Can school officials lead prayer in the morning? What about at sporting events or at a special event like graduation?

Quick Answer: No. School-led prayer at any public school function is unconstitutional.

Details: No one acting as a representative of the school (for example, teachers, coaches, administrators, selected students or clergy) can lead a prayer in school or at any school-sponsored event such as graduation or football games. The Supreme Court ruled that a law requiring Bible reading and the recitation of the Lord's Prayer violated the establishment clause *even if* students were permitted to leave the room during the recitation. The Supreme Court stated that ". . . the constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government." *Engel v. Vitale*, 370 U.S. 421 (1962). The Supreme Court has also held that clergy cannot lead non-denominational prayers, nor can there be student-led, or student-initiated prayers at school or school events.

What about just a mandatory moment of silence? Can schools have those?

Quick Answer: Yes, but it depends on the purpose. It is okay for a school to ask students to engage in a moment of silence so as long as:

- 1) The purpose is clearly non-religious;
- 2) There is no suggestion that religious thought or reflection is preferred; and
- 3) Students are left to meditate, reflect or pray silently as they see fit.

Details: The Supreme Court has indicated that a moment of silent reflection is likely acceptable as long as its purpose is clearly non-religious, and as long as the teacher does not use the time to lead the class in group prayer. *See e.g. Brown v. Gilmore*, 533 U.S. 1301 (2001).

Kentucky law allows teachers at the beginning of the first class of each day to announce a moment of silence that lasts no more than one minute. KRS § 158.175.

Can a student practice his or her own religion at school? Are students allowed to interrupt the school day for religious reasons, such as praying?

Quick Answer: Yes, students can practice their religion at school, but they may not disrupt class or school activities, nor may they infringe on the rights of others.

Details: Kentucky law says that a student may "[p]ray or engage in religious activities in a public school, vocally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, speak on, or engage in nonreligious matters alone or with other students in the public school." KRS § 158.183. This means you can pray in school as long as you are not disruptive. Religious expression by a student is personal speech protected by both the First Amendment's freedom of speech clause, and the free exercise clause, so long as it neither disrupts school activities nor infringes on the rights of others.

RELIGIOUS GROUPS AT SCHOOL

Can I attend bible study at school? What involvement can teachers have?

Quick Answer: Not during school hours, but when certain conditions are met, students may meet on school property for religious discussion during non-instructional time.

Details: Student-organized religious groups are permitted as long as three conditions are met:

- 1) The activity must take place during non-school hours;
- 2) School officials can't be involved in organizing or running the club (a faculty member may sponsor the club); and
- 3) The school must make its facilities available to all student groups on an equal basis.

Some school systems permit students to leave school to participate in religious activities, including Bible study, during school hours. These are known as “release time programs” and are allowed under the Constitution as long as (1) the remaining students are not deprived of instructional time, (2) the departing students are subject to the same absentee policy concerning make-up work as students who are permitted to leave for non-religious activity, and (3) the school doesn't endorse or encourage participation. The U.S. Constitution and Kentucky law protect a student's right to pray and even preach in school as long as they are not disruptive and do not infringe on the rights of others.

In 1978, the Kentucky General Assembly passed a statute requiring public schools post the Ten Commandments in every classroom. The American Civil Liberties Union of Kentucky filed suit on behalf of students and parents who objected to the posting. The United States Supreme Court found that the statute was religious in nature and struck it down as a violation of the First Amendment's establishment clause. *Stone v. Graham*, 449.U.S. 39 (1980).



TEN COMMANDMENTS

Can schools post the Ten Commandments?

Quick Answer: Only if the purpose of posting the Ten Commandments is completely non-religious. However, the Supreme Court has expressed skepticism about whether this is even possible.

Details: There are very strict circumstances where the displaying of the Ten Commandments is allowed – for example, a history class studying ancient law might display the Ten Commandments alongside other ancient forms of written law such as the Code of Hammurabi or the Draconian Constitution – but generally schools are not permitted to display it.

HOLIDAYS

What if a religious holiday that my family celebrates falls on a school day? Is that considered an excused absence?

Quick Answer: Yes, personal religious holidays are considered excused absences and students are not penalized for absences due to religious demands.

Details: Under Kentucky law, students have the right to be absent, in accordance with their school's attendance policy, from a public school day to observe religious holidays and participate in other religious practices.

However: Students may be required to comply with general school rules on absence notification, along with making up missed work, and refrain from excessive absences. Students should check with their local school board to find out their local absentee policy. Students who assert religious grounds for absences should not be questioned about the sincerity of their religious beliefs or compelled to prove their religious affiliation.

FREEDOM FROM DISCRIMINATION

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

**— U.S. Constitution,
Fourteenth Amendment**

Details: Your right not to be discriminated against is rooted in the idea of basic fairness to all people. The origin of this right is found in the Fourteenth Amendment to the U.S. Constitution, within the equal protection clause.

What does “Equal Protection” mean for students?

Answer: Students are entitled to be treated and judged on the basis of individual worth and not on the basis of their race, gender, religion, national origin or family’s income or social status. In addition, federal, state, and local laws prohibit discrimination on the basis of your ethnicity, disability, or pregnancy. Equal protection of the laws applies to **ALL** people in the United States – not just to U.S. citizens.

The Fourteenth Amendment guarantees that each person is entitled to “equal protection of the law.” That means that you are protected from discrimination on the basis of:

- Age**
- Disability**
- Socioeconomic Status**
- Genetic Information**
- National Origin**
- Pregnancy**
- Race/Color**
- Ethnicity**
- Religion**
- Gender**
- Race**



Does the school’s discrimination against me need to be intentional to be unconstitutional?

Quick Answer: No.

Details: Anti-discrimination laws prohibit policies that discriminate on their face as well as policies that appear fair on their face, but discriminate against a group of people in practice.

This means that even when a school’s actions do not intend to discriminate against a certain group of people, the school’s actions can still be against the law. For example, if your school requires attendance at a Saturday event in order to graduate, there may not be intentional discrimination against people who practice their religion on Saturdays, but the policy may still be discriminatory because it has the effect of discriminating against a group based on religion.

RACE DISCRIMINATION

My friends and I were just bicycling in a mostly white neighborhood and got stopped by the police. There were lots of other kids around, but we were the only ones who were African American. Can the police do that?

Quick Answer: It depends on the officer’s reason for stopping you. However, officers cannot stop you solely based on your race or color.

Details: The Kentucky Supreme Court held “the test for a *Terry* stop and frisk is not whether an officer can conclude that an individual is engaging in criminal activity, but rather whether the officer can articulate reasonable facts to suspect that criminal activity may be afoot and that the suspect may be armed and dangerous.” *Com. v. Banks*, 68 S.W.3d 347 (Ky. 2001). The Court also noted that the totality of the circumstances must

be evaluated to determine the probability of criminal activity. *Terry* stop procedures give officers the authority to stop and briefly detain someone if they have a reasonable suspicion that the person is involved in criminal activity. This also allows officers to do a limited search of the person’s outer clothing for weapons if the officer can articulate a reasonable suspicion that the person may be armed and dangerous.

However: Officers must be able to articulate their reasonable suspicion for stopping someone, and cannot rely solely on the person’s race or ethnicity. Racial profiling is any police practice in which a person is treated as a suspect because of his or her race, ethnicity, nationality or religion. This occurs when police investigate, stop, frisk, search or use force against a person based on such characteristics instead of evidence leading to a suspicion the person is engaged in criminal activity.

Kentucky: Kentucky enacted a statute that directly forbids any state law enforcement agency or official from stopping, detaining, or searching any person when such action is solely motivated by consideration of race, color, or ethnicity. Such action is considered a violation of the person’s civil rights under the statute. The Kentucky law also requires local law enforcement agencies that participate in the Kentucky Law Enforcement Foundation Program fund to implement a policy banning the practice of racial profiling. KRS § 15A.195.

Can a magnet school have racial quotas for admission if the quotas exist to ensure desegregation?

Quick Answer: Racial quotas, or policies that in form or in function set aside a certain number a positions for students of a certain race, are considered unconstitutional.

Details: Most of the Supreme Court’s focus regarding racial quotas has been on higher education, such as public universities, where the Court allows race to be considered along with other factors to promote diversity in education. For the Court to consider a program valid, it must allow consideration of other factors along with race, such as family background, religion, disability, that will

In Brown v. Board of Education of Topeka, a group of African American students challenged the right of public schools to keep them from attending all white schools. The U.S. Supreme Court held that requiring African American students and white students to attend separate schools violates the equal protection clause of the Fourteenth Amendment thus requiring schools to integrate.

— *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).



create a diverse educational environment for students. Race cannot be used as a determinative factor, nor can the bonus toward admissions someone receives be so great that the other factors have little or no impact. In 2016, the Supreme Court held that universities must continue to scrutinize the fairness of their admission policies, assess whether changing demographics still support the need for a race conscious policy, and identify the effects of the affirmative action measures the school deems necessary. *Fisher v. Univ. of Tex.*, 136 S.Ct. 2198 (2016).

However: It is unclear if courts will allow the types of policies used at universities to be applied to elementary and secondary schools. The Supreme Court has noted the unique context of higher education and expressed skepticism that modern day elementary and secondary schools need to use racial classifications to achieve diversity.

GENDER DISCRIMINATION

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Title IX: Title IX of the Education Amendments of 1972 requires that both male and female students receive equal opportunities in academics, extracurricular activities, athletics, and other programs. All public school districts are covered by Title IX because they receive some federal funding and operate education programs. Title IX also applies to the actions of a school regardless of where the action occurs, including those that take place off school grounds.

Schools: Each school is required to designate at least one employee to coordinate their efforts to comply with and carry out the school's responsibilities of Title IX. Your school is also required to publish the Title IX coordinator's contact information in your school's notice of nondiscrimination.

The boys' basketball team at our school gets much better practice times and has newer uniforms than the girls' team. Is that discrimination?

Quick Answer: Yes. As described above, Title IX prohibits gender discrimination in all aspects of public schools, including athletics.

Details: Schools that sponsor athletic programs are required to provide equal opportunity for both male and female students in meeting their interest in sports, as well as in specific areas such as equipment, supplies and recruitment. Title IX applies to all grade levels, all school employees, curriculum, instructional practices, facilities, funding allocations, athletics and other extra-curricular activities.

In considering whether a school provides equal opportunities to both male and female athletes, you must consider whether the school is:

- 1) Accommodating the athletic interest and abilities of both female and male students effectively;
- 2) Providing equal benefits to both male and female players;
- 3) Providing comparable opportunities to both female and male players;
- 4) Treating male and female sports programs comparably;
- 5) Providing the equipment and supplies each program requires;
- 6) Providing comparable game and practices times to both female and male teams;
- 7) Coaching and tutoring both male and female athletes; and
- 8) Providing comparable facilities to both male and female teams for practice and competition.

These are but a few factors considered in determining whether female and male sports programs are provided equal opportunities. For more information, please contact the ACLU of Kentucky or visit: <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html>.

DISCRIMINATION BASED ON NATIONAL ORIGIN

Do undocumented immigrants have the same educational rights as citizens?

Quick Answer: Undocumented immigrant students have the same right to public education as citizens.

Details: Children of undocumented immigrants are entitled to a free public education because the Fourteenth Amendment provides for “equal protection” to all “persons,” not only American citizens. The Supreme Court said that children come into the country through no fault of their own and there is no national policy enumerated by Congress allowing the states to deny these children access to basic education. The Court has also stated that denying children access to basic education denies them the “. . . ability to live within the structure of our civic institutions, and foreclose[s] any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Plyler v. Doe*, 457 U.S. 202 (1982).

Side Note: Legal guidance sent by the Departments of Justice and Education under President Obama’s administration directed that schools may not require proof of citizenship or block students from enrolling in school if their parents could not prove legal residency. President Trump takes a different stance on immigration, but cannot change the Supreme Court’s previous decision that the non-U.S. citizens may not be denied access to basic education based on their immigration status.

Do students who do not speak English have a right to an interpreter or translator?

Quick Answer: No.

Details: However, the obligation to not discriminate based on race, color, or national

origin requires public schools take affirmative action to ensure that limited English proficient (LEP) students, also known as English Learner (EL) students, or English Language Learners (ELLs), can meaningfully participate in educational programs. Schools are also required to communicate information to LEP parents in a language they can understand. As a result, many schools offer English as a Second Language (ESL) programs which provide instructional, social, and personal support for children whose first language is not English. The program utilizes the student's home language while introducing, maintaining, and developing necessary skills in the English language.

DISCRIMINATION BASED ON DISABILITY

Do students with learning disabilities have a right to education?

Quick Answer: Yes, absolutely.

Details: Federal and state law require school districts provide all students with disabilities, whether physical, learning, or emotional, a free and appropriate public education. Students with disabilities are entitled to a free assessment. Students with disabilities are entitled to attend school in the least restrictive setting that will allow them to get an education. This means that schools must first try to educate students with disabilities in regular classrooms. Only if that doesn't work should schools move them to special classrooms, and only if *that* doesn't work move them to special schools. Students with disabilities are also entitled to a learning plan known as an Individual Education Plan that takes into account their strengths, weaknesses, and areas of need in determining education goals. When a student's disability causes misbehavior, there are limits on discipline that can be imposed on that student.

Who is Protected: The Americans with Disabilities Act was amended in 2008, and makes clear that ADA retains the definition of disability that is found in Section 504 of the Rehabilitation Act of 1973. The amended ADA also emphasizes that the definition of "disability" should be interpreted broadly. To be protected under Section 504 and the ADA, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

Types of Protection: School districts are required to provide each student with a disability with aids and services necessary to ensure the student is receiving a free and appropriate public education. Students, and others with disabilities, including parents, must not be denied access to program or activities because of inaccessible facilities.

HARASSMENT

What is harassment?

Answer: Harassment can be a type of discrimination based on a protected class (such as race or gender) under the Fourteenth Amendment, or it can be behavior such as bullying, especially when the bullying is severe enough that it impacts the student's ability to learn. While bullying generally does not trigger protection under the Fourteenth Amendment, if someone is the target of bullying based on their race, religion, gender, national origin, or other protected status, such actions may be unconstitutional discrimination.

Even if the harassment is not based on the student's protected class status, the school is still responsible for protecting you from harassment such as bullying or threats, even if these take place outside of school, such as bullying through social media by other students.

Harassment includes behaviors such as:

- Name calling by students or teachers;
- Physical violence directed at a student;
- Unwanted sexual contact;
- An atmosphere that is so intimidating or threatening that it interferes with a student's ability to study and learn; or
- Being refused participation in school sponsored events, clubs or classes, including the prom or dances, because of sexual orientation, race, religious belief, gender, disability, or any other reason that is not disciplinary.

Does my school have an obligation to protect me from harassment?

Quick Answer: Yes, while at school, students are under the care of the school, and the school can be liable for negligently allowing a student to be injured.

Details: Most schools have harassment policies that describe how to report harassment, how it will be investigated, and how students who engage in harassment will be disciplined. Kentucky passed an anti-bullying statute that includes model behavior and student discipline guidelines. The statute requires each local school board to formulate a code of acceptable behavior and discipline applicable to students. The code must prohibit bullying, and must include procedures for identifying, documenting, and reporting incidents of bullying, as well as procedures for investigating complaints of bullying. KRS § 158.148.

The General Assembly recognizes October as the Anti-Bullying Month in the Commonwealth. Support can be shown by displaying purple and yellow ribbon. Purple is a reminder of domestic violence and the yellow is in memory of those who have taken their own lives as a result of bullying. KRS § 2.227.

There's a group of students at our school that always picks on my friend. These guys say they're going to take him outside and beat him because he's gay. Is this harassment?

Quick Answer: Yes. This is harassment and the school should protect your friend.

Details: Title IX protects students from discrimination based on gender identity or failure to conform to stereotypical notions of sex.

Note: Under President Obama's administration, the Office of Civil Rights stated that the sexual orientation or gender identity of the parties does not change a school's obligation to protect students from discrimination, clarifying that anti-gay harassment is a form of sexual violence and schools have an obligation under Title IX to investigate and remedy this type of harassment. President Trump's administration rescinded this guidance shortly after he took office, citing a need to more fully understand the legal issues involved.

I am stopped in the cafeteria almost every day and told by several students that I'd better watch my step if I know what's good for me. What should I do if I think I am being harassed?

Answer: All harassment should be reported, regardless of how minor. The following guidelines should help.

- 1) Keep a copy of the school handbook and know the policy about harassment.
- 2) Immediately write down everything about all incidents that occur, including who, what, when, where, how & who witnessed the occurrence.
- 3) Immediately give a written account of the incident to the principal and keep records of your conversations, including the names of those with whom you spoke, the dates and time you spoke to them, and their response to your complaint.

- 4) Keep copies of all your written accounts for your own records.
- 5) Talk to a parent, guardian, teacher or other adult you trust.

SEXUAL HARASSMENT

A school must respond promptly and effectively address sexual harassment. If the school knows or reasonably should know about sexual harassment that is causing a hostile environment, the school must take immediate action to eliminate the sexual harassment and address its effects.

The response by the school must be clearly reasonable in light of the circumstances and must not be minimal. In addition, the harassment must be severe enough that it “could be said to deprive the victim of access to educational opportunities provided by the school.” The school has a duty to investigate situations of sexual harassment even when the student or their parents do not want to file a complaint or do not request that the school take any action on the student’s behalf.

If a male teacher touches the shoulders of his female students to encourage them, is this sexual harassment?

Quick Answer: Possibly; it depends on the interaction and the history of the student and teacher. There can be a fine line between encouragement and unwanted sexual contact.

Details: Sexual harassment is an unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, request for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature. Sexual harassment can occur through unwanted touching of one student by another student or through the actions of a school official or teacher. It can also mean requests for sexual favors by teachers or school staff in exchange for some sort of benefit. An example would be a team coach who places a player in the starting lineup in exchange for a kiss.

Sexual harassment can also mean behavior that creates a hostile environment such that the victim is deprived of his or her opportunity to get an education. An example would be a teacher who makes repeated inappropriate sexual comments in class.

STUDENT PRIVACY RIGHTS & SCHOOL SECURITY

“The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated. . .”

— U.S. Constitution, Fourth Amendment

Unique School Environment: Due to the unique environment of schools, students receive less protection against unwarranted searches than they would outside of the school. School officials need only have a reasonable suspicion that a student has committed a violation of school rules in order to search the student’s locker, bags, and anything in the student’s possession. Reasonable suspicion is a lower level of legal proof than probable cause, which is generally required for most searches outside of a school environment.

SEARCHES BY SCHOOL OFFICIALS

Can a school official search my locker?

Quick Answer: Yes. The school’s responsibility to keep all students safe generally trumps your right to privacy at school.

Details: The Kentucky Supreme Court has said that a search by a teacher or an administrator is justified at the outset when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating the law or the rules of the school. Searches then are permissible when the measures adopted are reasonable related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction. This means: the greater the infraction the school reasonably suspects a student of committing, the greater the scope of a search that will be allowed.

Side Note: Remember not to consent if you do not want your possessions searched. However, even if you consent, if the school has reasonable suspicion to justify the search then school personnel will be able to search your effects anyhow. You may be waiving your right to object to the unreasonableness of the search later if you consent to allowing them to search your possessions. You should never physically resist a search, even if you withhold consent and you believe the search is illegal.

What about my backpack? That's my property. Can the school search that, too?

Quick Answer: Yes, if school officials have a reasonable suspicion that you have something in your backpack that is in violation of school rules or related to a crime.

Details: School officials have a lot of leeway in searching students. For example, school officials would generally be allowed to search a student's purse for cigarettes or marijuana without a warrant if they had reasonable suspicion that the student had been involved in smoking one of the substances and reasonably believed the contraband to be in the student's purse. However, suspecting *one* person in the school of smoking marijuana generally would not grant the school permission to search *all* students' bags or pockets.

Can teachers perform strip searches on students?

Quick Answer: Perhaps, but under very limited circumstances.

Details: Students have the right to refuse to consent to a strip search of their person, though with proper justification, the school may still perform a strip search. Strip searches require distinct elements of justification on the part of school authorities beyond what is required for searches of personal belongings and outer clothing. The United States Supreme Court addressed the issue of student strip searches by school officials in *Safford Unified School District No. 1 v. Redding*, 557 U.S. 364 (2009). In *Redding*, the Court noted that the

strip search of a student will be reasonable if the search, as actually conducted, is reasonably related in scope to the circumstances which justified the interference in the first place. The scope of the search will be permissible when it is not excessively intrusive given the age of the student, the sex of the student, and the nature of the infraction. Whatever the totality of circumstances, the content of the suspicion must match the degree of intrusions. Strip searches of young students are considered highly intrusive, so the level of the infraction necessary to justify the strip search of a student must also be high.

What constitutes a strip search: The Court considered what happened in the *Redding* case to be a strip search, because the student was required to remove her outer clothing and pull her bra and underwear out, whereby her breast and pelvic area were exposed to some degree. The Court also noted that it is not important whether school officials actually saw portions of the student's body, but the indignity and intrusion of the search itself "implicate[s] the rule of reasonableness."

My cousin runs track and his school made him take a drug test. Can schools do that?

Quick Answer: Schools may require random suspicionless urinalysis testing of students involved in extracurricular activities, including athletics.

Details: The Supreme Court has found that schools hold the authority to require all students who participate in athletics and competitive extracurricular activities to submit to drug testing. *See e.g., Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 464 (1995). The Court said that school districts have an important interest in preventing and deterring drug use among schoolchildren. In making this decision, the Court considered the nature of the privacy interest that could be compromised by the drug testing policy, the character of the intrusion imposed by the drug testing policy, and the nature and immediacy of the government's concerns and the efficacy of the policy in meeting those concerns.

THE REDDING CASE:

Facts: Savana Redding a 13-year old girl was escorted from her middle school classroom to the assistant principal's office, whereby the assistant principal showed Savana a planner containing knives and other contraband. Savana admitted owning the planner but stated that she had lent the planner to a friend and was not aware of the contraband. The assistant principal then produced four prescription strength and one over-the-counter strength pain reliever pills. All of these pills are banned from school under the school rules without advanced permission. Savana denied knowledge of the pills, but was confronted by the assistant principal about reports he received that she had given the pills to other students. Savana denied knowledge of the action and agreed to let the assistant principal search her belongings. Upon finding nothing, Savana was escorted to the nurse's office, where an administrative assistant and a school nurse had Savana remove her outer clothing and told her to pull her bra out and shake it, along with requiring her to pull the elastic on her underwear out. The school officials' search led to Savana's breast and pelvic area being exposed to some degree. No pills were found.

Court:

The Supreme Court reviewed the case and stated that:

- Under the reasonableness suspicion standard, a school search "will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." The required knowledge component of reasonable suspicion for a school official to conduct a search is that the knowledge raises a moderate chance of finding evidence of wrongdoing.
- The Court said the assistant principal had a sufficient suspicion to justify searching Savana Redding's backpack and outer clothing because a week earlier, he was notified by students that someone was bringing weapons and drugs to school. Further evidence was obtained when a chain of confessions from students led to Savana Redding initially giving the pill to another student. The search of her bag and outer clothing were reasonable under the circumstances because the search was conducted in her presence and in the relative privacy of the assistant principal's office.
- However, the Court said that since the suspected circumstances pointing to Savana Redding did not indicate that the drugs presented a danger to students or that they were concealed in her underwear, the assistant principal did not have sufficient suspicion to justify extending the search to the point of conducting a strip search on Savana Redding. For the strip search, the content of suspicion failed to match the degree of intrusion.
- Although the strip search violated Savana's Fourth Amendment rights, school officials were protected from liability by qualified immunity because the law regarding strip searches of students was not clearly established.

Safford Unified School Dist. No. 1 v. Redding, 557 U.S. 364 (2009).

In 2015, a federal district court in Ohio, which is within the same federal circuit as Kentucky, reviewed a charter school policy that required students to submit to drug testing if there were rumors over the student's involvement with drugs. If the student did not voluntarily submit to the drug test, they would be expelled. That court found that the charter school policy violated the student's constitutional rights under the Fourth Amendment against unreasonable search and seizures. *Cummerlander v. Patriot Preparatory Acad. Inc.*, 86 F.Supp.3d 808 (S.D. Ohio 2015).

Note that private schools are not bound by the same considerations as public schools, and may implement stricter or potentially invasive searches, such as suspicionless drug testing.

Looking Ahead: In 2017, the Supreme Court refused to hear a case involving drug testing as a condition of enrollment for the State Technical College of Missouri. The lower court found the policy to be unconstitutional under the Fourth Amendment. *Kittle-Aikeley v. Strong*, 844 F.3d 727 (8th Cir. 2016). It does not appear that the United States Supreme Court would uphold a broad reaching policy requiring all students to submit to random suspicionless drug testing. Some of the key points that the Supreme Court focused on are the voluntary nature of participation in sports and competitive extracurricular activities, and the fact that these are generally governed by policies themselves that require certain actions for students who wish to be involved in them.

It is important to note, however, that one of the things the court will consider in reviewing a drug testing policy is the "nature and immediacy of the government's concerns." In places with demonstrated high rates of drug use or abuse, it is possible that a court may weigh that factor in favor of the government's interest in preventing drug use among its students, and courts may be more lenient to allow broader drug testing beyond just for athletics or competitive extracurriculars.

There is a metal detector in my school that students have to walk through every day. Is that okay?

Quick Answer: Yes. Schools can use walk-through metal detectors, or wand-type metal detectors, to screen students upon entering school.

Details: Courts from several states have reviewed the issue of metal detectors in schools. Often the invasion is found to be minimal and the duty to protect students outweighs this slight intrusion. Further, if a student sets off a metal detector, this could also provide the school with the reasonable suspicion in order to conduct an individualized search. There are even federal grants through the Office of Community Oriented Policing Services that provide school funds to state and local governments for the placement and use of metal detectors on school grounds.

My school uses drug-sniffing dogs to find drugs on students and in their lockers. Can they do that?

Quick Answer: It depends on how the school uses the dogs. The extent of what the dogs are allowed to search is still developing. There is a difference between using drug-sniffing dogs on students and using them on lockers or cars.

Details: The Supreme Court has previously stated that drug sniffing canines were allowed to be used during a lawful traffic stop. In 2013, the Supreme Court held that there are circumstances in which a drug sniffing dog's alert could provide probable cause to search. *Florida v. Harris*, 568 U.S. 237 (2013). Courts are torn on the extent drug sniffing dogs should be used in schools. Generally, courts have found that students do not possess a reasonable expectation of privacy for their lockers or their vehicles that are parked on school grounds; therefore, canine sniffing units can investigate these areas without cause. However, courts in other jurisdictions have held that using a canine to sniff students without suspicion would likely be unconstitutional. And of course, where there is reasonable suspicion to search a student, a drug sniffing dog would no longer be necessary, as the school would then have the requisite suspicion to search the student and their belongings.

In *New Jersey v. T.L.O.*, a 14-year-old freshman student was caught smoking by one of her teachers. She was taken to the office where she met with the assistant vice principal who asked her if she had been smoking. She denied smoking and stated that she does not smoke. The assistant vice principal then searched her purse and found a pack of cigarettes as well as marijuana. The student claimed that the school's actions violated her constitutional rights. The United States Supreme Court held that the school could search her purse as the school had reason to believe the search would produce evidence that she was either violating the law or the rules of the school. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).



Can school officials search my car?

Quick Answer: Yes, but there must be “reasonable suspicion” to justify a search of a student’s car.

Details: Generally, a school official must have reasonable suspicion to search a student’s car. But, if drugs or weapons can be seen just by looking in your car, then that creates reasonable suspicion and makes it okay for school personnel to search your car. Furthermore, if a contraband sniffing canine indicates that your vehicle contains something illegal, this will provide officials the required suspicion need to conduct the search.

Our class went on a field trip to Washington D.C. and our teachers searched our hotel room for alcohol. We were not on school property. Where does a school’s authority over a student’s activities end?

Quick Answer: Schools have authority over the sponsored events of the school even if such events take place away from school property.

Details: School officials still retain responsibility for students who go on school sponsored trips or participate in school events. However, students also retain some of their basic rights against unreasonable search and seizures. In order for school officials to conduct a search of a student’s hotel room, they must be given permission or have reasonable suspicion at the time of the search. The school’s authority in this situation would turn on the extent the school was involved in the trip and the school’s responsibility in providing lodging. For instance, did the school provide the rooms or were students required to reserve their own hotel rooms? School sponsored events are generally events that school officials schedule, that the school sets eligibility requirements for, and that are funded by the school.

SEARCHES BY POLICE

Can the police perform searches of students at school?

Quick Answer: Yes. Police officers can conduct searches at school within constitutional limitations.

Details: If police are called into the school, the limits upon their right to search depend upon why they were called and what capacity they are acting in. The Fourth Amendment generally requires police to have a warrant and probable cause.

Police can search you without a warrant:

- When the person in control of the object or property voluntarily gives consent;
- To prevent harm;
- To prevent the destruction of evidence; or
- If you have been arrested.

If a police officer asks your permission to conduct a search, **you can say always no**. But, you should **NEVER** physically resist even an illegal search. When you say, “No. I do not consent to a search,” this will clearly indicate to the police that you have not consented to the search, making it illegal if the above conditions are not present.

Remember: You can say NO to a police search, but NEVER physically resist a search EVEN if you think it is illegal. The proper way to object to an illegal search is to challenge it in court.

Here’s What a Legal Search Looks Like:

- 1) Police have a search warrant AND probable cause; or
- 2) Police are trying to prevent harm with the search;
- 3) Police are trying to prevent the imminent destruction of evidence; or

4) Police have made a valid arrest and are conducting a search pursuant to the arrest.

And remember --- If YOU simply say it is okay to search you or your property, that can make an otherwise illegal search a LEGAL one.

If I’m at school and the police want to look in my locker, do I have the right to say “no”?

Quick Answer: You always have the right to say no; however, you may still be subject to a search if police or school official possess the required level of suspicion. If you voluntarily consent to a search, you are at risk of waiving your ability to contest the legitimacy of the search later.

What is probable cause?

Probable cause to search exists when there are known facts and circumstances that sufficiently warrant someone of reasonable prudence in belief that what is being searched for will be found.



Details: Courts sometimes require police to meet a higher standard of suspicion than school officials when it comes to searching your property. While school officials only need reasonable suspicion to search students' property, police are usually required to possess probable cause (a higher standard). However, this becomes more complicated depending on the police officer's role at the school. If the officer is at the school to assist school officials, it could be that the court will treat the officer's actions as being directed by school officials and so he or she will only have to possess a reasonable suspicion. This is generally so if the officer is conducting or observing the search on behalf of a request made by school official. The suspicion level required could also depend on the reason for the search. If the search is being conducted on behalf of information received by the school and not the police, it is more likely that courts would only require reasonable suspicion. The opposite of this is also true and courts have found that school official acting on behalf of the police must possess probable cause in order to search a student's property. The infraction could also impact how the court determines the requisite suspicion. For instance, is the school conducting a search because of a school rule violation or because police are investigating a student for committing a crime outside of school?

Can security guards or School Resource Officers (SROs) at my school perform searches without a warrant and probable cause?

Quick Answer: Generally, security officers are only required to possess reasonable suspicion to conduct a search if they are acting upon the school's behalf.

Details: Courts generally treat school security guards as school officials so they are not held to the higher standard of police officers. Security officers can generally conduct searches if they possess a reasonable suspicion. This can also be true for police officers who are acting as security officers under the school's authority – for instance, when police work to provide school security on their own time.

THE MIRANDA RULE

“No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . .”

— *Fifth Amendment, U.S. Constitution.*

Your Miranda Rights

Miranda is a now famous Supreme Court decision about the rights of suspects taken into police custody. In a landmark ruling issued in 1966, the Court established that police must tell suspects about certain rights. The case also established that prosecutors may not use anything said by defendants in police custody unless the police have advised them of these rights and the defendant has knowingly and voluntarily waived those rights. These rights are commonly called The Miranda Rights or The Miranda Rule.

— *Miranda v. Arizona*,
384 U.S. 436 (1966).

Some common wording of the Miranda Warning reads:

“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense. You can decide at any time to exercise these rights and not answer any questions or make any statements.”

If I'm only 16, does the Miranda Rule apply to me?

Quick Answer: Yes.

Details: The Miranda Rule applies any time a person, regardless of age, is subject to custodial interrogation by the police. A person will be considered in custody when they are placed under actual arrest or any time a reasonable person would feel they are under full custodial arrest. In deciding whether a person is in custody, the court will consider the totality of circumstances, such as the location of the interrogation, the force used to detain the person, the tone of the officer's voice, whether the person was told they could not leave, the length of the detention, the person's age, and other factors that the court considers would lead a person to the reasonable belief they are required to stay in the police's custody.

Once the police officer has told the person of their Miranda rights, the person in custody must voluntarily and knowingly waive them before an officer may continue with questioning. If you choose not to waive your Rights, it is best to ask for an attorney and then keep silent. Do not answer questions or volunteer information, even if the police continue to question you after you have asked for an attorney.

Do I have a right to have an attorney with me when the police are questioning me?

Quick Answer: Yes.

Details: Any time the police conduct custodial questioning, the suspect may request that an attorney be present. An attorney will only be provided for a suspect when a person is not able to pay for one and has been charged with a crime carrying with it the threat of jail or a prison sentence. Otherwise, you or your parents may choose to hire an attorney.

If a police officer wants to question me, can I ask to have my parents there?

Quick Answer: Yes, but police may not have to grant the request.

Details: Even though Kentucky law says that police must notify a child's parents before questioning him (KRS § 610.200(1)), police can probably still question students outside of the presence of their parents. Students who don't want to answer police questions should politely say so, and then ask whether they may leave or whether they must stay with the police. If the authorities tell the student that he or she is not free to leave, then the student may assert his or her right to remain silent.

If you're in this situation, you should also tell authorities that you do not waive any of your rights (to prevent them from claiming that you consented to a search or to questioning). Also, tell the authorities that you want your parents to be present, or that you want to talk to an attorney.

Can I refuse to answer questions if the police are questioning me?

Quick Answer: Yes.

Details: At any time, any person, including a youth or child, may refuse to answer questions asked by police officers. The important thing to remember is that you must clearly say that you do not want to answer any questions; if you are not clear in this request, it may be considered a waiver of the right to remain silent. A person may refuse to answer questions outright, or as stated above, a person may refuse to answer questions while outside the presence of their attorney.

But again, you should **NEVER** physically resist a police officer.

What should I do if the police stop me?

No matter where you are when the police stop you:

- Think carefully about your words, movement, body language, and emotions.
- Don't get into an argument with the police.
- Remember, anything you say or do can be used against you.
- Keep your hands where the police can see them.
- Don't run. Don't touch any police officer.
- Don't complain on the scene or tell the police they're wrong or that you're going to file a complaint.
- Do not make any statements regarding the incident.
- Ask for a lawyer immediately upon your arrest.
- Remember officers' badge and patrol car numbers.
- Write down everything you remember as soon as possible.
- Try to find witnesses and their names and phone numbers.
- If you are injured, take photographs of the injuries as soon as possible, but make sure you seek medical attention first.
- If you feel your rights have been violated, file a written complaint with the police department's internal affairs division or civilian complaint board.

While this document is designed to inform you of the rights that you possess as a student, we recognize a history of enforcement that has resulted in intimidation (aimed particularly at people of color), violence, or death. We urge you to use this manual as a guide to understanding your rights, but first and foremost keep yourself safe. There are situations where people have done everything they can to comply and put an officer at ease, yet still end up being injured or killed. We recognize that certain forms of resistance heighten the risk of being harmed by those in positions of power and we urge caution in all situations. More than anything else, we want you to be safe.



RIGHT TO A FREE PUBLIC EDUCATION & RESPONSIBILITY TO ATTEND

You have the right to a free public education, but that right comes with the responsibility to attend school unless you have a valid excuse.

Am I required to attend school?

Quick Answer: Yes, if you are a Kentucky resident between the ages of 6 and 16.

Details: Unless you are being home-schooled in accordance with Kentucky law, your parent or guardian is required to send you to school.

Does that mean my parents can get in trouble if I don't attend school?

Quick Answer: Yes. In fact, both parents and students can be subject to discipline.

Details: Local boards of education may adopt reasonable policies to punish students for truancy (being absent or tardy without a valid excuse for 3 days or more), and parents or guardians may be punished for their child's truancy under Kentucky law. A student is tardy if he or she misses up to 35 percent of the instructional day by arriving late, leaving early, or a combination of the two.

If you are truant, your parent or guardian will be given written notice, allowing one day to make sure you are in school or have a valid excuse for being out of school. If the violation continues or occurs again, the parent or guardian may be fined each time the student is truant; if trancies continue, parents and guardians can even be charged with a crime.

Are there any exceptions to required public school attendance?

Quick Answer: Yes.

Details: You do not have to attend public school if you:

- Are a high school graduate;
- Attend a private, parochial, or church regular day school;
- Are less than 7 years old and you are enrolled in private kindergarten-nursery school;
- Have a mental or physical condition that your doctor says makes attendance inadvisable;
- Are enrolled in a state-supported program for exceptional children; or

If you are a 4H Club member, participating in regularly scheduled 4H Club educational activities, and you are accompanied by or under supervision of a county extension agent or your 4H Club leader, you will not be considered absent from school; however, you are generally not eligible to receive an excused absence for a 4H Club activity if the absence occurs on a day the school or school district has set aside for district-wide tests of student assessment (e.g. the CATS tests).

You can also miss school if you are engaged in a school approved “educational enhancement opportunity” such as a music or language lesson.

I’ve heard that if I drop out of school, the school can cause my driver’s license to be revoked. Is that true?

Quick Answer: Yes. Schools can cause the revocation of driver’s licenses of students age 16 or 17, if they drop out of school or get declared academically deficient. KRS § 159.051.

Details: Dropping out means that a student has nine or more unexcused absences, including absences due to suspension. A student is academically deficient when she or he fails to pass four or more courses in a semester.

The Transportation Cabinet must notify the student of the revocation of the license. The student is entitled to a hearing in District Court to explain why the license should be reinstated. One reason why the Court may reinstate a student’s driving privilege is when the revocation produces a family hardship, i.e., the student’s family relies on the student’s ability to drive. If the student cannot prove such a hardship, she or he can reapply for the license upon completing a semester of school, or by passing four courses.

STUDENT DISCIPLINE

You've no doubt noticed by now that most of your rights while you're at school can be limited if your behavior is disruptive or impacts the rights of others. Still, schools must operate within guidelines when disciplining students, and you have the right to challenge many school disciplinary actions. Most of your rights in the area of student discipline come from Kentucky state laws.

A kid in our English class refused to stay in his seat after the teacher asked him to sit down a couple of times. Can a school discipline a student for something that harmless?

Quick Answer: Yes.

Details: Generally speaking, a school can discipline a student for inappropriate

behavior or breaking school rules. Each local school board has a code of acceptable behavior and discipline that outlines what behaviors will lead to discipline and what actions the school can take in disciplining a student. Many school codes of conduct include consequences for behaviors such as failing to follow directions or disrupting class.

Every school must keep a copy of the code of acceptable behavior and discipline for their students to see. In addition, information about student discipline can be found in the student

handbook. Students should review their student handbook at the beginning of every school year and keep a copy as a reference if they have questions.

Some of my classmates were suspended and then told they couldn't attend a school dance. Many students think that is going too far. What disciplinary actions can a school take against a student?

Answer: In disciplining students, schools can issue demerits, require students to attend detention, require students to attend in-school suspension, require students to attend Saturday school, and can also limit the sorts of extracurricular activities in which students can engage (such as attending dances). The most serious disciplinary actions a school can take against a student include suspension and expulsion.

Note: As described above, schools cannot punish students more harshly than usual based on the content of their speech. For instance, while schools may discipline students who choose to walk out of class as part of an organized protest, schools cannot punish those students more harshly than any other student who might miss class for any other reason. Make sure to review your school district's code of acceptable behavior and discipline to know how the school may respond to your actions.

What sorts of behaviors can lead to a student being suspended or expelled?

Answer: Kentucky law states that students can be suspended or expelled for:

- Willful disobedience or defiance of the authority of the teachers or administrators;
- Use of profanity or vulgarity;
- Assault or battery or abuse of other students;
- The threat of force or violence;
- The use or possession of alcohol or drugs;
- Stealing or destruction of or defacing of school property or personal property of other students;
- The carrying or use of weapons or dangerous instruments;
- Assault or battery or abuse of school personnel;
- Stealing or willfully or wantonly defacing, destroying, or damaging the personal property of school personnel on school property, off school property, or at school-sponsored activities; or
- Other incorrigible bad conduct on school property, as well as off school property at school-sponsored activities.

In addition, students can be expelled for bringing drugs to school with the intent to sell or distribute them or physically assaulting or abusing other students or school personnel. If a student is expelled, the school system must provide them with educational services through an alternative program unless the student is a threat to the safety of others.

If I'm suspended or expelled, do I have a right to challenge those decisions?

Quick Answer: Yes.

Details: Before a student can be suspended, he or she must be provided notice of the charge, an explanation of the evidence of the charge, and the student must be given the opportunity to tell his or her side of the story.

If, however, immediate suspension is needed to protect people or property or to avoid disruption, the school can suspend a student without first giving that student an opportunity to be heard. If that happens, within 3 days, the school must provide the student with information about the charge, evidence of the charge, and an opportunity to be heard. Before a student can be expelled, he or she and the parent(s) or guardian(s) must be provided an opportunity to have a hearing before the school board.

RIGHT TO PRIVACY & SCHOOL RECORDS

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

You should know who might look at your school records and get personal information about you. Under some circumstances, you can request that specific people, like military recruiters, not be given your personal information.

I'm almost 17. Can my parents look at my school records?

Quick Answer: Yes. Federal law requires schools to give parents access to their child's records. A child is defined as anyone under age 18. However, once the student turns 18 years old, schools shall obtain the student's consent to be able to release educational records to the student's family.

Details: Under the Family Educational Rights and Privacy Act (FERPA), schools must allow parents to inspect their child's educational records. If the parent disagrees with something in the record, the parent has a right to ask the school to correct the record. If the school refuses, the parent can then ask for a formal hearing and if the school still refuses, the parent can place a statement in the record disputing the inaccurate statement.

Can the school release my school records?

Quick Answer: Probably not without your parents' permission.

Details: In most cases, FERPA requires schools to obtain the consent of parents before they release school records. There are, however, a few exceptions. Schools can release a student's record to:

- Other schools to which a student is transferring;
- Authorities in health or safety emergencies;
- State and local authorities within a juvenile justice system pursuant to state law; and
- Anyone who is specified in a court order to receive the information.
- Finally, schools can disclose, without parent consent, certain directory information such as a student's name, address, telephone number, date and place of birth, and dates of attendance. However, schools must notify parents that they will be releasing directory information and give parents time to request that their child's directory information not be disclosed.

What happens when I turn 18? Who has the right to inspect and release my educational records?

Answer: When you turn 18 or enroll in a post-secondary school (such as a college or university), the rights your parent had under FERPA transfer to you such that *you and only you* have the right to inspect your records or request that your records be released.

My friend was contacted by a military recruiter who got his name, address, and telephone number from his school. Can the school give the military this sort of information?

Quick Answer: Yes, unless you and/or your parent direct the school not to release information to military recruiters.

Details: Under the No Child Left Behind Act, schools are required to release student information to the military for recruiting purposes. Schools are also required, however, to notify parents and students that they can opt out of the release of this information.

If you do not want your information released to a military recruiter, contact your school as soon as possible. The school should have an “opt out” form for your parent to sign.

SEXUAL HEALTH, EDUCATION & REPRODUCTIVE FREEDOM

The Bill of Rights guarantees that the government cannot dictate the most personal decisions an individual makes. The U.S. Supreme Court has found that your right to privacy includes your right to make decisions about contraception, and for women, it includes the right to choose whether to continue or terminate a pregnancy. The right to privacy and liberty to make these very personal decisions is among your most fundamental liberties.

SEX EDUCATION

Is my school required to teach a sex education class? If so, what must the curriculum include?

Quick Answer: Yes.

Details: The required curriculum varies by grade level; for more detailed information for specific grades, please see the Kentucky Academic Standards on the Department of Education's website (<https://education.ky.gov/>). Generally, though, public schools in Kentucky must include some sections about sexual education as part of the health education curriculum. It is a required part of the classes you must have to graduate from a Kentucky

high school. Sexual education is to be taught as part of at least a half-credit course, and includes sections on the reproductive organs of men and women, transmission of sexually transmitted diseases (STDs), and pregnancy.

With respect to birth control and STDs, Kentucky law requires that abstinence be taught as the only sure method in the prevention of STDs and pregnancy. However, the curriculum does not prohibit other methods from being identified. Local school districts can educate students on the range of methods of prevention of STDs and pregnancy.

My parents don't want me to attend a sex education class at school because they are afraid it will teach me something different than what our church teaches. Can they refuse to allow me to attend sex education class because of our religion?

Quick Answer: No. Parental rights and student rights do not include absolute control over teaching children about sexuality and sexual health. Sex education classes are to be taught from a public health perspective, not a religious one.

Details: The Sixth Circuit Court of Appeals has ruled that parents of children in the public schools may not opt their children out of

mandatory curricular content unless the content forces the student to affirm or deny a religious belief or engage or refrain from engaging in a religious practice. Merely being exposed to content with which the parent or student disagrees or which the parent or student finds offensive is not enough to demand an opt out. *Mozert v. Hawkins County Bd. of Education*, 827 F.2d 1058 (6th Cir. 1987).

Are Kentucky schools required to teach about HIV/AIDS?

Quick Answer: Yes.

Details: Kentucky schools' health education courses that include a sex education section must also include information on venereal disease transmission. What exactly is taught about HIV/AIDS varies by grade level; for more detailed information, please see the Kentucky Academic Standards on the Department of Education's website (<https://education.ky.gov/>). As an example, after successfully completing a high school-level health education course, "Students will demonstrate an understanding of diseases by: describing symptoms, causes, patterns of transmission, prevention and treatments of communicable diseases (colds, flu, mononucleosis, hepatitis, HIV/STD, tuberculosis)."

PREGNANT TEENS

My best friend just found out she's pregnant. Can she be expelled because of that?

Quick Answer: No.

Details: Although your school can prevent her from participating in activities that might endanger her or her pregnancy, she can't be expelled from public high school for being pregnant. Remember however, that private and religious high schools are not public institutions; a student who becomes pregnant at a private or religious school may be in violation of the school's policy and required to transfer somewhere else.

In 1998, two juniors at the Grant County High School in Kentucky were denied the right to participate in the National Honor Society. Despite their excellent academic credentials, student Somer Chipman was pregnant and student Chastity Glass had a baby. The school denied them admission to the National Honor Society because they had engaged in premarital sex. Federal District Judge William Bertelsman ordered the students be admitted to the National Honor Society. The judge noted that boys who engaged in premarital sex were not similarly excluded and also noted that there is no legitimate reason to keep pregnant or parenting students out of the National Honor Society. *Chipman v. Grant County Sch. Dist.*, 30 F.Supp.2d 975 (E.D. Ky. 1998).



Can I get birth control without my parents' permission?

Quick Answer: Yes.

Details: A minor can get prescription contraceptives without parental permission. However, you should ask about your doctor or clinic's policy on informing parents about your request for birth control. They may contact your parent(s) or guardian(s) if, as medical professionals, they think notification will benefit your health.

Note – Kentucky law allows health care professionals to inform the parent or guardian of a minor (someone under the age of 18) of any treatment needed when they think it would benefit the health of the minor.

I'm 17 years old and I can't afford birth control. Is there a way I can get birth control at no charge?

Quick Answer: Yes

Details: There is a federal program that provides birth control and other reproductive health services to low-income women and minors (under age 18). It is called Title X and it provides funding to local clinics to help provide lots of services including contraceptive methods, breast examinations, Pap tests, and sexually transmitted disease (STD) and HIV testing. As a minor, the fee a clinic will charge you for services or contraceptives is based on your income – not the income of your parents.

Clinics with Title X funding also provide counseling and referrals for prenatal care and delivery, foster care, adoption and abortion. But, Title X explicitly prohibits using program money to pay for abortions.

Note: the availability of free birth control has been affected by state funding, and it may be difficult to find clinics that provide free birth control for young people in your area. Contact your local health department or Planned

Parenthood of Indiana and Kentucky at (800) 230-PLAN for more information.

My friend Stacy just told her parents she's pregnant and they want her to get an abortion. Can she say no if she wants to continue the pregnancy?

Quick Answer: Yes. No one can force her to get an abortion.

Details: A minor can seek treatment for a pregnancy without parental permission. She can seek treatment with a private physician or get assistance from a local health department or family planning clinic. Again, a medical professional can inform the parent or guardian of a minor receiving health care of any treatment needed or given if they deem such notification to be of benefit to the minor's health.

I'm only 16. Can I get an abortion?

Quick Answer: Yes, with either parental consent or a judicial bypass.

Details: In Kentucky, if you are under 18 seeking an abortion, and have never been married or otherwise declared emancipated, you must have the consent of one parent to obtain an abortion, or without your parent's consent you can get a court order from a judge, known as a judicial bypass.

How do I get consent from a judge, called a judicial bypass, to get an abortion?

Answer: Young women can petition any district or circuit court judge for a judicial bypass, which gives you the right to make your own decision about whether or not to seek an abortion. It is best to ask an attorney to help you prepare for this process.

A counselor at an abortion clinic can set up an appointment for you with an attorney, or you can ask the court to appoint one. The court costs can be waived (so you don't have to pay for the costs of using the court itself) and the

In *Roe v. Wade*, 410 U.S. 113 (1973), the state of Texas passed a statute that made it a crime to obtain an abortion except to save the life of a pregnant woman. “Jane Roe” was an unmarried, pregnant woman who wanted to terminate her pregnancy but could not do so as the pregnancy did not threaten her life. She sued a county district attorney, Wade, seeking to have the statute declared unconstitutional. The United States Supreme Court held that the right to privacy is broad enough to include a woman’s decision whether to obtain an abortion or not.



process is confidential. Generally, in Kentucky, requests for a judicial bypass are approved by judges in Jefferson County. You also have the right to a speedy appeal to challenge the judge’s decision if the judge denies your request for a bypass. For more information about how to obtain a judicial bypass, you can contact the ACLU of Kentucky Reproductive Freedom Project at 502-581-1181 or info@aclu-ky.org.

I’ve heard friends talk about emergency contraception and the abortion pill. Are they the same thing?

Quick Answer: No. Emergency contraception and the abortion pill are two different things.

Details: Emergency contraception, also known as the “morning-after pill,” is a higher dose of birth control and is up to 89% effective in preventing unintended pregnancies if taken within 72 hours after a woman has had unprotected sex. Like regular birth control pills, emergency contraception can prevent pregnancy by delaying ovulation, preventing fertilization, or preventing implantation. Once a pregnancy is established (the fertilized egg has implanted in the uterine wall), emergency contraception has no effect. Information about emergency contraception is available at 1-888-NOT-2-LATE or www.not-2-late.com.

In contrast, the abortion pill (RU 486) is taken to cause an abortion within the first seven to nine weeks of pregnancy. For a provider closest to you, call 1-800-772-9100.

Do I have to get my parents’ permission to get emergency contraception? Or RU 486?

Answer:

Emergency Contraception: Emergency contraception is available “over-the-counter” at drug stores without a prescription or parents’ consent. You may also be able to obtain it at a local health clinic or Planned Parenthood location.

RU 486 (abortion pill): You must have either your parents’ consent or a judicial bypass (order from a judge) to obtain RU 486.

FREEDOM TO MAKE MEDICAL DECISIONS

Many medical decisions that you might want to make as a young person require your parents' approval, but in other cases, you may have the authority to seek tests and treatment on your own. It is important for you to know what kinds of tests and treatment you need your parents' consent to get.

And remember, in the case of an emergency, when a health professional thinks there is an immediate risk to your life or health, you can receive medical, dental, and other health services even if you're under 18, without the consent of a parent or legal guardian.

I'm just 17, but I went through our local court and was declared emancipated. Does that mean I can make all of my own medical decisions now?

Quick Answer: Yes.

Details: The term "emancipated minor" is defined under Kentucky law as: "any minor who is or has been married or has by court order or otherwise been freed from the care, custody, and control of her parents." An emancipated minor may get a diagnostic examination or treatment for sexually transmitted diseases (STDs), pregnancy, alcohol, or other drug abuse or addiction

from any physician without parental consent. Emancipated minors may seek an abortion without parental consent. In fact, emancipated minors may seek a broad array of medical services without parental consent.

I am not an emancipated minor. Do I need my parent's permission to be tested for a Sexually Transmitted Disease (STD)?

Quick Answer: No, but consult with the doctor or administrator of the test to find out their policy on divulging the results of your test to your parent(s) or guardian(s).

Details: You don't need your parent's permission to be tested or treated for an STD, but you should always check with the doctor or other qualified person performing the test to find out their policy on informing your parent(s) or guardian(s).

If you are being tested for HIV and/or AIDS, Kentucky law *allows* the tester to disclose the results of the test to your parent(s) or guardian. Always ask the person or agency conducting the test if it is their policy to keep your results confidential before you have the test.

I think I have a drinking problem, but I'm afraid to go to my parents for help. Can I go to a doctor on my own and ask for help?

Quick Answer: Yes.

Details: Minors who have not been emancipated can also make some health care decisions for themselves but their right to seek healthcare without parental consent is more limited than that of emancipated youth.

Whether a young person has been emancipated or not, he or she still has the right to get tested and treated for sexually transmitted diseases (STDs), pregnancy, alcohol, or other drug abuse or addiction from any physician without parental consent. Unemancipated minors also have the right to seek an abortion without parental consent through a process called a judicial bypass. See this Handbook's section on *Sexual Health, Education, and Reproductive Freedom* for information on the judicial bypass.

My best friend is 15 and I think she is depressed. She may have an eating disorder, too. Can she go see a psychiatrist or counselor on her own?

Quick Answer: No. Not unless she's been emancipated or a health professional thinks that withholding treatment would put your friend's life or health at immediate risk.

Details: Any young person 16 years old or older can seek outpatient mental health care treatment without parental consent. But, for young people under age 16, they must have parental consent to seek mental health services.

ACKNOWLEDGMENTS & SUPPORT

The ACLU of Kentucky would like to thank the following volunteers and interns for many hours of research for this handbook:

Brandon Sword, Michele Henry, Sara Farley Holland, Victoria Chanda, Lyse Hurd, Kendra Martin, Hugh McCarty, Karen Sheets, Michael Troutman, Andrea Walden, Gerina White, and Jay Windmill.

The ACLU of Kentucky is grateful to the ACLU of Louisiana, the ACLU of Ohio, and the ACLU of Northern California for the information in their handbooks used for reference and guidance for this resource for Kentucky's youth. A special thanks to the ACLU of Pennsylvania for sharing the format and content of their handbook with us.

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First Edition Published March 2006
Second Edition Published 2019