



**ACLU**

AMERICAN CIVIL LIBERTIES UNION  
of TEXAS

FOUNDATION

YOUTH RIGHTS MANUAL

# Youth Rights Manual



*A guide about your rights at school,  
at home, and in your community.*

January 2010

## ACKNOWLEDGMENTS

The Youth Rights Manual was primarily written and edited by **Lisa Graybill**, ACLU of Texas Legal Director; **Gouri Bhat**, ACLU of Texas Senior Staff Attorney; **Fleming Terrell**, ACLU of Texas Staff Attorney; and **Frank Knaack**, ACLU of Texas Legal Advocacy Coordinator.

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**Hana Boston**, *Thurgood Marshall School of Law, '10*

**Jessica DeVera**, *University of Virginia School of Law, '09*

**Kiywhanna Kellup**, *University of California Boalt Hall School of Law, '09*

**Melek Oz**, *University of Texas Law School, '08*

**Matthew Rigney**, *Southern Methodist University Law School, '10*

**Il Who Rho**, *University of Texas School of Law, '11*

**Hannah Robertson**, *University of Texas School of Law, '09*

**Argyrious Saccopulous**, *University of Texas School of Law, '09*

**Carol Simpson**, *Southern Methodist University Law School, '09*

**Sarah Sulak**, *University of Texas School of Law, '11*

**Jeff Tremblay**, *University of Michigan Law School, '10*

**Shea Wynn**, *New York University Law School, '09*

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## INTRODUCTION TO YOUR RIGHTS AS A PUBLIC SCHOOL STUDENT

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### ***What is this booklet about?***

This booklet will explain many youth rights, including your rights as a public school student. Some of these may be familiar to you, others may be new. You can only stand up for your rights if you know what they are, so it is important for students and their parents to be educated about students' rights.

Please read this booklet carefully to understand your rights. If you have questions about a specific issue or circumstance as it pertains to you or your school, you may want to ask your parent, your teacher or principal, or a counselor for help.

### ***Where do these rights come from?***

There are several important sources of students' rights, and you should be familiar with all of them, especially your school's Student Code of Conduct.

This booklet is focused mostly on students' rights under federal law. The Bill of Rights consists of the first ten amendments to the U.S. Constitution. It contains powerful protections for individuals by restricting what the government may do. Many of the rights discussed in this booklet draw their authority and power from the Bill of Rights.

The Bill of Rights has special significance in public schools. Teachers in public schools are government employees and government representatives. The daily interaction of government authority figures and young individuals is controlled in part by the protections contained in the Bill of Rights.

But this was not always the case. You may notice if you read the Bill of Rights that it seems to apply only to the federal government. For example, the First Amendment starts with the words, "Congress shall make no law . . . ." As you may have learned in your government class or social studies, the Texas State government is independent from the federal Congress. Schools are entities of State governments—so why does the Bill of Rights apply to them?

The answer is in a later amendment to the Constitution—the Fourteenth. The Fourteenth Amendment was adopted after the Civil War to protect individual rights against the actions of State governments and says that no State may "deprive a person of life, liberty, or property, without due process of law." Since the Constitution expresses its specific conceptions of "liberty" in the Bill of Rights, the Supreme Court has said that this "due process" clause of the Fourteenth Amendment applies many of the protections in the Bill of Rights to State governments like Texas.

### **Federal law**

Federal law means the laws of the United States. These laws apply to students all across the country, no matter what state you live in:

- The United States Constitution and the Bill of Rights;<sup>1</sup>
- Federal statutes, like the Individuals with Disabilities Education Act (IDEA)<sup>2</sup> and the Equal Educational Opportunities Act (EEOA).<sup>3</sup>

### **State law**

These laws apply only to students in Texas:

- The Texas Constitution;<sup>4</sup>
- Texas statutes, especially the Texas Education Code.<sup>5</sup>

### **Your School's Student Code of Conduct**

The Texas Education Code requires every school to have a Student Code of Conduct.<sup>6</sup> Your school's Student Code of Conduct applies only to your school, although many school codes of conduct are similar and many are based on a model provided by the Texas Association for School Boards (TASB).<sup>7</sup> Your school's Student Code of Conduct will explain your rights and responsibilities as a student in your particular school district.<sup>8</sup>

## ***What if I think my rights have been violated?***

If you think your rights have been violated, there are several things you may consider doing:

- Tell an adult you trust;
- File an administrative complaint with the school or agency that you believe violated your rights. Even if you don't think this will make a difference, it is important to create a record of what happened;
- File a complaint online with the ACLU of Texas, [www.aclutx.org](http://www.aclutx.org). While we cannot individually assist every person who contacts us, we monitor trends and we are more likely to intervene when we identify a pattern through multiple complaints;
- Speak to a lawyer. You may wish to speak to a lawyer if you believe your rights have been violated and you are interested in pursuing a legal remedy.

## **The information in this booklet is not legal advice.**

If you believe that your rights have been violated and you would like to contact an attorney, please visit the *Need Help?* section of our youth rights website <http://youthrightstx.org/needhelp>. From here, you will have access to both the ACLU legal complaint page as well as to a list of additional legal resources, many of which are also referenced throughout this manual.

## I. RIGHT TO EDUCATION AND RESPONSIBILITY TO ATTEND

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### ***What law guarantees my right to an education?***

It may come as a surprise to you that no federal law guarantees the right of all students to public education.<sup>9</sup> However, both the U.S. Supreme Court and Texas courts have recognized that state laws can create a substantive right to education.<sup>10</sup>

Title I, Chapter I, Section 1.002 of the Texas Education Code states that publicly funded schools must provide equal educational opportunities to all individuals within their jurisdiction or geographical boundaries.<sup>11</sup>

### ***Why are some public schools better than others, even in the same school district? Shouldn't they all be equal?***

Texas public schools are funded through property taxes, which is to say, taxes levied on houses and property in the district. Schools in districts with more valuable property have higher tax bases, and therefore have more tax revenue to spend on public schools.

This system of funding Texas public schools, and the inequities which result, has been challenged through a series of lawsuits beginning in 1973. In an attempt to equalize funding between property-rich and property-poor districts, the Texas legislature developed a “Robin Hood” system of reallocating resources between property-rich and property-poor districts.<sup>12</sup> Though this system has been the subject of numerous court challenges, it remains in effect as of the publication of this manual.



### ***What is a “low-performing” school? If my school is “low-performing,” what are my options?***

A “low-performing school” is a school 1) at which 50% or more of the students performed less than satisfactorily on state assessment tests for two of the preceding three years, or 2) which failed to satisfy the standards established by the state commissioner for education during any one of the preceding three years.<sup>13</sup>

Students attending low-performing schools are eligible to attend another school in the district that is not low-performing or to attend a school in another district. Schools cannot deny admission to students from low-performing schools on the basis of race, ethnicity, academic achievement, athletic abilities, language proficiency, sex, or socioeconomic status.<sup>14</sup>

## a.) ENROLLMENT AND ACCESS

### ***Residency***

To be a resident of a school district in Texas, either you, one of your parents, your legal guardian, or a grandparent who contributes significantly to your well-being must reside in the school district.<sup>15</sup>

However, residency means more than mere physical presence in a district. Typically, you must show that whoever lives in the district also intends to remain there. As long as you can show that you did not move to the district on your own for the primary purpose of participating in sports or other extracurricular activities, you are a resident of that district and deserve access to a free education.<sup>16</sup>

### ***Can I enroll in Texas public schools if I am and/or my parents are undocumented immigrants?***

Yes. In the landmark case, *Plyler v. Doe*, the U.S. Supreme Court decided that education is so important to the development of children and their communities that all children, regardless of their immigration status, deserve access to a free K–12 education.<sup>17</sup> In Texas, all children ages 5 to 21 enjoy this legal right.<sup>18</sup> For more information, or if you are having a problem enrolling in a Texas public school because of your immigration status, please read our [FAQs on Immigrant and Non-US Citizen Students located in the Freedom from Discrimination section](#) of this manual.

For more information about access to education, you may wish to consult “Legal Issues for School Districts Related to the Education of Undocumented Children,” an on-line guide published by the National School Boards Association and National Education Association, available for download at: <http://www.nsba.org/SecondaryMenu/COSA/Search/AllCOSAdocuments/Undocumented-Children.aspx>.

For more information on the educational rights of youth, please visit the League of United Latin American Citizens (LULAC) at: [www.lulac.org](http://www.lulac.org).

### ***What if I or my parents are homeless?***

Homeless students are considered residents of the school district in which they live, regardless of their residence or the residence of either parent of the person, or of the person's guardian or other person having lawful control of the person.<sup>19</sup>

While you are in school, educators (teachers, principals, administrators, etc.) have certain rights in what they can do to ensure you get an education, but you also have protections available to make sure they do not take your basic substantive rights away.

A substantive right is a right to a certain privilege, such as privacy that the government cannot take away from a person except in certain circumstances.

**b.) COMPULSORY ATTENDANCE REQUIREMENTS*****Do I HAVE to go to school?***

Yes. In Texas, the state Education Code requires that you attend public school from the time you are six until you turn eighteen.<sup>20</sup>

A student is exempt from this law if the student is:

- Enrolled in a private or parochial school;
- Being homeschooled;
- Has a physical or mental condition that makes attending school impossible and has a doctor's note explaining the condition;
- Is at least 16 years old, is studying for the high school equivalency exam, and has met other criteria defined by the Texas Education Code; or
- Is specifically exempted under another law.<sup>21</sup>

***What happens if I don't go to school?***

Failure to attend school is an offense under the Texas Education Code. A student commits this offense if he or she:

- Fails to attend school on 10 or more days or parts of days within a 6-month period in the same school year; or
- Fails to attend school on 3 or more days or parts of days within a 4-week period.<sup>22</sup>

Depending on the size of the jurisdiction, students may be prosecuted for this offense in a county court, a justice court, or a municipal court of the county in which the individual resides or in which the school is located.<sup>23</sup> If a court finds probable cause that a student has committed an offense, a peace officer may take the student into custody.

A peace officer who takes a student into custody for failure to attend school must:

- Promptly notify the individual's parent, guardian, or custodian of the action and the reason for it; and
- Without unnecessary delay, release the student into the custody of his or her parent, guardian, custodian, or another responsible adult, or bring the student to court.<sup>24</sup>

If the court finds that the student has committed the offense, the court may require the student to attend school or prepare to and take the high school equivalency exam,<sup>25</sup> and may also require the student to participate in a number of different special programs, such as an alcohol and drug abuse program, a counseling program, a violence avoidance program,<sup>26</sup> and/or community service.<sup>27</sup> The offense is a Class C Misdemeanor.<sup>28</sup>

***What about my parents? Can my parents or guardian get in trouble if I don't attend school?***

Yes. A parent who fails to ensure his or her child is attending school, even after the parent has received a warning, may be guilty of criminal negligence and may also be fined.<sup>29</sup>

A judge may order the student and the student's parent to attend a hearing relating to the charge of failure to attend school, and may also order them to attend a class for students at risk of dropping out of school, which is designed for both students and their parents.<sup>30</sup> A parent's failure to attend a hearing is a Class C misdemeanor.<sup>31</sup> A parent's failure to attend the class on drop-out prevention is punishable by contempt of court.<sup>32</sup>

***Can I still get a diploma if I have dropped out?***

Texas offers students in certain circumstances the opportunity to take a high school equivalency exam. To take the exam, students must either be:

- Over 17 years of age;
- Over 16 years of age and (1) enrolled in a Job Corps training program, (2) recommended by a public agency having custody of or supervision over the student, or (3) enrolled in the Seaborne ChalleNGe Corps; or
- Required to take the examination under court order for failure to attend school.<sup>33</sup>

## II. FREEDOM OF EXPRESSION AND ASSOCIATION

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“Congress shall make no law . . . 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.”<sup>34</sup>

The First Amendment to the U.S. Constitution and Article I of the Texas Constitution guarantee the freedom of expression to all citizens, including you! Because the Constitutions value everyone’s right to speak out about matters of importance, they also protect the rights of people to gather together—or assemble—to talk openly.<sup>35</sup>

Courts have ruled, however, that in order for schools to operate smoothly, students cannot have total freedom to assemble and speak whenever they wish. Although you don’t have as much freedom in school as you have out of school, you still have important rights.

### a.) GENERAL RULES and DEFINITIONS

#### *What type of expression is allowed at school?*

You can express yourself by speaking or writing, on bulletin boards, in student papers, on the Internet, or, depending on your school’s dress code, on your T-shirt or other article of clothing. However, the government can place a few limits on everyone’s expression, and teachers and other educators at your school may limit some speech that would be protected if you were away from school.

Expression is any way to communicate what you think or believe, through verbal or non-verbal means.

#### *What kind of speech can be prohibited everywhere?*

Everyone, not just students, has limitations on speech.

Speech that is **obscene** may be limited for adults and kids. Speech is obscene for adults if it deals with sex in an offensive and lustful manner, and it has no artistic, literary, political, or scientific value.<sup>36</sup> For example, some novels and films have sex scenes, but they are not obscene for adults if there is any artistic or literary value to including those scenes. Whether additional speech may be considered obscene for students depends in part on their age and other factors, but speech cannot be limited as obscene merely because adults believe it is “unsuitable for minors.”<sup>37</sup> However, **child pornography** can be prohibited even if it would not otherwise be considered obscene.<sup>38</sup>

**Defamatory** speech also is not protected. Generally speaking, your expression is defamatory if it is untrue, it harms someone’s reputation, and—if it is about a public figure—you knew or should have

known it was not true when you said or wrote it, such as saying that the principal is stealing money from the school activity fund when you have no facts to support that charge.<sup>39</sup>

Some types of speech can be limited for both adults and students:

1. Obscene speech;
2. Child pornography;
3. Defamatory speech;
4. True threats;
5. Fighting words;
6. Incitement.

The First Amendment doesn't protect a **"true threat"** to do violence to someone, whether or not you actually intend to carry out the threat.<sup>40</sup> To fall into this category, you must intend for your words to be a threat, so jokes don't usually count as long as someone would recognize the speech as a joke.<sup>41</sup>

Under Texas law, student speech that qualifies as a **"terroristic threat"** may be punished by school officials and the government.<sup>42</sup>

A **"terroristic threat"** is a threat of violence to any person or property with intent to:

1. Cause a reaction of any type by an agency organized to deal with emergencies such as police or fire departments;
2. Place any person in fear of imminent serious bodily injury;
3. Prevent or interrupt use of a building or other public place;
4. Cause impairment or interruption of public communications, public transportation, or other public services;
5. Place any group of the public in fear of serious bodily injury; or
6. Influence the conduct of any government entity.<sup>43</sup>

**"Fighting words"** can also be prohibited. Fighting words are words, like some racial slurs, that cause injury to the listener or are likely to cause a violent reaction.<sup>44</sup> Similarly, **"incitement"** is speech that is meant to and likely will cause others to commit lawless action right away.<sup>45</sup>

### ***Can my school censor other types of student speech?***

Yes, some student speech may be censored, even if it doesn't fall into any of the categories that are prohibited for adults too. Although students don't "shed their constitutional rights to freedom of speech

or expression at the schoolhouse gate,”<sup>46</sup> your school does not have to “tolerate student speech that is inconsistent with its basic educational mission.”<sup>47</sup> As a result, the U.S. Supreme Court has identified four types of student speech that schools may censor. *See the section on discipline for more information on how schools may discipline students for violating speech restrictions.*

First, the Supreme Court said that schools can censor student speech that causes a “material and substantial interference” with class or school activities, or affects the rights of others.<sup>48</sup> “Material and substantial interference” means a real disruption, not just something that draws attention or that teachers don’t like. In the famous case, *Tinker v. Des Moines Independent School District*, students were disciplined for wearing black armbands to protest the Vietnam War. The Supreme Court held that the discipline violated the First Amendment, because the students’ expression did not cause a substantial interference.<sup>49</sup>

The Supreme Court later said that schools can censor indecent, lewd, or offensive speech in a school setting.<sup>50</sup> In that case, *Bethel School District v. Fraser*, a high school was allowed to suspend a student for giving a school assembly speech laced with sexual innuendo.<sup>51</sup>

Next, the Supreme Court said that schools can censor the content of school-sponsored student publications and performances because they appear to be a message from the school itself.<sup>52</sup> Even so, any censorship of school-sponsored speech must reasonably serve an educational purpose.<sup>53</sup> Under this rule, the Supreme Court allowed a high school to cut articles on teen pregnancy and divorce from a school-sponsored student newspaper in *Hazelwood School District v. Kuhlmeier*.

Finally, the Supreme Court recently said that schools can censor speech that advocates the use of illegal drugs, since deterring drug use by minors is an issue of critical concern to schools and the government.<sup>54</sup> In *Morse v. Frederick*, the Supreme Court said that students who held up a banner reading “Bong Hits 4 Jesus” at a school event could be punished because the banner promoted illegal drug use.<sup>55</sup>

Federal courts in Texas also allow schools to censor other student speech if the censorship is *content-neutral*.<sup>56</sup> Censorship is content-neutral if it is based on some reason other than dislike for the message the speech conveys.<sup>57</sup> For example, a ban on wearing T-shirts with messages on them is content-neutral because it applies no matter what the messages say. This type of censorship is only allowed if it limits students’ speech no more than necessary to further an important school interest other than merely suppressing student expression.<sup>58</sup> The U.S. Supreme Court has not said whether it agrees with this type of censorship.

Under the First Amendment, the Supreme Court says schools can limit four types of student speech, and courts in Texas have added a fifth:

1. Speech that substantially and materially interferes with the educational mission of the school or interferes with the rights of others (*Tinker* standard);
2. Speech that is vulgar, lewd, or plainly offensive (*Fraser* standard);
3. Speech that appears to be sponsored by the school, but only to reasonably serve an educational purpose (*Hazelwood* standard);
4. Speech that encourages or promotes illicit drug use (*Morse* standard);
5. Other speech, but only if the censorship is content-neutral and no more than necessary to further an important school interest unrelated to suppressing expression. (*Canady* standard).

### ***What if I am not at school?***

Generally, the laws governing off-campus speech are the same for adults as for minors – speech is protected from government sanction unless it is obscene, child pornography, defamatory, a true threat, fighting words, incitement, or falls into a few other categories for which adults can be punished too.<sup>59</sup> However, schools may be able to discipline students for some off-campus speech when it does not fit into any of these categories but does fit into one of the categories of student speech that schools can censor on campus.

The limits on school discipline for off-campus speech are not entirely clear. Still, the greater the connection between the speech and school, the more likely it is that a court will allow discipline for the same types of speech schools can censor on campus. For example, schools can discipline students for off-campus speech that happens during a school field trip or event.<sup>60</sup> On the other hand, a federal court in Texas said that a school could not discipline a student for expression that was not done “on campus or even...directed at campus.”<sup>61</sup> In that case, the student drew a picture of his school under a violent siege. He made the drawing on his own time, off campus, and over two years before his brother inadvertently brought it to school.

Though the required connection to school may vary, several courts have applied the *Tinker* standard to off-campus speech, holding that off-campus speech can be punished if it results in an *on-campus* disruption.<sup>62</sup> For example, a student whose website contained mock pictures of a teacher’s severed head and a request for donations to fund her assassination caused the teacher to take a leave of absence. A Pennsylvania state court held that this disruption provided sufficient reason to discipline the student.<sup>63</sup> On the other hand, a student who created a derogatory “top ten” list about a teacher while off campus could not be punished because the list caused no disruption even after another student brought it to campus.<sup>64</sup>

However, due in part to the increased use of the Internet to transmit student speech both on and off campus, courts are still working to develop a clear standard. [See the section on Internet Speech, below, for more information.](#)

## **b.) ON-CAMPUS SPEECH**

### ***Can I protest or participate in a demonstration?***

You can communicate your opinions as long as you don't interfere with the rights of other students to communicate their different opinions. However, officials may punish forms of protest like interruptions, walkouts or boycotts, which disrupt the work of the school.<sup>65</sup> Schools cannot ban your nondisruptive expression just because it is about a controversial topic, though. They must have more than a mere apprehension that student expression would cause disruption to justify a ban on the speech.<sup>66</sup>

### ***What about political speech?***

Political speech is "at the core of what the First Amendment is designed to protect,"<sup>67</sup> and students generally have the right to state their political opinions except when the manner or means of doing so substantially disrupts the learning environment. For example, a student in a Michigan public high school was prohibited from wearing a T-shirt that had a picture of then-President George W. Bush on the front of it, along with a caption that read "International Terrorist."<sup>68</sup> The student said that he wore the T-shirt to protest President Bush's foreign policy and the imminent war in Iraq.<sup>69</sup> After another student complained, the principal told the student to turn the T-shirt inside out or change clothes, and said that if the student returned to school wearing the T-shirt he would be disciplined for insubordination.<sup>70</sup> The student sued, and the court held that absent specific evidence that the T-shirt did or would significantly and materially disrupt the learning environment, the student had a right to wear the T-shirt.<sup>71</sup>

***What is the difference between "pure speech," symbolic speech, and expressive conduct?***

"Pure speech" means speech that is spoken or written using words to communicate. Symbolic speech is speech that expresses a viewpoint through the use of a symbol, like wearing a black armband to protest a war. Expressive conduct is conduct that communicates a message, like showing someone the middle finger.

### ***Can I speak to my friends in Spanish or another language at school?***

Possibly. No court has said that public school students have a right to communicate in a foreign language.<sup>72</sup> Under some circumstances, however, disciplining students for speaking Spanish or another foreign language might amount to illegal discrimination on the basis of race or national origin.<sup>73</sup> A blanket ban on speaking a particular foreign language might also reflect or result in discrimination.<sup>74</sup> You should consult your student handbook or school district's policy to determine if and when speaking in a foreign language is prohibited at your school.

**c.) FORCED SPEECH*****Do I have to say the Pledge of Allegiance or stand and salute the flag?***

No. In *West Virginia Board of Education. v. Barnette*,<sup>75</sup> the U.S. Supreme Court ruled school officials may not compel students to pledge allegiance to or stand and salute the flag. This applies to both the U.S. flag and the Texas flag. The Texas Education Code requires students to recite the pledge of allegiance to both the U.S. and Texas flags every day, but also recognizes that students must be excused from doing so upon written request from their parent or guardian.<sup>76</sup>

***Can I participate in a Day of Silence?***

Probably. The National Day of Silence is an event that occurs every year when students across the country take some form of a vow of silence to bring attention to the name-calling, bullying and harassment—in effect, the silencing—experienced by LGBT (lesbian, gay, bisexual, and transgender) students and their allies.

You do have a right to participate in Day of Silence and other expressions of your opinion at a public school during non-instructional time: the breaks between classes, before and after the school day, lunchtime, and any other free times during the day.<sup>77</sup> However, you do not have a right to remain silent during class time if a teacher asks you to speak. If you want to stay quiet during class on Day of Silence, we recommend that you talk to your teachers ahead of time, tell them what you plan to do, and ask them if it would be okay for you to communicate on that day in writing.

For more information on Day of Silence and your right to participate, go to:  
<http://www.dayofsilence.org> or <http://www.aclutx.org/article.php?aid=569>.

**d.) SCHOOL CENSORSHIP*****Do I have a freedom to read? Can my school censor library books?***

Yes, you do have the freedom to read! An important Supreme Court case, *Board of Education, Island Trees Union Free School District v. Pico*, held that school boards may not remove books from school libraries based on their disagreement with the ideas expressed in those books.<sup>78</sup> While school officials can remove books from the library for other reasons, they must follow an even-handed, established procedure to do so.<sup>79</sup>

Public libraries have even less discretion than school libraries to ban books. For example, when a Wichita Falls, Texas public library removed the book *Heather Has Two Mommies* from its children's section in response to a petition signed by 300 library members, several parents sued the city in federal court.<sup>80</sup> The judge found that the city could not limit access to library materials solely on the basis of the content of those materials.<sup>81</sup>

### **Banned Books Report**

Every year, the ACLU of Texas surveys more than 1200 public school districts and charter schools in the state to find out which books have been banned or restricted in Texas public schools. The results are published in an annual report entitled “Free People Read Freely” during Banned Books week, typically the last week in September. For more information or to read a copy of the most recent report, go to: <http://www.aclutx.org/projects/bannedbooks.php>.

### ***Am I allowed to distribute written information, like church flyers or club announcements, to my fellow students?***

Yes. You can bring any written materials with you to school, such as off-campus newspapers, leaflets, or announcements, including religious materials.<sup>82</sup> The same restrictions apply as if the information were spoken instead of written – see above for the five types of censorship schools may apply.

If you wish to distribute them, however, you must follow school rules on when, where and how you may do that. The rules must be reasonable, and they must be the same for all types of non-school literature.<sup>83</sup>

### ***Can the school limit what students say in the student newspaper?***

Sometimes. The First Amendment’s protection of free speech protects written, political speech. The Supreme Court has made it clear, however, that under the U.S. Constitution, school officials may exercise editorial control over both the style and content of school-sponsored newspapers and other publications, so long as the restrictions they impose are reasonably related to a valid educational purpose.<sup>84</sup> According to the Court in *Hazelwood School District v. Kuhlmeier*, the school is the “publisher” of a school newspaper, which is printed under school supervision and at school expense, even though the writers are students. As “publisher,” the school can determine what can be published.<sup>85</sup>

However, censorship of school newspapers is not allowed unless it is related to a valid educational purpose. For example, the ACLU of Michigan successfully challenged a high school’s censorship of a school newspaper article about a resident who had sued the district for making him sick with fumes from idling school buses.<sup>86</sup> The ACLU also sued a California school on behalf of students whose newspaper series about sexual orientation and gender identity was wrongly censored, causing the school to adopt new policies to protect student journalists.<sup>87</sup>

### ***What about an off-campus ‘zine or other non-school-sponsored publication?***

In the case of non-school-sponsored (“underground”) publications, the school has much less control. As long as distribution takes place off campus outside of school hours, and there is no evidence that that the publication would disrupt or threaten to disrupt normal school operations, school officials cannot stop students from distributing the materials.<sup>88</sup>

If students plan to distribute an off-campus publication on-campus, the district generally can specify the time, place, and manner in which the publication may be distributed, as long as the standards are clearly defined, reasonable, and applied equally to everyone.<sup>89</sup> School officials may also review the contents of the underground publications before distribution, provided the procedures for review are clear and include reasonable time limits.<sup>90</sup>

Any school policies that regulate the content of underground papers cannot be vague or overbroad.<sup>91</sup> For example, a policy forbidding distribution of material that “encourages actions which endanger the health and safety of students” was found to be too vague.<sup>92</sup> Students must also have the right to appeal a censorship decision within set time limits.<sup>93</sup>

### **e.) INTERNET SPEECH**

#### ***Can the school punish me for something I say on the Internet?***

It depends. Schools can probably censor or punish students for speech on the Internet—or cyberspeech—if students create the speech as part of a school project or using school computers.<sup>94</sup> Even accessing the cyberspeech from campus, such as from a school computer lab, may be sufficient for a school to treat it as on-campus speech and censor or punish speech that is materially disruptive, lewd or vulgar, or advocates illegal drug use.<sup>95</sup> For example, a Pennsylvania eighth grader was expelled from school based on his creation, at home using his own computer, of a website entitled “Teacher Sux.”<sup>96</sup>

Evidence showed that the student had accessed the website while at school. The website included offensive depictions of a teacher, including one of her with her head cut off. As a result, the teacher was so upset that she took a medical leave of absence, students were frightened and parents complained. Finding that the website contained speech that was substantially disruptive of the school’s work, the Pennsylvania Supreme Court upheld the student’s expulsion.<sup>97</sup>

Courts continue to develop the rules on whether and when schools can discipline students for cyberspeech they create and access only from off campus. However, several have also allowed schools to discipline cyberspeech created off campus if it is closely connected to a substantial and material disruption on campus. For example, a school in Connecticut was permitted to punish a student who criticized school officials in his blog because it was foreseeable that the blog entries could cause a substantial and material disruption.<sup>98</sup> Applying the same rule to different facts, a federal court in Pennsylvania overturned a school’s suspension of a student who had posted a parodied profile of his high school principal on MySpace. The court held that the student’s speech was protected by the First Amendment because there was not enough evidence to connect the parody, which was developed off-campus, to any substantial and material disruption at school.<sup>99</sup>

While the law on cyberspeech is still unsettled, at a minimum schools should not be able to punish students for off-campus cyberspeech that is never accessed on campus and that does not risk a material and substantial disruption at school or fall into one of the categories of speech—such as defamation, child pornography, obscenity, true threats, fighting words, and incitement—that can always be prohibited.

It is important to note that the law is not well-settled with regard to whether school administrators can discipline students for cyberspeech, and it is unclear how courts in Texas will rule on students' on-line speech.

#### **Think before you post!**

Whether or not your school is likely to punish you, you should be mindful of what you post on the Internet, especially on social networking sites like Facebook and MySpace. Remember that these sites are open to the public and there's no guarantee that information or images you think are private won't be shared or seen by others, from your parents to teachers to college administrators to police. Even if you turn on privacy settings or use an alias, it's best to avoid posting statements you wouldn't want all of these people to see.

You should also be careful emailing information or images you want to be private. You can't control what other people do with information once they receive it, and you can't take words or a picture in an email back once you have sent it.

Finally, you should think twice before you impersonate a friend or teacher online. A new Texas law makes it a crime to impersonate someone else on a social networking site, email, instant message, text message, or similar communication with the intent to "harm or defraud any person."<sup>100</sup> Although this law may be unconstitutionally broad, it hasn't yet been challenged.

### **f.) FREEDOM TO ASSOCIATE - CLUBS AND ORGANIZATIONS**

#### ***Can we form clubs and organizations that represent our personal beliefs?***

The First Amendment guarantees a right to associate with others in pursuit of a wide variety of political, social, educational, religious, and cultural ends. While citizens have the right to associate to express themselves on such issues, they also have the right to exclude others whose membership would make it difficult to do so.<sup>101</sup>

If your high school allows any student clubs that are not directly related to classes, such as the Fellowship of Christian Athletes, the Young Republicans, the Young Muslims, or a Gay-Straight Alliance, it must allow all such groups to meet on equal terms.<sup>102</sup> [See the section on "Sexual Orientation and Gender Discrimination" for more information on Gay-Straight Alliances.](#) To be entitled to equal treatment, such groups must be student-run; a teacher may chaperone, but cannot direct the group's activities, nor can an outside adult run the group.<sup>103</sup> All such groups must have access to the same funds, facilities, and opportunities.<sup>104</sup>

Whether student clubs must accept members who do not share the club's beliefs depends on whether the member's presence would undermine the club's speech.<sup>105</sup> For example, when a student Christian organization, "Walking on Water," was denied recognition as a student club by a New York public school in part because the club required its officers to be Christian, the students sued, and a court found that the club had the right to select leaders who could express the club's religious beliefs.<sup>106</sup> In contrast, students belonging to another student Christian organization, "Truth," lost their challenge to a public school's refusal to recognize the club because all members had, among other things, "to have a true desire...to grow in a relationship with Jesus Christ."<sup>107</sup> The court concluded that the mere presence of non-Christian members would not change the club's speech.<sup>108</sup>

In order to establish a new club students should follow their school's procedure(s) for doing so. Check your school's Student Handbook for more information.

### **g.) CLOTHING AND APPEARANCE**

#### ***Can my school punish me for what I wear?***

It depends. Courts have found that school districts can regulate student appearance with dress codes and uniforms to further important school interests like safety, discipline, and preventing distractions in the learning environment.<sup>109</sup>



However, student expression in the form of clothing such as buttons, armbands, or t-shirts with slogans can qualify as protected speech provided that it is intended to express an understandable message, and the school's dress code permits such articles of clothing at all.<sup>110</sup> In addition, attire that is part of a religion in which a student sincerely believes--like yarmulkes, crosses, and turbans—cannot be prohibited unless there is no other way to fulfill a compelling school interest.<sup>111</sup>

"Plainly offensive" clothing may be barred,<sup>112</sup> but courts have reached different conclusions about what constitutes "plainly offensive." For example, a student who wore a T-shirt that said "homosexuality is a sin, Islam is a lie, abortion is murder, some issues are just black and white" successfully appealed his school's prohibition of the T-shirt.<sup>113</sup> In contrast, another court upheld a school's decision to forbid a student from wearing a Marilyn Manson T-shirt, reasoning that since Marilyn Manson sings about suicide, murder, and drugs, the message conveyed by the T-shirt was sufficiently offensive to justify the ban.<sup>114</sup>

***Can I wear a T-shirt with the Confederate flag on it?***

Maybe. The answer will turn on the circumstances. In several cases, schools have succeeded in prohibiting students from wearing or otherwise displaying images of the Confederate flag because it is a symbol of racial discrimination and harassment. For example, one court held that a student who wore a jacket displaying a Confederate flag on it just four years after his Tennessee High School was desegregated was legitimately suspended given the history of racial tension at the school.<sup>115</sup> In a more recent case, a different court upheld a student's suspension for drawing a Confederate flag during math class, thereby violating the school's policy against racial harassment and discrimination, in part because the student's school had a recent history of racial tension and discrimination.<sup>116</sup>

However, in another case two students successfully challenged their suspension for wearing T-shirts depicting country singer Hank Williams Jr. on the front and two intertwined Confederate flags on the back along with the words "Southern Thunder."<sup>117</sup> The court in that case held that absent any evidence the students' shirts were likely to cause a disruption, and in light of evidence that the school permitted Malcolm X T-shirts, the students' speech showing their enthusiasm for Hank Williams' Jr. and their shared Southern heritage was protected by the First Amendment.<sup>118</sup>

***Can my school require students to wear uniforms?***

Yes. A Texas law enacted in 1995 permits school boards to require school uniforms to improve the learning environment.<sup>119</sup> Districts adopting uniform policies are required to designate a source of funding to purchase uniforms for students who are economically disadvantaged.<sup>120</sup>

Students may be exempted from the uniform policy or allowed to transfer to another district that does not require uniforms, where space permits, if their parent or guardian provides a written statement that the school board believes states a "bona fide religious or philosophical objection to the requirement."<sup>121</sup> The uniform law was challenged by a group of students and parents in the Forney Independent School District. Among other things, the students and parents said that the school's uniform policy violated the students' free expression and free religious exercise rights and violated their parents' rights to direct their upbringing.<sup>122</sup> Some of the students had applied for an exemption based on "bona fide religious or philosophical objections," and some had been denied exemptions while others had successfully obtained them. The court held that the school's policy was neutral and did not violate any of the students' constitutional rights.<sup>123</sup> Beyond this case, there is little guidance as to what would – or wouldn't – state a "bona fide religious or philosophical objection." At a minimum, though, schools must exempt students for whom a uniform policy substantially burdens their sincerely held religious beliefs.<sup>124</sup>

***What about my hair? Can my school prevent me from having long hair, or pink hair, or a mohawk?***

Usually yes because the law permits school districts to regulate appearance to prevent distractions in the learning environment. Dress codes that restrict the length of hair for boys and prohibit unusual hairstyles or hair colors have been upheld by courts in Texas, on the theory that hairstyle is not usually a protected form of expression or that unusual hairstyles like long hair on boys would create a disruption to the learning environment.<sup>125</sup>

*However*, students who can demonstrate that they have a particular hairstyle because of a sincerely held religious belief must be exempted from such a policy unless applying the hair restriction is the only way for a school to fulfill a compelling interest.<sup>126</sup> For example, the ACLU of Texas recently won a case on behalf of a five-year-old American Indian kindergarten student, who was placed in In-School Suspension for refusing to cut his hair or hide his two long braids under his shirt.<sup>127</sup>

### ***So girls can have long hair but boys can't?***

In most school districts, yes. When it comes to dress codes, schools sometimes treat boys and girls differently based on their gender. This is usually based on the traditional ideas of what men and women should look like and wear. Although it may seem unfair, courts in Texas have found hair-length regulations directed at just one gender to be legal.<sup>128</sup> Courts in Texas would likely also uphold dress codes that apply different standards to boys and girls on the basis that such rules prevent disruption in the classroom.<sup>129</sup> However, courts have not ruled on this issue directly.

Check your school's Student Handbook for information on your school's particular dress code.

### ***How about piercings?***

A school district may be able to limit facial and other piercings. *In Bar-Navon v. Brevard County School Board* an appellate court held that Danielle Bar-Navon did not have a constitutionally protected right to display jewelry in her body piercings during school in contravention of a school board policy that limited piercings to the ears.<sup>130</sup> Although Danielle argued that the piercings on her tongue, nasal septum, lip, naval, and chest were "an expression of her individuality, a way of expressing her non-conformity and wild side, an expression of her openness to new ideas and her readiness to take on challenges in life," she did not claim that her piercings had any political or religious significance.<sup>131</sup> Absent such evidence, the court held that the school district's dress codes limiting piercing to ears was a constitutional exercise of its authority to regulate the time, place, and manner of expression to prevent extreme appearances which might cause disruptions to the learning environment.<sup>132</sup>

#### **MORE STUDENT SPEECH RESOURCES**

For more information about Freedom of Speech, visit these websites:

The First Amendment Center: <http://www.firstamendmentschools.org/>;

Student Press Law Center: <http://www.splc.org/legalresearch.asp?id=38>.

### III. FREEDOM OF RELIGION

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”<sup>133</sup>



The First Amendment protects your religious freedom through two distinct but equally important clauses:

- The “Establishment Clause” ensures that the government cannot favor any particular religious belief, or religion over non-belief. The Establishment Clause is about government action: it restricts the actions of schools trying to promote religion in general, or some religious beliefs at the expense of others.
- The “Free Exercise Clause” ensures that individuals have the right to practice their religious beliefs. The Free Exercise clause is about individual action: it protects your freedom to follow your religion without interference from the government.

Students did not always have the religious freedom you enjoy today. They had to go to court and fight for it. Schools used to tell children when and how to pray. In the landmark case of *Engel v. Vitale*, the Supreme Court said that the government has no right to compel that kind of conformity under the Establishment Clause.<sup>134</sup> The government cannot show a preference for any particular religion, or for religion in general over the beliefs of nonreligious people.<sup>135</sup>

#### a.) STUDENTS’ RIGHTS TO RELIGIOUS FREEDOM IN SCHOOL

*What rights do I have at school to express my religion?*

- **To pray.** You have the right to pray at school, whatever your religion.<sup>136</sup> So long as you are simply expressing your faith as an individual or with your friends, you are protected by the Free Speech and Free Exercise clauses of the First Amendment;
- **To talk to other students about your beliefs.** You have the right to talk to your friends about your religious beliefs,<sup>137</sup> as long as you are not disrupting class or trying to get help from the school to advance your beliefs;
- **To form a religious noncurricular club:**
  - Under the Equal Access Act, if your high school allows any noncurricular clubs, it must allow all noncurricular clubs as long as they meet the same requirements.<sup>138</sup> A noncurricular club is one that—unlike the cheerleading squad, student newspaper, or Spanish Club—is not directly related to school courses;<sup>139</sup>
  - However, if the school doesn’t allow any extracurricular groups at all to meet, they can stop you from meeting as well;<sup>140</sup>

- If you aren't sure what your school's rules are about extracurricular clubs, check your school's Student Handbook;
- **To wear articles of faith.** You also have the right to wear articles of faith, such as a rosary, hijab, yarmulke, or turban to school unless the school has a compelling reason to prohibit the item.<sup>141</sup>

### ***Can I talk about my religion in school homework assignments and art projects?***

Usually, yes, and teachers may not take points off—or give extra points—for religious content as long as your work is responsive to the assignment.<sup>142</sup> For example, a teacher could constitutionally give you a bad grade for submitting an essay on your religious beliefs in response to a math problem assignment.

However, if students, parents, and members of the public might reasonably perceive the expression to bear the imprimatur of the school and it occurs in the context of a curricular activity, the school may limit a student's religious expression. For example, a student who was prohibited from reading a Bible story to his class sued, claiming his Free Exercise rights were infringed. The court held that allowing the student to read the Bible story to the class might imply that the teacher endorsed the Bible story.<sup>143</sup> Additionally, courts have said that student artwork done as a part of a school's educational program can be censored to further an educational purpose. For example, a school was allowed to take down religious murals a student painted as part of a campus beautification project to avoid a disruption on campus.<sup>144</sup> On the other hand, a Las Cruces, New Mexico school could constitutionally permit an afterschool student group's mural containing crosses and other images representing the community, such as mountains and yucca plant, because the mural could not be mistaken as promoting a religious message.<sup>145</sup>

### ***What if a teacher asks me to do an assignment that conflicts with my beliefs?***

Teachers must allow students to express their personal beliefs in class discussion and in written work,<sup>146</sup> but they may also require students to complete academic exercises that conflict with the students' personal beliefs if the assignment serves a legitimate educational purpose.<sup>147</sup> Teachers may not require students to adopt or embrace any religious belief, including but not limited to the teacher's own beliefs.<sup>148</sup>

For example, parents who described themselves as born-again Christians challenged their school district's use of a basic textbook series because the series included topics like a fictional story about a girl who used mental telepathy and information about evolution.<sup>149</sup> The parents argued that requiring their children to use the textbooks unconstitutionally burdened the children's free exercise of religion, because passages in the textbooks conflicted with their religion. The court disagreed and said that merely requiring students to read and be exposed to information inconsistent with their religious beliefs does not violate their rights, absent a requirement that the students commit an act or practice or make an affirmation inconsistent with their beliefs.<sup>150</sup>

In another case, a group of parents of elementary school children challenged the school's use of books that depicted diverse families, including families where both parents were of the same gender.<sup>151</sup> The parents argued that the themes of the books conflicted with their religious beliefs that homosexuality is immoral.<sup>152</sup> The court rejected the parents' claims, holding that "[p]ublic schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the

school imposes no requirement that the student agree with or affirm those ideas, or even participate in discussions about them.”<sup>153</sup>

In addition, Texas law permits a parent, in writing, to temporarily excuse her child from class or any other school activity that conflicts with the parent's religious or moral beliefs. Such an excuse cannot be used to get a student out of taking a test, out of a whole semester, or to avoid meeting the normal graduation requirements.<sup>154</sup>

***What if I include scripture verses in my yearbook entry? Could the school censor me to avoid being sued?***

Your school may be confused about the difference between Establishment and Free Exercise. If all students are invited to submit a yearbook quote or entry and yours is barred because it is religious, the school may be violating your rights to free speech and free exercise of religion. For example, a high school in Michigan refused to print its high school valedictorian's submission to the yearbook because she included a Bible verse. After the ACLU intervened on behalf of the student, the school apologized and adopted a policy against censorship.<sup>155</sup> However, as with homework assignments and school newspapers, if students, parents, and members of the public might reasonably perceive the expression to bear the imprimatur of the school the school may limit a student's religious expression to serve a legitimate educational purpose.<sup>156</sup>

***What if I have to occasionally miss school for religious holidays?***

A student may be absent, with parental permission, for religious holidays, and the absence does not count against the student's attendance or academic record.<sup>157</sup> Public schools may allow students to leave school early to receive religious instruction elsewhere, provided that the public school is not used for religious purposes.<sup>158</sup> However, it is unconstitutional for a school to have a “release time” program in which students are invited to leave regular classes for religious instruction by teachers employed by private religious groups in public school classrooms.<sup>159</sup> Generally, if the purpose or effect of a school's “release time” program is to advance religion, it is unconstitutional.<sup>160</sup>

***What about “See You at the Pole,” events, where students meet at the flagpole to pray?***

“See You at the Pole,” (“SYATP”) and similar events, where high school students meet at a pre-arranged location on school grounds to pray together, may be allowed as long as they are student-organized optional events, do not occur during regular school hours, and students are not required to attend.<sup>161</sup> For more information about student religious club meetings, see the section on *Freedom to Associate*, above.

**What is the RVAA?**

The Religious Viewpoints Anti-Discrimination Act, also known as the Schoolchildren's Religious Liberties Act, went into effect during the 2007-2008 school year. Among other provisions, it states: "A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject."<sup>162</sup>

**b.) LIMITS ON RELIGIOUS COERCION IN SCHOOL**

The same constitutional amendment that ensures students have religious freedom to practice and express their faith, whatever that faith is, also protects students from having their school force any particular religion upon them.

***Some group came into my classroom one day and started walking down the rows passing out Bibles. Shouldn't the school have to keep those guys out?***

Yes. Schools cannot allow outside religious groups to come in and *proselytize* students or hand out religious materials during class time.<sup>163</sup> Some courts have said that high schools can allow such groups to distribute Bibles or other religious literature passively—such as by placing them on a table for students who want to take one—under strict limits and as long as all other groups that want to distribute outside materials have the same access.<sup>164</sup> However, schools may not permit distributions under any practice intended to advance religion, that appears to favor a religious view, or that creates a situation in which students feel coerced to take a copy of the scripture.<sup>165</sup> Thus, Bibles and other religious scriptures should not be distributed to elementary aged students by outside groups at any time during school because younger students may not understand that it is not the school that is endorsing the religious text.<sup>166</sup> For more information about Bible distribution, see *Gideons Bibles and Students' Religious Liberty: An ACLU of Texas Investigative Report* at: <http://aclutx.org/files/FINAL%20Gideons%20Report%20-%2010%2008%2009.pdf>.

***Proselytize*** means attempting to convert someone to a religion. For example, if Maria invited Robert out for coffee, and spent their conversation telling Robert that he would not be saved unless he joined her church, she would have proselytized him.

***Is my school allowed to require a "moment of silence" at the start of the school day?***

Yes. Schools are allowed to have a moment of silence as long as the practice was not adopted to advance religion and it does not communicate the message that prayer is the officially preferred activity

during the moment of silence.<sup>167</sup> For example, in one case, a teacher violated the Establishment Clause when she collected prayer requests, began the moment of silence by saying “Let us pray,” and finished it by saying “Amen.”<sup>168</sup>

While some laws requiring moments of silence in other states have been held unconstitutional because the legislative history showed that the law itself was adopted for the purpose of advancing religion,<sup>169</sup> under the current Texas Education Code, a moment of silence is not only permitted, but required, as is the recitation of the pledge of allegiance.<sup>170</sup> According to Texas law, during the one-minute period, each student may, as the student chooses, reflect, pray, mediate, or engage in any other silent activity that is not likely to interfere with or distract another student.<sup>171</sup>

***My coach holds a prayer circle with members of my sports team before games. This makes me uncomfortable because my religious views conflict with the rest of the team. Is the coach violating my rights?***



Yes. Even if such prayers don’t make you uncomfortable, your coach and teachers may not lead student prayer because doing so is coercive and sends the message that the school prefers or endorses a religious view.<sup>172</sup> However, if some members of the team wish to meet before games in order to pray, they have that right as individuals so long as they do not receive school endorsement or sponsorship.<sup>173</sup> Teachers, coaches, and other school employees are strictly forbidden from using their status as government authority figures to promote any religion to students.

***So if teachers can’t lead prayers, can they invite clergy or students to lead them instead?***

No. The Supreme Court held in *Lee v. Weissman* that a school violates the Establishment Clause when it invites an outside member of the clergy to deliver a prayer at a school event like graduation, because the students are coerced to participate in a religious exercise.<sup>174</sup> When a Texas school tried to get around

that rule by having students vote on whether to have a prayer and who would give it at football games, the ACLU of Texas fought the school all the way to the Supreme Court. In that case, *Santa Fe Independent School District v. Doe*, the Court held that by setting up an election and providing a student with the stage to lead prayer at football games, the school was still coercing students to pray.<sup>175</sup> In addition, the election itself was unconstitutional because allowing the majority of students to decide whether or not to pray gives them unconstitutional power to coerce students in the minority into hearing or participating in prayer that conflicts with their religious beliefs.<sup>176</sup>

***What about prayer at graduation? Is that allowed?***

It depends on who has chosen or sponsored the prayer - students, or the school.

Your school cannot sponsor or endorse prayer at a graduation or any other school-sponsored event, like induction into the National Honor Society, or Annual Athletic Banquet. School prayer, even if it is nonsectarian, cannot be forced upon people who do not wish to have the government tell them what prayers to hear. When a school sponsors a prayer at a graduation ceremony, the school is coercing nonbelievers into participating in the prayer, which violates the Establishment Clause.<sup>177</sup>

However, current Texas law says that students may choose to pray, or talk about their religious faith in a graduation or similar speech.<sup>178</sup> Such prayer cannot be constitutional unless the school is absolutely clear that it does not sponsor or endorse a student's religious speech.<sup>179</sup> Therefore, at a minimum, school administrators cannot encourage students to pray or dictate, suggest, or edit what a student should say, and they must include a disclaimer on graduation or other event programs indicating that they do not sponsor student religious speech.

And of course, any student can pray privately, to him or herself, at anytime, at graduation or anywhere else, as long as she or he is not disrupting other students.<sup>180</sup>

**Nonsectarian prayer** is prayer that does **not** call upon any specific deity (like Jesus, Allah, or Vishnu).

### ***Can my school have a Christmas tree or other holiday display?***

The holiday season presents special challenges in public schools. Schools throughout Texas conduct Christmas programs and display Christmas trees, menorahs and other religious symbols, even though such displays appear to violate the constitutional principle of neutrality. As U.S. Supreme Court Justice Sandra Day O'Connor said in the case of *Lynch v. Donnelly*, such displays may "send[] a message to nonadherents that they are outsiders...and an accompanying message to adherents that they are insiders."<sup>181</sup> Despite endorsement concerns, the Court in *Donnelly* upheld a city's crèche or nativity scene display in a city park alongside other symbols traditionally associated with Christmas like a statue of Santa Claus and his reindeer, candy striped poles, a Christmas tree, and carolers.<sup>182</sup>

A different outcome, however, was reached in *Allegheny County v. Pittsburg American Civil Liberties Union*.<sup>183</sup> There, the Supreme Court prohibited the display of a crèche containing a banner reading "Gloria in Excelsis Deo" on the grand staircase of a county courthouse alongside poinsettias and two decorated evergreen trees.<sup>184</sup> The Court said the display sent a "patently Christian message" and was, therefore, unconstitutional.<sup>185</sup>

In the same case, however, the Court upheld another municipal display of a Christmas tree, menorah, and sign saluting liberty and conveying general holiday greetings.<sup>186</sup> The Court's decision was based on its determination that, taken as a whole, the scene created a secular theme, although it recognized that the menorah was a religious symbol.<sup>187</sup>

The different outcomes of these cases make it difficult to understand the law on religious displays. The following principle is clear: whether a display will be found constitutional or not depends on the facts surrounding the display.

Religious displays on school property are more like displays on the courthouse steps and less like a display in a park. It is easy to confuse their message as an endorsement from the government. The Court specifically suggested in *Allegheny* that “when located in a public school, such a display [of a tree and a menorah] might raise additional constitutional considerations.”<sup>188</sup> The Supreme Court is concerned with subtle coercive pressures in primary and secondary schools and the fact students are compelled to attend.<sup>189</sup> Therefore, even with respect to the holiday season, the guiding principle remains that government must maintain a course of neutrality between religions as well as between religion and non-religion at public schools.

### **c.) ROLE OF RELIGION IN ACADEMICS**

***My school is offering an elective that teaches the Bible as history and literature. Are they allowed to do that?***

As long as they are careful, yes.

Schools may not teach the Bible as it would be taught in a Sunday School class, but the Supreme Court has said they may teach *about* the Bible in an objective and academic manner “as part of a secular program of education.”<sup>190</sup> For example, talking about the Bible in a class about different world religions, reading the book of Job as an example of existential literature, or reading portions of the Bible as part of a history lesson on how it and Christianity have impacted art are secular uses.<sup>191</sup> On the other hand, teaching that the Bible is the true word of God would not be a secular use.

However, no class time may be used to proselytize students, or to *promote* the Bible or Christianity or another other religion.<sup>192</sup> Many Bible classes have failed that test. For example the ACLU of Texas sued to stop the Ector County Independent School District from using a commercial curriculum published by the National Council on the Bible in Public Schools because the curriculum taught the Bible as literal truth, presented only one religious group’s view of the Bible, and had many other constitutional flaws.<sup>193</sup> Courts in other jurisdictions have prevented schools from offering such classes when the content impinged on students’ religious freedom.<sup>194</sup>

In Texas, a school may offer courses on the Bible as an elective to students in grade nine and above, but any such courses must respect the constitutional limits defined by the Supreme Court.<sup>195</sup> For more information on Bible courses in Texas, see *Know Your Rights: The Bible in Texas Public Schools*, available at: <http://www.aclutx.org/projects/article.php?aid=771&cid=26>.

***Can my school teach “creation science” or “intelligent design” in my science class?***

No. In 1987, the Supreme Court found that Louisiana violated the Establishment Clause when it required schools that taught the theory of evolution to also teach “creation science.”<sup>196</sup> By requiring “creation science,” a concept that the legislature made clear embraced religious teachings, the state had unlawfully tried to “restructure the science curriculum to conform with a particular religious viewpoint.”<sup>197</sup>

After that decision, supporters of teaching creationism in science classes embraced “intelligent design” as a new alternative to “creation science.” Intelligent design argues that the complexity of the organic

world could only have arisen from a force beyond nature, thus requiring some type of intelligent agent.<sup>198</sup>

In 2004 the Dover, Pennsylvania Board of Education voted to require all ninth grade biology teachers to read a statement to their students that challenged the validity of the theory of evolution, and instead suggested they look into “intelligent design” as an alternative “theory.” After listening to arguments from scientific experts, a federal judge decided that intelligent design is not a science and “cannot uncouple itself from its creationist, and thus religious, antecedents.”<sup>199</sup> As such, teaching it in the public schools is an unconstitutional endorsement of religion.<sup>200</sup>

For more information on your right to religious freedom in school, please visit the Texas Freedom Network (TFN) at [www.tfn.org](http://www.tfn.org).

## IV. FREEDOM FROM DISCRIMINATION

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Freedom from discrimination means the equal treatment of individuals despite their differences. With some limitations, the Constitution guarantees that schools cannot treat students differently based on their race, religion, sex, or national origin. Federal and state laws provide additional protections.

### Defining “discrimination”

Of course, prohibiting discrimination doesn’t prevent it from occurring. Unfortunately, every day in schools all over the state, students continue to experience different types of discrimination. The following is a partial list of behaviors that may reflect discrimination:

- **Bullying** – when school administrators, coaches, teachers or other students threaten or physically hurt a particular student or group of students because of a certain characteristic, such as race, or sexual orientation;
- **Harassment** – when school administrators, coaches, teachers, or other students verbally abuse or otherwise mistreat a particular student or group of students because of a certain characteristic, such as race or sexual orientation;
- **Disproportionate discipline or punishment** – when school administrators, coaches, or teachers reprimand or punish students who share certain characteristics, such as race or special education status, more often than others for the same behavior;
- **Denial of equal opportunity** – when school administrators, coaches, or teachers give some students opportunities or privileges not provided to all.

The following section will help you understand the legal standards that protect students from different types of discrimination.

### a.) RACE

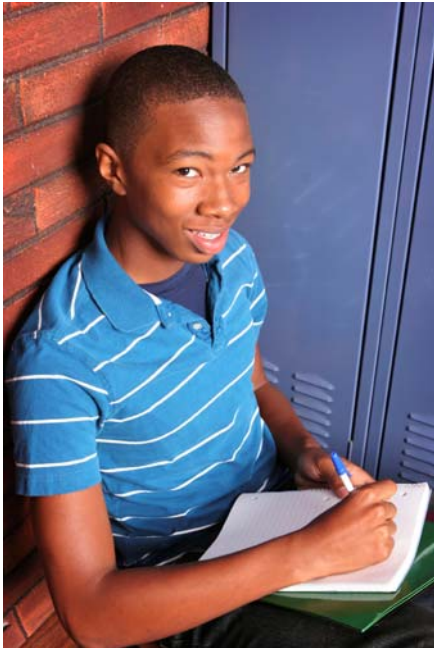
#### ***What guarantees my right to receive the same educational opportunities regardless of my race?***

The Fourteenth Amendment to the United States Constitution prohibits the states from denying equal protection of the laws to any person. In 1954, the Supreme Court of the United States invoked this amendment in a case entitled *Brown v. Board of Education*. The Court held that separate, black-only schools were “inherently unequal” and that requiring black students to attend separate schools violated their Fourteenth Amendment rights.<sup>201</sup> Previously, a federal court in Texas held in *Delgado v. Bastrop Independent School District* that it was unconstitutional to require children of Mexican descent to attend separate public schools from white students.<sup>202</sup>

Since the *Brown* decision, students of all races throughout the United States have the legal right to equal educational opportunities.

What is “desegregation”? Desegregation is the process or policy of eliminating the segregated education of students of different races, and integrating students of **all** races into the same school or school district.

***Is desegregation complete? If not, what is the government doing about it?***



Unfortunately, after the *Brown* decision, some communities and school districts went to great extremes to continue their racial segregation efforts. For example, in 1959 in Prince Edward County, Virginia, the local school board closed all the public schools rather than allow racial integration.<sup>203</sup> While courts had the power to declare local school admission policies unconstitutional, many states refused to implement laws that would allow black and white students to attend the same schools.<sup>204</sup>

Even though legal segregation ended long ago, de facto segregation, or segregation in fact, continues today. School districts have devised a variety of ways to address the continuing impact of de facto segregation, with mixed results. The Supreme Court recently struck down the Seattle, Washington, and Louisville, Kentucky school districts’ race-based classification systems, which both districts had used to promote and ensure the racial diversity of schools within their districts.<sup>205</sup> The Court held that the school districts could not take into account students’ race

in assigning them to schools to ensure racial diversity.<sup>206</sup>

For more information on your right to be free from racial discrimination, please visit the National Association for the Advancement of Colored People (NAACP) at [www.naACP.org](http://www.naACP.org).

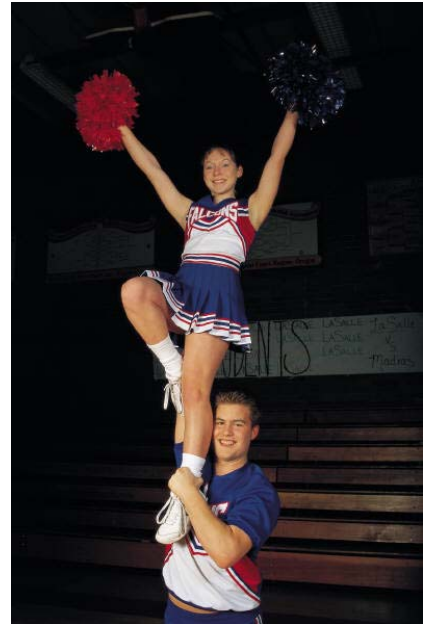
**b.) GENDER**

***Can classes or an entire school be limited to only one gender?***

Yes. The *No Child Left Behind* Act of 2002 allows school districts to limit certain course offerings, or in certain cases entire schools, to either boys or girls only.<sup>207</sup> A school district may establish single-sex schools provided that “substantially equal” courses, services, and facilities are available for the excluded gender at either single-sex or coeducational schools within the school district.<sup>208</sup>

A school may offer single-sex classrooms if: 1) a legitimate rationale is provided (for example, if very few girls have taken a computer science class in the past, a school could offer a girls-only computer science class); 2) the school district provides a coeducational class in the same subject at a geographically accessible location; and 3) a review is conducted every two years to determine whether single-sex classes are still necessary to remedy whatever inequity prompted their being offered. In addition, physical education courses involving bodily contact and courses that deal exclusively with human sexuality may be segregated by gender.<sup>209</sup>

Sex segregation in public schools has accelerated since October 2006, when the U.S. Department of Education announced new regulations making it easier for public schools to implement single-sex schools and classrooms. The ACLU of Louisiana recently challenged mandatory sex segregation in Vermilion Parish School District.



Charter schools are exempt from these regulations and may be set up as single-sex institutions or provide single-sex classrooms without meeting the above listed requirements.

### ***Do boys and girls have an equal right to participate in sports?***

Yes. Title IX of the Education Amendments of 1972 (“Title IX”) mandates that no education program or activity receiving Federal financial aid may exclude, deny benefits to, or discriminate against any person in the United States because of his or her gender.<sup>210</sup> Federal regulations require that a school that “operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes.”<sup>211</sup>

Specifically, a school may operate or sponsor separate teams for boys and girls when the selection for the teams is based on competitive skill or when the activity involved is a contact sport (such as boxing, wrestling, rugby, ice hockey, football, and basketball).<sup>212</sup> However, if the school does not operate or sponsor such a team for members of one sex, and if athletic opportunities for members of that sex have previously been limited, then members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport.<sup>213</sup>

If separate boys’ and girls’ teams exist, the school must provide equal opportunities for each. This equality is measured by factors such as:

1. Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
2. The provision of equipment and supplies;
3. Scheduling of games and practice time;
4. Travel and per diem allowance;
5. Opportunity to receive coaching and academic tutoring;
6. Assignment and compensation of coaches and tutors;
7. Provision of locker rooms, practice and competitive facilities; and

8. Provision of medical and training facilities and services.<sup>214</sup>

### c.) SEXUAL ORIENTATION and GENDER DISCRIMINATION

#### ***Does the Constitution protect LGBT students from discrimination on the basis of sexual orientation, the same way it protects students from discrimination on the basis of race?***

Yes and no. The Supreme Court has held that the state may not discriminate against lesbian, gay, bisexual or transgendered (LGBT) persons without a rational basis for doing so.<sup>215</sup> This is the lowest standard of scrutiny the court can apply, and means that the policy will be upheld unless the person challenging it can show that there is no reasonable basis for the policy, so the only purpose must be discrimination.<sup>216</sup>

In contrast, policies which discriminate on the basis of gender are reviewed under intermediate scrutiny – which, like it sounds, is a medium standard of review. Policies that discriminate on the basis of race are subject to the strictest scrutiny, which means they are only constitutional if the state has a compelling reason for the policy and there is no less discriminatory alternative.

#### ***Do I have the right to form a Gay/Straight Alliance with other students at my school?***

Probably. If your school allows other student groups not affiliated with classes, such as a Chess Club or Fellowship of Christian Athletes, then federal law mandates it allow a Gay-Straight Alliance.<sup>217</sup> The Equal Access Act requires all non-curricular student organizations be treated equally, no matter the content of the club.<sup>218</sup> In fact, if the school allows even one group not related to classes, then the school cannot deny any other group on the basis of the group's message or content.<sup>219</sup>

For more information on student groups, please read our FAQs on *Freedom to Associate – Clubs and Organizations* located in the *Freedom of Expression* section of this manual. For more information on the Equal Access Act, please read our FAQs on *Students' Rights to Religious Freedom in School* in our *Freedom of Religion* section of this manual.

A Gay-Straight Alliance (GSA) is a student-run club, typically in a high school, which provides a safe place for students to meet, support each other, talk about issues related to sexual orientation, and work to end homophobia. Many GSAs function as a support group and provide safety and confidentiality to students who are struggling with their identity as gay, lesbian, bisexual, transgender, or questioning. In addition to support, some GSAs work on educating themselves and the broader school community about sexual orientation and gender identity issues.

***Can my school stop me from putting up fliers or using the announcement system to talk about my Gay/Straight Alliance, or from making announcements about gay-friendly events?***

Under the Equal Access Act, if the school allows other non-curricular student groups to put up fliers or make announcements, the school cannot restrict other student organizations from doing the same, even if it disagrees with the content of the speech. However, some courts have limited this kind of speech if the court thinks it is going to contradict an abstinence-only sex education curriculum.

***If we have a GSA, can we talk about sex and safe sex practices?***

While it might make sense for a Gay-Straight Alliance to give students a forum to discuss sexuality and safer sex issues, it is advised that students avoid these topics because at least one Texas court has found that this is at odds with Texas' abstinence-only policy.<sup>220</sup> For more information on permitted expression, see the *Freedom of Expression and Association* section of this handbook.

***Can I bring a same-sex date to the prom?***

Yes. If you go to a public school and school officials try to tell you that you can't bring a same-sex date to prom, tell them about *Aaron Fricke v. Richard B. Lynch*, a case in which a court found that a school's refusal to allow a male student to bring a male date to prom violated the Constitution.<sup>221</sup> The law also protects your right to equal protection, meaning that you can't be treated differently from other students because of your sexuality.<sup>222</sup>

For more information on your right to be free from discrimination based on sexual orientation and gender, please visit:

Gay, Lesbian and Straight Education Network (GLSEN) at [www.glsen.org](http://www.glsen.org);  
Out Youth at [www.outyouth.org](http://www.outyouth.org).

**d.) MARRIED, PREGNANT, OR PARENTING STUDENTS**

Married students, pregnant students, and students who are parents have the same right to a free public education as all other students, including the right to fully participate in all activities offered by the school.<sup>223</sup>

Texas public schools may provide a life skills program for student parents. Life skills programs include educational and support services designed to enable parenting students to complete their education while raising their families.<sup>224</sup>

A district may not discriminate against any student or exclude any student from its education program or activity, including class or an extracurricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from pregnancy, unless the student requests voluntarily to participate in a separate portion of the District's program or activity.

#### **e.) IMMIGRANT AND NON- US- CITIZEN STUDENTS**

##### ***If I am an undocumented immigrant, can I still go to school in Texas?***

Yes. If you are one of the more than 1.7 million undocumented immigrant minors living in the United States, you have the same educational rights as U.S. citizens. In the landmark case *Plyler v. Doe*, which originated in Texas, the Supreme Court decided that education is so important to the development of children and their communities that all children, regardless of their immigration status, deserve access to a free K-12 education. It doesn't matter whether your parents are U.S. citizens or not. In Texas, all children ages 5 to 21 enjoy this legal right.<sup>225</sup>

For more information about access to education, you may wish to consult "Legal Issues for School Districts Related to the Education of Undocumented Children," an on-line guide published by the National School Boards Association and National Education Association. It is available for download at:

<http://www.nsba.org/SecondaryMenu/COSA/Search/AllCOSAdocuments/Undocumented-Children.aspx>.

##### ***But I heard that my school district requires proof of my legal presence in the United States to enroll in school. I don't have a social security card, visa, or any other form of identification.***

It is a violation of federal law for school districts to require any proof of citizenship or legal immigration status for enrollment in public school.<sup>226</sup> You do not need a social security card, state or federally issued identification card, visa, or green card to enroll. In Texas, the only documents school administrators may request are: (1) a birth certificate or other proof of identity; (2) records from the school you most recently attended; (3) proof of immunizations; and (4) proof that you reside in the school's district.<sup>227</sup>

***But I don't live with my family. I moved to the U.S. on my own to get an education. Am I still considered a resident of the school district?***

Probably. To be a resident of a school district in Texas, either you, one of your parents, your legal guardian, or a grandparent who contributes significantly to your well-being must reside in the school district.<sup>228</sup> However, residency means more than physical presence in a district. Typically, you must show that whoever lives in the district also intends to remain there. As long as you can show that you did not move to the district on your own for the primary purpose of participating in sports or other extracurricular activities, you are a resident of that district and deserve access to a free education.<sup>229</sup>

***So I have the right to a free education, but won't enrolling in school reveal my family's undocumented immigration status?***

No. School administrators are required to provide educational opportunity "to all on equal terms," which arguably prohibits them from adopting policies that create fear of deportation and thereby discourage enrollment.<sup>230</sup> In addition, the Federal Educational Rights and Privacy Act (FERPA) prevents schools and districts from releasing your records to anyone outside of the school, including immigration officers.<sup>231</sup> If your parents want to prevent your school from releasing basic information such as your name and address, FERPA and Texas law allow them to request in writing that the district mark this information as confidential.<sup>232</sup> If your personal information is labeled confidential, the school must obtain consent from your parents before releasing anything.

***I am from a low-income family. As an undocumented immigrant, can I apply for federally funded school programs like the free lunch program?***

Yes. Federal law requires school districts to provide undocumented children the same benefits and services available to citizens, such as the reduced or free school breakfast and lunch programs.<sup>233</sup>

For more information on the rights of immigrants, please visit the Mexican American Legal Defense & Education Fund (MALDEF) at: [www.maldef.org](http://www.maldef.org).

**f.) LIMITED ENGLISH PROFICIENT STUDENTS**

***I don't speak English but want to enroll in school. Can I still enroll?***

Yes. The Equal Education Opportunities Act of 1974 (EEOA) prohibits school districts from discriminating against students based on sex, race, or national origin, which requires them to aid students to overcome language barriers.<sup>234</sup>

***Will my school place me in a bilingual education program?***

Probably. In Texas, if there are 20 or more limited English proficiency (LEP) students within the same grade level, the school must provide a bilingual education program on site with licensed bilingual educators. Schools must inform your parents of your placement in the program both in English and your parents' native language.<sup>235</sup>

**g.) HEALTH – IMMUNIZATIONS, HIV/AIDS*****Can I be prevented from enrolling in public school if I don't have certain immunizations?***

Maybe. School officials may prevent students from attending public school if the students have not received immunizations against certain vaccine-preventable diseases.<sup>236</sup> Exceptions may be made for students if a doctor signs a statement saying the immunization would be harmful to the students or if a parent or guardian signs a statement explaining that the student should not be immunized for "reasons of conscience," including religious beliefs.<sup>237</sup> Nevertheless, anyone, even students with medical or religious exemptions, may be excluded from a school or childcare facility to control outbreaks of vaccine-preventable or other contagious diseases.<sup>238</sup>

***What if I have HIV/AIDS? Can a school prohibit me from attending?***

No.<sup>239</sup>

## V. SCHOOL RECORDS: PRIVACY AND ACCESS

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### ***What types of information might my school keep in my record?***

Schools keep records of each student's academic and personal progress. The records may include academic grades, teacher evaluations, disciplinary actions, attendance records, test scores and health records.<sup>240</sup> A federal law, the Family Educational Rights and Privacy Act, commonly called "FERPA," gives parents and adult students access to their own student records.<sup>241</sup> It also prevents the release of those records to most third parties without written consent.

### ***So, are my school records private?***

Generally, the school must get written consent from your parent or you (if you are over 18 or legally emancipated) before it can disclose your records to anyone,<sup>242</sup> but if you are under 18 your parents can access your school records without your permission.

### ***Are there any circumstances when my school can release my records without getting consent to do so?***

In certain cases, schools can disclose your records without prior consent, including: to school officials who have "legitimate educational interests;" to another school if you transfer; if ordered to do so by a court; if necessary to protect your's or someone else's safety in an emergency; and financial records can be given to financial aid personnel.<sup>243</sup> Also, certain identifying information, often called "directory information," has less protection and can be released without prior written consent unless your parent requests in advance that it not be given out.<sup>244</sup> Your student handbook or school district's policy should tell you what information your school releases as directory information.

### **a.) U.S. MILITARY RECRUITERS IN YOUR SCHOOL**

Military recruiters have become a fixture in many schools across the United States and offer an opportunity to graduating students to serve their country. Unfortunately, U.S. military recruiters and/or public school administrators sometimes fail to inform students of their rights with regard to military recruitment practices and student privacy rights.<sup>245</sup> While military service is an honorable path for young men and women to consider, this failure, coupled with our military's current high-risk duties abroad, has made it even more important for students to know and understand their rights when U.S. military recruiters come to campus.

### ***How old do I have to be to volunteer for the U.S. military?***

Without parental consent, you must be 18 years old to volunteer for the U.S. military.<sup>246</sup> With parental consent, you can volunteer for the U.S. military when you turn 17 years old.<sup>247</sup> But, these age restrictions have not stopped the U.S. military from beginning their recruiting process on kids as young as 11 years old.<sup>248</sup>

***Can my school give military recruiters my personal information?***

Yes, unless you request that it be withheld. The No Child Left Behind Act gives military recruiters the right to obtain the names, addresses and telephone numbers of high school students.<sup>249</sup> But, you or your parent(s) have the right to request that your school administrators not release your information to the military; a decision that both your school and the military must follow.<sup>250</sup> Schools are required to give you and your parent(s) the opportunity to deny military recruiters access to their records,<sup>251</sup> but many schools fail to follow this legal requirement. Thus, if you do not want your records released it is important for you and your parent(s) to tell your school administrator in writing at the beginning of the school year.

***Can military recruiters come to my school?***

Schools must give military recruiters the same access that they give to colleges or prospective employers.<sup>252</sup>

***What if my family is undocumented, can they get in trouble if I deny the U.S. military access to my records?***

No. You have the right to refuse to answer any questions from U.S. military recruiters, including questions regarding your family's immigration status.

## VI. SEX EDUCATION and REPRODUCTIVE HEALTH

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Like religion, any discussion dealing with sexuality is highly controversial. While our society continues to change its attitude towards sexuality, there are still disagreements over what is appropriate. Deciding what is appropriate or necessary with respect to sex education courses consistently generates vigorous debate.

### a.) SEX EDUCATION

#### *Do I have a right to sex education?*



Courts have upheld the rights of school districts to offer sex education,<sup>253</sup> but neither federal nor Texas state law requires a school district to offer sex education classes.<sup>254</sup> Nevertheless, Texas schools do have to offer a health education course, and consider the recommendations of an advisory committee made up of administrators, teachers, parents and community members about including grade-appropriate general health information on sex.<sup>255</sup> Any intermixing of religious instruction with sex education violates the Establishment Clause.<sup>256</sup>

#### ***My school isn't giving us information about condoms or birth control. Why not?***

The Texas Education Code requires that abstinence be presented as the preferred method of birth control and protection against sexually transmitted diseases (STDs), and forbids schools from distributing condoms.<sup>257</sup> This means that schools may teach safer sex if they choose, but they

must present abstinence as the preferred method for you to protect yourself.

**Abstinence-only education** emphasizes sexual abstinence as the preferred way to prevent pregnancy and sexually transmitted disease, while omitting information regarding safe sex practices or other methods of disease and pregnancy prevention.

Many Texas school districts have taught abstinence-only courses because they received extra federal funding for them and they believe that teaching about safer sex methods will confuse students.<sup>258</sup> These abstinence-only sex education courses teach that abstinence is the only way to be 100 percent protected against STDs and pregnancy, but give no information—or sometimes inaccurate, frightening information—about condoms or birth control.<sup>259</sup>

***Is there anything else I can do to make sure students like me get accurate information about sex?***

The Texas Education Code requires that school districts form a local school health advisory council, with members appointed by the school board. A majority of these councils' members must be parents of students in the schools. They provide recommendations to the Board of Trustees for the school district when choosing materials and methods of instruction for anything having to do with sex education.<sup>260</sup> If your parents would be willing to help, they can ask to be appointed to your district's health advisory council and have a say in what your curriculum will be. For more information on your school's health advisory council, check your school district's policies.

**For more information on comprehensive sex education, you can visit these websites:**

Planned Parenthood of America - [www.plannedparenthood.org](http://www.plannedparenthood.org);

Sexuality Information and Education Council of the United States - [www.siecus.org](http://www.siecus.org);

ACLU Reproductive Freedom Project - [www.aclu.org/reproductiverights/](http://www.aclu.org/reproductiverights/).

**b.) CONTRACEPTION, ABORTION, AND PREGNANCY**

Minors have rights in Texas when it comes to their sexual and reproductive health care, with some limitations:

- Minors may access at least some forms of birth control, including condoms and birth control film and foam, without parental permission. Additionally, minors can receive information about birth control, pregnancy tests and diagnosis and treatment for certain sexually transmitted infections without parental permission;<sup>261</sup>
- However, Texas law attaches several additional requirements to obtain an abortion;
- Absent a serious medical emergency, a minor normally cannot have an abortion until 48 hours after her doctor notifies her parent of the procedure, or sooner if the parent gives consent in a sworn written document.<sup>262</sup> However, a minor may sometimes obtain an abortion without parental notification if she obtains a "judicial bypass." To do so, she must obtain a court order stating that:
  1. She is mature and sufficiently well informed to make her own decision;
  2. Parental notification is not in her best interests; or
  3. Parental notification may lead to physical, sexual or emotional abuse of the minor;<sup>263</sup>
- If you need help obtaining a judicial bypass because you cannot get your parent's permission for an abortion, contact Jane's Due Process at [www.janesdueprocess.org](http://www.janesdueprocess.org) or 1-866-999-5263;
- After an initial consultation, all women seeking an abortion must wait at least 24 hours. During that time, they will be asked to review literature describing the abortion procedure and the risks associated with it.<sup>264</sup>

## VII. FAMILY ISSUES

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### a.) EMANCIPATION

#### ***What does it mean to be an emancipated minor?***

To be an *emancipated* minor (person under the age of 18) means that you are no longer under the control of your parents or legal guardian and that they are not responsible for your financial support, legal acts, and debts.

#### ***How does a minor become emancipated?***

Under Texas law, a minor may “petition to have the disabilities of minority” (which in this context means limitations) removed for limited or general purposes if:

- the minor is a resident of Texas;
- the minor is 17 years of age or at least 16 years of age and living separate and apart from the minor’s parents, managing conservator, or guardian; and
- self-supporting and managing his or her own financial affairs.<sup>265</sup>

The minor must file the petition in the court in the county in which he or she resides, and the petition must include information identifying the minor’s parent, guardian or managing conservator and why removal is in the best interests of the minor.<sup>266</sup> The court will appoint an amicus attorney or attorney ad litem to represent the interests of the minor.<sup>267</sup> The court will grant the minor’s request if the judge believes it is in the minor’s best interest.<sup>268</sup>

#### ***What rights will a minor have if the court grants her petition to be emancipated?***

The court may grant the minor’s request for a limited purpose, which should be spelled out in the court’s order, or may remove all of the disabilities of minority generally.<sup>269</sup> A general removal means that except for specific constitutional and statutory age requirements, a minor has the capacity of an adult, including the capacity to enter legally-binding contracts and to make education decisions for him or herself.<sup>270</sup>

However, these rights do not include the right to vote, for which you must be 18, or the right to purchase and consume alcoholic beverages, for which you must 21.<sup>271</sup>

### b.) MARRIAGE

Anyone who wants to get married must apply for a marriage license to the county clerk in the county in which at least one of the applicants resides.<sup>272</sup> Generally, individuals must be 18 years of age or older to obtain a marriage license.<sup>273</sup>

However, Texans under 18 years old can marry in some limited circumstances:

- If they are 16 or 17 years old and have documented parental consent; or <sup>274</sup>
- If they petition a court and receive a court order authorizing the marriage. <sup>275</sup>

## VIII. SEARCH AND SEIZURE AT SCHOOL

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

The Fourth Amendment to the Constitution prohibits the unreasonable search and seizure of property by officers of the State – including law enforcement officers and public school officials. Generally, a search of a person or his or her property is presumed unreasonable unless those conducting the search have probable cause or a warrant, which is a paper signed by a judge finding there is probable cause to believe the person has committed or is committing a crime. There are some exceptions, such as exigent (emergency) circumstances.

### ***Am I protected by the Fourth Amendment at school?***

Initially, it was not clear whether the Fourth Amendment extended to searches conducted by public school officials. The Supreme Court, however, settled this issue in a landmark decision in 1985, *New Jersey v. T.L.O.*, holding that students have a legitimate expectation of privacy, even at school, and any search of your person or property conducted by school officials has to be legal under the Fourth Amendment.<sup>276</sup>

#### **a.) SEARCHES GENERALLY**

##### ***How do you know if a search by a school official is legal?***

When the courts decide cases involving searches of students, they use two criteria to evaluate whether the search was legal:

- Whether there was as reasonable suspicion to perform the search;
- Whether the items searched were reasonably related to the initial suspicion.<sup>277</sup>

Additionally, the search may not be excessively intrusive in light of the age and sex of the student and the nature of the infraction.<sup>278</sup> For example, the United States Supreme Court recently held that strip-searching a thirteen-year-old female student who was suspected of having over-the-counter pain relieving drugs in her underwear was unreasonable and excessive.<sup>279</sup>

In another case, a Texas high school student caught leaving campus during the school day, reportedly to attend his grandfather's funeral, was searched once the assistant principal discovered the grandfather had not died. The assistant principal patted the student down, discovering only car keys, had him remove his socks and shoes and pull down his pants, searched his locker, and finally searched his car, where drugs were found. The Texas Court of Criminal Appeals held that the assistant principal had reasonable suspicion that the student was skipping school, which justified the initial pat-down, but that the subsequent searches of the student's clothing, locker, and car were excessive and unreasonable.<sup>280</sup>

### About searches at home and school

At **home**, officers generally need a warrant to search your person or property, with some exceptions. In **schools**, however, as long as educators have a reasonable suspicion that a student has broken a law or a school rule, they can search students and they don't need a warrant or parental permission. The scope of the search must be reasonably related to the original suspicion. Also, if you **voluntarily agree** to being searched, the school does not need to give a reason.

### ***What do I do if I am subject to a search that I think is illegal?***

If you think a search is illegal, you should explain your objection. If school officials or police officers proceed with the search anyway, you should comply and be respectful and polite. If evidence is found as a result of an illegal search, your attorney may file a motion to suppress the evidence in court; if granted, this means that the evidence cannot be used against you. Illegally obtained evidence cannot be used against you in criminal or juvenile proceedings.<sup>281</sup>

### ***If a teacher or the principal searches me because they suspect I have drugs, can they take other things in my possession even if I don't have drugs?***

Once a teacher or principal searches you because they have a reasonable suspicion that you have drugs, guns, or other contraband they might be able to keep anything they find on you. For example, if they suspect you of having drugs and find a weapon or a notebook with violent threats, they can keep these items and can discipline you for having them.

## **b.) METAL DETECTORS AND DRUG DOGS**

### ***Can my school make students walk through a metal detector at school or school events?***

Probably. The practice of making all students walk through a metal detector before entering school is common in some municipalities in Texas. Although in other contexts individualized suspicion is required before a student may be searched, courts have upheld the use of metal detectors at school entrances on the grounds that they are relatively unintrusive methods of inspection and that the objective of the search – to keep weapons out of school – is necessary to protect and maintain a proper educational environment.

For example, O.E., a student at a Texas alternative learning center, challenged the district's policy of requiring all students entering the alternative learning center to pass through a metal detector; be patted down; empty their pockets onto a tray; and remove their shoes and place them on a table for inspection. A police officer inspecting students' shoes found a marijuana cigarette wrapped in tissue paper in O.E.'s shoe. The court, noting that students and parents were notified of the policy when students were enrolled at the center, held that the search was a reasonable "administrative search" justified by the school's need to maintain safety, health, and discipline.<sup>282</sup>

***My school often brings in drug dogs. Can they do that?***

It depends. Schools can use drug dogs to sniff cars in the school parking lot because they are parked on public property, and to sniff lockers because the school owns the lockers.<sup>283</sup> But, if the drug dogs sniff you or the belongings you are carrying, that is considered a search and the Fourth Amendment protects your privacy.<sup>284</sup> Your school cannot interrupt your class or line you up in the hallways to have dogs sniff you without a good reason, such as a suspicion that you have materials that violate the school code of conduct.



**c.) LOCKERS, CARS, PURSES, AND BACKPACKS**

***I leave important personal items in my locker to keep them safe. Can the school search my locker at any time?***

Yes. Under Texas law, you do not have a legitimate expectation of privacy in your locker. The school technically owns your locker and does not need your consent before searching it. At the same time, the search of your locker must be reasonable and related to the suspected disciplinary violation that caused the search. For example, a student in Texas was suspected of stealing credit cards and therefore a search of her locker was considered reasonable.<sup>285</sup> But, when a student was suspected of skipping school, the court found that a search of his locker was unreasonable and illegal under the circumstances.<sup>286</sup>

The bottom line is: You should not keep anything in your locker that you would not be comfortable with school officials seeing.

***I drive to school. Can the school search my car?***

It depends. If a trained dog alerted school officials to your vehicle, that would give school officials reason to suspect that a search of your car would uncover evidence of a rule violation. However, if a school official sees you leaving school grounds and suspects you are skipping school, and also suspects without specific basis that on another occasion you sold drugs on school grounds, searching your automobile would not be reasonably related to the original suspicion that you are skipping school, and a search of your vehicle would be illegal.<sup>287</sup>

***Can my school search my purse or backpack?***

The rules for searching a student's purse or backpack are the same as for searching the student's person or clothing: the school official must have reasonable suspicion that the student is in possession of evidence that would confirm the student has broken a school rule or the law, and the scope of the search must be reasonably related to the suspicion.

#### d.) DRUG TESTING

***My school recently instituted a policy of random drug testing for students involved in extracurricular activities. Isn't this a search, and if it is, isn't that a little bit unreasonable?***

Yes, random drug testing does constitute a search under the Fourth Amendment. However, a student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety for all students.<sup>288</sup>

Under existing federal and state law, your school is permitted to require the random urine screening of students participating in extracurricular activities such as sports, band, and cheerleading; and also, probably, of students purchasing a campus parking permit.<sup>289</sup> When you participate in these programs or park on school property, random drug testing is allowed because you have a lower expectation of privacy, and your school has a legitimate interest in ensuring the safety of others.<sup>290</sup>

Your school may not, however, randomly drug test *all* students—this would be unreasonable and unconstitutional.<sup>291</sup> Many school districts are now offering voluntary random drug testing, in which a student and his or her parent consent to random testing. The Supreme Court has not addressed the constitutionality of voluntary testing programs, but such programs would likely be considered legal as long as consent to test were given knowingly and voluntarily.<sup>292</sup>

***What rights do I have with respect to the results of my drug test?***

Students subject to drug testing have the right to privacy during the collection of the urine sample and the right to confidentiality in the results.<sup>293</sup> The results may be shared among school officials on a “need to know” basis.<sup>294</sup> If you test positive, you may have the right to challenge the results and be re-tested, and the school district may be prohibited from releasing the results to the police or using them to have you charged with a crime.<sup>295</sup> Check your school code of conduct to be sure.

Did you know...

- Studies have shown that random student drug testing does not deter drug use;<sup>296</sup>
- Random student drug testing is expensive. On average it costs about \$42 per year per student, which would be about \$21,000 per year for a high school of 500 students.<sup>297</sup> With the same money, a school could hire a substance abuse counselor to serve all students;
- One year into Texas' statewide, two-year, \$6 million program testing student athletes for steroids, only 2 of 10,117 high school students had positive results, causing lawmakers to consider whether the program is a waste of state resources.<sup>298</sup>

**e.) QUESTIONING BY SCHOOL OFFICIALS**

***My principal called me to his office and started asking me questions about something that can get me in trouble. What can I do?***

It depends on who is questioning you. In Texas, there are strict requirements for the *Mirandizing* of minors. Students must be Mirandized, or have their Miranda rights read to them, if they are taken into custody by police.

***Mirandizing*** is the process of reading you your rights that you so often hear on television cop shows: you have the right to remain silent, anything you say can and will be held against you in a court of law, etc.

However, courts have held that school officials do **not** need to Mirandize you if they are acting according to their duties.<sup>299</sup> For example, if the principal calls you to his office and asks you questions about skipping school, he does not need to Mirandize you. You do not have a right to speak to a lawyer, and you could be punished for not answering.<sup>300</sup>

**You are only “in custody” if you are involuntarily taken** into a situation by police where any person your age would believe that he or she was not free to leave. If you are not certain about whether you are free to leave, ask the official who is talking to you.<sup>301</sup>

## IX. POLICE INTERACTION: ON AND OFF CAMPUS

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### a.) ON-CAMPUS

#### ***Do police have the same right to search me as school officials?***

It depends. If a school official initiates the search or where police involvement is minimal, the “reasonable suspicion” standard will be applied.<sup>302</sup> The reasonable suspicion standard will also be applied if a school police officer (school resource officer) or liaison officer initiates a search on their own authority.<sup>303</sup> However, if an outside police officer initiates the search, or if school officials act at the request of law enforcement agencies, they must have probable cause to search.<sup>304</sup>

Note that if you are in a public place, such as walking to school or at the mall, the law for minors is the same as for adults – police need either a warrant or probable cause to search you. If there is an emergency, police can search you to prevent harm or the destruction of evidence.<sup>305</sup> Police can also frisk you if they reasonably suspect you might be armed or are breaking the law, and they can search you after lawfully placing you under arrest.<sup>306</sup>

#### ***A police officer at my school stopped me in the hall and started asking me questions. What are my rights?***

If a police officer asks you questions at school or anyplace else, you may not have to answer and you shouldn’t be punished for not answering. You should ask to speak with your parent or a lawyer. The police can only hold you if you are in custody because of a criminal investigation.

### b.) OFF-CAMPUS

#### ***Can a law enforcement officer question me if I am in a public space, such as a sidewalk or park, and not doing anything wrong?***

Law enforcement officers may come up to you and ask you questions anytime you are in a public space. You have no obligation to answer any questions they ask you. If you do not wish to speak with an officer who has approached you it is important that you ask the officer if you are free to leave before attempting to walk away. It is also important that you never run from an officer, even if you have done nothing wrong.

In addition, under Texas law you do not have to provide a law enforcement officer with your name, date of birth, or address unless you have been arrested.<sup>307</sup> However, if you are driving a car, you may be stopped and asked to produce a valid driver’s license appropriate for the vehicle you are driving. Failure to provide this information may lead to your arrest.<sup>308</sup>

Under Texas law you can be charged with a crime if you give a fake name, date of birth, or address to an officer if you have been arrested, detained, or if the officer has good cause to believe you have witnessed a crime.<sup>309</sup>

***Can a law enforcement officer stop and frisk me in a public space, such as a sidewalk or park?***

It depends. A law enforcement officer may stop and frisk you if the officer has a reasonable suspicion that you have just committed, are committing, or are about to commit a crime and a reasonable fear for his or others' safety.<sup>310</sup> This type of frisk has become known as a "Terry Stop," named after the U.S. Supreme Court case that legitimized this law enforcement action.<sup>311</sup> During a Terry Stop, the officer may only frisk the outside of your clothing.<sup>312</sup> The officer may not attempt to manipulate objects to determine what they are, nor may the officer search your pockets, unless they feel a weapon.<sup>313</sup> In addition, an officer cannot search your backpack, purse, or other type of bag during a Terry Stop.

***During a "Terry Stop" may the law enforcement officer seize any contraband they find during the frisk?***

It depends. The U.S. Supreme Court has said law enforcement officers may seize contraband discovered during a lawful Terry Stop if the object's identity is "immediately apparent."<sup>314</sup> But, if the officer engages in a frisk that goes beyond what is permitted during a Terry Stop (such as manipulating objects in your pocket in an attempt to discover their identity) then the frisk and any discoveries as a result of the frisk are unconstitutional, and thus inadmissible in court.<sup>315</sup>

***Can a law enforcement officer order me to exit a car that I am driving or a passenger in?***

Yes. The U.S. Supreme Court has ruled that law enforcement officers may order both the driver<sup>316</sup> and passenger(s)<sup>317</sup> out of a car that has been lawfully stopped by law enforcement.

***Can a law enforcement officer search my car?***

It depends. The U.S. Supreme Court has determined that a law enforcement officer does not need a warrant to search your car. Instead, the law enforcement officer just needs to have probable cause to believe that a crime is taking place, that you were involved in crime, or that you have evidence of a crime in your car.<sup>318</sup> In practical terms, this means that if you are pulled over and the officer smells marijuana or another illegal substance, or has been tipped off by an informant that you are in possession of illegal substances, then the officer *may* have probable cause to search your vehicle. Do not attempt to interfere with an officer's search if you disagree with the officer's determination that they have probable cause. Instead, you should dispute the search and any evidence found in court. If the officer does not have probable cause to search your car, then they can do so only if they receive your permission. You should not face legal repercussions if you deny them permission.

***Can law enforcement officers search my house or apartment?***

Law enforcement officers can search your home if they have a warrant.<sup>319</sup> A warrant is an order from a court which grants law enforcement the right to search a specific location for evidence related to a specific criminal act. If law enforcement officers arrive at your door with a warrant, be sure to read the warrant before you open your door or allow them entry (ask them to slide it under the door, if possible). You should make sure the information, including your name and address, is correct on the warrant. If the information on the warrant is incorrect, you should point this out to the officers before you open your door. If they decide to conduct the search anyway, you should not get in their way. Instead, you

should take notes during the search, including the officers' names and badge numbers. This information is important if you wish to challenge the search or its results in court.

There are two exceptions to the requirement that an officer first obtain a warrant to search your house or apartment: (1) you, your roommate, or someone else in the house who the officer reasonably believes has the authority to consent voluntarily consents to the search;<sup>320</sup> or (2) there are exigent circumstances (*i.e.*, the police are in hot pursuit of a suspect who they believe entered your home, or that the time it would take an officer to obtain a warrant would place public safety in danger, allow for the destruction of evidence, or enable a suspect to escape).<sup>321</sup>

***I am not a U.S. citizen, do I have the same rights?***

In general, yes. Non-citizens who are in the United States—regardless of their immigration status—are protected by the Fourth Amendment and generally have the same constitutional rights as citizens when law enforcement officers stop, search, question, or arrest them.

***Do I maintain my Fourth Amendment protections when entering or exiting the U.S.?***

No. The U.S. Supreme Court has determined that the U.S. government's need to protect the border supersedes your Fourth Amendment to protection against unreasonable search and seizures. Therefore, the Court allows U.S. government officers to search you and your possessions without the need to show "reasonable suspicion, probable cause, or [a] warrant."<sup>322</sup>

***Do I maintain my Fourth Amendment protections at the airport?***

It depends. If you are traveling domestically, you maintain a greater portion of your Fourth Amendment protections. Federal Courts have determined that a search can be "no more extensive or intensive than necessary, in light of current technology, to detect the presence of weapons or explosives ... ." <sup>323</sup> This search must also be conducted in "good faith."<sup>324</sup> In practical terms, this means that if you desire to fly, Transportation Security Administration (TSA) officers can require you to go through a security checkpoint and submit to their limited search for weapons and bombs, but the TSA officers may not extend this search to look for evidence of other criminal actions such as transporting drugs or counterfeit passports.<sup>325</sup> But, like at an international border, the U.S. Supreme Court has stated that your Fourth Amendment rights are severely limited if you are arriving from an international destination. Therefore, the Court allows U.S. government officers to search you and your possessions without the need to show "reasonable suspicion, probable cause, or [a] warrant."<sup>326</sup>

Definitions you should know...

- Reasonable suspicion – “[A] particularized and objective basis’ for suspecting the person stopped of criminal activity.”<sup>327</sup>
- Probable cause – “The test for probable cause is whether facts and circumstances within the officers’ knowledge are sufficient to warrant a prudent person, or one of reasonable caution, to believe, in the circumstances shown, that the suspect has committed, is committing or is about to commit an offense.”<sup>328</sup>

### c.) ARREST AND CUSTODIAL PROCESS

#### ***What should I do if I am arrested?***

If you are arrested, you have the right to remain silent, the right to an attorney, and the right to have an attorney appointed if you cannot afford one.<sup>329</sup> Law enforcement officers are required to tell you that you have these rights, but many do not. You have these rights regardless of what law enforcement personnel tell or do not tell you. It is very important that you exercise these rights, as anything you say can and will be used against you in court. You should ask to see a lawyer immediately after you are arrested, and refrain from speaking with law enforcement personnel until after you have received advice from your lawyer. It is very important to only speak with law enforcement personnel when your attorney is present. Under Texas law, you are only required to tell the officer your name, residential address, and date of birth.<sup>330</sup> It is important that you do not give law enforcement officers a fake name, as this is a criminal offense under Texas law.<sup>331</sup>

#### ***What if I am taken into custody? What happens then?***

The Texas Family Code provides a number of protections for juveniles who are taken into custody. Once you are in custody you have the right to refuse to answer any questions until you speak with a lawyer and/or your parents.

Unless there is an indication the minor is intoxicated, a person taking a minor into custody must immediately either:

- Release the child to his or her parent, guardian, or custodian, providing that individual promises to bring the child to juvenile court if requested;<sup>332</sup>
- Dispose of the case without requiring the child to go to court;<sup>333</sup>
- Bring the child to school if it is a school day and school officials agree to take custody of the child;
- Bring the child to a medical facility if the child appears seriously ill or needs emergency treatment;

- Bring the child to a designated office if there is probable cause to believe the child engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation; or
- Bring the child to a detention facility or a secure detention facility, if appropriate.<sup>334</sup>

If the minor appears to be intoxicated, the person taking the minor into custody may first test the minor for drugs or alcohol or take the minor to a facility to be tested.<sup>335</sup>

Regardless, the person taking the minor into custody must notify the minor's parent, custodian, or guardian as soon as reasonably possible that the minor is in custody and the reason why.<sup>336</sup>

## X. YOUR RIGHTS WITH RESPECT TO SCHOOL DISCIPLINE

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Schools can search you and ask you questions about different situations you were involved in because they have a responsibility to make sure that school is a safe environment that encourages learning. The law also allows schools to discipline you in order to protect this environment. Texas law requires school districts to create Student Codes of Conduct that describe what behavior is acceptable for you as a student and what teachers and other educators can do if you break school rules.<sup>337</sup>

### ***How and when can my school discipline me?***

The Texas Education Code provides basic rules on what schools can and must do with respect to school discipline. And your school's Student Code of Conduct explains what you can and cannot do at school, what the school can do to discipline you, and what rights you have if you are punished.

It's very important that you read your school's Student Code of Conduct. What a school defines as bad behavior can range from actions as simple as disrupting class by talking too much, to more serious behavior involving drugs, alcohol, or physical violence.

The Student Code of Conduct is usually included in a student handbook that your school distributes at the beginning of each school year.<sup>338</sup> You and your parents should read through it together before signing the form stating that you received and understood it. If you have lost your copy of the Student Code of Conduct, you can ask for another copy at your school or look for it on your school district's website.

### ***My school punished me for something I did outside of school. Can they do this?***

It depends. The school can punish you for your actions outside of school depending on where the actions take place and what they are. Most Student Codes of Conduct specify where and/or when the school has the ability to monitor and punish student conduct, such as within 300 feet of school property or during school-sponsored or school-related activities. In addition, the Texas Education Code provides in detail when the school must or can use each type of discipline for conduct that took place outside of school.<sup>339</sup> For example, if you possessed, used, or sold drugs or alcohol within 300 feet of school property or during school-sponsored or school-related activities, then your school must remove you from class and place you in a Disciplinary Alternative Education Program (DAEP).<sup>340</sup> Additionally, your school also can expel you for a certain period of time for such conduct.<sup>341</sup>

***What types of discipline can my school use?***

Your school's Student Code of Conduct should describe all the different disciplinary actions it can use,<sup>342</sup> such as detention, being sent to the principal's office, permanent removal from the teacher's classroom (expulsion), In-School Suspension (ISS), Out-of-School Suspension (OSS), transfer to a DAEP, and expulsion or transfer to a Juvenile Justice Alternative Education Program (JJAEP). If Texas law requires the school to expel you, you will also be referred to the juvenile or criminal justice system for other punishment.<sup>343</sup> Students who are younger than six years old may be sent to a DAEP only if they bring a firearm to school.<sup>344</sup> Students under ten may be expelled only if they bring a firearm to school.<sup>345</sup>

***Can the school use physical force (corporal punishment) to discipline me?***

Maybe. Texas law does not forbid corporal punishment at school.<sup>346</sup> Check your Student Code of Conduct or contact your school board to find out what the policy is in your district. Some districts allow corporal punishment as a final resort, some require the permission of a parent before corporal punishment can be utilized, and others ban it completely.

In a joint report issued in August 2008, the ACLU and Human Rights Watch found that children in Texas and Mississippi are routinely physically punished for minor infractions like chewing gum and violating the dress code, as well as for more serious transgressions like fighting. In Texas alone, 49,197 public school students were subjected to corporal punishment during the 2006-2007 school year, the largest number in any state. The study shows that physical force is disproportionately used to discipline African-American and special education students. In the thirteen states with the highest rates of paddling (Texas included), African-American students were paddled 1.4 times more than one would expect given their percentage of the student population. Similarly, 10,222 special education students were disciplined physically in Texas public schools during the 2006-2007 school year—a number far exceeding their relative percentage of the student population.

See *A Violent Education: Corporal Punishment of Children in U.S. Public Schools*, at:

<http://www.aclu.org/intlhumanrights/gen/36476pub20080819.html>.

***How long can I be suspended, put in a DAEP, or expelled?***

Your school can suspend you for up to three days at a time,<sup>347</sup> but can place you in a DAEP until the end of the school year or longer.<sup>348</sup> The school can even place you in a DAEP or expel you for longer than a year for a serious problem, such as if school officials believe you are a threat to others.<sup>349</sup> If the school puts you in a DAEP for more than 60 days or past the end of the grading period, your parents can petition the school board to review the decision; however, the board's decision is final and may not be appealed, even to a court.<sup>350</sup> Also, if you are in the DAEP for 120 days or more, the school board must review your status and hear arguments for returning you to regular school.<sup>351</sup>

***What if I don't agree with the disciplinary action?***

Unfortunately, you cannot contest most disciplinary actions. However, in the case *Goss v. Lopez*, the U.S. Supreme Court stated that students have a right to *due process*—the ability to find out why you are being punished and provide your side of the story—when the school is using one of the more serious forms of punishment.<sup>352</sup> Specifically, according to the Texas Education Code:



- The principal must schedule a conference no later than the third class day after ISS, OSS, a DAEP placement, or expulsion, and the school must notify the student and the parent when scheduling a conference;<sup>353</sup>
- The principal, the teacher removing the student, the student, and the parent must attend the conference; however, if the school has made valid efforts to require attendance of the student and the parent, the conference may be held even if they are not present;<sup>354</sup>
- At the conference, the reason for discipline should be explained, and the student and the parent should be given a chance to present their side of the story.<sup>355</sup> If the decision is made at the conference to proceed with the expulsion, a hearing must be held within 10 days (a hearing is required only in expulsion cases).<sup>356</sup> The parent must be invited in writing to the hearing,<sup>357</sup> and the student has the right to be represented at the hearing by the parent, guardian, or lawyer.<sup>358</sup>

For more information about how you and your parents can advocate for you if you are facing school discipline charges, see Texas Appleseed's *When My Child Is Disciplined at School: A Guide for Families*, available on-line at:

[http://www.texasappleseed.net/content/index.php?option=com\\_docman&task=doc\\_view&gid=60&Itemid=](http://www.texasappleseed.net/content/index.php?option=com_docman&task=doc_view&gid=60&Itemid=) and in Spanish at:

[http://www.texasappleseed.net/content/index.php?option=com\\_content&task=view&id=14&Itemid=93](http://www.texasappleseed.net/content/index.php?option=com_content&task=view&id=14&Itemid=93).

***Can my school place me in a DAEP or expel me without holding a conference or a hearing?***

Schools ordinarily have to schedule a conference no later than the third class day after ISS, OSS, a DAEP placement, or expulsion,<sup>359</sup> and a hearing is additionally required for expulsion cases.<sup>360</sup> However, under certain circumstances, your school may order a DAEP placement or expulsion before a conference or a hearing is held.<sup>361</sup> The principal may order an immediate DAEP placement without first holding a conference if the principal reasonably believes that the student's conduct is so unruly, disruptive, or

abusive that it seriously interferes with the teacher's ability to communicate effectively with the class, with other students' ability to learn, or with the operation of school or a school-sponsored activity.<sup>362</sup>

The principal also may order an immediate expulsion before holding a conference or a hearing if the principal reasonably believes that action is necessary to protect persons or property from imminent harm.<sup>363</sup> However, at the time of an emergency placement/expulsion, the school must notify the student of the reason for it, and the school must hold a conference or hearing not later than the tenth day after such placement/expulsion.<sup>364</sup>

***My parents and I spoke with the principal and teachers, and we still think what they did to me is wrong. What else can we do?***

Check your Student Code of Conduct to see if your district allows you to request that the Board of Trustees review the disciplinary decision (an "appeal"). For suspension and a DAEP placement, it is up to each school district whether to have an appeal process; districts typically allow such appeals, and the Board's decision on appeal is final and may not be re-appealed. For expulsion, on the other hand, an appeal process is required by state law, and the decision to expel can be appealed to the school board.<sup>365</sup> If you and your parents are still unhappy with the decision by the board, you can appeal to a district court of the county in which the school district's central office is located (you and your parents may want to speak with an attorney to see what can be done to protect your rights in this situation).<sup>366</sup>

***What if I think the disciplinary action is based on discrimination because of my race, national origin, gender, age, or disability?***

Statistics show that students of color in Texas—African-American and Hispanic students in particular—are disproportionately disciplined and punished in schools.<sup>367</sup> Discrimination in schools may also be based on students' gender, age, or disability. If you think you have been disciplined inappropriately for discriminatory reasons, in addition to attending any scheduled conferences and filing an appeal where possible, you and your parents should:

- Speak with the teachers, principals, or others involved to see that your complaint is investigated and addressed;
- If you or your parents feel the situation has not been sufficiently addressed, speak with the board of trustees or the superintendent of your district to request that they take action to investigate and address the situation;
- Carefully document all the actions you take and the responses that you and your parents receive;
- If other students are experiencing similar discrimination in school discipline, file a complaint with the U.S. Department of Education's Office of Civil Rights or with the Texas Education Agency. Complaints with the Office of Civil Rights must be filed within 180 calendar days of the date that the alleged discrimination occurred;
- Consult an attorney to see what other options you have to protect your rights.

If you feel the Student Code of Conduct at your school is unfair, speak with your parents. Their participation in different school organizations or with school board elections can influence the administration to change the code.

A copy of the Texas law controlling discipline, Chapter 37 of the Texas Education Code, is available at: <http://tlo2.tlc.state.tx.us/statutes/ed.toc.htm>.

To learn more about how abusive and discriminatory punishment undermines education, visit: <http://www.aclu.org/intlhumanrights/gen/36478prs20080820.html>.

To learn more about the Office of Civil Rights, the federal agency that investigates discrimination in schools based on gender, race, national origin, and disability, visit: <http://www.ed.gov/about/offices/list/ocr>.

## **XI. YOUR RIGHTS IF YOU ARE ARRESTED OR CONFINED IN A JUVENILE FACILITY**

The Fourteenth Amendment of the U.S. Constitution guarantees legal rights to “any person” (not just American citizens) charged with committing a crime.<sup>368</sup> Just as the schools may not punish a student in certain ways without fulfilling the student’s right to *due process* - the right to present your case and rebut the charges against you - Texas may not confine a child in a juvenile facility without providing that juvenile with due process of the law.

*Due process* prohibits the government from unfairly or arbitrarily depriving a person of their life, liberty, or property. In this context, due process means that a juvenile must be given an opportunity to be heard, to present evidence, and to rebut any charges alleged against him or her.

### ***As a teenager, am I subject to juvenile court?***

Under the Texas Family Code, if you are designated as a child you are subject to the juvenile court. A child is defined as a person who is between the ages of 10 and 17, or who is over 17 but under 18 and engaged in delinquent conduct or conduct indicating a need for supervision before turning 17.<sup>369</sup>

### ***What constitutes delinquent conduct?***

Under Texas law, delinquent conduct is defined to be:

- Conduct that violates a penal law of Texas or the United States that is punishable by imprisonment or by confinement in jail (*i.e.*, Class B misdemeanors through capital felonies);<sup>370</sup>
- Conduct including driving, flying, or boating while intoxicated, or committing an assault or manslaughter while intoxicated;<sup>371</sup>
- Conduct that violates a municipal or justice court order under circumstances that would constitute contempt of court;<sup>372</sup> or
- The third or subsequent offense of driving under the influence of alcohol by a minor.<sup>373</sup>

### ***What constitutes conduct indicating a need for supervision?***

Conduct indicating a need for supervision is:

- Conduct that violates the penal laws of Texas of the grade of misdemeanor, other than a traffic offense, that is punishable by fine only;<sup>374</sup>
- The absence of a child on 10 or more days or parts of days within a 6-month period in the same school year, or on three or more days or parts of days within a 4- week period;<sup>375</sup>

- The voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;<sup>376</sup>
- Conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and volatile chemicals;<sup>377</sup>
- An act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled;<sup>378</sup> or
- Conduct that violates a reasonable and lawful order of a court.<sup>379</sup>

### ***What happens if I am charged with breaking the law?***

It depends on what the charges are and what evidence there is that you committed the crime. Whether or not you committed the crime, you must be given the legal right to present your case and rebut the charges against you. In the landmark case *In re Gault*, the U.S. Supreme Court decided that juveniles accused of crimes have the right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination.<sup>380</sup>

### ***What happens if I am taken into custody and put in a holding unit at the police station?***

According to Texas law, if you are taken into custody, you will be provided a detention hearing within two working days.<sup>381</sup> The purpose of the detention hearing is so the court can determine whether it would be appropriate to release you until the time of your adjudication hearing. In deciding whether to release you from detention, the court will consider such factors as: whether you are likely to appear at the adjudication hearing, whether you may be dangerous to yourself or to the public, whether there is suitable parental or guardian supervision available for you, and whether you have been in trouble in the past.<sup>382</sup>

At the adjudication hearing, you have the right to a jury trial unless both you and your attorney waive it.<sup>383</sup> The adjudication hearing concludes with a finding by a judge or a jury on whether you actually engaged in delinquent conduct requiring further supervision.<sup>384</sup> If you are found delinquent, you will then have a disposition hearing where you will be told whether or not you will be sentenced to Texas Youth Commission (TYC). Remember that you have the right to either your own attorney or an appointed attorney throughout this process.<sup>385</sup>

### ***What if I can't afford a lawyer?***

If your parent(s) or guardian(s) cannot afford a lawyer, the court will appoint one.<sup>386</sup> However, if the court finds that they can afford a lawyer but are refusing to do so, the court shall order them to provide you with an attorney, or will appoint one and may then order your parent(s) or guardian(s) to reimburse the county for the attorney's fees.<sup>387</sup>

### ***If I am found to have engaged in delinquent conduct, will I be sentenced to TYC?***

Not necessarily. If the judge or jury finds that you have engaged in delinquent conduct, they can: (1) place you on probation (not to extend beyond your 18<sup>th</sup> birthday, but which can be transferred after your 18<sup>th</sup> birthday to a district court);<sup>388</sup> (2) sentence you to TYC, with a possible transfer to the Texas Department of Criminal Justice;<sup>389</sup> (3) suspend your driver's license;<sup>390</sup> or (4) order you to perform

community service.<sup>391</sup> You or your parent(s) may also be required to pay the victim money to compensate for damages incurred because of your crime.<sup>392</sup>

### ***Will I be tried as an adult?***

It depends. In Texas, a juvenile court may allow a child as young as 14 to be tried as an adult if the court finds probable cause to believe that the child committed a capital felony (murder), an aggravated controlled substance felony, or a first degree felony; and the court also finds that because of the seriousness of the offense the welfare of the community requires adult proceedings.<sup>393</sup> Similarly, a child as young as 15 can be tried as an adult if a juvenile court makes similar findings and the child is alleged to have committed a second or third degree felony or a state jail felony.<sup>394</sup> Absent these circumstances, a child who is charged with committing a serious offense like those identified above while under the age of 17 may be transferred to adult court only if the child has since turned 18, and only if the juvenile court finds both probable cause and finds that it was not possible to proceed in juvenile court prior to the child's 18<sup>th</sup> birthday for reasons beyond the control of the state.<sup>395</sup>



If you are tried as an adult, you will receive the same punishment as an adult would for committing the same crime. However, you cannot receive the death penalty for crimes committed before you turned 18 - not even for capital offenses.<sup>396</sup>

### ***How long will I have to stay at TYC?***

It depends. In Texas, juveniles who are sent to TYC are given either a determinate sentence (a specific amount of time to serve) or an indeterminate sentence (a minimum amount of time they must serve after which the judge decides when they are ready to be released to their family).<sup>397</sup> If you are given a determinate sentence, you can be sentenced to TYC until you have reached the age of 16 and then can be transferred to the Texas Department of Criminal Justice (the adult system)<sup>398</sup> for a total of 40 years (including time spent at TYC).<sup>399</sup> The law authorizes TYC to request a transfer to adult prison for any child with a determinate sentence after the child reaches age 16 but before age 19.<sup>400</sup> If you are given an indeterminate sentence, you cannot be transferred to adult prison or confined to TYC beyond your 19<sup>th</sup> birthday (or age 21 for youth committed prior to June 9, 2007).<sup>401</sup>

### ***Do I have any rights in TYC?***

Yes, although not the same rights you have in the community. As long as you do not interfere with the safety or operation of the facility, you have the right to free speech and expression, including the right to practice the faith of your choice.<sup>402</sup> Additionally, you also have the right to equal treatment.<sup>403</sup> You should not be discriminated against because of your race, sex, national origin, or any physical or other handicaps.<sup>404</sup> Other basic rights include: the right to personal possessions, the right to receive visitors, the right of access to mail and telephone, the right to earnings and monetary gifts, the right to

protection from physical and psychological harm, the right to medical and dental care, the right of access to attorneys, the right to be informed, the right to accuracy and fairness, the right to confidentiality, and the right to file grievances and appeal decisions.<sup>405</sup>

***Is there anything I can do if I'm not given all of my rights?***

Yes. You can file a complaint with TYC officials. You have the right to have your complaints answered quickly and fairly and you should not be punished or mistreated for filing a complaint. If you disagree with TYC's response, you may appeal the decision to the local administrator and the Executive Commissioner.<sup>406</sup> You may also complain to the TYC Ombudsman.<sup>407</sup>

Q: What is TYC?

A: The Texas Youth Commission is the juvenile corrections agency for the State of Texas. TYC operates youth detention facilities, state schools, and halfway houses.<sup>408</sup>

For a detailed explanation of your rights, visit the TYC website at:  
***<http://austin.tyc.state.tx.us/Cfinternet/handbook/index.html#intro>***.

## XII. SPECIALIZED EDUCATION RIGHTS

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Some students have specialized education rights established by statute or in Supreme Court cases.

### a.) EDUCATION FOR STUDENTS WITH DISABILITIES

If your school district has identified you as having a disability, or your parents have requested that you be tested for a disability, federal law may provide you with additional rights and protections at school that other students do not have. When it comes to school discipline, the Texas Education Code provides that any disciplinary action must be determined in accordance with federal law and regulations.<sup>409</sup> For example, if you have disabilities and have received special education services, the emergency placement/expulsion (see above) is subject to federal law and regulations.<sup>410</sup> Also, your school's Student Code of Conduct must specify whether *a disability that substantially impairs the student's capacity to appreciate the wrongfulness of conduct* is considered before your school makes disciplinary decisions.

#### ***I have been identified as disabled. Am I guaranteed a special education?***



Yes. Several federal laws require that schools provide special education and related services to students the school has identified as having disabilities.<sup>411</sup> The Texas Education Code describes how schools in Texas should act to meet these requirements.<sup>412</sup>

#### ***Will I still receive special education if the school disciplines me?***

Yes. Your school must provide you with special education services unless it expels you.

#### ***What if I am disciplined for conduct that is related to my disability?***

A “disciplinary change in placement” occurs when you are removed from class for more than 10 consecutive school days (a DAEP placement, for example) or when removing you from class forms a pattern (your school decides whether there is a pattern, and your parents can appeal the decision).<sup>413</sup>

When a “disciplinary change in placement” is imposed, your school must inform your parents on the same day the decision is made, and must also provide them with information about your federally protected rights.<sup>414</sup> Within 10 days of the change in placement, your school must conduct a “manifestation determination review” (MDR) to see whether your conduct was a manifestation of your disability.<sup>415</sup> If the school determines that your conduct was a manifestation, then the school cannot punish you and you must be returned to your regular class;<sup>416</sup> also, the school should change your educational plan and provide services to help you. On the other hand, if the school finds your behavior is

not a manifestation, then the school can apply ordinary disciplinary procedures that apply to non-disabled students.<sup>417</sup>

If you and your parents want to appeal an MDR decision and/or a change in placement, you can request an expedited due process hearing by filing an appeal to a Special Education Hearing Officer through the Texas Education Agency.<sup>418</sup> An expedited hearing must occur within 20 school days after a request, and the hearing officer must issue a decision 10 school days after the hearing.<sup>419</sup> If the hearing officer also decides that your behavior was not a manifestation, then you will be subject to the same disciplinary actions as non-special education students.<sup>420</sup>

Even if your school has not yet identified you as needing special education, Individuals with Disabilities Education Act (IDEA) protection may still apply if, before the conduct occurred, the school knew that you had a disability.<sup>421</sup> For example, if your parents informed a principal or teacher in writing that you are in need of special education services or requested an evaluation for special education services in writing, or if your school expressed concerns about your condition to supervisory personnel or the director of special education, then you may be eligible for IDEA protection even though you have not yet been identified by your school as disabled.

Finally, always consider speaking with an attorney to see what can be done to protect you and your rights.

**For more on special education...**

For more information on issues relating to students with disabilities, visit Advocacy, Inc.'s website, **[www.advocacyinc.org/](http://www.advocacyinc.org/)**;

Curious how a Special Education Hearing Officer reviews cases? Past cases are available at the Texas Education Agency website at: **[www.tea.state.tx.us/special.ed/hearings/](http://www.tea.state.tx.us/special.ed/hearings/)**.

- <sup>1</sup> An easy-to-read, searchable copy of the Constitution is available on-line at <http://www.usconstitution.net/>.
- <sup>2</sup> 20 U.S.C. §§ 1400–1482.
- <sup>3</sup> 20 U.S.C. §§ 1701–1721.
- <sup>4</sup> TEX. CONST. art. VII. This is the “Education” article of the Texas Constitution.
- <sup>5</sup> TEX. EDUC. CODE. The Texas Education code, and all state statutes, are available online at <http://www.statutes.legis.state.tx.us/>.
- <sup>6</sup> TEX. EDUC. CODE § 37.001.
- <sup>7</sup> The Texas Association of School Boards is online at [www.tasb.org/](http://www.tasb.org/).
- <sup>8</sup> Your school’s code of conduct should be available to all students. You may be able to find it on the Internet by ‘googling’ your school’s name and “code of conduct” or “student handbook.”
- <sup>9</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973); *see also* *Goss v. Lopez*, 419 U.S. 565, 572–573 (1975) (stating that although there is no constitutional right to a public education, once a state provides that right under state law, it cannot be taken away—e.g., through suspension—arbitrarily).
- <sup>10</sup> TEX. CONST. art VII, § 1: “A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” *See also* *Goss v. Lopez*, 419 U.S. at 573–574.
- <sup>11</sup> TEX. EDUC. CODE § 1.002.
- <sup>12</sup> *See* TEX. EDUC. CODE § 41.002 (establishing a limit to the “wealth per student” of individual school districts).
- <sup>13</sup> TEX. EDUC. CODE § 29.202.
- <sup>14</sup> TEX. EDUC. CODE § 29.203(d).
- <sup>15</sup> TEX. EDUC. CODE § 25.001(b).
- <sup>16</sup> TEX. EDUC. CODE § 25.001(d).
- <sup>17</sup> *Plyer v. Doe*, 457 U.S. 202, 230 (1982).
- <sup>18</sup> TEX. EDUC. CODE § 25.001(a). An individual between 21 and 26 years of age may be admitted for the purpose of obtaining a high school diploma.
- <sup>19</sup> TEX. EDUC. CODE § 25.001(b)(5).
- <sup>20</sup> TEX. EDUC. CODE § 25.085.
- <sup>21</sup> TEX. EDUC. CODE § 25.086.
- <sup>22</sup> TEX. EDUC. CODE § 25.094(a).
- <sup>23</sup> TEX. EDUC. CODE § 25.094(b).
- <sup>24</sup> TEX. EDUC. CODE §§ 25.094(d-1)(1)–(2).
- <sup>25</sup> TEX. CODE CRIM. PROC. §§ 45.054(a)(1)(B)–(C).
- <sup>26</sup> TEX. CODE CRIM. PROC. § 45.054(a)(2).
- <sup>27</sup> TEX. CODE CRIM. PROC. § 45.054(4).
- <sup>28</sup> TEX. EDUC. CODE § 25.094(e).
- <sup>29</sup> TEX. EDUC. CODE § 25.093.
- <sup>30</sup> TEX. CODE CRIM. PROC. § 45.054(3).
- <sup>31</sup> TEX. CODE CRIM. PROC. § 45.054(5)(d).
- <sup>32</sup> TEX. CODE CRIM. PROC. § 45.054(5)(a-2)(b).
- <sup>33</sup> TEX. EDUC. CODE § 7.111(a).
- <sup>34</sup> U.S. CONST. amend. I.
- <sup>35</sup> U.S. CONST. amend. I; TEX. CONST. art. I, §§ 8, 27.
- <sup>36</sup> *Miller v. California*, 413 U.S. 15, 23-24 (1973).
- <sup>37</sup> *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 212-214 (1975).
- <sup>38</sup> *New York v. Ferber*, 458 U.S. 747, 756 (1982).
- <sup>39</sup> TEX. CIV. PRAC. & REM. CODE §§ 73.001-73.006; *New York Times v. Sullivan*, 376 U.S. 254, 280 (1964).
- <sup>40</sup> *Virginia v. Black*, 538 U.S. 343, 359 (2003).
- <sup>41</sup> *Virginia v. Black*, 538 U.S. 343, 360 (2003).
- <sup>42</sup> TEX. EDUC. CODE § 37.006; TEX. PENAL CODE § 22.07.
- <sup>43</sup> TEX. PENAL CODE § 22.07(a).
- <sup>44</sup> *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 572 (1942).
- <sup>45</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).
- <sup>46</sup> *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 506 (1969).
- <sup>47</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988) (internal quotation marks omitted).
- <sup>48</sup> *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 511 (1969).
- <sup>49</sup> *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 514 (1969).
- <sup>50</sup> *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).

- <sup>51</sup> Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 677-78 (1986).
- <sup>52</sup> Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 271-73 (1988).
- <sup>53</sup> Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).
- <sup>54</sup> Morse v. Frederick, 551 U.S. 393, 406-410 (2007).
- <sup>55</sup> Morse v. Frederick, 551 U.S. 393 (2007).
- <sup>56</sup> Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist., 579 F.3d 502, 509 (5<sup>th</sup> Cir. 2009) (citing Canady v. Bossier Parish Sch. Bd., 240 F.3d 437 (5<sup>th</sup> Cir. 2001)); *pet'n for cert. filed*, No. 09-409 (Oct. 2, 2009).
- <sup>57</sup> Palmer ex rel. Palmer v. Waxahachie Indep. School Dist., 579 F.3d 502, 509-10 (5<sup>th</sup> Cir. 2009) (citing Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)), *pet'n for cert. filed*, No. 09-409 (Oct. 2, 2009).
- <sup>58</sup> Canady v. Bossier par. Sch. Bd., 240 F.3d 437 (5<sup>th</sup> Cir. 2001).
- <sup>59</sup> *Compare* Fenton v. Stear, 423 F. Supp. 767, 771-72 (W.D. Pa. 1976) (school could punish student for calling teacher a "prick" off campus because comment amounted to "fighting words") with Klein v. Smith, 635 F. Supp. 1440, 1441-42 (D. Me. 1986) (school could not punish student for flipping off teacher off campus because gesture did not amount to "fighting words").
- <sup>60</sup> Morse v. Frederick, 551 U.S. 393, 400-401 (2007).
- <sup>61</sup> Porter v. Ascension Parish Sch. Bd., 393 F.3d 608, 615 (5<sup>th</sup> Cir. 2004).
- <sup>62</sup> Porter v. Ascension Parish Sch. Bd., 393 F.3d 608, 619 (5<sup>th</sup> Cir. 2004) (collecting cases).
- <sup>63</sup> J.S. ex rel. H.S. v. Bethlehem Area Sch. Dist., 757 A.2d 412 (Pa. Commw. Ct. 2000).
- <sup>64</sup> Killion v. Franklin Reg'l Sch. Dist., 136 F.Supp.2d 446, 455-56 (W.D.Pa. 2001).
- <sup>65</sup> Dunn v. Tyler Indep. Sch. Dist., 460 F.2d 137, 142-43 (5<sup>th</sup> Cir. 1972).
- <sup>66</sup> Tinker v. Des Moines Indep. Comty. Sch. Dist., 393 U.S. 503, 508-510 (1969).
- <sup>67</sup> Morse v. Frederick, 551 U.S. 393, 403 (2007) (quoting Virginia v. Black, 538 U.S. 343, 365 (2003)).
- <sup>68</sup> Barber v. Dearborn Pub. Sch., 286 F. Supp.2d 847, 849-50 (E.D. Mich. 2003).
- <sup>69</sup> Barber v. Dearborn Pub. Sch., 286 F. Supp.2d 847, 849 (E.D. Mich. 2003).
- <sup>70</sup> Barber v. Dearborn Pub. Sch., 286 F. Supp.2d 847, 850 (E.D. Mich. 2003).
- <sup>71</sup> Barber v. Dearborn Pub. Sch., 286 F. Supp.2d 847, 856-58 (E.D. Mich. 2003).
- <sup>72</sup> Rubio v. Turner Unified Sch. Dist. No. 202, 453 F. Supp. 2d 1295, 1305 (D. Kan. 2006).
- <sup>73</sup> See 42 U.S.C. § 2000d; Rubio v. Turner Unified Sch. Dist. No. 202, 453 F. Supp. 2d 1295, 1305 (D. Kan. 2006) (student's discipline for speaking Spanish sufficient to allege discrimination under Title VI).
- <sup>74</sup> See 29 C.F.R. § 1606.7(a) (creating presumption that blanket bans on foreign language in workplace violate Title VII); Maldonado v. City of Altus, 433 F.3d 1294, 1304-1305 (10<sup>th</sup> Cir. 2006) (in employment context, policy prohibiting speaking Spanish during breaks and other times lacking reasonable justification could indicate hostility on basis of national origin), *abrogated in part on other grounds*, Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006). But see Silva v. St. Anne Catholic Sch., 595 F.Supp.2d 1171, 1183-85 (D. Kan. 2009) (noting difference between employment and educational context and upholding blanket English-only policy in private school where students were bilingual).
- <sup>75</sup> West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).
- <sup>76</sup> TEX. EDUC. CODE §§ 25.082(b)-(c); see also Frazier ex rel. Frazier v. Winn, 535 F.3d 1279, 1284-85 (11<sup>th</sup> Cir. 2008) (upholding parental consent requirement to opt out of pledge), *reh'g en banc denied*, 555 F.3d 1292 (11<sup>th</sup> Cir. 2009), *cert. denied* 77 U.S.L.W. 3634, 78 U.S.L.W. 3011 (Oct 05, 2009) (No. 08-1351).
- <sup>77</sup> Tinker v. Des Moines Indep. Comty. Sch. Dist., 393 U.S. 503, 506-511 (1969).
- <sup>78</sup> Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 872 (1982) (plurality opinion); Campbell v. St. Tammany Parish Sch. Bd., 64 F.3d 184, 188-89 (5<sup>th</sup> Cir. 1995) ("Even though the constitutional analysis in the *Pico* plurality opinion does not constitute binding precedent, it may properly serve as guidance in determining whether the School Board's removal decision was based on unconstitutional motives.) But see Chiras v. Miller, 432 F.3d 606, 619 n.32 (5<sup>th</sup> Cir. 2005) (stating in dicta that "*Pico* has no precedential value as to the application of First Amendment principles to the school's decision to remove the books from the library").
- <sup>79</sup> Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico, 457 U.S. 853, 874 (1982) (plurality opinion).
- <sup>80</sup> Sund v. City of Wichita Falls, Texas, 121 F. Supp.2d 530, 535 (N.D. Tex. 2000).
- <sup>81</sup> Sund v. City of Wichita Falls, Texas, 121 F. Supp.2d 530, 547-48 (N.D. Tex. 2000).
- <sup>82</sup> Clark v. Dallas Indep. Sch. Dist., 806 F. Supp. 116, 120 (N.D. Tex. 1992).
- <sup>83</sup> Shanley v. Northeast Indep. Sch. Dist., 462 F.2d 960, 970 (5<sup>th</sup> Cir. 1972).
- <sup>84</sup> Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988).
- <sup>85</sup> Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 271-73 (1988).
- <sup>86</sup> Dean v. Utica Community Sch., 345 F.Supp.2d 799, 809 (E.D.Mich. 2004); Press Release, American Civil Liberties Union, Michigan Judge Rules Utica School Violated Student Journalist's Free Speech Rights (Oct. 12, 2004) *available at* <http://www.aclu.org/studentsrights/gen/12914prs20041012.html>.
- <sup>87</sup> Press Release, American Civil Liberties Union, California High School Journalists Win Free Speech Victory (Nov. 16, 2006) *available at* <http://www.aclu.org/freespeech/youth/27414prs20061116.html>.

- <sup>88</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960 (5<sup>th</sup> Cir. 1972). *But cf.* *Sullivan v. Houston Indep. Sch. Dist.*, 475 F.2d 1071 (5<sup>th</sup> Cir. 1973) (upholding student's suspension for violating school policy requiring prior review of underground papers distributed off campus in manner calculated to result in paper being brought on campus).
- <sup>89</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960, 970 (5<sup>th</sup> Cir. 1972); *Pounds v. Katy Indep. Sch. Dist.*, 517 F.Supp.2d 901, 914-15 (S.D.Tex. 2007).
- <sup>90</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960, 977-78 (5<sup>th</sup> Cir. 1972); *Pounds v. Katy Indep. Sch. Dist.*, 517 F.Supp.2d 901, 918, 923 (S.D.Tex. 2007).
- <sup>91</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960, 975 (5<sup>th</sup> Cir. 1972).
- <sup>92</sup> *Burch v. Barker*, 861 F.2d 1149, 1152 n. 1 (9<sup>th</sup> Cir. 1988).
- <sup>93</sup> *Shanley v. Northeast Indep. Sch. Dist.*, 462 F.2d 960, 978 (5<sup>th</sup> Cir. 1972).
- <sup>94</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270-73 (1988).
- <sup>95</sup> *J.S. ex rel. H.S. v. Bethelhem Area Sch. Dist.*, 807 A.2d 847, 667-68 (Pa. 2000). *But cf. id.* at 668 (expressing doubt about whether cyberspeech falls under *Fraser* standard because not delivered to unsuspecting listeners).
- <sup>96</sup> *J.S. ex rel. H.S. v. Bethelhem Area Sch. Dist.*, 807 A.2d 847, 667-69 (Pa. 2000).
- <sup>97</sup> *J.S. ex rel. H.S. v. Bethelhem Area Sch. Dist.*, 807 A.2d 847, 674-75 (Pa. 2000).
- <sup>98</sup> *Doninger v. Niehoff*, 527 F.3d 41, 43 (2d Cir. 2008).
- <sup>99</sup> *Layshock v. Hermitage Sch. Dist.*, 496 F. Supp.2d 587, 600-602 (W.D. Pa. 2007).
- <sup>100</sup> TEX. PEN. CODE § 33.07.
- <sup>101</sup> *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000) (holding that Boy Scouts had right to expel assistant Scoutmaster who was gay despite New Jersey's anti-discrimination statute); *Hurley v. Irish Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557 (1995) (holding that organizers of city's annual St. Patrick's Day Parade had right to exclude gay, lesbian, and bisexual group from parade); *Hsu ex rel. Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839, 862 (2d Cir. 1996) (prohibiting student club from preserving expressive content of meetings by excluding non-Christians from leadership positions likely violates Equal Access Act).
- <sup>102</sup> Equal Access Act, 20 U.S.C. § 4071 et seq.; Tex. Educ. Code § 25.154; *Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226 (1990).
- <sup>103</sup> 20 U.S.C. §§ 4071(c), 4072(2).
- <sup>104</sup> *Prince v. Jacoby*, 303 F.3d 1074 (9<sup>th</sup> Cir. 2002).
- <sup>105</sup> *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000).
- <sup>106</sup> *Hsu ex rel. Hsu v. Roslyn Union Free Sch. Dist. No. 3*, 85 F.3d 839, 859-62 (2d Cir. 1996).
- <sup>107</sup> *Truth v. Kent Sch. Dist.*, 542 F.3d 634, 644-47 (9<sup>th</sup> Cir. 2008), *cert. denied*, 77 U.S.L.W. 3596, 3707-08 (June 29, 2009) (Nos. 08-1130, 08-1268).
- <sup>108</sup> *Truth v. Kent Sch. Dist.*, 542 F.3d 634, 647 (9<sup>th</sup> Cir. 2008), *cert. denied*, 77 U.S.L.W. 3596, 3707-08 (June 29, 2009) (Nos. 08-1130, 08-1268).
- <sup>109</sup> *Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 510-13 (5<sup>th</sup> Cir. 2009), *pet'n for cert. filed*, No. 09-409 (Oct. 2, 2009).; *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 286 (5<sup>th</sup> Cir. 2001); *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 443 (5<sup>th</sup> Cir. 2001).
- <sup>110</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969); *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 439-41 (5<sup>th</sup> Cir. 2001). *But cf.* *Palmer ex rel. Palmer v. Waxahachie Independent School Dist.*, 579 F.3d 502 (5<sup>th</sup> Cir. 2009) (upholding restrictions on messages on all but school-group T-shirts as content neutral), *pet'n for cert. filed*, No. 09-409 (Oct. 2, 2009)..
- <sup>111</sup> TEX. CIV. PRAC. & REM. CODE § 110.003; *Arocha v. Needville Indep. Sch. Dist.*, 4:08-cv-02934 (S.D. Tex. Jan. 20, 2009), *available at* <http://www.aclutx.org/files/2009%2001%2020%20Order.pdf> <http://www.aclutx.org/article.php?aid=672>, *appeal docketed*, No. 09-20091 (5<sup>th</sup> Cir. Feb. 10, 2009).
- <sup>112</sup> *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986).
- <sup>113</sup> *Nixon v. Northern Local Sch. Dist. Bd. of Educ.*, 383 F. Supp.2d 965, 970-72 (S.D. Ohio 2005).
- <sup>114</sup> *Boroff v. Van Wert City Bd. of Educ.*, 220 F.3d 465, 470-71 (6<sup>th</sup> Cir. 2000), *cert. denied*, 532 U.S. 920 (2001).
- <sup>115</sup> *Melton v. Young*, 465 F.2d 1332, 1334-35 (6<sup>th</sup> Cir. 1972).
- <sup>116</sup> *West v. Derby Unified Sch. Dist. No. 260*, 206 F.3d 1358, 1365-67 (10<sup>th</sup> Cir. 2000).
- <sup>117</sup> *Castorina ex rel. Rewt v. Madison County Sch. Bd.*, 246 F.3d 536, 538 (6<sup>th</sup> Cir. 2001).
- <sup>118</sup> *Castorina v. Madison County Sch. Bd.*, 246 F.3d 536, 544 (6<sup>th</sup> Cir. 2001).
- <sup>119</sup> TEX. EDUC. CODE § 11.162(a).
- <sup>120</sup> TEX. EDUC. CODE § 11.162(b).
- <sup>121</sup> TEX. EDUC. CODE § 11.162(c).
- <sup>122</sup> *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275, 281-82 (5<sup>th</sup> Cir. 2001).
- <sup>123</sup> *Littlefield v. Forney Indep. Sch. Dist.*, 268 F.3d 275 (5<sup>th</sup> Cir. 2001).
- <sup>124</sup> TEX. CIV. PRAC. & REM. CODE § 110.003.

- <sup>125</sup> *Karr v. Shmidt*, 460 F.2d 609 (5<sup>th</sup> Cir. 1972), *cert. denied* 409 U.S. 989 (1972); *Ferrell v. Dallas Indep. Sch. Dist.*, 392 F.2d 697 (5<sup>th</sup> Cir. 1968) (focusing on disruption to educational environment, pre-*Tinker*), *cert. denied* 393 U.S. 856 (1968). *But cf.* *Canady v. Bossier Parish Sch. Bd.*, 240 F.3d 437, 440 & n.1 (5<sup>th</sup> Cir. 2001) (rejecting *Karr* analysis for *Spence/Johnson* test for expressive activity).
- <sup>126</sup> TEX. CIV. PRAC. & REM. § 110.003.
- <sup>127</sup> *Arocha v. Needville Indep. Sch. Dist.*, 4:08-cv-02934 (S.D. Tex. Jan. 20, 2009), *available at* <http://www.aclutx.org/files/2009%2001%2020%20Order.pdf> <http://www.aclutx.org/article.php?aid=672>, *appeal docketed*, No. 09-20091 (5<sup>th</sup> Cir. Feb. 10, 2009).
- <sup>128</sup> *Barber v. Colorado Indep. Sch. Dist.*, 901 S.W.2d 447 (Tex. 1995); *Bd. of Trustees of Bastrop Indep. Sch. Dist. v. Toungate*, 958 S.W. 2d 365 (Tex. 1998).
- <sup>129</sup> *Bd. of Trustees of Bastrop Indep. Sch. Dist. v. Toungate*, 958 S.W. 2d 365, 371-2 (Tex. 1998) (stating, in case involving student hair restriction, that gender discrimination in “dress and grooming” standards is constitutional).
- <sup>130</sup> *Bar-Navon v. Brevard County Sch. Bd.*, 290 Fed. Appx. 273, 275 (11<sup>th</sup> Cir. 2008).
- <sup>131</sup> *Bar-Navon v. Brevard County Sch. Bd.*, 290 Fed. Appx. 273, 274 (11<sup>th</sup> Cir. 2008).
- <sup>132</sup> *Bar-Navon v. Brevard County Sch. Bd.*, 290 Fed. Appx. 273, 277 (11<sup>th</sup> Cir. 2008).
- <sup>133</sup> U.S. CONST. amend. I.
- <sup>134</sup> *Engel v. Vitale*, 370 U.S. 421, 434-35 (1962).
- <sup>135</sup> *Wallace v. Jaffree*, 472 U.S. 38, 53 (1985); *Engel v. Vitale*, 370 U.S. 421, 434-35 (1962).
- <sup>136</sup> See TEXAS EDUC. CODE § 25.901; *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969); U.S. Dep’t of Education, Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools (Feb. 7, 2003), *available at* [http://www.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](http://www.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html).
- <sup>137</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”); *Capitol Square Review & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995) (“private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression”).
- <sup>138</sup> Equal Access Act, 20 U.S.C. § 4071 et seq.; TEX. EDUC. CODE § 25.154; *Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226, 236 (1990).
- <sup>139</sup> *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 239-40 (1990).
- <sup>140</sup> *Bd. of Educ. of Westside Cmty. Sch. v. Mergens*, 496 U.S. 226, 236 (1990).
- <sup>141</sup> TEX. CIV. PRAC. & REM. CODE § 110.003; *Arocha v. Needville Indep. Sch. Dist.*, 4:08-cv-02934 (S.D. Tex. Jan. 20, 2009), *available at* <http://www.aclutx.org/files/2009%2001%2020%20Order.pdf> <http://www.aclutx.org/article.php?aid=672>. (American Indian kindergarten student has right to wear hair in two long braids as expression of his religious beliefs), *appeal docketed*, No. 09-20091 (5<sup>th</sup> Cir. Feb. 10, 2009); *Chalifoux v. New Caney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997) (holding that school rule prohibiting the wearing of rosaries violated Catholic students’ Free Exercise rights). *But cf.* *Menora v. Illinois High Sch. Ass’n.*, 683 F.2d 1030 (7<sup>th</sup> Cir. 1982), *cert. denied*, 459 U.S. 1156 (1983) (holding that high school sports association rule prohibiting students from wearing yarmulkes affixed with bobby pins to avoid potential harm to other players did not violate Jewish students’ Free Exercise rights as long as students had other option to cover their heads as required by faith).
- <sup>142</sup> TEX. EDUC. CODE § 25.153.
- <sup>143</sup> *C.H. v. Olivia*, 990 F.Supp. 341, 353-54 (D.N.J. 1997), *aff’d in part en banc*, 226 F.3d 198, 200 (3d Cir. 2000).
- <sup>144</sup> *Bannon v. Sch. Dist. of Palm Beach County*, 387 F.3d 1208, 1211, 1215 (11<sup>th</sup> Cir. 2004), *cert. denied*, 546 U.S. 811 (2005) (holding the school may restrict a student’s permanent mural by the principal’s office which contains a crucifix and paraphrases John 3:16 if the school sponsors the expression in a nonpublic forum “and students, parents, and members of the public might reasonably believe them to bear the imprimatur of the school”).
- <sup>145</sup> *Weinbaum v. City of Las Cruces, N.M.*, 531 F.3d 1017, 1037 (10<sup>th</sup> Cir. 2008); *see also* *Seidman v. Paradise Valley Unified School Dist.* No. 69, 327 F.Supp.2d 1098 (D. Az. 2004) (finding school could not prohibit parent from writing “God bless Quinn” on commemorative tile on school grounds because message was not proselytizing and, given the multitude of tiles with various messages, would not be understood by a reasonable person as a school endorsement of religion).
- <sup>146</sup> TEX. EDUC. CODE § 25.153.
- <sup>147</sup> *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1065 (6<sup>th</sup> Cir. 1987).
- <sup>148</sup> *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943); *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1065-66 (6<sup>th</sup> Cir. 1987).
- <sup>149</sup> *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1061-62 (6<sup>th</sup> Cir. 1987).
- <sup>150</sup> *Mozert v. Hawkins County Bd. of Educ.*, 827 F.2d 1058, 1065-66 (6<sup>th</sup> Cir. 1987).
- <sup>151</sup> *Parker v. Hurley*, 514 F.3d 87 (1<sup>st</sup> Cir. 2008).
- <sup>152</sup> *Parker v. Hurley*, 514 F.3d 87, 92-93 (1<sup>st</sup> Cir. 2008).
- <sup>153</sup> *Parker v. Hurley*, 514 F.3d 87, 106 (1<sup>st</sup> Cir. 2008).
- <sup>154</sup> TEX. EDUC. CODE § 26.010.

- <sup>155</sup> Press Release, American Civil Liberties Union, After ACLU Intervention on Behalf of Christian Valedictorian, Michigan High School Agrees to Stop Censoring Religious Yearbook Entries (May 11, 2004), *available at* <http://www.aclu.org/studentsrights/expression/12845prs20040511.html>.
- <sup>156</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 270-73 (1988).
- <sup>157</sup> TEX. EDUC. CODE §§ 25.087(b)(1)(A), 25.092(e); *see also* TEX. CIV. PRAC. & REM. CODE § 110.003; *Church of God (Worldwide, Texas Region) v. Amarillo Indep. Sch. Dist.*, 511 F.Supp. 613 (N.D. Tex. 1981), *aff'd* 670 F.2d 46 (5th Cir. 1982) (holding school policy that limited excused absences for religious observance to two days per year was unduly burdened free exercise adherents of Church of God, who are required by religion to abstain from secular activity for seven holy days each year, without compelling interest).
- <sup>158</sup> *Zorach v. Clauson*, 343 U.S. 306, 315 (1952); *H.S. v. Huntington County Cmty. Sch. Corp.*, 616 F.Supp.2d 863, 892-96 (N.D.Ind. 2009) (finding public school likely violated Establishment Clause in permitting release time religious instruction at church-owned trailer parked on school property).
- <sup>159</sup> *McCullum v. Bd. of Educ. of Sch. Dist. No. 71*, 333 U.S. 203 (1948).
- <sup>160</sup> *H.S. v. Huntington County Cmty. Sch. Corp.*, 616 F.Supp.2d 863, 893-96 (N.D.Ind. 2009) (applying *Lemon* test).
- <sup>161</sup> Equal Access Act, 20 U.S.C. § 4071 *et seq.*; TEX. EDUC. CODE § 25.154; *Bd. of Educ. of Westside Cmty. Sch. v. Mergens ex rel. Mergens*, 496 U.S. 226 (1990).
- <sup>162</sup> TEX. EDUC. CODE §§ 25.151-156.
- <sup>163</sup> *Doe v. South Iron R-1 Sch. Dist.*, 498 F.3d 878, 883 (8<sup>th</sup> Cir. 2007); *Berger v. Rensselaer Cent. Sch. Corp.*, 982 F.2d 1160, 1171 (7<sup>th</sup> Cir. 1993), *cert. denied*, 508 U.S. 911 (1993); *Chandler v. James*, 985 F.Supp. 1094, 1101 (N.D.Ala.1997); *Goodwin v. Cross County Sch. Dist. No. 7*, 394 F. Supp. 417, 427-28 (E.D. Ark. 1973).
- <sup>164</sup> *Peck v. Upshur County Bd. of Educ.*, 155 F.3d 274 (4<sup>th</sup> Cir. 1998).
- <sup>165</sup> *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 593-94 (1989); *Lee v. Weisman*, 505 U.S. 577, 587 (1992).
- <sup>166</sup> *Peck v. Upshur County Bd. of Educ.*, 155 F.3d 274, 288-89, & n\* (4<sup>th</sup> Cir. 1998) (noting that restrictive passive Bible distribution policy upheld for secondary schools would likely be impermissible in elementary schools). *But see* *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418, 424 (6<sup>th</sup> Cir. 2004) (rejecting *Peck's* distinction of elementary schools).
- <sup>167</sup> *Croft v. Governor of Texas*, 562 F.3d 735 (5<sup>th</sup> Cir. 2009) (holding that amendment adding “prayer” to activities permitted during “moment of silence” had secular purposes and did not have primary effect of advancing religion because it allowed students to pursue any other silent activity; and there was no excessive entanglement of religion, even though the teachers were instructed to compel students to remain silent).
- <sup>168</sup> *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1285 (11<sup>th</sup> Cir. 2004) (“a teacher or administrator's intent to facilitate or encourage prayer in a public school is per se an unconstitutional intent to further a religious goal”).
- <sup>169</sup> *Wallace v. Jaffree*, 472 U.S. 38, 59-61 (1985).
- <sup>170</sup> TEX. EDUC. CODE §§ 25.082(b)-(d).
- <sup>171</sup> TEX. EDUC. CODE § 25.082(d).
- <sup>172</sup> *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203 (1963) (finding teacher-lead prayer and Bible readings unconstitutional); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (“the religious liberty protected by the Constitution is abridged when the State affirmatively sponsors the particular religious practice of prayer”).
- <sup>173</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (noting “nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day”).
- <sup>174</sup> *Lee v. Weissman*, 505 U.S. 577 (1992) (holding school's invitation of a rabbi to lead non-sectarian prayer at graduation ceremony unconstitutional).
- <sup>175</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 317 (2000).
- <sup>176</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 316-17 (2000).
- <sup>177</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 311-12 (2000); *Lee v. Weisman*, 505 U.S. 577, 587, 594-95 (1992).
- <sup>178</sup> TEX. EDUC. CODE § 25.151.
- <sup>179</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000); *Lee v. Weisman*, 505 U.S. 577 (1992); *But cf. Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 683-86 (1986) (noting public schools are allowed to review speeches for vulgarity, lewdness, or sexually explicit language, but may not administer rules to discriminate against student religious prayer or speech).
- <sup>180</sup> *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 313 (2000) (noting “nothing in the Constitution ... prohibits any public school student from voluntarily praying at any time before, during, or after the school day”).
- <sup>181</sup> *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O'Connor, J., concurring).
- <sup>182</sup> *Lynch v. Donnelly*, 465 U.S. 668, 671 (1984).
- <sup>183</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573 (1989).
- <sup>184</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 540, 598-600 (1989).
- <sup>185</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 601, 602 (1989).
- <sup>186</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 620 (1989).

- <sup>187</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 620 (1989).
- <sup>188</sup> *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 620 n. 69 (1989). But cf. *Sechler v. State College Area Sch. Dist.*, 121 F.Supp.2d 439, 451 (M.D.Pa.,2000) (finding “winter holiday” display including menorah, items related to Kwanzaa, and an evergreen “giving tree” in school auditorium during after-hours school event did not violate Establishment Clause).
- <sup>189</sup> *Lee v. Weissman*, 505 U.S. 577, 592 (1992) (“there are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools”).
- <sup>190</sup> *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 225, 306 (1963); *Roberts v. Madigan*, 921 F.2d 1047, 1055 (10th Cir. 1990).
- <sup>191</sup> *Wiley v. Franklin*, 468 F.Supp. 133, 151 (“with proper selectivity, interpretation, objectivity and emphasis innumerable secular lessons relevant to Western culture, history, literature and values can be taught [in a Bible course] without encountering any First Amendment religious freedom infringement”).
- <sup>192</sup> *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 223-25 (1963).
- <sup>193</sup> Press Release, American Civil Liberties Union of Texas, Texas School Board Agrees To Stop Teaching Unconstitutional Bible Class In Public Schools (Mar. 5, 2008) *available at* <http://www.aclutx.org/article.php?aid=698>.
- <sup>194</sup> *Herdahl v. Pontotoc County Sch. Dist.*, 933 F.Supp. 582, 598-99 (N.D. Miss. 1996) (Bible course which asserts a sectarian interpretation of the Bible and teaches creationism is unconstitutional); *Gibson v. Lee County Sch. Bd.*, 1 F.Supp.2d 1426, 1434 (M.D. Fla. 1998) (teaching the Resurrection of Christ as if it was literal history violates the Establishment Clause); *Wiley v. Franklin*, 468 F.Supp. 133, 149 (D.C. Tenn. 1979) (noting that teaching the Bible literally without interpretation violates the Establishment Clause).
- <sup>195</sup> TEX. EDUC. CODE §28.011.
- <sup>196</sup> *Edwards v. Aguillard*, 482 U.S. 578 (1987).
- <sup>197</sup> *Edwards v. Aguillard*, 482 U.S. 578 (1987).
- <sup>198</sup> *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 718-19 (M.D. Pa. 2005).
- <sup>199</sup> *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 765 (M.D. Pa. 2005).
- <sup>200</sup> *Kitzmiller v. Dover*, 400 F. Supp. 2d 707, 766 (M.D. Pa. 2005).
- <sup>201</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).
- <sup>202</sup> *Delgado v. Bastrop Indep. Sch. Dist.*, No. 388 (W.D.Tex. June 15, 1948) (not selected for publication); *see also* *United States v. Tex. Educ. Agency*, 600 F.2d 518, 521 n. 5 (5th Cir. 1979).
- <sup>203</sup> *Griffin v. Prince Edward County*, 377 U.S. 218, 225 (1964).
- <sup>204</sup> *See, e.g., Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1, 27-28 (1971) (authorizing the busing of students to eliminate segregation).
- <sup>205</sup> *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730 (2007).
- <sup>206</sup> *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 729-30 (2007).
- <sup>207</sup> 34 C.F.R. § 106.34(c).
- <sup>208</sup> 34 C.F.R. § 106.34(c).
- <sup>209</sup> 34 C.F.R. § 106.34(b).
- <sup>210</sup> 20 U.S.C. § 1681 *et seq.*
- <sup>211</sup> 41 C.F.R. § 101-4.540(c)(1).
- <sup>212</sup> 41 C.F.R. § 101-4.540(b).
- <sup>213</sup> 41 C.F.R. § 101-4.540(b).
- <sup>214</sup> 41 C.F.R. §§ 101-4.50(c)(1)(i)-(ix).
- <sup>215</sup> *Romer v. Evans*, 517 U.S. 620 (1996).
- <sup>216</sup> *Romer v. Evans*, 517 U.S. 620, 631-32 (1996).
- <sup>217</sup> 20 U.S.C. § 4071(a).
- <sup>218</sup> *Bd. of Educ. v. Mergens*, 496 U.S. 226, 239-40 (1990).
- <sup>219</sup> *Bd. of Educ. v. Mergens*, 496 U.S. 226, 236 (1990).
- <sup>220</sup> *Caudillo v. Lubbock Indep. Sch. Dist.*, 311 F. Supp. 2d 550, 563 (N.D. Tex. 2004).
- <sup>221</sup> *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980).
- <sup>222</sup> *Romer v. Evans*, 517 U.S. 620 (1996).
- <sup>223</sup> *See* 20 U.S.C. § 1681 *et seq.*; TEXAS CIV. PRAC. & REM. CODE § 106.001 (prohibiting discrimination by public officials and employees on the basis of race, religion, color, sex, or national origin); TEXAS CONST. art. I § 3a (Equal Rights Amendment).
- <sup>224</sup> TEXAS EDUC. CODE § 29.085.
- <sup>225</sup> *Plyler v. Doe*, 457 U.S. 202, 230 (1982).
- <sup>226</sup> *In re Alien Children Education Litigation*, 501 F. Supp. 544 (S.D. Tex. 1980), *aff’d*, *Plyler v. Doe*, 457 U.S. 202, 209-210 (1982).
- <sup>227</sup> TEXAS EDUC. CODE § 25.002.
- <sup>228</sup> TEXAS EDUC. CODE § 25.001(b).

- <sup>229</sup> TEXAS EDUC. CODE § 25.001(d).
- <sup>230</sup> *Plyler v. Doe*, 457 U.S. 202, 223 (1982).
- <sup>231</sup> 20 U.S.C. § 1232g(b)(1).
- <sup>232</sup> 20 U.S.C. § 1232g(a)(1)(A).
- <sup>233</sup> 42 U.S.C. § 1751.
- <sup>234</sup> 20 U.S.C. § 1703.
- <sup>235</sup> TEX. EDUC. CODE § 29.053.
- <sup>236</sup> TEX. EDUC. CODE § 38.001.
- <sup>237</sup> TEX. EDUC. CODE § 38.001(c).
- <sup>238</sup> TEX. EDUC. CODE § 38.001(f).
- <sup>239</sup> Section 504 of the Rehabilitation Act of 1973.
- <sup>240</sup> TEX. FAM. CODE § 26.004.
- <sup>241</sup> 20 U.S.C. § 1232g(a)(1)(d).
- <sup>242</sup> 20 U.S.C. § 1232g(a)(1)(d).
- <sup>243</sup> 20 U.S.C. § 1232g(b).
- <sup>244</sup> 20 U.S.C. §§ 1232g(a)(5), (b)(1); TEX. FAM. CODE § 26.013.
- <sup>245</sup> *Soldiers of Misfortune*, ACLU (2008) *available at* <http://www.aclu.org/intlhumanrights/gen/35245pub20080513.html>.
- <sup>246</sup> 10 U.S.C. 31 § 505(a).
- <sup>247</sup> 10 U.S.C. 31 § 505(a).
- <sup>248</sup> *Soldiers of Misfortune*, ACLU, at 15 (2008) *available at* <http://www.aclu.org/intlhumanrights/gen/35245pub20080513.html>.
- <sup>249</sup> No Child Left Behind Act of 2001 § 9528 (a)(1), 20 U.S.C. § 7908 (a)(1).
- <sup>250</sup> No Child Left Behind Act of 2001 § 9528 (a)(2), 20 U.S.C. § 7908 (a)(2).
- <sup>251</sup> No Child Left Behind Act of 2001 § 9528 (a)(1), 20 U.S.C. § 7908 (a)(1).
- <sup>252</sup> No Child Left Behind Act of 2001 § 9528 (a)(3), 20 U.S.C. § 7908 (a)(3).
- <sup>253</sup> *See Coleman v. Caddo Parish Sch. Bd.*, 635 So. 2d 1238, 1266 (La. App. 2 Cir. 1994) (finding that school districts are permitted but not required to present sex education to students), *Hobolth v. Greenway*, 218 N.W.2d 98, 99-100 (Mich. Ct. App. 1974) (finding that school districts may create sex education curriculums when authorized to present sex education by statute), *Smith v. Ricci*, 446 A.2d 501 (N.J. 1982) (upholding the right of the state board of education to require school districts to present sex education courses).
- <sup>254</sup> *See Tex. Att’y Gen. Op. DM-465* (Jan. 9, 1998) (determining that legislature intended local school districts to decide for themselves whether to offer sex education).
- <sup>255</sup> TEX. EDUC. CODE §§ 28.002(a)(2); §§ 28.004 (a)-(d).
- <sup>256</sup> *Sch. Dist. of Abington Township v. Schempp*, 374 U.S. 203, 225, 306 (1963); *see also ACLU v. Foster*, No. Civ.A 02-1440, 2002 WL 1733651 (E.D. La. Jul. 24, 2002) (use of state funding for sexuality education by religious organizations violates Establishment Clause); *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (prohibiting “excessive entanglement” between the state and religion).
- <sup>257</sup> TEX. EDUC. CODE §§ 28.004(e)-(f).
- <sup>258</sup> Dr. David Riley & Dr. Kelly Wilson, *Just Say Don’t Know: Sexuality Education in Texas Public Schools 5-10*, at <http://www.tfn.org/site/PageServer?pagename=SexEdReportIndexPage> (last visited October 3, 2009); 42 U.S.C. § 710.
- <sup>259</sup> Dr. David Riley & Dr. Kelly Wilson, *Just Say Don’t Know: Sexuality Education in Texas Public Schools 17-25*, at <http://www.tfn.org/site/PageServer?pagename=SexEdReportIndexPage> (last visited Oct. 3, 2009).
- <sup>260</sup> TEX. EDUC. CODE §§ 28.004(a)-(d).
- <sup>261</sup> FAQ, Texas Association of Planned Parenthood Affiliates, at <http://www.pptexas.org/faq> (last visited Oct. 3, 2009).
- <sup>262</sup> TEX. FAM. CODE § 33.002.
- <sup>263</sup> TEX. FAM. CODE § 33.003.
- <sup>264</sup> TEX. HEALTH & SAFETY CODE § 171.012.
- <sup>265</sup> TEX. FAM. CODE § 31.001.
- <sup>266</sup> TEX. FAM. CODE §§ 31.002, 31.003.
- <sup>267</sup> TEX. FAM. CODE § 31.004.
- <sup>268</sup> TEX. FAM. CODE § 31.005.
- <sup>269</sup> TEX. FAM. CODE § 31.005.
- <sup>270</sup> TEX. FAM. CODE § 31.006.
- <sup>271</sup> U.S. CONST. amend. XXVI; TEX. ALCOHOLIC BEV. CODE § 106.
- <sup>272</sup> TEX. FAM. CODE § 2.001.
- <sup>273</sup> TEX. FAM. CODE § 2.101.
- <sup>274</sup> TEX. FAM. CODE § 2.102.
- <sup>275</sup> TEX. FAM. CODE § 2.003.

- <sup>276</sup> New Jersey v. T.L.O., 469 U.S. 325 (1985); *see also* Coronado v. State, 835 S.W.2d 636, 639 (Tex. Crim. App. 1992).
- <sup>277</sup> See In re V.P., 55 S.W. 3d 25 (Tex. App. 2001).
- <sup>278</sup> New Jersey v. T.L.O., 469 U.S. 325, 341 (1985).
- <sup>279</sup> Safford Unified School Dist. No. 1 v. Redding, 129 S.Ct. 2633, 2642 (2009).
- <sup>280</sup> Coronado v. State, 835 S.W.2d 636, 639 (Tex. Crim. App. 1992).
- <sup>281</sup> TEX. CODE CRIM. PROC. § 38.23(a); TEX. FAM. CODE § 51.17(c).
- <sup>282</sup> In the Matter of O.E., 2003 WL 22669014 (Tex. App. 2003).
- <sup>283</sup> Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470 (5th Cir. 1981).
- <sup>284</sup> Horton v. Goose Creek Indep. Sch. Dist., 690 F.2d 470, 481 (5th Cir. 1981).
- <sup>285</sup> Shoemaker v. State, 971 S.W. 2d 178 (Tex. App. 1998).
- <sup>286</sup> Coronado v. State, 835 S.W.2d 636, 641 (Tex. Crim. App. 1992).
- <sup>287</sup> Coronado v. State, 835 S.W.2d 636, 641 (Tex. Crim. App. 1992).
- <sup>288</sup> Pottowmie v. Earls, 536 U.S. 822 (2002).
- <sup>289</sup> Pottowmie v. Earls, 536 U.S. 822 (2002).
- <sup>290</sup> Pottowmie v. Earls, 536 U.S. 822 (2002).
- <sup>291</sup> Tannahill ex rel. Tannahill v. Lockney Indep. Sch. Dist., 133 F. Supp. 2d 919 (N.D. Tex. 2001); Pottowmie v. Earls, 536 U.S. 822 (2002).
- <sup>292</sup> Pottowmie v. Earls, 536 U.S. 822 (2002).
- <sup>293</sup> Pottowmie v. Earls, 536 U.S. 822, 833 (2002).
- <sup>294</sup> Pottowmie v. Earls, 536 U.S. 822, 833 (2002).
- <sup>295</sup> Pottowmie v. Earls, 536 U.S. 822, 833 (2002).
- <sup>296</sup> See Roy Yamaguchi, Lloyd Johnston, and Patrick O'Malley, *Relationship Between Student Illicit Drug Use and School Testing Policies*, 73 J. Sch. Health 4, 159-164 (2003).
- <sup>297</sup> Robert L. DuPont, Teresa G. Campbell and Jacqueline J. Mazza, *Report of a Preliminary Study: Elements of a Successful School-Based Student Drug Testing Program* 8 (Rockville, MD: U.S. Dep't of Educ., 2002).
- <sup>298</sup> *Just Two Texas Athletes Test Positive for Steroids in Program's First Year*, U.S.A. TODAY (AP) July 23, 2008, available on-line at [http://www.usatoday.com/sports/preps/2008-08-20-texas-steroids-testing\\_N.htm](http://www.usatoday.com/sports/preps/2008-08-20-texas-steroids-testing_N.htm).
- <sup>299</sup> In re V.P., 55 S.W. 3d 25, 32 (Tex. App. 2001).
- <sup>300</sup> In re V.P., 55 S.W. 3d 25, 32 (Tex. App. 2001).
- <sup>301</sup> In re V.P., 55 S.W. 3d 25, 33 (Tex. App. 2001).
- <sup>302</sup> Russell v. State 74 S.W. 3d 887, 890-92 (Tex. App. 2002).
- <sup>303</sup> Russell v. State 74 S.W. 3d 887, 890-92 (Tex. App. 2002).
- <sup>304</sup> Russell v. State 74 S.W. 3d 887, 890-92 (Tex. App. 2002).
- <sup>305</sup> Terry v. Ohio, 392 U.S. 1, 24 (1968).
- <sup>306</sup> New Jersey v. T.L.O., 469 U.S. 325, 352 (1985).
- <sup>307</sup> TEX. PENAL CODE § 38.02(a).
- <sup>308</sup> TEX. TRANS. CODE § 521.025.
- <sup>309</sup> TEX. PENAL CODE § 38.02(b).
- <sup>310</sup> Terry v. Ohio, 392 U.S. 1, 30 (1968).
- <sup>311</sup> Terry v. Ohio, 392 U.S. 1 (1968).
- <sup>312</sup> Terry v. Ohio, 392 U.S. 1 (1968).
- <sup>313</sup> Terry v. Ohio, 392 U.S. 1 (1968).
- <sup>314</sup> Minnesota v. Dickerson, 508 U.S. 366, 367 (1993).
- <sup>315</sup> Minnesota v. Dickerson, 508 U.S. 366, 367 (1993).
- <sup>316</sup> Pennsylvania v. Mims, 434 U.S. 106 (1977).
- <sup>317</sup> Maryland v. Wilson, 519 U.S. 408 (1997).
- <sup>318</sup> Carroll v. U.S., 267 U.S. 132, 149 (1925).
- <sup>319</sup> Johnson v. U.S., 333 U.S. 10 (1948).
- <sup>320</sup> Georgia v. Randolph, 547 U.S. 103 (2006).
- <sup>321</sup> City of Brigham v. Stuart, 547 U.S. 398 (2006).
- <sup>322</sup> U.S. v. Montoya de Hernandez, 473 U.S. 531, 538 (1985).
- <sup>323</sup> U.S. v. Aukai, 497 F.3d 955, 962 (9th Cir. 2007).
- <sup>324</sup> U.S. v. Aukai, 497 F.3d 955, 962 (9th Cir. 2007).
- <sup>325</sup> U.S. v. Fofana, 620 F. Supp.2d 857, 863 (S.D. Ohio 2009).
- <sup>326</sup> Almeida-Sanchez v. U.S., 413 U.S. 266, 272 (1973).
- <sup>327</sup> Ornelas v. U.S., 517 U.S. 690 (1996).
- <sup>328</sup> U.S. v. Puerta, 982 F.2d 1297, 1300 (9th Cir. 1992).

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- <sup>329</sup> TEX. CODE CRIM. PROC. § 1.051.
- <sup>330</sup> TEX. PENAL CODE § 38.02(a).
- <sup>331</sup> TEX. PENAL CODE § 38.02(b).
- <sup>332</sup> TEX. FAM. CODE § 52.02.
- <sup>333</sup> TEX. FAM. CODE § 52.03.
- <sup>334</sup> TEX. FAM. CODE § 52.02 (a).
- <sup>335</sup> TEX. FAM. CODE § 52.02(c).
- <sup>336</sup> TEX. FAM. CODE § 52.02(b).
- <sup>337</sup> TEX. EDUC. CODE § 37.001(a).
- <sup>338</sup> Every year, each school district must provide parents with information regarding its Student Code of Conduct. TEX. EDUC. CODE § 37.001(d).
- <sup>339</sup> See TEX. EDUC. CODE §§ 37.006(a)-(d), 37.007(a)-(f).
- <sup>340</sup> TEX. EDUC. CODE § 37.006(a)(2).
- <sup>341</sup> TEX. EDUC. CODE § 37.007(b)(2).
- <sup>342</sup> TEX. EDUC. CODE § 37.001(a).
- <sup>343</sup> See TEX. EDUC. CODE § 37.007(a).
- <sup>344</sup> TEX. EDUC. CODE §§ 37.006(l), 37.007(e)(2).
- <sup>345</sup> TEX. EDUC. CODE §§ 37.007(h), (e)(2).
- <sup>346</sup> TEX. EDUC. CODE § 22.0512; see also *Fee v. Herndon*, 900 F.2d 808 (5th Cir.1990), *cert denied*, 498 U.S. 908 (1990) (“[R]easonable corporal punishment is not at odds with the Fourteenth Amendment and does not constitute arbitrary state action. [...] Texas has authorized educators to impose a *reasonable* measure of corporal punishment upon students when necessary to maintain school discipline.”) (emphasis in original).
- <sup>347</sup> TEX. EDUC. CODE § 37.005(b).
- <sup>348</sup> TEX. EDUC. CODE § 37.009(c).
- <sup>349</sup> TEX. EDUC. CODE §§ 37.009(d), (h).
- <sup>350</sup> TEX. EDUC. CODE § 37.009(b).
- <sup>351</sup> TEX. EDUC. CODE § 37.009(e).
- <sup>352</sup> *Goss v. Lopez*, 419 U.S. 574, 579, 581 (1975).
- <sup>353</sup> TEX. EDUC. CODE § 37.009(a).
- <sup>354</sup> TEX. EDUC. CODE § 37.009(a).
- <sup>355</sup> TEX. EDUC. CODE § 37.009(a).
- <sup>356</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>357</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>358</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>359</sup> TEX. EDUC. CODE § 37.009(a).
- <sup>360</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>361</sup> TEX. EDUC. CODE § 37.019.
- <sup>362</sup> TEX. EDUC. CODE § 37.019.
- <sup>363</sup> TEX. EDUC. CODE § 37.019.
- <sup>364</sup> TEX. EDUC. CODE § 37.019.
- <sup>365</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>366</sup> TEX. EDUC. CODE § 37.009(f).
- <sup>367</sup> See Texas Appleseed, *Texas’ School-to-Prison Pipeline, Dropout to Incarceration: The Impact of School Discipline and Zero Tolerance*, Oct. 2007, *Full Report and Data Tables*, available at [http://www.texasappleseed.net/content/index.php?option=com\\_content&task=view&id=21&Itemid=106](http://www.texasappleseed.net/content/index.php?option=com_content&task=view&id=21&Itemid=106).
- <sup>368</sup> U.S. CONST. amend. XIV, § 1.
- <sup>369</sup> TEX. FAM. CODE § 51.02(2).
- <sup>370</sup> TEX. FAM. CODE § 51.03(a)(1).
- <sup>371</sup> TEX. FAM. CODE § 51.03(a)(3).
- <sup>372</sup> TEX. FAM. CODE § 51.03(a)(2).
- <sup>373</sup> TEX. FAM. CODE § 51.03(a)(4).
- <sup>374</sup> TEX. FAM. CODE § 51.03(b)(1)(a).
- <sup>375</sup> TEX. FAM. CODE § 51.03(b)(2).
- <sup>376</sup> TEX. FAM. CODE § 51.03(b)(3).
- <sup>377</sup> TEX. FAM. CODE § 51.03(b)(4).
- <sup>378</sup> TEX. FAM. CODE § 51.03(b)(5).
- <sup>379</sup> TEX. FAM. CODE § 51.03(b)(6).

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- <sup>380</sup> *In re Gault*, 387 U.S. 1 (1967).
- <sup>381</sup> TEX. FAM. CODE § 54.01(a).
- <sup>382</sup> TEX. FAM. CODE § 54.01(e).
- <sup>383</sup> TEX. FAM. CODE § 51.09(1).
- <sup>384</sup> TEX. FAM. CODE § 54.03(f).
- <sup>385</sup> TEX. FAM. CODE § 51.10(a).
- <sup>386</sup> TEX. FAM. CODE § 51.10(f).
- <sup>387</sup> TEX. FAM. CODE § 51.10(d)(e).
- <sup>388</sup> TEX. FAM. CODE § 54.04(d)(1).
- <sup>389</sup> TEX. FAM. CODE §§ 54.04(d)(2)-(3).
- <sup>390</sup> TEX. FAM. CODE § 54.042.
- <sup>391</sup> TEX. FAM. CODE § 54.044.
- <sup>392</sup> TEX. FAM. CODE § 54.048.
- <sup>393</sup> TEX. FAM. CODE § 54.02(a).
- <sup>394</sup> TEX. FAM. CODE § 54.02(a).
- <sup>395</sup> TEX. FAM. CODE § 54.02(j).
- <sup>396</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).
- <sup>397</sup> TEX. FAM. CODE §§ 54.04(d)(2)-(4).
- <sup>398</sup> TEX. HUM. RESOURCES CODE § 61.079.
- <sup>399</sup> TEX. FAM. CODE § 54.04(d)(3)(A).
- <sup>400</sup> TEX. HUM. RESOURCES CODE § 61.079.
- <sup>401</sup> TEX. YOUTH COMMISSION, GAP 85.1.
- <sup>402</sup> TEX. YOUTH COMMISSION, GAP 93.1; *see also* TEX. HUM. RESOURCES CODE § 61.046 (freedom of religion).
- <sup>403</sup> U.S. CONST. amend. XIV, § 1; T.X. CONST. art. I, § 3(a); *see also* TEX. YOUTH COMMISSION, GAP 93.1.
- <sup>404</sup> U.S. CONST. amend. XIV, § 1; T.X. CONST. art. I, § 3(a); *see also* TEX. YOUTH COMMISSION, GAP 93.1.
- <sup>405</sup> TEX. YOUTH COMMISSION, GAP 93.1.
- <sup>406</sup> TEX. YOUTH COMMISSION, GAP 93.31; *see also* TEX. YOUTH COMMISSION, GAP 93.53 (specific to appeals to the Executive Commissioner).
- <sup>407</sup> S.B. 103 § 64.101, Leg., 80<sup>th</sup> Reg. Sess. (Tx. 2007).
- <sup>408</sup> TEX. HUM. RESOURCES CODE §§ 61.002 & 61.032.
- <sup>409</sup> TEX. EDUC. CODE § 37.004(b).
- <sup>410</sup> TEX. EDUC. CODE § 37.019.
- <sup>411</sup> Federal laws providing protections for students with disabilities include the Individuals with Disabilities in Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990.
- <sup>412</sup> For example, *see* TEX. EDUC. CODE § 37.004.
- <sup>413</sup> 20 U.S.C. § 1415(k)(1)(H).
- <sup>414</sup> 20 U.S.C. § 1415(k)(1)(H).
- <sup>415</sup> 20 U.S.C. § 1415(k)(1)(E)(i).
- <sup>416</sup> 20 U.S.C. § 1415(k)(1)(F)(iii).
- <sup>417</sup> 20 U.S.C. § 1415(k)(1)(E)(i).
- <sup>418</sup> 20 U.S.C. § 1415(k)(1)(E)(i).
- <sup>419</sup> 20 U.S.C. § 1415(k)(1)(E)(i).
- <sup>420</sup> 20 U.S.C. § 1415(k)(1)(E)(i).
- <sup>421</sup> 20 U.S.C. § 1415(k)(5).