

Students' Rights Handbook

A guide for public school students in New Jersey

Fourth Edition



Created and Written by the American Civil Liberties Union
of New Jersey

Sponsored by the New Jersey State Bar Foundation

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Acknowledgments

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Introduction

Most Americans between the ages of 6 and 18 spend nearly half their waking hours in or around school. It is therefore essential that they learn about both their rights and responsibilities in that environment. Equally important, the adults who deal with these students should know the extent of their control over this group of young people. While it is true that students do not check their rights at the schoolhouse gate, it is also true that, because of their young age and because of the educational function of schools, the rights of students are more limited than the rights of adults in the outside world.



In the *Students' Rights Handbook*, we have addressed a variety of rights and responsibilities affecting students in public schools – including charter schools — regarding issues such as discrimination, speech and expression, religion, search and seizure, school records, and disciplinary procedures. This information is current as of July 2011. It is important to note that the *Handbook* is being produced as a public education service to help explain the laws in New Jersey. It does not constitute legal advice, which can be given only by an attorney. If you are having a problem related to one of the issues discussed here, you may want to consult a counselor or teacher. You may also want to consult an attorney who regularly handles school cases. Finally, you may wish to contact one of the organizations listed in the Appendix-Referral Guide of this handbook.

In short, we hope the *Handbook* will serve as a guide to students, parents, and school personnel who wish to protect their own rights and to respect the rights of others within the school community.

Where Students' Rights Come From & A Quick Note About the Courts

Students' rights are established and protected by various sources, including the U.S. Constitution, the New Jersey Constitution, federal and New Jersey state laws and the courts. The U.S. Constitution provides protection to public school students, although the protection is limited. Rights that you might have on the street may not apply when you are in a public school. Fortunately, the New Jersey Constitution can sometimes provide students with more rights than those provided by the U.S. Constitution.

Many New Jersey laws also affect students' rights. For example, the New Jersey Law Against Discrimination, which was the first state anti-discrimination law in the country, prohibits school districts from treating students differently based on race, sex, nationality, sexual orientation, gender identity, disability, or other enumerated characteristics. Additionally school officials in both public and nonpublic schools must provide voter registration information and a registration form to each eligible high school student prior to graduating high school.¹

Throughout the *Handbook*, we refer to decisions made in both the state and federal court systems. Every state, including New Jersey, has its own judicial system and the United States has a federal judicial system. It is important to keep in mind that the decisions of the state courts do not necessarily affect the decisions of the federal courts and vice versa. Decisions made by the U.S. Supreme Court, however, are binding on every court. Even though the two court systems are separate, they function in very similar ways.

In both the state and the federal systems, cases begin in trial courts. In New Jersey, trial courts are called *Superior Courts* (county-based court) or *Municipal Courts* (local town court). In the federal system, the trial courts are usually called *District Courts*. When a party in a case does not agree with the decision of the trial court it can appeal or challenge the court's decision in an appellate court. Federal cases in New Jersey are appealed to the *Third Circuit Court of Appeals* while decisions of the State's superior court can be appealed to the *Appellate Division of the Superior Court*. Both systems have supreme courts which hear cases on appeal from appellate courts. Supreme courts are known as the "highest courts" because the New Jersey Supreme Court has the final decision on New Jersey's laws and Constitution and the U.S. Supreme Court has the final decision on federal laws and the U.S. Constitution. When students challenge a violation of their rights in court, the decisions from these cases create "case law." Because courts' decisions in these cases impact student rights, this handbook frequently refers to these decisions.

1. Right to a Free Public Education & Responsibility to Attend

The New Jersey Constitution requires the state to provide “a thorough and efficient system of free public schools for the instruction of all children in the state between the ages of 5 and 18 years.”² The New Jersey Supreme Court has held that the right to a “thorough and efficient” education means that the state must ensure that poorer urban school districts’ educational expenditures per pupil are substantially equivalent to those of the more affluent suburban districts and must address the urban districts’ special disadvantages.³

State law requires regular attendance at a public school or an equivalent program of instruction, either in a private school or outside of school, for all children between the ages of 6 and 16.⁴ In New Jersey, parents have a right to educate their children at home as long as they provide “equivalent instruction” to that provided in the public schools.⁵ Parents are required to provide only academic equivalency; they are not required to provide equivalent social development derived from group education.⁶ Parents or guardians who fail to ensure that their children regularly attend school or who do not provide equivalent education at home may be charged with a disorderly persons offense and can be fined up to \$25 for the first offense and up to \$100 for each subsequent offense at the discretion of the court.⁷

Residency

Students have a right to attend school in the district in which they live.⁸ The law presumes that a child lives with his or her parents. Foster parents are treated the same as natural parents for this purpose.⁹ If, however, a child lives with someone who is not a parent or foster parent, but who provides support and caretaking, without being paid to do so, the child may attend school in the district where the guardian lives. To do so, the parents and guardian must show that the student is not residing with the guardian solely for the purpose of receiving a free public education within the district, and that the parents are unable to care for the child due to family or economic hardship.¹⁰ If the board determines that the claims are not supported by sufficient evidence, it may deny admission to the child. This decision may be appealed within 21 days to the Commissioner of the Department of Education. During this 21-day period, and while any appeal proceedings are pending before the commissioner, the child is entitled to attend the district of claimed residency.¹¹ If the appeal is unsuccessful, the school district will assess tuition for the period of time during which the student was improperly enrolled, including the time that the case was pending on appeal to the commissioner.¹²

Disputes over whether a family actually lives within a particular district often arise. A family's residency can be established through a variety of documents, such as household bills, car registrations and leases.¹³ A school district should not be able to insist on one particular type of document to determine residency. For example, the ACLU-NJ was successful in overturning a school board's denial of enrollment to students whose parents could not produce a Certificate of Continuing Occupancy for their apartment. Such a certificate may not be available if a family is living in substandard housing. The courts have determined a district cannot deny free public education based on whether a domicile is legal.¹⁴

Homeless Students. Although students generally attend school in the district where their parents or guardians reside, New Jersey law recognizes that homeless families may be forced to move quite often. State law makes special provisions for children of homeless parents, because their education would be severely disrupted if these students had to switch schools every time their parents moved.

Homelessness is defined as “temporarily lack[ing] a fixed, regular and adequate residence.”¹⁵ The “district of residence” for a child whose parent or guardian temporarily moves from one school district to another as a result of being homeless is the school district in which the parent or guardian last lived prior to becoming homeless.¹⁶ After such a move, the child may continue to attend public school wherever he or she attended before moving; may enroll in the “district of residence,” determined as stated above; or may enroll in the district where the child is temporarily living.¹⁷ School officials from the district of residence, after consulting with the child's parent or guardian, decide based on the child's best interests where the child should enroll.¹⁸ Wherever the child enrolls, the district of residence must pay any necessary transportation or tuition costs.

If the parent or guardian disagrees with the school officials' decision about where a homeless child is to attend school, he or she may bring that objection to the county superintendent. The county superintendent must then determine the appropriate placement within 48 hours.¹⁹

A parent or guardian who objects to the regional superintendent's decision may request mediation through the Department of Education. If the mediation is unsuccessful, the parent or guardian may appeal to the Commissioner of Education.²⁰

A helpful resource on the issue of homelessness and students is *Education Rights of Homeless Students: A Guide for Advocates*, which is published by the Education Law Center whose contact information is listed at the end of the handbook.

2. Freedom From Discrimination

Discrimination has many faces, and even its subtler forms can be harmful. Each school district must provide courses of study, instructional material and programs that are designed to eliminate discrimination and promote understanding among children of different races, colors, creeds, religions, sexes, ancestries, national origins, and social and economic status. The New Jersey Law Against Discrimination says that schools cannot treat students differently because of their race, creed, sex, handicap, or national origin.

If a student feels he or she is being treated differently from other students because of his or her race, sex, religion, national origin, social or economic status, pregnancy, family or marital status, physical, mental, or sensory handicap or affectional or sexual orientation, the student should immediately bring the matter to the attention of his or her teacher, counselor, principal or other school official. The following sections set forth some of the forms of discrimination that have occurred in school settings.

Racial Discrimination

Intentional racial segregation in schools was first declared illegal by the U.S. Supreme Court in the 1954 case of *Brown v. Board of Education*.²¹ Twelve years later Congress passed Title VI of the Civil Rights Act of 1966, which prohibits discrimination and segregation based on race or national origin.²² In New Jersey, school officials are not only forbidden to segregate, they are also required to make every effort to ensure racial balance. Each board of education must ensure that each school and each class within the school reflects the racial composition of the school district as closely as possible.²³

New Jersey, like many states, has wrestled for years with the problem of racial segregation resulting from segregated housing patterns. This topic is beyond the scope of this booklet. If a student has a complaint or needs information regarding discrimination, he or she may contact his or her local school district's affirmative action officer.

Gender Discrimination

Like other forms of discrimination, discrimination based on gender is illegal under both federal and state law.²⁴ Title IX of the Educational Amendments of 1972 provides that “[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”²⁵ Specific regulations issued under Title IX make it illegal to discriminate against girls and women in the areas of curriculum, extracurricular activities, student aid, student services, counseling and guidance, and financial aid.²⁶

New Jersey law bans segregation based on gender. The Department of Education's regulations provide that "courses shall not be offered separately on the basis of gender."²⁷ The regulations provide for only one exception in which boys and girls may be educated separately: those portions of classes related to human sexuality.²⁸

Sports. School athletic programs have traditionally been a source of alleged discrimination against girls and women. Although Title IX specifically includes a section prohibiting discrimination in athletics, it has two major exceptions to the prohibition: (1) single-sex teams are permitted in the case of contact sports (e.g., boxing, wrestling, rugby, football, basketball and ice hockey); and (2) single-sex teams are permitted in non-contact sports if parallel male and female teams are established.²⁹ For example, a separate boys' tennis team is permitted if a girls' tennis team exists. Cases challenging separate, parallel teams have not been successful.



Even where a particular girl who has requisite skill to play on the boys' team, the courts have justified the maintenance of two separate teams with claims that it maximizes participation of both sexes in interscholastic sports.³⁰

There are avenues to pursue, however, under federal and state constitutions and state anti-discrimination laws, if a female student wants to try out for a male team where no parallel female team exists. For example, a New Jersey girl successfully challenged a local school board's prohibition on girls playing on the boys' football team by arguing that her exclusion violated the anti-discrimination provisions contained in the New Jersey education law and the more general Law Against Discrimination.³¹

However, boys who want to try out for girls' teams will probably not be permitted to do so in New Jersey, even where the girls' team is the only team. A New Jersey boy who sought to play on his high school's girls' field hockey team was unsuccessful in his court challenge to the New Jersey State Interscholastic Athletic Association's policy prohibiting boys from playing on girls' teams. The court held that the policy did not amount to unlawful discrimination because its purpose was to promote equal athletic opportunity for females and to redress the effects of past discrimination.³² The court reasoned that permitting boys to gain spots on girls' teams might allow males to dominate the sport and would risk displacing females to such an extent that it could reduce athletic opportunities for girls.

New Jersey law also requires that schools must treat separate male and female teams equally. Schools must therefore allocate resources, including staff salaries, equipment expenses, and access to facilities, to boys' and girls' teams on an equitable basis.³³

Sexual Harassment. Sexual harassment is another form of discrimination that is covered by Title IX and state anti-discrimination laws.³⁴ There are two types of sexual harassment. Hostile environment harassment is the most prevalent and involves unwelcome sexual advances, requests for sexual favors, and other acts of a sexual nature which have the purpose or effect of creating an intimidating, hostile, or offensive school environment. The other type is “quid pro quo” (which means “this for that”) harassment and occurs when a school employee requires that a student’s grade (or position on a team or leadership spot) be based on whether the student submitted to unwelcome sexual advances or other acts of a sexual nature. Unwelcome sexual behavior by teachers or fellow students should be reported immediately to a counselor, principal or other school official.



LGBT Discrimination

State law bans discrimination on the basis of sexual orientation or gender identity or expression.³⁵ Students have a constitutional right to be open about their sexual orientation or gender identity, and schools may not attempt to silence students who are open about their sexual orientation. Schools should not disclose a student’s sexual orientation to the student’s parents without the student’s consent. The U.S. Supreme Court has ruled that minors have a constitutional right to privacy, even

from their parents.³⁶ At least one federal court has ruled that disclosing a student’s sexuality to his or her parents without the student’s consent violates the student’s right to privacy.³⁷

As noted in the section on school clubs, the First Amendment and the Federal Equal Access Act prohibit schools from discriminating against gay-straight alliances or similar student groups. Schools also must enforce school dress codes in a gender neutral way (so that if skirts are permissible, both girls and boys should be allowed to wear them) and may not prohibit same-sex couples from attending the prom.³⁸ The State’s Core Curriculum Content Standards require school districts to include information about sexual orientation in their health education curricula. Schools are also responsible for preventing and responding to bullying on the basis of sexual orientation.

For more information on LGBT-related issues in schools, students may wish to refer to the resources available at www.aclu.org/getequal.

Married, Pregnant and Parenting Students

Married students, pregnant students and students who are parents have the same right to a free education as all other students, including the right to participate fully in all activities offered by the school. State regulations specifically prohibit schools from excluding a pregnant student from any educational program or activity unless a physician certifies that such exclusion is necessary for her physical, mental or emotional well-being.³⁹ If a student is excluded for these reasons, the school must provide her with an adequate and timely opportunity for instruction in order to continue or make up her schoolwork without penalty.⁴⁰

Discrimination Based on Citizenship

The U.S. Supreme Court has ruled that excluding the children of undocumented or “illegal” immigrants from public schools violates the children’s right to equal protection of the laws and is therefore unconstitutional.⁴¹ New Jersey regulations prohibit school districts from requesting social security numbers, income tax returns, or other documents that relate to citizenship status.⁴² Because immigration status is not relevant to determining whether students may attend school, directly or indirectly questioning students or their parents about their citizenship is suspect and violates their right to equal protection unless undertaken for some other lawful purpose.

Non-English Speaking Students

The failure of a school district to provide to non-English speaking students either remedial English language instruction or other adequate instruction in their own language “make[s] a mockery of public education” and constitutes unlawful discrimination.⁴³ Federal law specifically requires that all school districts receiving federal funding provide classes for non-English speaking students to learn English.⁴⁴ Furthermore, under New Jersey law, school districts must offer a bilingual education program if there are at least 20 students of limited English-speaking ability who also share a particular native language.⁴⁵ If a district does not have 20 such students, but has at least 10 students of limited English proficiency, it must establish an English as a Second Language program.⁴⁶ All other school districts must provide English language services to improve the proficiency of any student with limited English-speaking ability.⁴⁷

Regardless of whether a student has been classified as non-English speaking, parents retain the right to refuse any or all of the bilingual program or English language services for their child.⁴⁸ Once a student is enrolled in a bilingual education program, however, the school district has

the authority to determine whether the student should remain in the program.⁴⁹ A parent or teacher who disagrees with the decision may appeal it locally, and parents who are unhappy with the outcome of local appeals may appeal to the Commissioner of Education.⁵⁰

Students With Educational Disabilities

The Federal Individuals with Disabilities in Education Act (IDEA)⁵¹ and the New Jersey Beadleston Act⁵² protect students with educational disabilities who may be denied their right to a free and appropriate education. Pursuant to these statutes, the New Jersey Department of Education has adopted the following classifications of educational disabilities:⁵³

- | | |
|---------------------------|---------------------------------------|
| 1. auditorily impaired | 8. orthopedically impaired |
| 2. autistic | 9. other health impaired |
| 3. cognitively impaired | 10. preschool child with a disability |
| 4. communication impaired | 11. social maladjustment |
| 5. emotionally disturbed | 12. specific learning disability |
| 6. multiply disabled | 13. traumatic brain injury |
| 7. deaf/blindness | 14. visually impaired |

Each local school district must adopt and implement procedures for the identification and referral of students with potential educational disabilities.⁵⁴ In order to conduct an initial evaluation of a child for a possible disability, a school district must obtain either parental consent or an order from an administrative law judge after a due process hearing.⁵⁵ If a parent identifies his or her child as potentially educationally disabled, the parent may request an evaluation in writing. Once the child is referred for the initial evaluation, the child study team, the parent, and the regular teacher must meet within 20 calendar days of the request to determine if the evaluation is warranted. The parent must then be notified in writing of the determinations made at this meeting, including whether the child will be evaluated.⁵⁶ If the child study team determines that an evaluation is appropriate, it must then be completed within 90 calendar days.⁵⁷

If the child study team determines that a child has an educational disability, it must meet within 30 days to develop an Individualized Education Program (IEP),⁵⁸ which is a plan setting forth goals and measurable objectives for the student and defining the setting in which the student will be taught.⁵⁹ For example, a student with a severe disability may need to be in a special program or school in order to receive an appropriate education. The IEP must also describe related services, such as speech, physical, or occupational therapy, that are necessary for the student's education.⁶⁰

Parental consent is required to implement the first IEP developed after initial classification.⁶¹ The school district must also obtain parental consent before conducting a re-evaluation, though consent is not required if the district either obtains an order from an administrative law judge after a due process hearing or makes reasonable efforts to obtain consent but the parent fails to respond.⁶²

If parents disagree with an evaluation made by the child study team or other professional hired by the school district, they have the right to request an independent evaluation of their child's needs at the cost of the school district.⁶³

In addition, parents may request either mediation through the New Jersey Department of Education or an impartial due process hearing before an administrative law judge.⁶⁴

Both state and federal laws include so-called "stay put" provisions, whereby pending the outcome of mediation or a due process hearing, no change in classification, program, or placement may be made unless the school board and parents agree otherwise or emergency relief is granted by an administrative law judge.⁶⁵

One important exception to the "stay put" rule involves disciplining students with disabilities. Schools may suspend or refer a child with disabilities to alternative placement for up to 10 days, or up to 45 days if a student is being disciplined for possessing weapons or drugs on school property or inflicting serious bodily injury on a school staff member.⁶⁶ Suspensions or placement changes of fewer than 10 days may still constitute a change in placement if the removal is part of a pattern.⁶⁷ Schools may not impose disciplinary measures to students with disabilities that they do not impose on those without disabilities.⁶⁸

The IEP team determines what is an appropriate alternative educational setting. The IEP team also must determine whether the child's behavior is a manifestation of the child's disability. If it is not, the child can be disciplined in the same way as a student without disabilities. If the behavior is a manifestation of the disability, the child's placement cannot be changed, except by the IEP team process as described above.

For further information, parents may consult *The Right to Special Education in New Jersey: A Guide for Advocates* and *Student Discipline Rights and Procedures: A Guide for Advocates*, publications of the Education Law Center, whose contact information is provided at the end of this handbook.



Bullying

New Jersey has enacted one of the toughest anti-bullying laws in the country.⁶⁹ Under the law, school districts have a responsibility to try to prevent harassment, intimidation, and bullying, and to deal with it when it occurs. The law details what steps districts must take to deal with harassment, intimidation, and bullying.

Districts must implement policies to prevent bullying, including training for teachers and other school employees.⁷⁰ Training must include information on reducing risk of suicide for at-risk groups.⁷¹ Schools must also appoint a school safety team and an anti-bullying specialist, and each district must appoint an anti-bullying coordinator.⁷² Districts are also required to adopt detailed procedures for responding to bullying when it occurs on school campus or a school bus or at a school-sponsored event.⁷³ Teachers or other school employees who witness bullying must report it to the school administration on the same day and file a written report within two days of the incident.⁷⁴ School administrators who fail to respond to bullying are subject to discipline.⁷⁵ Retaliation by students, school authorities, or school board members against anyone reporting incidents of bullying is prohibited.⁷⁶ Schools must also respond appropriately to bullying off school campus that substantially disrupts or interferes with a student's education.⁷⁷

Twice each year, the district superintendent must report at a public meeting to the board of education acts of violence, vandalism, and bullying.⁷⁸ Schools and districts are graded on their efforts to implement anti-bullying policies, and the annual school report cards must contain data on the number and nature of bullying incidents.⁷⁹

The New Jersey Supreme Court has ruled that school districts may be held responsible for failing to take reasonable measures to respond to bullying incidents based on characteristics protected by the Law Against Discrimination, including race, religion, gender, ethnicity, sexual orientation, or disability.⁸⁰

Immunizations

Students may be prohibited from attending any school, private or public, if they have not been immunized against certain vaccine-preventable diseases.⁸¹ Exceptions can be made, however, if a doctor signs a statement saying the immunization would be harmful to the student or if a parent or guardian signs a statement explaining how immunization violates the religious beliefs of the parent or guardian.⁸² Nevertheless, anyone, even students with medical or religious exemptions, may be excluded from a school or child care facility to control outbreaks of vaccine-preventable or other contagious diseases.⁸³

HIV and AIDS

No student or teacher with Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) may be barred from public schools or otherwise be discriminated against by a public school or school district. School districts may not discriminate against a student who lives with or is related to someone with HIV or AIDS. If a school district becomes aware of a student's HIV status, it is required to have prior written informed consent from the parent (or student if 12 or older) to share the information and can share it only for the purpose of determining an appropriate educational program for the student.⁸⁴ Discrimination against people with HIV or AIDS is prohibited by a number of state and federal laws, including the Americans With Disabilities Act, the Federal Rehabilitation Act and the New Jersey Law Against Discrimination.⁸⁵ These laws all reflect numerous medical studies that indicate there is "no apparent risk of HIV infection... through close, non-sexual contact with AIDS patients."⁸⁶

3. Freedom of Speech & Expression

Speech and Political Expression

Freedom from governmental interference with speech is guaranteed to everyone in New Jersey by the First Amendment to the U.S. Constitution and by Article 1, paragraphs 4, 6 and 18 of the New Jersey Constitution. Because public schools are government entities, students have free speech rights at public schools and have wide latitude to express their ideas and opinions.

Students cannot be disciplined for merely expressing an idea, as long as that expression does not disrupt educational activity or interfere with the rights of others.⁸⁷ This rule applies whether students are communicating an idea or political viewpoint as part of a class discussion or protesting a government or school policy outside class. Normally, peaceful expression, no matter how unpopular or controversial, may not be censored.

These rights, however, do have limitations. Students may not encourage others to commit acts of violence.⁸⁸ Students who make false personal attacks may be disciplined or sued for slander or libel. If students' speech is obscene, they may be punished by both school and government authorities. The U.S. Supreme Court has held that a school district may discipline a student for using sexual innuendo in a speech, even though the speech





would not have been punishable if given outside of school.⁸⁹ A New Jersey court has held that students could be disciplined for lewd and obscene chants at a school basketball game that were “loud, offensive, disruptive, and disturbing to neighboring spectators.”⁹⁰ The U.S. Supreme Court has ruled that speech at school-sponsored events that promoted or approved drug use could be censored.⁹¹ Additionally, a federal district court held that a school did not violate a kindergartner’s First Amendment rights by suspending the student for saying, “I’m going to shoot

you,” because a balance must be struck between the student’s rights and the school’s role in fostering “socially appropriate behavior.”⁹²

In addition, school officials can impose reasonable restrictions on when, where and how speech activities can take place in order to prevent disruption of educational activities. For example, a school can limit passing out flyers in hallways to times before and after school and during lunch in order to protect students and maintain a proper educational environment.⁹³ A school could not, however, maintain a blanket rule against handing out literature anywhere or at any time during school.⁹⁴

Students may express their views not only verbally, but also through symbolic speech, such as wearing armbands or political buttons. In *Tinker v. Des Moines Independent Community School District*, the landmark case establishing student free speech rights,⁹⁵ three public school students had been suspended from school for wearing black armbands to protest the Vietnam War. The U.S. Supreme Court held that the students’ peaceful protest was protected by the Free Speech Clause of the First Amendment. This protection extends to the use of buttons, flags, decals and other badges of symbolic expression, as long as they are not “obscene” and do not directly provoke a “material and substantial” interference with classroom activities or the rights of others. Students’ rights to express their views cannot be abridged simply because the views are unpopular with school officials or other students, or because administrators fear students reacting to a symbol will cause a disruption.⁹⁶

Demonstrations

Picketing, marching and other forms of peaceful demonstration are forms of symbolic expression and, as a result, are constitutionally protected.⁹⁷ As long as school activities are not disrupted or obstructed,

demonstrations should be allowed, and participants should not be subject to discipline. A demonstration outside a school building, such as a rally or picketing, is more likely to be found legal than one inside the building. Most courts, however, have restricted student demonstrations on school property, particularly if the demonstration is to occur during school hours or within a school building. These courts appear to have reasoned that based on the *Tinker* case, it is likely that such demonstrations will be found to “materially and substantially disrupt” school activities.

A federal court, for example, upheld the suspension of a group of black students who walked out of a school pep rally when the song “Dixie” was played.⁹⁸ School officials had found the walkout disruptive. In another case, a federal court held that students could be suspended for staying out of school and conducting a rally to protest school policies they claimed were racially discriminatory.⁹⁹ Still another court permitted a school to prohibit all demonstrations inside any school building.¹⁰⁰ This last decision seems clearly wrong under *Tinker*, because the court made no distinction between demonstrations that disrupt school activities and those that do not.

A Pennsylvania state court upheld suspensions for an in-school sit-in, but more thoroughly applied the analysis in *Tinker*.¹⁰¹ The court stated that a sit-in was not illegal merely because it was indoors; nor because other students gathered in the hall to watch; nor because school administrators, who had chosen to keep watch on the demonstration, could not attend to their duties. The court said that in deciding under the *Tinker* test when a demonstration “materially” interferes with school activities, “the courts can only consider the conduct of the demonstrators and not the reaction of the audience.” The Pennsylvania court found, however, that this particular demonstration did materially interfere with school activities, both because the student demonstrators missed scheduled classes, and because noise from the demonstration required some classes to be moved to different locations and disturbed others.

Off-Campus & Internet Speech

While school officials may punish student speech inside the “schoolhouse gate” for a variety of reasons, the First Amendment limits their authority to regulate student speech occurring off campus.¹⁰² Student speech is considered to occur “on campus” if it occurs at school, on a school bus, or at a school event. The U.S. Supreme Court held that a student displaying a banner in 2001 with the message “Bong Hits 4 Jesus” outside a public event in which the school participated could be disciplined for speech promoting illegal drug use.¹⁰³ Student speech that is intentionally directed at a school, such as an email from a student’s home computer to a teacher’s school email account, may also be considered on campus.¹⁰⁴

While schools may punish lewd and obscene speech or speech promoting illegal drug use that occurs in school or at a school event, they

may not penalize the same speech if made by a student on a home computer. The constitution limits school officials in their ability to punish students for expressive activity done on the student's own time and off-campus. They may sanction a student for off-campus speech only if they reasonably believe that off-campus student speech will cause a material and substantial disruption on school grounds.¹⁰⁵ Substantial disruption means more than just a "remote apprehension of disturbance," but "a specific and significant fear of disruption."¹⁰⁶ Thus, most criticism and personal attacks against school employees are beyond the reach of school disciplinary authorities unless they are made on campus. In two significant cases, the U.S. Court of Appeals for the Third Circuit ruled that school districts could not punish students for using their home computers to publish fake MySpace profiles of their principals containing sexually explicit and otherwise offensive content.¹⁰⁷

Students should nevertheless be careful about what they post on social networking websites. The law in this area is still evolving, and some courts have been more willing than others to allow punishment for off-campus speech targeting school administrators.¹⁰⁸ Courts might also hold off-campus speech targeting students to a different standard than speech targeting school officials.¹⁰⁹

Hair and Dress Codes

Not only do the protections for free speech and expression extend to spoken and written words, but also to nonverbal expression, including hair and dress. If a school has a hair or dress code, the Law Against Discrimination requires that it be applied in a gender neutral manner. For example, girls cannot be required to wear skirts and boys cannot be prohibited from wearing skirts if the school allows them for girls.

Uniforms. Mandatory uniform requirements, unlike most dress codes, tell students what they must wear rather than what they cannot wear, and as a result are more likely to infringe on students' rights. The New Jersey Legislature has passed a law endorsing, but not mandating dress codes, including uniforms.¹¹⁰ Schools that adopt uniform policies, however, must follow procedural guidelines before implementing them and provide assistance for economically disadvantaged students. The law allows for, but does not require, schools to include an "opt-out" provision in their uniform policies.¹¹¹ The better practice, however, is for schools to provide students and parents with the ability to opt out of a uniform policy in order to protect the student's rights.

Clothing and items with messages. Students have the right to wear shirts with political messages and cannot be restricted or punished for doing so, unless the school has a uniform policy. Public schools, even ones with uniform policies, are not allowed to prohibit arm bands or buttons with political messages, even attached to a uniform or a backpack. Schools

may not adopt unreasonable regulations regarding political messages without interfering with students' constitutional rights. The ACLU of Michigan won a case in 2003 on behalf of a student who was prohibited from wearing a t-shirt calling President Bush an "international terrorist."¹¹²

This right must be balanced with the school's need for safety and discipline. The law allows schools to ban obscene, threatening, or "lewd or vulgar" speech.

Types of clothing. A student does not necessarily have a First Amendment right to wear a particular type or style of clothing. For example, one court held that wearing saggy pants does not constitute protected speech, despite the fact that the student wearing the pants intended to convey to others his identity. The court rejected this argument because the student failed to establish that this message would be objectively understood.¹¹³ Similarly, a federal court in Illinois upheld the authority of a high school to forbid male students from wearing earrings as part of a broader ban on gang symbols, jewelry and insignia.¹¹⁴ The court determined that earrings did not convey a particular message. Dress codes that regulate body piercings have been challenged in other states and in a case in Florida, a court found that various body piercings were not protected speech because they did not convey a particular message and were not expressive conduct.¹¹⁵ It is unclear whether a school in New Jersey can prohibit or regulate piercing, since there has not been a case challenging this type of regulation.



Hair. A student's right to wear his or her hair any length and style has been consistently upheld by New Jersey courts. Many of these cases were decided during the 1960s and 70s, when long hair, beards, mustaches, and sideburns were considered controversial. In protecting the rights of students, the courts held that hairstyles and sideburns are not proper subjects for school regulation.¹¹⁶ Students cannot be barred from participating in school activities, like band or athletics, because of their hairstyle or because they have mustaches and beards.¹¹⁷ School officials may, however, require students to alter hairstyles if they interfere with work, create a disruption in the classroom or elsewhere in the school, or present a clear and present danger to health or safety.¹¹⁸ The burden is on the school to show that the problem actually occurred and could not be controlled any other way.

Student Newspapers and Publications

School officials may exercise editorial control over both the style and the content of school-sponsored newspapers and other publications, so long as the restrictions they impose are reasonably related to a valid educational policy.¹¹⁹ According to the U.S. Supreme Court, the school is the “publisher” of a school newspaper that is printed under school supervision and at school expense, even though the writers are students. As “publisher,” the school can determine what can be published.

In some cases, courts have protected student speech in school publications. The ACLU of Michigan successfully challenged a high school that censored an article by the school newspaper’s editor about a lawsuit by a resident who lived next to the district’s bus garage and claimed that diesel fumes from idling buses caused his illness. The court held that the school had violated the editor’s First Amendment rights.¹²⁰

In one New Jersey case brought by the ACLU-NJ, *Desilets v. Clearwater Regional Board of Education*,¹²¹ a junior high school principal refused to publish a seventh grader’s movie reviews of two R-rated films. The New Jersey Supreme Court decided that the principal’s censorship violated the student’s First Amendment expressional rights because the school failed to establish any legitimate educational policy that would apply to the challenged material. Because that case was based on a student’s federal constitutional rights, it remains an open question whether student writers and editors might in some cases be afforded greater protection under the state constitution. It is up to a state’s courts, legislature and interested legal organizations to define the limits of these state constitutional rights.

In the case of non-school-sponsored (“underground”) publications, the school has much less control. Material in such publications can be censored only if it meets a clearly stated definition of libel or obscenity, or if it will cause a substantial disruption. Students may distribute underground newspapers on school grounds before and after school and between classes, subject to reasonable restrictions on time, place, and manner of distribution.¹²² Moreover, school authorities do not have the right to review the contents of underground publications before distribution.¹²³ Any school policies that regulate the content of underground papers cannot be vague or overbroad. For example, a policy forbidding distribution of material that “encourages actions which endanger the health and safety of students” was found to be too vague.¹²⁴ Students also have the right to appeal a censorship decision within set time limits.¹²⁵ A school cannot regulate off-campus distribution of underground student newspapers, even if distribution appears calculated to cause the newspaper to arrive on school premises. For more detailed information on issues relating to student newspapers and student expression in general, parents and students can visit the website of the Student Press Law Center, at <http://www.splc.org/knowyourrights/>.



Censorship of Information

Censorship of books and instructional materials by school authorities has become a troublesome issue around the country. The U.S. Supreme Court has held that high school students have a constitutional right not only to speak freely themselves, but also to hear others' ideas and information, because access to ideas is necessary to the meaningful exercise of freedom of speech. The Court has held that a school board may not remove books from school libraries based solely upon the board's view of what should be acceptable concerning religion, politics

or other matters of opinion.¹²⁶ However, the Court would allow schools to remove books that are "pervasively vulgar" or not "educationally suitable."

As to classroom texts, the school's authority is much broader because of the school's duty to teach "community values" in the classroom. Accordingly, schools may select books that are consistent with those values. However, New Jersey law prohibits discriminatory classroom or school practices, such as stereotyping in textbooks or other course material.¹²⁷

The escalating number of computers used by students and schools and the popularity of the Internet have added yet another dimension to the censorship issue. Although no court has decided whether a school can censor web pages on the Internet, the U.S. Supreme Court held that the Internet is the most participatory form of mass speech yet developed and is entitled to the highest protection from governmental intrusion.¹²⁸ Although this decision was not framed in the context of schools, it strongly indicates that the Internet deserves at least as much protection from censorship as a school library.

Flag Salute and Pledge of Allegiance

Students have the right to refuse to salute the flag or to recite the "Pledge of Allegiance" if they have any conscientious objections to either of these acts.¹²⁹ School authorities may not judge whether such objections are sincere or reasonable.

In 1978, a federal court struck down a section of the New Jersey statutes that required students who objected to the flag salute to stand during its recitation.¹³⁰ Students may sit quietly during the flag salute and those who do not wish to participate may not be required to leave the room.¹³¹

Student Groups

The First Amendment forbids school districts from discriminating against student groups merely because they disagree with the viewpoint a student group espouses.¹³² Furthermore, under the federal Equal Access Act, a school that opens facilities to any noncurriculum-related student groups may not deny access to those facilities or otherwise discriminate against any other student group “on the basis of the religious, political, philosophical, or other content” of the group’s speech.¹³³ So, if a school district allows students to form a chess club, scuba diving club, drama club, or Key club, it cannot prohibit students from organizing a gay-straight alliance or Bible study group.¹³⁴

4. Religion in Schools

There are two ways that the U.S. Constitution ensures religious freedom. First, it protects everyone’s right to free exercise of religion, which is the right to practice a particular religion or no religion at all, without interference from the government. Second, it prohibits government involvement in religion. In public schools, this means that students are free to believe what they wish and that school officials must remain neutral and may not endorse, promote, fund or otherwise impose religious beliefs in any way.¹³⁵

Religious Teachings in School

Students can study religion for its influence on history, literature, and culture, but students’ reading and class time cannot be used to teach that one religion is better than another one or to insult any religion. Teachers may not preach their beliefs in class. In 2007, the ACLU-NJ supported a student who complained when the Kearny public school system failed to discipline a teacher who stated in his 11th grade class that those who do not hold the same beliefs belonged in hell.¹³⁶

Another issue in religious teaching in school has been the inclusion of “intelligent design” as part of the science curriculum. Intelligent design asserts that an intelligent, supernatural entity has intervened in the history of life. A district court in Pennsylvania ruled that because it cannot be tested by scientific theory, intelligent design is “a religious view, . . . not a scientific theory.”¹³⁷

School Prayer

The Constitution protects students who engage in private, individual prayer. It also forbids school-sponsored prayer in order to protect those whose convictions differ from government-sanctioned beliefs. The U.S. Supreme Court has recognized that “prayer exercises in public schools carry a particular risk of indirect coercion.”¹³⁸ Thus, public schools may not

conduct prayer or Bible reading sessions, even if students who do not want to participate are permitted to remain silent or leave the classroom.¹³⁹ Nor may teachers announce that a period of prayer may be offered by a student volunteer.¹⁴⁰ Even so-called “non-denominational” prayers are banned.¹⁴¹ It is important to remember that the First Amendment prohibits both the endorsement of one religion over another, as well as the endorsement of religion over non-religion.¹⁴²

This prohibition against prayer in public schools was reaffirmed by the U.S. Supreme Court in its 1992 *Lee v. Weisman* decision, which ruled that invocation and benediction prayers at a public school graduation violated the Constitution. Although the school tried to navigate around the First Amendment by allowing only nonsectarian prayers that were inclusive and sensitive to all beliefs, the Court ruled that merely making the content of school-sponsored prayer more acceptable did not change the coercive, unconstitutional nature of reciting prayers at a government event.¹⁴³

Prayers cannot be offered at graduation ceremonies in New Jersey even if students vote for a student-led prayer. The ACLU-NJ was successful in representing a student who did not want a public prayer as part of his graduation ceremony.¹⁴⁴ His school tried to argue that, because a majority of students had voted to include prayer at graduation, it was constitutionally permissible. The federal appeals court hearing the case did not agree. It held that the right to be free from state-sponsored religion is, like all rights contained in the Bill of Rights, an individual right that cannot be taken away by majority vote.

Similarly, schools may not circumvent the prohibition on school-sponsored prayer by having a “moment of silence.” A federal appeals court ruled that “a purpose of accommodating the religious beliefs of some students is itself a religious purpose, in the sense that absent such beliefs there would have been no reason for the accommodating state action.”¹⁴⁵

While school districts may not promote or endorse a religious message or belief, they are also prohibited from restricting students’ freedom to express their religious beliefs. Student speech that carries a religious message is entitled to no less protection than other student speech.¹⁴⁶ Sometimes, it may be difficult to draw the line between school-endorsed religious speech, which the Establishment Clause forbids, and strictly student-led and student-initiated religious speech, which the Free Exercise Clause protects. If a student would reasonably perceive the activity as a state endorsement of prayer in public schools, then the school has violated the Establishment Clause.¹⁴⁷

As noted in the last section, schools that permit non-curriculum-related student clubs must also permit religious student groups to organize and use school facilities. Religious groups must be student-run, and their message may not be endorsed or sponsored by the school or its employees.

Religious Observance & Releasing Students Early

A student may be absent, with parental permission, for religious holidays, with the absence not counting against the student's attendance or academic record.¹⁴⁸

Public schools may allow students to leave school early to receive religious instruction elsewhere, provided that the public school is not used for religious purposes.¹⁴⁹ However, it is unconstitutional for a school to have a "released time" program in which regular public school classes end an hour early one day a week so that religious instruction, by teachers employed by private religious groups, can be given in public school classrooms.¹⁵⁰

Holiday Displays

The holiday season presents special problems in public schools. Schools throughout the state conduct Christmas programs and display Christmas trees, menorahs and other religious symbols, even though such displays appear to violate the constitutional principle of neutrality. As U.S. Supreme Court Justice Sandra Day O'Connor stated in the case of *Lynch v. Donnelly*, such displays "send a message to non-adherents that they are outsiders... and an accompanying message to adherents that they are insiders."¹⁵¹ Thus, the Court held that a municipality's display of a crèche surrounded by poinsettias and two decorated evergreen trees sent a "patently Christian message" and was, therefore, unconstitutional.¹⁵² In the same case, however, the Court upheld another municipal display of a Christmas tree, menorah and sign saluting liberty and conveying general holiday greetings. The Court's decision was based on its determination that, taken as a whole, the scene created a secular theme, although it recognized that the menorah was a religious symbol.

The Court did specifically suggest in the case of *Allegheny County v. Pittsburgh American Civil Liberties Union* that "when located in a public school, such a display [of a tree and a menorah] might raise additional constitutional considerations."¹⁵³ Therefore, even with respect to the holiday season, the guiding principle remains that government must maintain a course of neutrality between religions as well as between religion and non-religion. Accordingly, schools should keep in mind that an attempt to include all religions in such celebrations is not adequate since many students either do not have any religious beliefs, or follow faiths (such as Islam) that do not have any holidays around Christmas.

Vouchers

Direct government aid to religious schools violates the First Amendment prohibition on laws respecting an establishment of religion.¹⁵⁴ However, the U.S. Supreme Court has ruled that voucher programs, in which the government provides to students a cash allowance that the student may

spend on tuition at a school of the student's choice does not violate the federal Constitution.¹⁵⁵ It is unclear whether such a program would violate the state constitution because a state court has not yet reviewed a legal challenge to voucher programs.

5. Search & Seizure

The Fourth Amendment to the U.S. Constitution guarantees citizens freedom from unreasonable governmental searches and seizures. A search of a person or his or her property is presumed unreasonable unless there is a warrant. There are circumstances when law enforcement officers can search a person without a warrant, but they ordinarily cannot search a person or a person's possessions unless they have probable cause to believe that the person has committed or is committing a crime.



Individual Searches

The rules regarding searches are very different for minors while in school. One of the major U.S. Supreme Court decisions concerning student searches is *New Jersey v. T.L.O.*¹⁵⁶ In *T.L.O.*, the Court determined that students are protected under the Fourth Amendment from unreasonable searches and seizures by public school officials (who are viewed as governmental agents). Nevertheless, the Court found that within the school

setting, where school personnel must maintain discipline so that learning can take place, the definition of what is “reasonable” is much broader than outside this setting. Accordingly, school officials need not obtain search warrants; nor do they need to have probable cause to believe a student is violating the law prior to conducting a search. School searches of students are lawful if they are reasonable under the circumstances. The search will generally be found to be reasonable if two conditions exist: (1) there are reasonable grounds for suspecting the search will turn up evidence that the student is violating the law or school rules; and (2) the search is no more intrusive than necessary to turn up this particular evidence. The age and sex of the student and the seriousness of the offense are also considered in deciding reasonableness.¹⁵⁷

In *State v. Moore*,¹⁵⁸ a state appellate court applied the reasoning of the *T.L.O.* decision and determined that the search of a student's bookbag by an assistant principal was reasonable because another student had reported to a guidance counselor that the defendant possessed marijuana and the assistant principal knew that the defendant had previously been disciplined

for possessing a small amount of marijuana. Moreover, the assistant principal did not conduct the search until after he asked the defendant if the bookbag was his, and he denied ownership. The court in *Moore*, quoting the decision in *T.L.O.*, emphasized that school officials need only exercise reason and common sense.

The decisions in *T.L.O.* and *Moore* do appear to protect students from blanket searches without individualized suspicion of wrongdoing. In *T.L.O.*, the Court rejected the argument that school officials, as “substitute parents,” can search any student at any time. Nevertheless, once these officials reasonably suspect a student of violating the law, they have broad authority to search, among other places, the student’s locker, pockets and purse, and they can turn over what they find to the police.¹⁵⁹ If a student’s car is parked on school property, school officials may also search it upon reasonable suspicion.¹⁶⁰

Although school officials have broad authority to search students and their lockers and their possessions if there is individualized suspicion of wrongdoing, the searches that are conducted cannot be overly intrusive. This standard applies to searches of persons as well as property. The search itself must be reasonably related to the objectives of the search and must not be excessively intrusive in light of the student’s age and sex, and the nature of the alleged offense. If a teacher were looking for a gun or large knife, a pat-down would be enough to determine whether the student had the weapon. A search for a small bag of forbidden candy might require a more intrusive search, but one that could not be justified in light of the relative unimportance of the infraction. Strip searches are considered so intrusive that schools are prohibited from conducting them.¹⁶¹

Mass Searches — Metal Detectors and Dogs

The practice of making all students walk through a metal detector before entering school is unfortunately becoming more widespread. Although in other contexts individual suspicion is required before a student may be searched, the courts have upheld the use of metal detectors at school entrances on the grounds that they are relatively unintrusive methods of inspection and that the objectives of the search — keeping weapons out of school — are necessary to protect and maintain a proper educational environment.¹⁶²

Similarly, courts have upheld schools’ use of drug-sniffing dogs to search all school lockers.¹⁶³ These searches have been upheld on the grounds that the search is relatively unintrusive and the goal of keeping drugs out of school is very important. However, many courts have distinguished between the use of dogs to sniff lockers and the use of dogs to sniff the individual.¹⁶⁴ While the former has generally been allowed, the latter has not. Some schools have abandoned the use of drug-sniffing dogs after parents and students expressed concern at the use of dogs sniffing students’ belongings

for contraband without any suspicion of wrongdoing on the part of individual students.

Searches of Desks and Lockers

Students should consider any desk or locker, or any other place provided by the school for their belongings, to be searchable without a warrant. They should not put anything in these places that they would not want anyone to find or see. A school can conduct locker or desk inspections without a warrant, consent by the students, or even any particular suspicion, so long as there is a written policy allowing such searches, and students are informed in writing at the beginning of the year that an inspection may occur.¹⁶⁵ New Jersey law specifically grants school boards the power to enact such policies.¹⁶⁶ If a school has no such policy, a search without a warrant or a student's consent must be shown to be based on reasonable suspicion.¹⁶⁷

Random Drug Testing of Students in Extracurricular Activities

Testing a person for the presence of drugs has been held to be a type of search and therefore subject to the constraints of the Fourth Amendment.¹⁶⁸ In *Vernonia School District v. Acton*, the U.S. Supreme Court held that a school district could require students to consent to random drug testing as a condition of participating in interscholastic sports, reasoning that the testing was confidential and relatively private and that the school district had an interest in fighting drug abuse.¹⁶⁹ Since then, courts have continued to use less restrictive standards of review for random drug testing programs, and found it constitutional for school districts to implement random drug testing programs for all students who participate in extracurricular activities or park on campus.¹⁷⁰

The ACLU-NJ lost its challenge to a high school's policy of conducting random drug tests on all students who participated in extracurricular activities or sought parking privileges. The court held that, under the state constitution, the district could implement a reasonable suspicionless drug testing policy because of its duty to maintain order and discipline and to respond to documented problems of drug abuse.¹⁷¹ In determining that the school's policy was reasonable, the court emphasized that students who "objected" to the plan could "opt out" by not seeking parking privileges or participating in extracurricular activities.

Because of the court's reliance on the "voluntary" nature of extracurricular activity, it is unlikely that random drug testing policies for *all* students who attend school would be permitted under the New Jersey Constitution. Further, the court stated that each drug and alcohol testing program will be analyzed separately, and each school will have to "base their intended programs on a meticulously established record."¹⁷²

All New Jersey high school athletes whose teams qualify for postseason play are subject to random testing for performance-enhancing drugs. New Jersey was the first state to test high school students in all sports for performance-enhancing drugs.

Drug Testing Based on Reasonable Suspicion

In 1990, New Jersey enacted specific procedures for drug testing students based on reasonable suspicion.¹⁷³ If a school has reasonable suspicion to believe that a student is acting under the influence of drugs or alcohol, the principal must immediately notify the parent or guardian and the superintendent of schools to arrange for an immediate examination by a doctor selected by the parent or guardian. If no doctor is immediately available, then the student must be brought to the emergency room of the nearest hospital to be examined as soon as possible for the purpose of diagnosing whether the student is under the influence. A written report of the examination must be furnished within 24 hours to the parent or guardian. If found to be under the influence, the student may not return to school until he or she submits a doctor's note to the principal, detailing the student's ability to return. The student must also be interviewed by a substance awareness coordinator to determine the extent of the student's involvement with illegal substances.

6. Sexual Health and Education



Sexual Education in Schools

New Jersey law mandates at least 2½ hours of health and physical education during each school week.¹⁷⁴ Public schools must provide students with comprehensive sex education as part of their health and physical education curriculum. The state's Core Curriculum Content Standards require districts to provide students with information about methods of contraception and their effectiveness.¹⁷⁵ Thus, while state law requires that sex education programs must favor abstinence over

contraception as a method of birth control or disease prevention,¹⁷⁶ school districts may not adopt an abstinence-only sex education program and must provide students with information about contraceptives. Sex education classes should be taught from an instructional, non-religious point of view.

Contraception, Abortion, and Pregnancy

Minors have rights in New Jersey when it comes to their sexual and reproductive health care. They may give their informed consent and receive confidential care for all family planning services without parental involvement. These services include: contraceptive care and counseling, emergency contraception, pregnancy tests and options counseling, and abortion services. More than half of the states enforce laws requiring minors to get parental consent or court permission before they can obtain an abortion. There is no such requirement in New Jersey because the ACLU-NJ successfully challenged a statute that would have required parental notification for a woman under 18 to obtain an abortion (unless a judge waived a notification requirement).¹⁷⁷

7. School Records

The Family Educational Rights and Privacy Act (FERPA), a 1974 federal law, specifies a parent's and student's right to see school records. A student's parents and students 18 years of age or older (or 16 and graduating or leaving school) can inspect and review official school records and files directly related to the student. The school must provide the records within a reasonable period of time, but never more than 45 days after the request.¹⁷⁸ Records can be withheld only if school officials obtain a court order.¹⁷⁹



Information in the record that is inaccurate, misleading or otherwise in violation of privacy or other rights can be challenged in two ways. A parent or adult student may request that the school district either (1) insert an explanation or additional data to correct any false impression or (2) expunge or correct misinformation.¹⁸⁰ If meeting with school officials does not resolve the problem, the parent or student may appeal the district's decision within 10 days to the local board of education or the Commissioner of Education.

Generally, a school may not release records containing personally identifiable information to third parties without the written consent of the parents or the adult student. There are four principal exceptions to this rule: (1) local school officials who have a legitimate educational interest; (2) officials from other schools in which the student plans to enroll; (3) representatives of the United States Comptroller General and Secretary of

Education; and (4) state educational authorities.¹⁸¹ Schools must keep on file a copy of any request for the records made by anyone other than local school officials.¹⁸² Parents or adult students must also be notified in advance every time the records are turned over to an outside organization because of a court order.¹⁸³

The U.S. Supreme Court has held that peer grading—when a student scores another student’s test or assignment as the teacher reads out the correct answers—does not violate FERPA’s confidentiality requirements, because an assignment graded by a peer is not an educational record as it is not yet recorded in the teacher’s grade book.¹⁸⁴

Since a student’s records may someday be seen by local school officials, such as those on a disciplinary panel, or by a future employer, probation officer, welfare worker or school admissions director, it is advisable that the student or a parent check the student’s records periodically and correct any inaccurate, misleading or inappropriate information.

Military Recruiters Accessing Student Records

Military recruiters can and do approach high schools and ask for lists of students’ names, addresses and telephone numbers. Schools must provide this “directory information” (name, address, phone number) about a student to recruiters unless the student or parent instructs the district in writing not to release it.¹⁸⁵ The school should give students and parents a form for this purpose and explain their right to have information withheld, but it should honor any kind of written request.

8. Discipline: Suspension, Expulsion & Other Punishments

All schools have rules of conduct for students to follow, which apply to students both on campus and at school-sponsored functions. These rules should be given to all students in writing. If a student does not receive a copy, he or she should ask the school for one. The following section answers questions about the two most important forms of discipline that schools use—suspension and expulsion.

Students have a constitutional right to an education and therefore may be suspended or expelled only for specified reasons and only in a manner that satisfies certain procedural requirements to determine if the student is guilty.¹⁸⁶ Detentions or other minor punishments may be given without a hearing or other requirements. These requirements are called “due process rights” because they derive from the U.S. Constitution’s due process clause in the Fourteenth Amendment. The Constitution applies to government employees and therefore governs the actions of public school officials, because they are employees of the government. This section describes the

protections students have and the ground rules the school must follow in imposing these punishments.

Students With Educational Disabilities

If school staff believe that a student's misbehavior results from a disability they should make a referral for a child study team evaluation. Under New Jersey and federal law, a student with educational disabilities is entitled to certain procedural protections, including the stay-put provisions discussed on page 13 before he or she can be suspended or expelled.¹⁸⁷ For additional information parents can refer to *Student Discipline Rights and Procedures: A Guide for Advocates*, a publication of the Education Law Center, whose address and phone are listed in the referral guide at the end of this handbook. Parents can also consult an advocate who is familiar with these protections if confronted with a disciplinary action.

Duty to Prevent Suspension or Expulsion

A school district should remove a student only after it has made every reasonable effort to address a behavior problem. Cause of misbehavior may include an undetected disability, unchallenging classwork, or a stressful home environment. Before suspending or expelling a student, school authorities should first attempt other corrective steps, such as counseling, parent conferences, a behavior modification plan or temporary placement in a "time-out" room. School districts are required to have alternative education programs, which are "non traditional learning environments that address the individual learning styles and needs of disruptive or disaffected students at risk of school failure or mandated for removal from general education."¹⁸⁸

The Difference Between Suspension and Expulsion

Expulsion refers to permanent exclusion of a student from a school and termination of educational services to that student. Suspension is the temporary removal of a student from school.¹⁸⁹ All students who are suspended or expelled are entitled to some procedural protections, but schools may impose short-term suspensions, that is, suspensions of 10 days or fewer, without a formal hearing. Expulsions and long-term suspensions (those exceeding 10 days) trigger a formal hearing process in which students are afforded much greater procedural protections.¹⁹⁰

Valid Reasons for Suspension or Expulsion

Under New Jersey law, students can be suspended or expelled for any of the following reasons:

- Continued and willful disobedience;
- Open defiance of a teacher or another person having authority over the student;

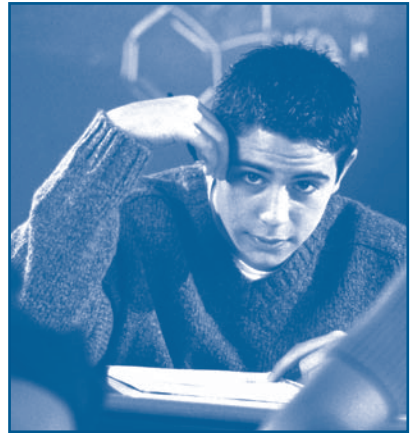
- Conduct posing a continuing danger to the physical well-being of other students;
- Physically assaulting another student, school employee, or board member;
- Taking or attempting to take property from another student by means of force or fear;
- Intentionally damaging or attempting to damage school property;
- Occupying a school or other building owned by the school district without permission and failing to leave once ordered to by the person in charge of the building;
- Intentionally causing others to occupy a school building without permission;
- Causing other students to be truant;
- Possessing, consuming, or being under the influence of alcohol or drugs while on school premises;
- Harassing, intimidating, or bullying another student;
- Possessing a firearm on school property, on a school bus, or at a school-sponsored event;
- Having been convicted of, or adjudicated delinquent for, possession of a gun or a crime while armed with a gun.¹⁹¹

The first two grounds for discipline are very general. School authorities may use them to justify expulsion or suspension for specific behavior beyond that described in the remaining grounds. For example, the State Commission of Education upheld a three-day suspension of a student for using profanity to a music teacher.¹⁹² However, courts have ruled that suspension or expulsion is only justified if a student's behavior "materially and substantially" interferes with the operation of the school.¹⁹³ Students in New Jersey may be disciplined for behavior that occurs away from school grounds only if it jeopardizes the safety or well-being of other students, teachers or school property.¹⁹⁴ Thus, a school may not suspend a student merely because the student has been arrested.¹⁹⁵

Suspensions of 10 Days or Fewer

The Constitution's due process clause entitles a student facing suspension of up to 10 days to receive "notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version."¹⁹⁶ New Jersey regulations require an "informal hearing" prior to suspension but guarantees few procedural protections beyond those required by the Constitution.¹⁹⁷ A student does not have the right to be accompanied by parents or represented by counsel at the informal hearing, and is not entitled to call or cross-examine any witnesses.

A student may be immediately removed from school without this informal hearing only if the student's presence poses a continuing danger to persons or property or threatens to disrupt the academic process.¹⁹⁸ Immediate removal is justified only for certain serious offenses, such as assault with a weapon,¹⁹⁹ or when the school can demonstrate that it was impossible or unreasonably difficult to provide a hearing before suspension.²⁰⁰ When a student is immediately moved from school, he or she must receive notice and a hearing as soon as possible, generally no later than the next day.



Long-Term Suspensions or Expulsion

Before a school district either expels a student or formally imposes a suspension of more than 10 days, it must hold a formal hearing.²⁰¹ This hearing must occur within 30 days after the first day of the suspension.²⁰² The district must notify the student's parents of the procedures required in the hearing.²⁰³ A student facing long-term suspension or expulsion must receive:

- ***Written notice of the charges.*** Prior to the hearing, the student's parents must be given a written statement of the charges and the evidence upon which they are based.²⁰⁴ The reasons should be clear and precise and describe the conduct of the student.
- ***Representation by an attorney.*** The student has the option of being represented at the hearing by an attorney or any other person the student feels can adequately protect his or her interests.²⁰⁵ However, the school authorities do not have to pay for the student's attorney. Parents may also attend the hearing.
- ***Impartial officials.*** The school board or committee of the board that is hearing the case must not be biased in any way.²⁰⁶ Any person involved in the incident should not be a member of the panel or board hearing the case. Finally, no member of the hearing board should take a side until after all the evidence is presented.
- ***Translator.*** A translator should be provided if needed.
- ***List of witnesses and student defense.*** Before the hearing, school officials should give the student a reasonable time to prepare a defense and, if necessary, the opportunity to inspect his or her school records. School officials are also required to give the student the names of the witnesses they plan to call and approximately what each

will say so the student can prepare for the hearing.²⁰⁷ At the hearing, the student must be given the opportunity to:

- explain his or her side of the story;
- bring witnesses to testify;
- present signed statements by witnesses;
- face and cross-examine the witnesses for the school;
- remain silent without being disciplined for it.

The board's discipline hearing must be held at a session closed to the public to protect the privacy of the student and his or her family. However, the board must take its final vote on the discipline in public.²⁰⁸

Students' Rights During and After the Decision-Making Process

- ***Ensuring a Fair decision.*** The board or committee must hand down a written decision within a reasonable time. If a committee of the board held the hearing, the school board as a whole must receive and consider a detailed written report of the hearing before taking any final action against the student.²⁰⁹ A complete transcript or tape of the hearing should be made available to the student. The conclusion of the board must be in writing and a copy must be given to the student.
- ***Appeals.*** The student has the right to appeal. An appeal must be made to the Commissioner of Education within 90 days.²¹⁰ New Jersey laws set forth the exact procedure for appealing a suspension or expulsion, and a student may request information for appealing from the Commissioner's office. In most cases, a lawyer should be consulted if an appeal is planned.
- ***Clearing records.*** If a student is found not guilty at a hearing, or if a suspension is later determined to have been invalid, any reference to the hearing or suspension must be removed from the student's school records.²¹¹

Special Discipline Rules for Serious Offenses

Under New Jersey and federal law,²¹² additional procedures and rules apply to the most serious discipline cases involving:

- assault against school personnel;
- assault against school personnel or another student with a weapon on school property or at a school function;
- gun possession on school property, on a school bus or at a school function;
- conviction of possession of a gun or a crime involving a gun off school property.

A student accused of one of the above four offenses is entitled to the same procedural protections listed above for any student facing long-term

suspension or expulsion. In addition, such a student is subject to the following rules.

Immediate suspension. For all four serious offenses, the principal or his or her designee²¹³ must immediately suspend the student from school until the school board holds a formal hearing. For assaults without a weapon (the first category), the student is entitled to an informal hearing at this stage.

Board hearing and decision. The school board must hold a hearing within 30 days following the day the student is removed.²¹⁴ The school board's decision on the imposition of discipline must be made within five days of the close of the hearing.²¹⁵ If the board finds that the student has not committed the offense, the student must be returned immediately to the regular education program.²¹⁶

One-year removal for gun offense. If the school board finds that a student is guilty of possessing a gun at school, or has been convicted of a gun offense off school property, the board must order the student's removal from the regular education program for at least one year. However, the school district's superintendent has the discretion to shorten this time period, depending upon the facts of the case.²¹⁷

Return to regular education program for students. As in most suspension cases, the school board determines the length of suspension for a student found guilty of assaulting school personnel without a weapon. A different procedure applies to those students suspended or removed from regular education for the three weapons-related offenses. For these students, the school district's superintendent, not the school board, is responsible for determining whether and when a student is ready to return to the regular education program.²¹⁸

Alternative Education and Home Instruction During Long-Term Suspension and Expulsion

Expelled students have the right to an alternative education under the state constitution until the student's 19th birthday or graduation, and under state statute until the student's 20th birthday or graduation.²¹⁹ This is so even in cases involving removal from school for assault with a weapon against another student or school staff, possession of a gun on school grounds, and conviction of a gun offense. For these offenses, the "Zero Tolerance for Guns" law requires placement in an alternative education program, home instruction or another suitable program.²²⁰

For other offenses, some school boards provide home instruction, and some provide placement in an alternative school. However, in practice, the vast majority provide no educational alternatives for students removed from school. This may present a problem when the three serious offenses listed above require alternative instruction. The New Jersey Constitution

guarantees a thorough and efficient education for all students.²²¹ In one case, the New Jersey Commissioner of Education ruled that a suspended student must have the opportunity to make up the work missed.²²²

Other Punishments

Monetary damages. In addition to suspension and expulsion, the parents or guardians of any minor (even if he or she does not attend the school) who damages or vandalizes public or non-public school property are liable to the board of education for money damages.²²³

Corporal punishment. New Jersey law prohibits both public and private schools from using of physical force (such as hitting the hands of a student with a ruler) to discipline a student unless it is reasonable and necessary to prevent physical injury to others, to obtain possession of weapons or other dangerous objects, in self-defense, or for the protection of persons or property.²²⁴

Conclusion

Schools are places for growing, inquiring minds. School authorities must accordingly allow students to question or reject established values, even at the expense of their own comfort. On the other hand, the educational environment requires that students observe a certain degree of discipline and order. In many respects, this same tension between an individual's right to expression and society's interest in order is present in American society as a whole. Our U.S. and state constitutions require that these competing interests be met in a manner that protects individual rights. Individual rights are the foundation for the growth and stability of our democratic institutions. It is the responsibility of students to be vigilant so that when civil liberties issues arise in school, they will be resolved in a way that respects constitutional principles.



Appendix & Referral Guide

American Civil Liberties Union of New Jersey
P.O. Box 32159, Newark, NJ 07102
(973) 642-2084
<http://www.aclu-nj.org>

Association for Children of New Jersey
35 Halsey Street, Newark, NJ 07102
(973) 643-3876
<http://www.acnj.org>

Education Law Center
60 Park Place, Suite 300, Newark, NJ 07102
(973) 624-1815
<http://www.edlawcenter.org>

Legal Services of New Jersey
100 Metroplex Drive at Plainfield Avenue, Suite 402,
P.O. Box 1357, Edison, NJ 08818-1357
<http://www.lsnj.org>
(732) 572-9100

Rutgers Law School — Newark
Constitutional Litigation Clinic
123 Washington Street, Newark, NJ 07102
(973) 353-5687

Rutgers Law School — Newark
Special Education Clinic
123 Washington Street, Newark, NJ 07102
(973) 353-5576

Student Press Law Center
1101 Wilson Blvd., Suite 1100
Arlington, VA 22209-2275
(703) 807-1904
<http://www.splc.org/>

Endnotes

1. N.J.S.A. § 18A:42-4; *In re State Bd. of Education's Denial to Adopt Regulations Implementing the New Jersey High School Voter Registration Law*, __ N.J. Super __ (April 25, 2010)
2. N.J. Const. art. VIII, § 4, ¶ 1. State law guarantees free attendance at public schools to all those under 20 years of age. N.J. Stat. Ann. § 18A:38-1.
3. *Abbott v. Burke*, 149 N.J. 145 (1997).
4. N.J.S.A. § 18A:38-25.
5. *State v. Massa*, 95 N.J. Super. 382 (Law Div. 1967). See also *Pierre v. Society of Sisters*, 268 U.S. 510 (1925).
6. *Massa*, 95 N.J. Super. at 390.
7. N.J.S.A. § 18A:38-31.
8. N.J.S.A. §§ 18A:38-1(a), (d).
9. N.J.S.A. §§ 18A:7B-12(a), 18A:38-2.
10. N.J.S.A. § 18A:38-1(b)(1).
11. *Id.*
12. §§ 18A:38-1(b)(1)-(b)(2).
13. *R.A. v. Bd. of Educ. of Ewing Township*, 95 N.J.A.R. 2d (EDU) 49 (1994).
14. *Bd. of Educ. of Twp of Middle v. K.K.*, 93 N.J.A.R. 2d (EDU) 461 (1992).
15. N.J.S.A. § 18A:7B-12 (c).
16. *Id.*
17. N.J.S.A. § 18A:7B-12.1.
18. *Id.*
19. *Id.*
20. N.J. Admin. Code § 6A:17-2.8(c)(1)(iv).
21. *Brown v. Bd. of Educ. of Topeka, Kansas*, 347 U.S. 483 (1954).
22. Title VI, Civil Rights Act of 1964, 42 U.S.C. § 2000a *et seq.*
23. *In Re the Racial Imbalance Plan of Roselle Bd. of Educ.*, 1976 S.L.D. 187; N.J.A.C. § 6A:7-1.7(a)(2).
24. U.S. Const. amend. XIV; 20 U.S.C. § 1681 *et seq.*; N.J. Stat. Ann. § 10:5-1 *et seq.*
25. 20 U.S.C. § 1681(a).
26. 45 C.F.R. § 86.31 *et seq.*
27. N.J.A.C. § 6A:7-1.7(b)(2).
28. N.J.A.C. § 6A:7-1.7(b)(2)(i).
29. 45 C.F.R. § 86.41.
30. *O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 545 F. Supp. 376 (N.D. Ill. 1982).
31. *E.B. v. North Hunterdon Reg'l School Dist. Bd. of Educ.*, 12 N.J.A.R. (EDU) 232 (1986).
32. *B.C. v. Cumberland Reg'l School Dist.*, 220 N.J. Super. 214 (App. Div. 1987).

33. N.J.A.C. § 6A:7-1.7(d).
34. See, e.g., *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992) (holding that a student may recover damages for sexual harassment by teacher under 20 U.S.C. § 1681(a)); *Lebmann v. Toys 'R' Us, Inc.*, 132 N.J. 587 (1993) (holding that employer may be liable for damages for hostile work environment harassment under New Jersey Law Against Discrimination, N.J.S.A. § 10:5-1 *et seq.*).
35. N.J.S.A. § 10:5-4.
36. See, e.g., *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976) (striking down blanket parental consent requirement for minors to obtain an abortion).
37. *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1196 (C.D. Cal. 2007).
38. *Fricke v. Lynch*, 491 F. Supp. 381 (D.R.I. 1980).
39. N.J.A.C. § 6A:7-1.7(a)(6).
40. N.J.A.C. § 6A:7-1.7(a)(6)(i).
41. *Plyler v. Doe*, 457 U.S. 202 (1982).
42. N.J.A.C. § 6A:22-3.4(d).
43. *Lau v. Nichols*, 414 U.S. 563, 566 (1974).
44. 20 U.S.C. § 1703(f).
45. N.J.S.A. § 18A:35-18(a).
46. N.J.A.C. § 6A:15-1.4(c).
47. N.J.A.C. § 6A:15-1.4(b)
48. N.J.S.A. § 18A:35-22.
49. N.J.S.A. § 18A:35-19.1
50. N.J.S.A. § 18A:35-19.2.
51. 20 U.S.C. § 1415 *et seq.*
52. N.J.S.A. § 18A:46-2 *et seq.*
53. N.J.A.C. § 6A:14-3.5.
54. N.J.A.C. § 6A:14-3.3.
55. N.J.A.C. §§ 6A:14-2.3(a), -2.3(c), -2.7(b)
56. N.J.A.C. § 6A:14-3.3(e).
57. N.J.A.C. § 6A:14-3.4(e).
58. N.J.A.C. § 6A:14-3.7(a).
59. N.J.A.C. § 6A:14-1.3.
60. *Id.*
61. N.J.A.C. §§ 6A:14-2.3(a)(2); 6A:14-3.7(m)
62. N.J.A.C. §§ 6A:14-2.3(a)(3), -2.3(c).
63. N.J.A.C. § 6A:14-2.5(c).
64. N.J.A.C. §§ 6A:14-2.6(a), -2.7(a).
65. 20 U.S.C. § 1415(k)(4); N.J.A.C. § 6A:14-2.6(d)(10), 2.7(u).

66. 20 U.S.C. §§ 1415(k)(1)(B), (G).
67. 34 C.F.R. § 300.536(a)(2).
68. 20 U.S.C. § 1415(k)(1)(B).
69. N.J.S.A. § 18A:37-13 *et. seq.*
70. N.J.S.A. §§ 18A:37-17(b).
71. N.J.S.A. § 18A:6-112.
72. N.J.S.A. §§ 18A:37-20, 21.
73. N.J.S.A. §§ 18A:37-15(b)(5), (6).
74. N.J.S.A. § 18A:37-15(b)(5).
75. N.J.S.A. § 18A:37-16(d).
76. N.J.S.A. § 18A:37-16(a).
77. N.J.S.A. § 18A:37-15.3.
78. N.J.S.A. § 18A:17-46.
79. N.J.S.A. § 18A:7E-3(a)(10).
80. *L.W. v. Toms River Reg'l Schools Bd. of Educ.*, 189 N.J. 381 (2007)
81. N.J.A.C. § 8:57-4.1 *et seq.*
82. N.J.A.C. § 8:57-4.3(b), -4.4(a).
83. N.J.S.A. § 26:4-6; N.J.A.C. §§ 8:57-4.3(d), -4.4(d).
84. N.J.A.C. 6A:16-2.4(e)(1).
85. 42 U.S.C. § 12101 *et. seq.*, 29 U.S.C. § 794(a) N.J.S.A. § 10:5-5(q).
86. *Chalk v. United States Dist. Court Central Dist. of California*, 840 F.2d 701 (9th Cir. 1988).
87. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 513 (1969).
88. *Brandenburg v. Ohio*, 395 U.S. 444 (1969).
89. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
90. *State v. Morgulis*, 110 N.J. Super. 454, 459 (App. Div. 1970).
91. *Morse v. Fredrick*, 551 U.S. 393 (2007).
92. *S.G. v. Sayreville Bd. of Educ.*, 333 F.3d 417, 422 (3d Cir. 2003) (quoting *Fraser*, 478 U.S. at 681).
93. *Nelson v. Moline Sch. Dist. 40*, 725 F. Supp. 965 (C.D. Ill. 1989).
94. *Riseman v. Sch. Comm. of Quincy*, 439 F.2d 148 (1st Cir. 1971).
95. 393 U.S. 503 (1969).
96. *Id.*; *Bethel School Dist. v. Fraser*, 478 U.S. 675 (1986). In *Sypniewski v. Warren Hills Regional Bd. of Educ.*, 397 F.3d 243 (2002), the United States Court of Appeals held that a school did not show prior disruptive use of the word “redneck,” thus could not ban a student from wearing a T-shirt containing the word “redneck.”
97. *Edwards v. South Carolina*, 372 U.S. 229 (1963).
98. *Tate v. Bd. of Educ. of the Jonesboro Special School Dist.*, 453 F.2d 975 (8th Cir. 1972).

99. *Dunn v. Tyler Independent School Dist.*, 460 F.2d 137 (5th Cir. 1972).
100. *Sword v. Fox*, 446 F.2d 1091 (4th Cir. 1971).
101. *Gerbet v. Hoffman*, 336 F. Supp. 694 (E.D. Pa. 1972).
102. See *Morse v. Frederick*, 551 U.S. 393, 405 (2007) (noting some speech which would be punishable if made on school grounds would not be punishable if made outside of school) (citing *Bethel School Dist. No. 43 v. Fraser*, 478 U.S. 675, 682–83 (1986)).
103. *Id.* at 396–97.
104. *J.S. v. Blue Mountain School Dist.*, ___ F.3d ___ (slip op. at 8) (3d Cir., June 13, 2011) (en banc) (Smith, J., concurring).
105. *Id.*, slip op. at 3 (majority opinion)
106. *Saxe v. State College Area School Dist.*, 240 F.3d 200, 211 (3d Cir. 2001).
107. *J.S.; Laysbock v. Hermitage School Dist.*, ___ F.3d ___ (3d Cir., June 13, 2011) (en banc).
108. *Compare J.S. and Laysbock with Doninger v. Nieboff*, 527 F.3d 41 (2d Cir. 2008).
109. See, e.g., *Kowalski v. Berkeley County Schools*, ___ F.3d ___ (4th Cir., July 27, 2011).
110. N.J.S.A. § 18A:11-7.
111. N.J.S.A. § 18A:11-8.
112. *Barber ex rel. Barber v. Dearborn Public Schools*, 286 F. Supp. 2d 847 (E.D. Mich. 2003).
113. *Bivens ex rel. Green v. Albuquerque Public Sch.*, 899 F. Supp. 556 (D.N.M. 1995).
114. *Olesen v. Bd. of Educ. of School Dist. No. 228*, 676 F. Supp. 820 (N.D. Ill. 1987).
115. *Bar-Novan v. School Bd. of Brevard County*, 2007 WL 3284322 (M.D.Fla.) (Nov. 5, 2007).
116. *Pelletreau v. Bd. of Educ. of New Milford*, 1967 S.L.D. 35, 47–48.
117. *Bramwell v. Franklin Township Bd. of Educ.*, 1970 S.L.D. 331; *Harris v. Teaneck Bd. of Educ.*, 1970 S.L.D. 311.
118. *Wallace v. Ford*, 346 F. Supp. 156 (E.D. Ark. 1972); *Pelletreau*, (NJ) 1967 S.L.D. 35.
119. *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988).
120. *Dean v. Utica Community Schools*, 345 F. Supp. 2d 799 (E.D. Mich. 2004).
121. 137 N.J. 585 (1994).
122. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).
123. *Burch v. Barker*, 861 F.2d 1149 (9th Cir. 1988); *Fujishima v. B.d of Educ.*, 460 F.2d 1355 (7th Cir. 1972).
124. *Burch v. Barker*, 651 F. Supp. 1149 (W.D. Wash. 1987) (reversed on other grounds at 861 F.2s 1149).
125. *Id.*

126. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982).
127. N.J.A.C. § 6A:7-1.7(c)(2).
128. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 863 (1997).
129. *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).
130. *Lipp v. Morris*, 579 F.2d 834 (3rd Cir. 1978).
131. *Frain v. Baron*, 307 F. Supp. 27 (E.D.N.Y. 1969).
132. *See Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 46 (1983) (noting that the state may not “suppress expression merely because public officials oppose the speaker’s view,” even in a nonpublic forum).
133. 20 U.S.C. § 4071.
134. *Bd. of Educ. of Westside Community Schools v. Mergens*, 496 U.S. 226 (1990); *Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244 (3rd Cir. 1993); *Boyd County High School Gay Straight Alliance v. Bd. of Educ. of Boyd County*, 258 F. Supp. 2d 667 (E.D. Ky. 2003).
135. *School Dist. of Albington Township v. Schempp*, 374 U.S. 203 (1963).
136. “ACLU Supports Student Challenge to Preaching Teacher,” <http://www.aclu-nj.org/pressroom/aclusupportsstudentchallen.htm> (last accessed May 31, 2011).
137. *Kitzmiller v. Dover Area School Dist.*, 400 F. Supp. 2d 707, 726 (M.D.Pa., 2005).
138. *Lee v. Weisman*, 505 U.S. 577, 592 (1992).
139. *Schempp*, 374 U.S. at 224–25.
140. *American Civil Liberties Union of New Jersey v. Blackhorse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471 (3rd Cir. 1996).
141. *Lee*, 505 U.S. at 610 (Souter, J. concurring).
142. *Epperson v. Arkansas*, 393 U.S. 97, 106 (1968).
143. *Lee*, 505 U.S. at 586 (majority opinion).
144. *Blackhorse Pike*, at 84 F.3d at 1474.
145. *May v. Cooperman*, 780 F.2d 240, 252 (3d Cir. 1985) *appeal dismissed sub nom. Karcher v. May*, 484 U.S. 72 (1987)
146. *See O.T. v. Frenchtown Elementary School Dist. Board of Educ.*, 465 F. Supp. 2d 369 (D.N.J. 2006)
147. *Id.*; *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 308 (2000); *Borden v. School Dist. of Township of East Brunswick*, 523 F.3d 153, 175 (3d Cir. 2008).
148. N.J.S.A. §§ 18A:36-14, -15.
149. *Zorach v. Clauson*, 343 U.S. 306, 315 (1952).
150. *McCollum v. Bd. of Educ.*, 333 U.S. 203, 212 (1948).
151. *Lynch v. Donnelly*, 465 U.S. 668, 688 (1984) (O’Connor, J., concurring).
152. *Allegheny County v. Pittsburgh American Civil Liberties Union*, 492 U.S. 573, 601 (1989).

153. *Id.* at 620 n. 69.
154. *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373, 392 (1985).
155. *Zelman v. Simmons-Harris*, 536 U.S. 639, 644 (2002).
156. *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).
157. *State v. Moore*, 254 N.J. Super. 295 (App. Div. 1992); *T.L.O.*, 469 U.S. at 342 (1985).
158. 254 N.J. Super. 295 (App. Div. 1992).
159. *T.L.O.*, 469 U.S. at 347-48.
160. *State v. Best*, 987 A.2d 605, 607 (N.J. 2010)
161. N.J.S.A. § 18A:37-6.1; *see also Safford Unified School Dist. No. 1 v. Redding*, 557 U.S. ___, 129 S. Ct. 2633 (2009).
162. *See, e.g., Thompson v. Carthage School Dist.*, 87 F.3d 979 (8th Cir. 1996).
163. *Compare Horton v. Goose Creek Independent School Dist.*, 690 F.2d 470, 482-83 (5th Cir. 1982) (“The intrusion on dignity and personal security that goes with ... canine inspection of the student’s person ... cannot be justified ... when there is no individualized suspicion.”) with *Doe v. Renfrow*, 631 F.2d 91 (7th Cir. 1980) (holding that mass dog sniffs of students do not violate the Fourth Amendment).
164. *See, e.g., Horton*, 690 F.2d at 473 (holding dog sniffs of students persons, but not of their lockers or automobiles parked on school property, to be a “search”); *Jones v. Latexo Independent School Dist.*, 499 F. Supp. 223, 235 (E.D. Tex. 1980) (noting that “the extent of personal intrusion” in dogs sniffing students’ vehicles “was somewhat less serious than in the dog’s sniffing each individual student”). But *see Renfrow* (holding that dog sniffs of school children are not searches subject to the Fourth Amendment).
165. *Singleton v. Bd. of Educ.* USD 500, 894 F. Supp. 386, 391 (D. Kan. 1995).
166. N.J.S.A. § 18A:36-19.2.
167. *Id.*; *see also* Assembly Education Committee Statement, No. 422—L.1985, c. 198 (declaring that N.J.S.A. § 18A:36-19.2 permits locker searches “in a manner consistent with” *State v. Engerud*, 94 N.J. 331 (1983)).
168. *Vernonia School Dist. v. Acton*, 515 U.S. 646, 672 (1995).
169. *Id.* at 664-65.
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