

Know Your Rights!

A Guide for
Public School
Students in
Tennessee



Prepared by
ACLU of Tennessee

The American Civil Liberties Union of Tennessee (ACLU-TN) is dedicated to translating the guarantees of the Bill of Rights into realities for all Tennesseans.

First organized in 1968, ACLU-TN is a private, non-partisan, non-profit membership organization headquartered in Nashville. ACLU-TN is the state affiliate of the American Civil Liberties Union (ACLU). ACLU-TN promotes its goals through advocacy, litigation, legislative lobbying, and public education.

The principles ACLU-TN fights for include: the right to free speech and expression; the right to freely practice any religion or no religion; the right to equal treatment, regardless of race, ethnicity, gender, age, religion, disability, or sexual orientation; the right to reproductive freedom; and the right to privacy.

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Top ACLU Students' Rights Victories

The ACLU has long been a defender of students' rights. The nation's largest public-interest law firm, the ACLU appears before the United States Supreme Court more than any other organization except the U. S. Justice Department. Below are just a few of the important Supreme Court cases involving the rights of public school students that the ACLU has participated in, either through direct representation of the individuals bringing the lawsuit or through "friend-of-the-court" legal briefs supporting the constitutional claims of the individuals bringing the lawsuit.

1) West Virginia v. Barnette 319 U.S. 624 (1943)

Several Jehovah's Witness families challenged a West Virginia state law that required all public school students to say the Pledge of Allegiance. (Saluting the American flag goes against the beliefs of the Jehovah's Witness faith.) The Supreme Court ruled the state law was unconstitutional and said that public schools could not require children to salute the American flag in violation of their beliefs.

2) Brown v. Board of Education 347 U.S. 483 (1954)

In this landmark decision, the Supreme Court overturned as unconstitutional the "separate but equal" doctrine outlined by the Court in its 1896 decision in Plessy v. Ferguson (163 U. S. 537). Until that time, public schools across the country were segregated under the "separate but equal" doctrine, which said that racial segregation in public facilities was permissible as long as "equal" facilities were provided for both whites and minorities.

3) Engel v. Vitale 370 U.S. 421 (1962)

Several families challenged the New York State Board of Regents' requirement that all public school students recite a "nondenominational" prayer written by the Board. The Supreme Court ruled that it was unconstitutional for states to write a prayer and require public school students to say it. In its decision, the Court said, "it is no part of the business of government to compose official prayers."

4) Abington School District v. Schempp 374 U.S. 203 (1963)

Following from its ruling in Engel (see above), the Supreme Court struck down a Pennsylvania state law requiring a minimum of ten Bible verses to be read to public school students during each school day, saying the law in question violated the Establishment Clause of the First Amendment.

5) Epperson v. Arkansas 393 U.S. 97 (1968)

The Supreme Court overturned Arkansas' ban on teaching evolution in public schools after a public school teacher challenged the law. The Court ruled that the ban, which was adapted from Tennessee's ban on teaching evolution (made famous by the 1925 Scopes trial), violated the Establishment Clause of the First Amendment.

6) Tinker v. Des Moines 393 U.S. 503 (1969)

Several Iowa students sued their public school after they were suspended for wearing black armbands to school to protest the Vietnam War. The Supreme Court ruled that the school's policy prohibiting the wearing of armbands was an unconstitutional violation of the First Amendment, saying that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

7) Goss v. Lopez 419 U.S. 565 (1975)

After several Ohio public school students challenged their suspensions from school because they had not received a hearing before or immediately after the suspension, the Supreme Court ruled that Fourteenth Amendment due process guarantees require public schools to provide students facing suspension with a written disciplinary notice and a disciplinary hearing.

8) Board of Education, Island Trees School District v. Pico
457 U.S. 853 (1982)

The Supreme Court overturned a New York State public school's decision to remove ten books from the school library (including Kurt Vonnegut's Slaughter-House Five and the anonymous Go Ask Alice) for being "anti-American, anti-Christian, anti-Semitic, and just plain filthy" after several students challenged the decision. The Court ruled that that the school had violated the students' First Amendment rights by removing the books.

9) Wallace v. Jaffree 472 U.S. 38 (1985)

After a parent challenged Alabama's "moment of silence" statute, the Supreme Court ruled that the state's law requiring public school students to observe a moment of silence "for meditation or voluntary prayer" at the beginning of each school day violated the Establishment Clause of the First Amendment.

10) Edwards v. Aguillard 482 U.S. 578 (1986)

A group of parents, teachers and religious leaders challenged a Louisiana state statute requiring public school teachers to give "equal time" in the classroom to

creation theory whenever evolution was taught. The Supreme Court ruled the law was an unconstitutional violation of the Establishment Clause of the First Amendment.

11) Lee v. Weisman 505 U.S. 577 (1992)

A Rhode Island family with children in public school challenged their school's practice of having a member of the clergy say a prayer at graduation. The Supreme Court ruled that allowing clergy to deliver prayers at public school graduations violated the Establishment Clause of the First Amendment.

12) Santa Fe Independent School District v. Doe 530 U.S. 290 (2000)

Two Texas families with children in public school – one Catholic, the other Mormon – challenged their school's practice of having a student chaplain say a prayer over the loudspeaker before football games. The Supreme Court ruled that the practice was an unconstitutional violation of the Establishment Clause of the First Amendment.

Other Supreme Court Cases of Interest

Below are four additional Supreme Court cases of interest to students. Except for Hazelwood v. Kuhlmeier, the ACLU participated in all of these cases, either through direct representation of the individuals bringing the lawsuit or through "friend-of-the-court" legal briefs.

1) Everson v. Board of Education 330 U.S. 1 (1947)

In the 1940s, a local school board in New Jersey authorized the district to reimburse families for the costs they incurred if they used public transportation to send their children to school. This policy applied both to students in public school as well as to students who lived in the public school district but elected to attend private or parochial school instead. A New Jersey taxpayer challenged the policy, arguing that it used public funds to assist students in attending parochial schools. While the Supreme Court ruled that the policy did not violate the Establishment Clause of the First Amendment, the Court quoted Thomas Jefferson in its now-famous ruling, saying that, "the clause against establishment of religion by law was intended to erect "a wall of separation between church and State.""

2) Miranda v. Arizona 384 U.S. 436 (1966)

Several individuals challenged their criminal convictions after statements they

made were used against them in court. None of the individuals were told by law enforcement that they could have an attorney present during questioning and that they did not have to answer any of the questions asked of them. The Supreme Court ruled that prior to questioning an individual in custody, law enforcement must inform the accused of the right to remain silent, to have an attorney present, and to waive these rights.

3) Hazelwood v. Kuhlmeier 484 U.S. 260 (1988)

Several public school journalism students in St. Louis, Missouri, challenged their principal's decision to cut articles on teen pregnancy and divorce from the school paper. The Supreme Court ruled that school officials could edit the school newspaper (or any other school-sponsored "expressive" activity) but established several criteria school officials must meet before editing or censoring student expression.

4) Reno v. ACLU 521 U.S. 844 (1997)

The ACLU challenged the federal Communications Decency Act of 1996 (CDA), which placed several restrictions on Internet users. The Supreme Court ruled the CDA was an unconstitutional violation of Internet users' First Amendment rights because it restricted content on the Internet, and because many of the Act's provisions were vague and overly broad.

Hey, We Tried: Some ACLU Students' Rights Losses

The ACLU has earned many landmark students' rights victories. But unfortunately, we have not won every case we've brought before the Supreme Court. Below are a few students' rights cases the ACLU has participated in – either through direct representation of the individuals bringing the lawsuit or through "friend-of-the-court" legal briefs – that have resulted in less favorable decisions for students.

1) New Jersey v. T.L.O. 469 U.S. 325 (1985)

After a New Jersey public school student was tried on juvenile delinquency charges based on evidence found during a warrantless search by school officials on school property, the student challenged the search in court as a violation of the Fourth Amendment protection against "unreasonable search and seizure." Unfortunately, the Supreme Court ruled that, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." In its ruling, the Court found it was impractical to expect teachers to obtain warrants to search students, and instead established the standard of

“reasonableness” for student searches. Instead of needing a warrant or probable cause to search a student, a school only needs reasonable suspicion that a student has broken the law or done something wrong in order to search that student.

2) Vernonia School District v. Acton 515 U.S. 646 (1995)

The Supreme Court ruled that an Oregon public school district’s policy of mandatory drug testing for student athletes was constitutional after the family of a seventh-grader challenged the policy in court. The school refused to allow the student involved to play football after his parents did not provide consent for him to be drug tested. The Supreme Court ruled that mandatory drug testing for athletes meets the reasonable suspicion standard for public school searches established in New Jersey v. T.L.O. (see above)

3) Board of Education v. Earls 536 U.S. 822 (2002)

Two Oklahoma public school students challenged their school district’s policy of randomly drug testing students involved in any extracurricular activity. The Supreme Court ruled that the policy was constitutional, and said in its ruling that students’ privacy rights were limited because schools have a responsibility to ensure health and safety at the school.

Other Important Students’ Rights Cases

Some students’ rights issues have not yet been considered by the Supreme Court. As a result, lower court rulings will provide precedents for these issues until the Supreme Court hears a case involving these matters. However, it is important to note that different states belong to different judicial jurisdictions, meaning that a precedent in one jurisdiction may not apply to another jurisdiction. Below are a few important lower court precedents involving students’ rights. All of the cases below involved ACLU participation, either through direct representation of the individuals bringing the lawsuit or through “friend-of-the-court” legal briefs.

1) Beck v. Alexander U. S. District Court, Middle District of Tennessee—Nashville Division (1982)

Several public school students and parents challenged, as a violation of the Establishment Clause, a Tennessee state statute mandating a moment of silence be observed in all public schools “for meditation or prayer of personal belief.” A federal district court judge ruled that the statute was unconstitutional and enjoined the state from enforcing it. The state legislature subsequently replaced the statute with a new law mandating that a moment of silence be observed to

help students and teachers “prepare themselves for the activities of the day.”

- 2) Berger v. Rennsler Central School Corporation
982 F. 2d 1160 (7th Cir.), cert. Denied, U.S. 113 S. Ct. 2344 (1993)

An Indiana family challenged their public school’s practice of allowing representatives from Gideons International to distribute Bibles in fifth grade classrooms. The U. S. Court of Appeals for the 7th Circuit ruled that it was a violation of the Establishment Clause of the First Amendment for a public school to allow Gideons representatives to distribute Bibles in the classroom.

- 3) Tannahill v. Lockney Independent School District
133 F. Supp. 2d 919 (N.D. Tex. 2001)

A Texas family sued their public school district after the district instituted a policy of mandatory drug testing for all students, and then suspended their 12-year-old son when the parents refused to provide consent for the testing. A federal district court judge overturned the policy, ruling that it was a violation of students’ Fourth Amendment right to privacy.

- 4) Vinson v. Wilson County Board of Education U. S. District Court,
Middle District of Tennessee—Nashville Division (2001)

Two Tennessee public school students challenged their suspension from school for wearing protest logos on their dress code-compliant shirts that read “The school board voted and all I got was this lousy uniform” and “I miss my old clothes,” arguing that the logos were a form of protest protected by the First Amendment. The United States District Court for the Middle District of Tennessee issued an injunction prohibiting the School Board from disciplining students for wearing protest logos. The final settlement resulted in the Board amending the dress code to permit logos on dress-code compliant shirts and a permanent injunction preventing the Board from punishing any other students for wearing protest logos.

- 5) Emmett v. Kent School District No. 415
92 F. Supp. 2d 1088 (W. D. Wash. 2001)

A Seattle public school student was suspended after he created a website parodying his school’s official website. He and his parents challenged the suspension in court as a violation of the student’s free speech rights. The website had been created on the student’s own time with his own resources. A federal district court judge enjoined the school district from enforcing the suspension, ruling that the speech involved was entirely out of the district’s control.



Introduction

The Bill of Rights to the Constitution protects specific individual rights – like freedom of speech, the right to privacy, and freedom of religion – from intrusion by all government entities, including public schools. The Constitution doesn’t place age requirements on these freedoms. ACLU-TN believes that all citizens, including students, should enjoy these basic rights.

But no one’s constitutional rights are absolute. Even though newspapers have a right to freedom of the press, a newspaper can’t deliberately print lies about a public official. A group of protesters can’t vandalize a government building to demonstrate opposition to a policy just because they have the right to protest. The government retains the power to regulate our rights to a limited extent to preserve safety and order in our society. This is true for both young people and adults.

It’s important to remember that the liberties granted to us by the Bill of Rights come with responsibilities. ACLU-TN believes citizens should exercise their freedoms in order to preserve them. But we must exercise our rights with some common sense. This is especially true for students. The courts, which are charged with interpreting the Constitution, have generally ruled that the rights of public school students can be regulated to a greater degree than the rights of adults. The courts have done this for several reasons, including age and safety considerations and to ensure that the educational process faces a minimum of disruptions during the day. As a result, public school students have fewer constitutional protections than adults.

ACLU-TN has consistently advocated for greater protections for students through our public education and advocacy work, as well as through legislative lobbying and litigation. We remain committed to continuing this fight in the future.

This guide is designed to answer questions you may have about your rights as a public school student. However, not every issue affecting public school students is addressed in this guide. It is only an outline of current law as of March 2004 regarding public schools, and should not be taken as specific legal advice. If you believe you need legal help, you should consult a private attorney.

Note: This guide refers to both state and federal law. Citations beginning with “TCA” are from the Tennessee Code Annotated, which is the compilation of Tennessee state laws and which constantly changes. United States Supreme Court cases and lower court cases are referenced by case name and year. Full citations for these cases can be found in the opening pages of this guide.

Freedom of Expression

What is freedom of expression?

Freedom of expression is the collective term for several of the freedoms protected by the First Amendment to the United States Constitution. Freedom of expression includes freedom of speech, freedom of the press, the freedom to assemble and protest, and the freedom to petition. These above freedoms also combine to create what the courts have called an implied “freedom of association,” which means you have the right to join any existing club you are interested in or to form new organizations if you like.

But free expression goes beyond the right to say or write or protest as you see fit. Free expression covers all means of expression, and protects everything from the spoken and written word to artistic endeavors to political campaign signs to T-shirt logos. Free expression also includes the right not to speak, meaning the First Amendment protects you from being compelled by the government to express anything you do not believe in.

Do I have the right to free expression while I’m at school?

Yes...sort of. In the Supreme Court’s decision in Tinker v. Des Moines (see below), the Court determined that student expression should be judged by whether or not it “materially or substantially interferes” with the educational process. This means you have the right to free speech at school, but you have to exercise this right in a manner that does not disrupt the school day.

This general rule applies both to students and to adults. The courts have repeatedly said that while the government cannot regulate the content of speech, the government can regulate the time, place, and manner of the speech. This doctrine is what allows local governments to pass noise ordinances or to place restrictions on the size of political campaign signs.

Suppose you are upset about a new grading policy the school board has proposed. You can’t stand on your desk during class and scream about the policy at the top of your lungs, because that would disturb other students’ ability to learn. But there are other things you can do...

Like what?

The right to free speech includes the right to assemble, protest and petition. To express your feelings, you could organize a rally of like-minded students. Just be sure to hold your rally in a safe place at a safe time. If you block entrances, clog the hallways, or leave class, your actions would be judged by the “materially or substantially interferes” test, and school administrators would likely both end the rally and discipline you.

Even though most people think of a “protest” as a big gathering of people yelling and waving signs, there are lots of ways to protest – including many that have been determined to be non-disruptive to the school day.

For example, in 1965, Mary Beth Tinker and four other junior high students in Des Moines, Iowa, decided to protest American bombing in Vietnam by wearing black armbands to school. The principal learned of the plan and banned armbands on campus. Mary Beth and the other students wore their armbands anyway and were suspended for violating the new policy.

Mary Beth decided to challenge her punishment in court, and the case eventually went to the Supreme Court. In 1969, the Court said in Tinker v. Des Moines, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The Court ruled that students retain their free speech and protest rights when they are at school, and found that black armbands were a legitimate, non-disruptive means of student protest.

Along these same lines, ACLU-TN successfully defended two Wilson County students who were suspended from Mt. Juliet Junior High School for protesting the school’s dress code policy. Cory and Kista Vinson wore protest logos on their dress-code compliant shirts that said, “The school board voted and all I got was this lousy uniform” and “I miss my old clothes.” ACLU-TN believed these logos were a legitimate means of non-disruptive protest like the black armbands in the Tinker case, and therefore Kory and Kista shouldn’t have been punished for wearing them. After a judge granted a preliminary injunction to prevent the school from disciplining students for wearing the logos, the school agreed to revise its dress code policy. Now students in the school district can wear 3” by 4” logos on their uniforms without fear of being punished.

Why can my school tell me what I can wear? Isn’t the way I dress a form of expression that is protected by the First Amendment?

Although ACLU-TN believes dress codes are a violation of students’ right to free expression, the courts typically disagree. While the Supreme Court has not yet heard a public school dress code case, lower courts generally have accepted school administrators’ argument that dress codes and school uniforms limit distractions to the educational process and reduce violence in schools.

Moreover, the Tennessee School Security Act permits local boards of education to enact dress codes for students in grades 6-12, and specifically allows schools to prevent the wearing of any clothing on school property that “denotes...students’ membership in or affiliation with any gang associated with criminal activities.” (TCA § 49-6-4215)

That being said, dress codes should be reasonable. For example, your school

can probably prohibit students from wearing vulgar T-shirt slogans or skimpy clothing. However, your school cannot prohibit religious clothing or jewelry such as a crucifix or a yarmulke. For this reason, dress codes should include an “opt-out” provision for students. This provision creates exceptions for students who cannot adhere to the dress code for legitimate reasons, such as religious or financial concerns or because they are pregnant.

Are student-produced school newspapers protected by the First Amendment guarantee of freedom of the press?

Yes, although school administrators retain the final say over the contents of the school paper. In 1983, the principal of Hazelwood East High School in St. Louis, Missouri, decided to omit two pages of the school newspaper that had been submitted for final approval by the newspaper staff. The pages contained an article on teen pregnancy and an article on the impact of divorce on Hazelwood students. The journalism students responsible for the articles felt the principal violated their First Amendment rights to free speech and free press by cutting the pages, and they challenged their principal’s decision in court. The case, Hazelwood v. Kuhlmeier, eventually went to the Supreme Court.

Unfortunately, the Court ruled that school officials could edit not only the school newspaper but also any other school-sponsored “expressive activity” (such as a school play or a student art exhibit). But the Court did establish guidelines that school officials must follow if they choose to censor student expression. Expression can be edited or censored if the principal:

- believes the language used is inappropriate for a high school audience
- feels such action is necessary to protect the reputation of the school
- feels editing is needed to ensure the educational goal of the activity

However, school officials cannot censor something just because they disagree with the opinion being expressed.

What if I want to write controversial things in my own newspaper that I print when I am not at school?

Your school can’t censor the actual content of a publication that you publish away from school, but school officials can control when and where you distribute it. As with rallies and protests, the school can prevent you from passing out your newspaper in a manner that would disrupt the educational process or create a hazard, meaning you shouldn’t circulate your publication during class or block the hallways to distribute it.

What about my personal website? Could my school control what I post on the Web?

Laws concerning the Internet are still in formation, especially where students are concerned. The newness of the technology means that a lot of First Amendment issues surrounding the Web have not yet been addressed.

Based on important recent court decisions, the Internet appears to be the most protected form of speech in the United States – for now. In 1997, the Supreme Court ruled in Reno v. ACLU that the Communications Decency Act of 1996 (CDA) was unconstitutional. The Court ruled that several of the Act’s provisions were vague and overly broad, and found the Act placed restrictions on the content of the Internet, which is not allowed under the First Amendment.

But the Supreme Court has never considered a case involving student websites. Several lower courts have dealt with the issue, and so far, the trend seems to be to protect the right of students to publish personal websites as they see fit if the sites are created and maintained away from school time. For example, in 2001 in Emmett v. Kent School District No. 415, a federal judge in Seattle blocked the pending suspension of a public school student after he created a website parodying his high school’s official website.

As with traditional student publications, the issue seems to rest with the origin of your website. If the school is providing the web hosting for your site, then the school probably can edit its content using the same standards applied to student newspapers. But if you create the site using your own resources on your own time, then it seems you should be able to post to the web as you please.

Can my school “block” certain Internet sites from being viewed on school computers?

Internet filters are becoming more prevalent in our society. Public schools and public libraries use filters, which are created by private companies, to prevent young people from accessing potentially inappropriate material. However, Internet filters are flawed and hardly foolproof, because they do not eliminate the potential for young people to access X-rated or violent sites. Moreover, the software often prevents young people from accessing a wealth of important and useful information on the Internet.

Plainly put, Internet filtering is cyber-censorship. Community leaders and educators typically believe Internet filters should be used to prevent students from viewing explicit web content, to prevent exposure to controversial ideas, and to prevent students from accessing information that is not “age-appropriate.” These same concerns have spurred censorship of more traditional mediums throughout history. However, these motivations prevent students from access-

ing a wide range of diverse information and opinions. The First Amendment protects even the most disturbing or hateful speech in any medium against censorship. ACLU-TN believes the proper way to counter ideas is with more ideas, not with censorship or suppression.

How does blocking software work?

The software company programs its products to search for certain criteria before allowing a computer user to access a web page. Typically, the software is programmed to deny access to sites that have specific words or phrases in them, like “sex,” “breast,” and “XXX.” The software also is told to block sites that represent certain concepts, such as “hate” or “intolerance.”

However, words like “sex,” “breast,” and “XXX” are not found only in explicit sites. Blocking these words also means an Internet user won’t be able to view an encyclopedic article on reproduction, information on breast cancer prevention, and sites about Super Bowl XXX. Blocking certain concepts prevents access to many political and public policy sites.

Can my school ban books from the school library or from one of my classes?

Book banning is a complicated and controversial issue. In 1975, a New York school district decided to remove several books from the school library (including Kurt Vonnegut’s Slaughter-House Five and the anonymous Go Ask Alice) because a conservative parents’ group had included the books on a list of titles that the group believed were “objectionable” and “improper fare for school students.” Several students challenged the school district’s decision in court, because they believed the books had been banned for passages that personally offended members of the school administration, not because the books’ content as a whole lacked educational value. The case went to the Supreme Court, and in 1982, the Court ruled in Island Trees v. Pico that public school officials can’t censor a book just because they don’t like the beliefs expressed in the book. As the Court said, “Our Constitution does not permit the official suppression of ideas.”

However, the Court’s ruling did allow for books to be banned from public school libraries if the school believed the books involved lacked “educational suitability.” This means that your school could keep books out of the library for things like excess profanity, but your school cannot remove a book based on the actual ideas in the book.

The pressure of local community standards often complicates this issue further. If most parents and community leaders share the same belief system or have shared similar experiences, they may join together to encourage the school to ban books they consider harmful to students. For example, if you live in a community where most people are of the same religious faith, books that discuss a

different faith might be targeted. If you live in an urban area with a high crime rate, books that talk about violence might be opposed.

Can my school prevent me from starting a controversial new club, like a gay/straight alliance or a religious organization?

Not if the school receives federal funds and permits other types of student groups to form and meet on campus. The federal Equal Access Act (20 U. S. C. § 2071) states that if a public school receiving federal funds allows even one student club not directly linked to classes to meet on campus during non-instructional time, then the school must allow any and all student clubs the same access to school facilities, regardless of the content of the club's meetings and activities. The Equal Access Act prevents schools from prohibiting the formation of a student club or denying a student club access to school facilities based solely on the beliefs expressed by the club.

However, if your school does not receive federal funds or does not allow any student groups to form and meet on campus, then your school can prevent you from forming a new club.

As with other means of free expression, your school could regulate the time, place and manner of your club meetings, as long as these regulations are not individual to your club based on its beliefs. For example, if the school only allows student groups to meet after school, your school can legitimately prevent you from holding a meeting during lunch.

“It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

—Tinker v. Des Moines, 393 U. S. 503 (1969)

Freedom of Religion

What is freedom of religion?

Simply put, freedom of religion is the right to worship – or not worship – as you see fit. The Founders of our country must have thought this was a really important freedom. Not only did they include it in the First Amendment of the Bill of Rights, it's the very first freedom listed in the First Amendment.

The first two phrases (or clauses) of the First Amendment protect freedom of religion. The first clause says, "Congress shall make no law respecting an establishment of religion." This is called the Establishment Clause. The Establishment Clause ensures that the government cannot set up a national religion or force citizens to worship a certain way.

The First Amendment continues, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The "prohibiting the free exercise thereof" part is called the Free Exercise Clause. This clause means that the government can't make laws that prevent you from worshipping as you please. For example, the government can't make certain religions illegal.

In 1947, the Supreme Court ruled in Everson v. Board of Education that the Establishment Clause of the First Amendment was intended to protect the religious liberty of all Americans by erecting a "wall of separation between Church and State." This concept was not new; Thomas Jefferson first used this phrase in 1801 in a letter to a church congregation in Connecticut.

Combined with the Free Exercise Clause, the Establishment Clause makes it clear that government and religion should not mix. The Founders understood that religion is a very personal and private matter, and believed citizens should have the sole authority to decide how, when, where and what they and their families worship. The only way to make sure religious freedom is protected is to insist through the First Amendment that government stay out of religion and religion stay out of government.

Freedom of religion is a complicated subject, and it's a subject that has sparked a lot of heated debate around the country – and especially in Tennessee. The wave of public school shootings in the 1990s left a lot of adults concerned that young people are not being exposed to enough "proper" morals or "old-fashioned" values. As a result, many people believe the solution to the problem is to bring religion into the public schools.

But it's important for both students and parents to remember that religion is one of the most personal aspects of an individual's life. And most people cer-

tainly don't want any branch of the government – state, federal, or local – to tell them how to conduct their private lives. A community might think religion in the schools is good if most people in the community have similar beliefs. But suppose one of the schoolteachers has different beliefs – maybe even beliefs that are shocking by the community's standards. What if this teacher decided to include his or her own religious beliefs in class instruction or forced students to pray to his or her deity? Parents would probably be outraged.

That's why it is so important to keep the government out of religion and religion out of the government. Some people criticize the separation of church and state outlined in the First Amendment as an absolutist principle, but it's the only way to ensure that everybody's religious beliefs are protected, and that nobody suffers any negative consequences for their beliefs.

Can I practice my religion while I am at school?

Yes, students enjoy the right to free religious exercise while at school. Because public schools are funded by tax money, they are part of the government. And as arms of the government, public schools are bound by the Free Exercise Clause of the First Amendment, which means they cannot prevent you from expressing your religion while you are on school property.

However, it's important to remember that any expression of your religious faith is judged by the same standard as expressions of free speech. Any demonstration of your faith cannot interfere with the educational process. This means you have the right to free religious expression while at school, but you have to exercise this right in a manner that does not disrupt the school day.

In addition to the guarantees found in the Bill of Rights, Tennessee state law protects a student's right to practice his or her faith while in school. The Tennessee Student Religious Liberty Act (TCA § 49-6-2904) ensures the rights of Tennessee public school students to voluntarily do the following:

- Pray vocally or silently
- Express religious viewpoints in the classroom
- Express religious viewpoints to other students
- Possess and distribute religious literature
- Be absent from school in observance of religious holidays or to attend religious services

However, the Act stipulates that all of the above rights shall be exercised following the same guidelines that regulate non-religious expression. Under both federal case law and Tennessee state law, schools can regulate the time, place and manner of students' religious expression in the same way they can regulate students' free speech rights. As mentioned earlier, the courts have consistently ruled that schools can impose these types of rules to make sure that no individ-

ual student's behavior causes a disruption to the school day or interferes with the educational process.

The main thing to keep in mind is that any religious expression you wish to enjoy at school must fall within school rules. You can't do anything that is disruptive, meaning you can't block the hallways to pray or respond to a question in your algebra class with a lengthy speech detailing your personal religious beliefs. And you can't do anything that would be viewed as forcing or coercing your fellow students into praying or worshipping with you.

But there are lots of things you can do under federal and state law. First, you have the right to pray in a silent or quiet manner whenever you choose. As the old joke says, as long as there are tests in school, there will be prayer in school. You have the right to bring a religious text to school to read during non-instructional time, such as at lunch or between classes. You have the right to talk to other like-minded students about your beliefs, and you have the right to pray or share information with other like-minded students if you wish.

If it's OK for me to pray in school, then why is school prayer so controversial?

There's a big difference between an individual student silently praying whenever he or she chooses and a school telling students when, where and how to pray. When you pray by yourself, you are enjoying your right of free religious exercise as guaranteed under the First Amendment to the Constitution. But if a public school requires students to pray, that is a violation of the Establishment Clause of the First Amendment.

Because the Establishment Clause prohibits the government from endorsing any specific religious belief, public schools cannot have any policy that favors or promotes a particular faith. If your teacher says a prayer out loud or reads from a religious text in class before beginning to teach, you as the student have little choice but to participate. After all, you are required by law to attend school, and most schools have discipline policies that prohibit students from leaving a class without permission. The First Amendment guarantees that students cannot be subjected to a prayer or other religious activity that is offensive to their personal beliefs.

Additionally, in two cases in the early 1960s ([School District of Abington Township v. Schempp](#) and [Engel v. Vitale](#)), the Supreme Court ruled that prayers and scripture readings in public school classrooms were unconstitutional violations of the Establishment Clause, even if the religious activities were voluntary and students had the option of being excused from the classroom while these activities were taking place.

Schools should not coerce students into participating in a religious activity that

makes them uncomfortable. Your school should not view you and your classmates as part of a captive audience. Nobody – especially not teachers and administrators – should force you to participate in any form of religious expression that you disagree with or find offensive.

What about moments of silence?

Many states, including Tennessee, have laws mandating that public schools begin the educational day with a moment of silence. TCA § 49-6-1004 says that a moment of silence of approximately one minute shall be observed by all grades at the beginning of each school day. The statute also provides that classroom teachers must announce that it is time for the moment of silence, but may not suggest to students what action – if any – the students should take during that time.

Because the statute says a moment of silence shall be observed to help teachers and students “prepare themselves for the activities of the day” and not for the purpose of any specific type of religious activity, Tennessee’s moment of silence law does not violate the Establishment Clause. However, when the law was first enacted, it originally said that a moment of silence was to be observed “for meditation or prayer of personal belief.” In 1982, ACLU-TN filed a lawsuit on behalf of several students and parents, arguing that the statute violated the Establishment Clause of the First Amendment. A federal district court judge ruled in Beck v. Alexander that the statute was unconstitutional in October 1982 and enjoined the state from enforcing it. In March 1983, the state legislature replaced the unconstitutional statute with the current statute.

Additionally, in 1981, Ishmael Jaffree learned that teachers at the Alabama public elementary school his children attended were leading the students in the Lord’s Prayer during class time and in prayers at lunch. Mr. Jaffree complained repeatedly to the school and reminded them of the constitutional protection of separation of church and state. When the school failed to respond to his complaints, Mr. Jaffree filed a lawsuit challenging the practices of the school as well as three Alabama state statutes permitting religious activities in public schools. One of these statutes was the state’s moment of silence law. The case eventually went to the Supreme Court, and in 1982 the Court ruled in Wallace v. Jaffree that state-mandated moments of silence for the purpose of prayer were unconstitutional.

My school usually has a member of the clergy say a prayer at graduation. Is that acceptable?

No. Graduation is an official school activity that graduating seniors are required to attend. And not only are seniors required to be there, but so are many other students, including the school band or orchestra, the school choir, and students serving as ushers or greeters. Because the school sponsors the event,

the school is bound to uphold the First Amendment and cannot show preference to any one religion over another. This is true even if the graduation does not take place on school grounds.

Over the years, the courts have heard many cases regarding prayer at a variety of public school activities, including graduations and football games. The key issue when considering prayer in school seems to be the prayer's origin. Generally speaking, if a representative of the school (such as a teacher, an administrator, or even a student who is acting as an official speaker at an official school function) delivers a prayer, then that prayer is considered to be school-sponsored and therefore unconstitutional.

For example, in 1989, 14-year-old Deborah Weisman was preparing to graduate from a public middle school in Providence, Rhode Island, that had a tradition of prayer at graduation. When Deborah's older sister graduated from the school in 1986, a Baptist minister said a prayer and asked everyone to bow their heads and "thank Jesus Christ." Concerned a prayer would be said at their younger daughter's graduation, her family contacted the school to remind them of the constitutional protection of the separation of church and state. However, the school refused to end the practice, and a rabbi said a prayer at Deborah's graduation. The family challenged the practice in court, and the case eventually went to the Supreme Court. In 1992, the Court ruled in Lee v. Weisman that prayers at graduation were unconstitutional, saying, "The First Amendment's Religion Clauses mean that religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State."

Can my school have someone say a prayer over the loudspeaker at a sporting event?

No. The Santa Fe Independent School District in Santa Fe, Texas, had a policy of allowing the student council chaplain (a position voted on by other students) to deliver a prayer via the loudspeaker at all varsity football games during the season. Two families with high school students in the district filed suit in court challenging the practice. The case, Santa Fe Independent School District v. Doe went to the Supreme Court, and in 2000 the Court ruled the school's policy of having prayer at football games violated the Establishment Clause and was therefore unconstitutional.

Can my teacher make me recite the Pledge of Allegiance?

No. TCA § 49-6-1001 requires all students in Tennessee public schools to learn the Pledge of Allegiance and "to demonstrate such knowledge." The statute also mandates that local Boards of Education require the daily recitation of the Pledge of Allegiance in each classroom in which a flag is displayed. However, the statute says that a student cannot be forced to recite the Pledge "if the student or the student's parent or legal guardian objects on religious, philoso-

phical or other grounds to the student participating in such exercise.”

If you are exempt from reciting the Pledge, the statute requires that you sit or stand quietly at your desk while your classmates say the Pledge. The statute also says that you “shall make no display that disrupts or distracts others who are reciting the Pledge.”

Federal case law also prohibits public schools from forcing students to recite the Pledge. In 1942, the West Virginia State Board of Education passed a resolution requiring all public school teachers and students to recite the Pledge of Allegiance. Because World War II was raging at the time, failure to say the Pledge was considered insubordination, and students who refused to recite the Pledge were expelled. Even more shocking was that many expelled students were threatened with transfers to juvenile criminal reformatories and their parents were threatened with criminal prosecution for supporting delinquency.

Many Jehovah’s Witness families objected to forced recitation of the Pledge on religious grounds. The Jehovah’s Witness faith prohibits believers from worshipping graven images, and Jehovah’s Witnesses consider the flag an image that falls under this command. Several families sued the Board of Education over this policy, and the case went all the way to the Supreme Court. In 1943, the Court ruled in West Virginia Board of Education v. Barnette that the state’s regulation requiring public school students to recite the Pledge was unconstitutional. In its decision, the Court said, “To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous, instead of a compulsory routine, is to make an unflattering estimate of the appeal of our institutions to free minds.” The Court went on to say, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.”

Can representatives from Gideons International or a local house of worship distribute religious materials at school?

No. The public school district in Rensselaer, Indiana, had a long history of allowing representatives from Gideons International (a private religious organization whose primary function is distributing the Christian Bible) to pass out Bibles in fifth grade classrooms. The Berger family contacted the school to remind them of the constitutional separation of church and state and to request that the school end the practice. When the school refused, the Bergers filed a lawsuit challenging the practice. In 1993, the U.S. Court of Appeals for the 7th Circuit ruled in Berger v. Rensselaer Central School Corporation that it was a violation of the Establishment Clause for a public school to allow Gideons representatives to distribute Bibles in the classroom.

Does the Establishment Clause prohibit my teacher from discussing religion

in the classroom for any reason?

No. Religion does have a constitutionally permissible place in the classroom. Public schools can incorporate religion into a variety of academic subjects. Religion is a proper component in the study of world history and contemporary history and in understanding the cultures of other countries. Excerpts from many religious texts are useful for the study of literary forms and techniques. But any classroom discussion of religion should be solely academic. The Establishment Clause prevents public school officials from showing preference for any particular religious belief. Therefore, if religion is included as part of an academic discussion, your teacher can neither endorse nor discredit its beliefs.

Can my teacher teach creationism in my science class?

No. In the 1980s, the state of Louisiana prohibited the teaching of evolution in public school science classes unless creation science was also taught. (The theory of evolution, first outlined by English naturalist Charles Darwin, says that all creatures evolved over time from a single organism. Creation science is a religious interpretation of natural history, and says that all creatures were created by a divine being.)

A group of parents, teachers and religious leaders challenged the state law in court, and the case was eventually brought before the Supreme Court. In 1987, the Court ruled in Edwards v. Aguillard that Louisiana's "Creationism Act" was an unconstitutional violation of the Establishment Clause. In its ruling, the Court said, "The Act impermissibly endorses religion by advancing the religious belief that a supernatural being created humankind.... The Act's primary purpose was to change the public school science curriculum to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety. Thus, the Act is designed either to promote the theory of creation science that embodies a particular religious tenet or to prohibit the teaching of a scientific theory disfavored by certain religious sects. In either case, the Act violates the First Amendment."

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein."

—West Virginia Board of Education v. Barnette, 319 U. S. 624 (1943)

Search and Seizure

What does the Constitution say about search and seizure?

The Fourth Amendment to the Constitution guarantees “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” This means that government officials, such as police officers, can’t randomly search a person or a person’s property without good reason, and they also can’t seize control of a person’s property without good reason. This good reason is usually called “probable cause.” Probable cause generally means that law enforcement officials suspect an individual of committing a crime and have reason to believe that the individual may be subject to arrest.

Am I protected against “unreasonable search and seizure” while I am at school?

Yes, to some extent. The Supreme Court has ruled that students enjoy fewer Fourth Amendment protections than do adults. In 1980, T.L.O., a New Jersey high school freshman, was discovered smoking cigarettes with a friend in her school’s bathroom. When she and her friend were taken to the assistant principal’s office for questioning, T.L.O. denied that she had been smoking and claimed she didn’t smoke at all. The assistant principal looked into her purse, and saw not only a pack of cigarettes, but cigarette rolling papers which he believed indicated that she used marijuana. He then searched her purse thoroughly and found a small amount of marijuana, plastic bags, a pipe, and a large amount of money. Based on the evidence produced by the search, T.L.O. was tried in juvenile court for selling marijuana. T.L.O. claimed the evidence the state used against her (the items discovered by the assistant principal) was found during an unreasonable search and seizure, and she sued to have the evidence suppressed.

The case went to the Supreme Court, and in 1985 the Court ruled in New Jersey v. T.L.O. that, “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.” In its ruling, the Court found that it was impractical to expect teachers to obtain warrants to search students in the same manner that police are required to obtain warrants before searches. The Court established the standard of “reasonableness” for student searches. Instead of needing a warrant or probable cause to search a student, a school only needs reasonable suspicion that a student has broken the law or done something wrong in order to search that student.

What constitutes reasonable suspicion?

For a school official to have reasonable suspicion that you have done something wrong, he or she needs to have a strong suspicion that you are guilty. For

example, you cannot be searched to determine if you are carrying drugs just because of the way you are dressed. But if your teacher smells marijuana on your clothes, that provides your teacher with reasonable suspicion that you may have drugs in your possession, and then you could be searched.

Are there any other guidelines that regulate searches of students?

Yes. Tennessee state law authorizes searches of students while on school property for the purposes of removing dangerous weapons, drugs and drug paraphernalia from school grounds.

The Tennessee School Security Act permits the search of individual students based on the results of a locker search or based on information received from teachers, staff members, students or other individuals. The Act mandates that when a student is searched, the following standards of reasonableness shall be met:

- a particular student has violated school policy
- the search will produce evidence of the policy violation or will lead to disclosure of a weapon, drugs, or drug paraphernalia
- the search is in pursuit of legitimate interests in maintaining school safety and security
- the search is not used for the sole purpose of producing evidence for a criminal prosecution
- the search should be reasonably related to the objectives of the search and should take into consideration the age, sex, and alleged infraction of the student involved
(TCA § 49-6-4205)

Could I ever be strip-searched at school?

Probably. If a school official has reasonable suspicion that you have committed a serious violation of school policy, such as bringing a weapon to school, then you could be strip-searched. However, a strip search should not take place in front of other students, and should be conducted by a school official of the same gender as the student being searched. Moreover, your school cannot randomly strip search a group of students or strip search an entire classroom.

Does my school have to get a warrant or “read me my rights” before I am searched?

No. As mentioned earlier, the Supreme Court’s decision in New Jersey v. T.L.O. said that schools are only required to have reasonable suspicion before a student is searched. Therefore, your school does not need a warrant to search you. You also do not have to be “read your rights” before you are searched by school officials; that right only applies when a person in custody is being ques-

tioned by law enforcement. (see page 31 for more information)

Can my locker be searched?

Yes. The Tennessee School Security Act gives public school principals and other school staff the authority to search not only lockers, but also cars, containers and packages on school property (TCA § 49-6-4204). However, the statute also requires schools to post notice informing individuals that these items are subject to search.

Most schools view student lockers as school property, not private property. As such, your school can search your locker if necessary. However, school officials should still have a good reason to go through your locker. Your school cannot decide to search your locker just to see what they might find. Your school can search your locker if officials have reason to believe you have violated school policy and a locker search will produce evidence to that fact.

It is still unclear as to whether or not schools can randomly search lockers for drugs. The Supreme Court has never ruled on a case like this, but some lower courts have said it is permissible for schools to conduct random drug searches on lockers.

What happens if my locker is searched, and school officials find something I'm not supposed to have at school?

School officials can seize any contraband they find in your locker, and use what they find as evidence against you in any disciplinary proceedings. Once they have seized contraband, school officials are likely to turn it over to law enforcement for proper handling, meaning the student responsible for the contraband could face criminal charges. In fact, the Tennessee School Security Act requires a public school principal to notify law enforcement even if the principal only reasonably suspects a student of carrying a weapon or having drugs while on school property. (TCA § 49-6-4209)

Can the local police bring drug dogs into the school?

The Tennessee School Security Act authorizes the use of drug dogs inside public schools, but says that “such animals shall be used only to pinpoint areas needed to be searched and shall not be used to search the persons of students or visitors.” (TCA § 49-6-4208) It appears that the state statute is actually more protective than federal law on this issue, because state law specifically prohibits the use of dogs to search individuals.

Federal case law is unclear on this issue. It is probably legal for the police to bring drug dogs to school to sniff specific students, their lockers, and possessions – if the school has reasonable suspicion that these students have drugs at

school. However, a random drug dog sniff, where dogs sniff a large number of students, is questionable, since a lot of students will be sniffed that are not necessarily suspected of having drugs. Especially questionable are drug “lockdowns,” where all students at a school are held in their classrooms until drug dogs have had an opportunity to sniff everyone.

Can my school force me to take a drug test?

Yes. The Tennessee School Security Act allows a student to be drug tested “if there are reasonable indications to the principal that such student may have used or be under the influence of drugs.” (TCA § 49-6-4213(a)) The Act goes on to define “reasonable” indications. In order to drug test a student, the school must meet all of the following conditions:

- The student in question must have violated school policy
- The drug test will yield evidence of the violation or will establish either that the student was impaired because of drug use or that the student did not use drugs
- The drug test is accordance with the school’s “legitimate interests” of maintaining safety, security, and a disruption-free school day
- The drug test is not used only to gain evidence for a criminal prosecution
- The drug test must take place within the presence of a witness (TCA § 49-6-4213(a))

TCA § 49-6-4213(b)(1)(2) and TCA § 39-17-405 define “drugs” as any substance with high potential for abuse, with no accepted medical use or with no accepted safety for medical use, and alcohol. The Act also states that if a school implements a drug testing policy, students must be notified in writing at the time of their enrollment that they are subject to testing, that they have the right to refuse to undergo drug testing, and the consequences of such a refusal. Under Tennessee state law, a student’s parent or guardian must be notified before a drug test is administered.

TCA § 49-6-4213(j)(2) states that if a student is drug tested and the test is negative, all records of the test, including the request for the test and any indication that the student has been tested, must be expunged from all records, including the school’s records. If a student’s drug test is positive, state law mandates that school officials provide the student and the student’s parents or guardians with information on drug and alcohol treatment programs.

Additionally, the Supreme Court has ruled that random drug testing for public school student athletes is constitutional. In 1991, Oregon seventh grader James Acton signed up to play football at his school, but was not allowed to play because his parents refused to consent to the school’s requirement that all student

athletes be drug tested. The Actons sued the school district, and the case went all the way to the Supreme Court. In 1995, the Supreme Court ruled in Vernonia School District v. Acton that mandatory drug testing for student athletes meets the reasonable suspicion requirement established by the Court in New Jersey v. T.L.O.

Moreover, the Supreme Court has ruled that random drug testing for students involved in any extracurricular activity is constitutional. In June 2002, in Board of Education v. Earls, the Supreme Court ruled that an Oklahoma public school district's policy of randomly drug testing students involved in any extracurricular activity was constitutional. Two Tecumseh High School students, Lindsay Earls and Daniel James, filed suit challenging the school district's policy. Lindsay was a member of several extra-curricular activities; Daniel wanted to be on the Academic Team. Lindsay and Daniel challenged the policy as a violation of their constitutional right to privacy.

The Supreme Court built upon its ruling in Vernonia School District v. Acton, saying, "A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety. Schoolchildren are routinely required to submit to physical examinations and vaccinations against disease...Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults." Additionally, the Court dismissed Lindsay's and Daniel's claims that the drug testing policy impermissibly invaded their privacy, saying that students who participate in extracurricular activities "voluntarily subject themselves to many of the same intrusions on their privacy as do athletes."

The Supreme Court has not ruled on a case involving mandatory drug testing of all students in a public school district. While case law on this issue is still unclear, a recent ruling by a federal district judge in Texas provides a precedent that mandatory drug testing of all public school students is unconstitutional. In late 1999, public school officials in Lockney, Texas, instituted a mandatory drug testing policy in response to concerns that drug use was on the rise among the town's young people. The Lockney School District was the first school district in the country to implement a policy of testing all students in the district.

Larry Tannahill and his wife Traci opposed the policy, and they refused to give the school permission to drug test their 12-year-old son, Brady. According to school policy, refusal to take the test must receive the same punishment as failure to pass the test, and Brady was given in-school suspension. The Tannahills challenged the policy in court, and in March 2000 in Tannahill v. Lockney Independent School District, a federal district judge overturned the school's policy as a violation of students' Fourth Amendment right to privacy.

Could my school ever make me take a Breathalyzer test?

Possibly, especially since the Tennessee School Security Act defines “drugs” as both drugs and alcohol. (TCA § 49-6-4202(2)) It is not unheard of for local police to be present at extracurricular school events, such as football games and school dances. If a student is acting intoxicated and/or creating a disruption, it is conceivable that the student would be removed from the event and tested. Additionally, as we mentioned earlier, TCA § 49-6-4213 allows for “testing” by public school for drugs and/or alcohol. The statute does not specify what type of testing a school may utilize, so it is presumable that the manner of testing would be left up to the school.

Isn't it a violation of my privacy rights to make me walk through a metal detector at school?

Metal detectors have been found to be a reasonable means of ensuring safety and security at school because they can detect the presence of guns or other weapons before they are brought into a school building. With lingering concern over school violence in our country, public schools will probably only see an increase in the use of metal detectors, not a decrease. However, school officials cannot take advantage of the use of metal detectors to search you for anything other than weapons, unless they have reason to believe you have something else in your possession that you should not have at school.

Can I have my parents or an attorney present if a school official questions me about alleged wrongdoing, especially if I could be suspended for the wrongdoing?

Nothing in current federal law requires parents or guardians to be notified or be present when a student is questioned about an offense punishable by suspension. While the Supreme Court has said that individuals being questioned must be “read their rights” or “Mirandized,” this right applies only to individuals being questioned by law enforcement while in custody. (see page 31 for more information) Additionally, Tennessee state law does not require parents or guardians to be present or notified before a student is questioned by school officials. Instead, state law only defines the types of offenses punishable by suspension. These include:

- Willful or persistent violation of school rules
- Truancy
- Immoral conduct or vulgar language
- Violence or threatened violence against another student or against school personnel
- Willful or malicious damage to school property or the property of another individual present on campus

- Inciting others to do any of the acts listed above
- Defacing or destroying school property
- Possession of a firearm on school property
- Using obscene or threatening language against a school official
- Unlawful use or possession of drugs
- Any other conduct that threatens order or discipline at the school
- Any off-campus criminal behavior that results in a felony charge against a student, when such charge makes the continued presence of the student at school a threat to security and order at the school (TCA § 49-6-3401)

“Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults.”

**—Board of Education v. Earls,
536 U.S. 822 (2002)**

Discipline, Due Process and Zero Tolerance

Do I have the right to tell my side of the story before I am suspended or expelled?

Yes. According to TCA § 49-6-3401(c)(1), “Except in an emergency, no principal, principal-teacher or assistant principal shall suspend any student until that student has been advised of the nature of the student’s misconduct, questioned about it, and allowed to give an explanation.”

Can a police officer come to school to question me?

Yes, but you are not required to speak to the police or answer any questions they ask of you. The wisest course would be to not answer any questions until you have had a chance to speak with an attorney.

What should I do if I am stopped by a police officer when I am not at school?

First and foremost, always be polite and respectful. Stay calm, and don’t argue or insult the officer who has stopped you. Be cooperative – if you are asked for your license, registration and proof of insurance, show it to the officer.

What should I do if I am questioned by the police when I am not at school?

Once again, the most important thing is to be polite and respectful. Stay calm, and don’t let your emotions allow you to say something you’ll regret later. At least one thing they say on TV crime dramas is true – anything you say or do could be used against you later.

You have the right to refuse to answer questions, but doing so may make the police more suspicious. If you are stopped on the street by a police officer and questioned, ask if you are under arrest and, if so, why. Don’t run away or resist the officer – this could get you into more trouble.

If you are taken into custody by law enforcement—meaning you don’t have the ability to leave voluntarily—and you are questioned, you have the right to talk to an attorney. This is commonly known as the Miranda right, after the 1966 Supreme Court ruling in Miranda v. Arizona. In this case, several individuals challenged their criminal convictions after statements they made about the criminal acts they were accused of were used against them in court. In each situation, none of the individuals had an attorney present and none had been notified by law enforcement that they could have an attorney present during questioning and/or did not have to answer any questions asked of them.

In its ruling, the Court said, “Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.”

As discussed earlier, it’s important to remember that Miranda rights apply only to questioning by law enforcement, not by school officials.

What is “zero tolerance?”

Simply put, zero tolerance generally means that a certain punishment (usually suspension or expulsion) is given to any and all students who break a rule, regardless of the circumstances of the individual incident and without consideration of the past conduct of the student involved.

Tennessee state law says, “that any rule or policy designated as a zero tolerance policy means that violations of that rule or policy will not be tolerated, and that violators will receive certain, swift, and reasoned punishment.” (TCA § 49-6-4216(b)(1))

Zero tolerance policies have their origin in a 1994 law passed by the United States Congress called the Federal Gun-Free Schools Act (20 U.S.C. § 8921). The statute required the states to pass legislation mandating a one-year suspension for any student who brought a firearm onto school property. States who failed to pass such a measure would lose federal school funding.

In efforts to prevent “another Columbine” or “another Jonesboro,” local school boards increasingly embraced strict regulations prohibiting firearms on campus after a wave of prominent shootings plagued public schools in the late 1990s. These regulations became the foundation of modern zero tolerance policies when school boards expanded them to include not only other weapons and drugs, but also anything that could possibly be used as a weapon or a drug as well.

The intent of the public school administrators who have implemented zero tolerance policies and the parents who have supported the policies is admirable. After all, we all agree that public schools should be secure, productive envi-

ronments – places where students can safely learn. But ACLU-TN believes that zero tolerance policies are not the best means of achieving this goal. The right to due process is guaranteed by the Fourteenth Amendment to the U. S. Constitution, which says that no state shall “deprive any person of life, liberty, or property, without due process of law.” The Fourteenth Amendment applies to any situation in which a government actor accuses an individual of wrongdoing, whether that government actor is a prosecuting attorney in a court of law, a supervisor in a government workplace, or a principal in a public high school.

Due process includes several key components. For example, a person suspected of wrongdoing is entitled to know the charges against them and is entitled to a hearing to ensure that all sides of the story are heard before a punishment, if any, is implemented. In addition, if a person is found guilty of some type of wrongdoing, the punishment given to the person can’t be more serious than the wrongdoing itself.

Most zero tolerance policies prevent guns, knives, chains and sticks from being brought onto school grounds. Anyone violating this is punished by suspension or expulsion for the remainder of the school year. At first, this might sound sensible. No one should bring a gun or a knife to school, and anyone foolish enough to do so certainly should be punished.

But suppose your mom is kind enough to pack a lunch for you one day, and she includes an apple and a small paring knife to peel it. If your teacher or principal discovers the knife, you can be punished for violating zero tolerance policy. It won’t matter that the knife was harmless and was on school property for a reasonable, non-violent purpose. And it won’t matter if you are a star student or a star athlete, or both.

Zero tolerance policies aren’t really that extreme, are they?

If you’re still not convinced, consider the story of 11-year-old Ashley Smith from Atlanta, Georgia. Ashley’s school, Garrett Middle School, has a zero tolerance weapons policy. Ashley, a Tweety Bird fan who even maintains her own website devoted to the cartoon character, had a Tweety key chain attached to her Tweety wallet. School officials noticed the thin 10-inch-long chain connecting her key chain and wallet and suspended Ashley for 10 days in September 2000 for violating the zero tolerance policy, which prohibited “chains” from being brought to school.

Luckily, the school board later overturned Ashley’s suspension. But Ashley’s story shows just how vulnerable all students are to zero tolerance policies. Everybody carries keys, right? Would your key chain be considered a violation of zero tolerance?

There's not as much confusion over zero tolerance drug policies, right?

Zero tolerance policies for drugs and drug paraphernalia are just as problematic as those for weapons. Basically, any kind of drug or pill could be considered a violation of policy, and many zero tolerance policies are specifically written to prevent students from bringing any kind of non-prescription medication to school.

Young people have aches, pains and illnesses just like adults. What happens if you bring cough medicine to school because you have a cold? What happens if you pack some aspirin in your backpack because you played a rough game of football the night before? What happens if a young woman keeps over-the-counter remedies in her purse to ease the pain of cramps?

In all of these cases, students could potentially be punished for violating zero tolerance drug policies, no matter what the circumstances surrounding the use of these medications.

But what if I tell my teacher or principal I've brought something to school that might be considered a violation of zero tolerance?

Unfortunately, you could still be in a lot of trouble. Zero tolerance policies focus solely on the presence of items at school that are "contraband." Telling a school authority that you have something prohibited by zero tolerance doesn't change the fact that the item is present on school property. Many students have been punished in spite of the fact that they were honest up front about what they had brought to school.

It sounds like I could easily do something that would violate zero tolerance policy. What can I do to make sure I don't get in trouble?

The first and most important thing is obvious – don't bring anything to school that you know doesn't belong there. Weapons and drugs should never, ever, be brought to school.

You should also make sure you stay on top of any mix-ups that might lead you to unknowingly break zero tolerance rules. For example, if you sometimes drive a parent's car and your parent keeps a weapon in the car, make sure it's removed before you drive to school.

If you need to take over-the-counter medicine while you are at school, bring just enough for the school day, and get a note from a parent or your doctor letting the school know why you have the medicine.

Privacy and Personal Records

What exactly is the right to privacy?

The right to privacy is one of the most complicated freedoms guaranteed by the Constitution. There is no single amendment that explicitly states that individuals have a right to privacy. Instead, the courts have repeatedly ruled that the 1st, 4th, 9th, and 14th Amendments work together to create the right to privacy.

In very basic terms, the constitutional right to privacy means that the government should not have any more personal information about you than necessary and should not excessively regulate your personal decisions.

Why should I, as a student, be concerned about the right to privacy?

From the moment we are born, we all begin generating and accumulating private information. Think about it: every time you go to the doctor, are involved in a monetary transaction, or even sign up for one of those “preferred customer” cards at your favorite store, your private information is being collected and stored.

As our society becomes more and more dependent on technology, more pieces of private information are being linked together through computer databases. And because businesses are increasingly using government-issued Social Security Numbers as identifiers, everything from medical records to a person’s video rental history might someday be found with the touch of a button.

And students have a special privacy concern: their student record...

What kinds of information might be in my student record?

Student records often contain a large amount of very personal information. Besides your contact information, Social Security Number, date of birth, and grades, your student record might include any or all of the following:

- Attendance records
- IQ scores
- Medical information
- Psychological or psychiatric information
- Teacher evaluations
- Disciplinary records and behavior reports
- Information on the student organizations and extracurricular activities you are involved with

Are there any laws that protect the privacy of my student record?

Yes. In 1974, Congress passed the Family Educational Rights and Privacy Act as part of a larger piece of education legislation. (This act is usually referred to by its initials, FERPA, although it is sometimes called The Buckley Amendment). FERPA applies to any school that receives any type of funding from the U. S. Department of Education. Since most public high schools receive some type of federal funds, they must abide by FERPA.

FERPA says that, in most circumstances, schools may not release private information from a student's educational record to anyone outside the school system unless the school has permission from the student (if the student is 18) or from the student's parent or guardian (if the student is under 18). If a school violates FERPA and releases information without permission, they could lose their federal funding.

So my school can NEVER release any information about me without my permission or my parents' permission?

No. FERPA outlines a few exceptions in which schools may release student records without getting permission from students and their families.

First, FERPA allows schools the limited ability to release information about you to other institutions that have a reasonable need for your records. For example, if you are transferring to a new high school or applying to college, your current school is not required to get your permission before disclosing your student record to these institutions. However, your school is required to tell you it will be sending the information, give you a copy of the record if you would like one, and allow you to challenge any information in the record you believe is incorrect.

Similarly, your school is allowed to release "directory information" about you, such as your name, address and phone number. However, again your school is required to tell you or your parents ahead of time what information it will release. You and your parents can also ask that some or all of this information be excluded from school directories.

If a judge decides to subpoena your school records for a court proceeding, the school is required to comply with that subpoena and does not have to get your permission before releasing your record to the court. (A subpoena is a court order issued for certain documents that a judge feels are necessary to a court case.)

Your school also might have to disclose student health records if there is a public health need for doing so (for example, a meningitis scare). Again, in a situa-

tion like this, your school is not required to get your permission first before disclosing this information.

Finally, FERPA allows schools to release student information in emergency situations when there is not adequate time to get permission first – for example, if you are hurt and medical personnel need to know medical history information included in your student record in order to treat you most effectively.

Are there any other exceptions?

Yes. The federal No Child Left Behind Act of 2002 requires that school districts receiving certain federal funding provide student names, addresses, and telephone numbers to military recruiters upon request.

However, the Act also says that schools must allow students and their parents to opt out of this practice if they do not wish to participate. Schools are required to notify parents of the method and timeline necessary for opting out of the program.

Do I have the right to look at my student record?

If you are 18, FERPA says you have the right to see your student record. If you are under 18, FERPA says that parents and guardians have the right to look at their children's records on their behalf.

What if my parents and I look at my student record and see that some of the information is wrong?

Under FERPA, students and their parents have the right to ask that incorrect information in student records be corrected. To do this, you should make a request in writing to your principal explaining what information is wrong and how it should be corrected.

If for some reason school officials believe your existing record is correct and refuse to grant your request that the information in question be changed, FERPA allows you to include a written statement in your student record explaining why you believe the information is wrong. The school is then required by FERPA to include this statement each time they release your student record to another party.

Do any other laws affect the privacy of my student record?

Yes. It might surprise you to learn that the privacy of your student record has

been compromised by anti-terrorism laws.

Just 45 days after the tragic terrorist attacks of September 11, Congress approved a 342-page bill called the USA PATRIOT Act. The PATRIOT Act was pushed through Congress with virtually no debate by some of our nation's leaders, who thought the legislation was a necessary tool in the "war on terror." Most members of Congress now admit that they didn't even read the bill before they voted to pass it.

We all agree that our country should be safe. But as we now know, the PATRIOT Act goes far beyond just keeping us safe. It also drastically altered or even removed many of our precious constitutional freedoms.

So how does the PATRIOT Act affect the privacy of my student record?

The PATRIOT Act makes it much easier for student records to be subpoenaed. Before the PATRIOT Act, a judge could subpoena student records only for probable cause, meaning that law enforcement officials believe the student in question has committed a crime and believe that the student may be subject to arrest. Schools also were required to tell a student that his or her record had been subpoenaed by court order.

The PATRIOT Act changed all this. Now, under the PATRIOT ACT, law enforcement officials can get a court order to look at your student records simply by telling a judge that they have reasonable suspicion that there is information in your record that will be helpful to an ongoing investigation. The change in the law makes it much easier for law enforcement officials to be given access to student records. (For more information on the difference between probable cause and reasonable suspicion, see page 24.)

What's even worse, under both the PATRIOT Act as well as current state law, schools are no longer required to tell a student if his or her record has been subpoenaed – something that used to be required under FERPA. In 2002, the Tennessee General Assembly passed the Educational Records as Evidence Act. (TCA 49-50-1501) This law says that schools do not have to notify a student whose records are subpoenaed if the authority issuing the subpoena orders that the existence of the subpoena or the records requested by the subpoena not be disclosed.

Simply put, your private student record could be looked at by law enforcement officials even if you are not being investigated for committing a crime, and you might never even know it.



The Bill of Rights

Amendment I.

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

Amendment II.

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III.


No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

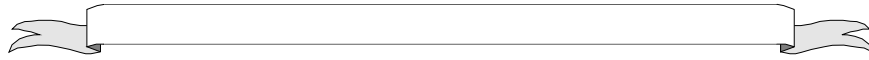
Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.





The Bill of Rights

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

Amendment VII.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*The first ten Amendments (the Bill of Rights) were ratified
December 15, 1791.*





Other Important Amendments

Amendment XIII.

The Thirteenth Amendment was ratified December 6, 1865.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction...

Amendment XIV

The Fourteenth Amendment was ratified July 9, 1868.

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws...

Amendment XV.


The Fifteenth Amendment was ratified February 3, 1870.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude...

Amendment XIX.

The Nineteenth Amendment was ratified August 18, 1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex...



ACLU-TN High School Clubs

ACLU-TN relies on Tennesseans statewide to alert us to civil liberties issues in their communities. We also need students to be our ears and eyes in the public schools. One of the best ways to do this is by forming an ACLU club at your school.

A few things to keep in mind before organizing an ACLU club at your school:

- 1) Contact the ACLU-TN office to discuss your interest.
- 2) Talk to your principal about the steps you must follow to be recognized as an official school club. You probably will need to at least fill out some forms for your school when you first organize your club.
- 3) Find a supportive teacher to be the sponsor of your club.
- 4) Make sure you have identified other students interested in joining the club.

For more information about ACLU high school clubs, contact:

**ACLU-TN
P. O. Box 120160
Nashville, TN 37212
(615) 320-7142**

...and check out our high school club organizing manual on the web at www.aclu-tn.org/hsmanualpage1.html.

**↑ Yes! I would like more information about
ACLU-TN.**

I am most interested in the following issues:

- ↑ Students' Rights
- ↑ Freedom of Speech/Press
- ↑ Internet Censorship and Privacy
- ↑ Religious Freedom
- ↑ Death Penalty
- ↑ Gender Equality
- ↑ Racial Equality
- ↑ Lesbian and Gay Rights
- ↑ Immigrants' Rights
- ↑ Rights of the Disabled
- ↑ Employee Rights
- ↑ Reproductive Rights
- ↑ Privacy
- ↑ Voting Rights
- ↑ USA PATRIOT Act
- ↑ Other _____

**↑ Yes! I would like information about
joining ACLU-TN.**

Name: _____

Address: _____

City: _____

Zip Code: _____

**Please mail form to:
ACLU-TN, P. O. Box 120160, Nashville, TN 37212**



(615) 320-7142 P. O. Box 120160, Nashville, TN 37212 www.aclu-tn.org

