

Chapter 2

You and School

*“It is not enough to have a good mind;
the main thing is to use it well.”*

René Descartes, French philosopher

Since the advent of student rights in the 1960s, many on- and off-campus activities have been challenged in the courts. Students have sought and found refuge in the Bill of Rights, with a number of cases getting the attention of the U.S. Supreme Court in Washington, D.C.

Some of your peers have taken a stand regarding incidents at school. As a result, the courts have had to consider your individual rights. For example, the First Amendment guarantees freedom of speech, religion, and the press. When your parents were teenagers, these rights only applied to their parents. Since then, First Amendment protection has been extended to students.

The Fourth Amendment’s right to be safe against unreasonable searches and seizures applies to you. The key word here is “unreasonable,” as considered in the context of the school setting. Are your locker and backpack private property? Are they off-limits to school security or teachers? What about your car when it’s parked on campus? Is a drug test to play sports at school an illegal search?

The Fifth Amendment guarantees of due process and protection against self-incrimination are also on your side. But do you know what the amendment means and how it plays a role in your life? What is due process?

What does the Eighth Amendment's protection against cruel and unusual punishment have to do with you at school? Do you have any recourse if you're unjustly accused of something at school and expelled as a result?

These issues and more are discussed in this chapter. As you read, keep referring to the Bill of Rights below and on page 31. Think about how it applies to your school life. Although the Bill of Rights was written over 200 years ago and amounts to fewer words than one of your homework assignments, it continues to be the foundation of all our rights and a model for democracies around the world.

Bill of Rights—Amendments I to X

- I** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- II** A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
- III** No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
- IV** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
- V** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or in public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled

“Do I have to go to school?”

By law, all U.S. children are required to go to school. Public education is free, as is transportation to and from school (in most communities), and breakfast and lunch programs are provided for qualifying students. Private school education is also an option, as long as the minimum state law attendance requirements are met.

States differ on the minimum age to begin your education. Some

“Schools function as a marketplace of ideas. . . . The ‘robust exchange of ideas’ is a special concern of the First Amendment.”—U.S. Supreme Court (1967), *Keyishian v. Bd. of Regents*

in any Criminal Case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- VI** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the Witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.
- VII** In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
- VIII** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
- IX** The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
- X** The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

(1791)

require children who are five or six years old by a certain date (September 1, for example) to begin first grade. The rules vary slightly from state to state; to learn about the law in your state, see the chart on page 180. In most states, parents who fail to send their children to school may be charged with education neglect. Consequences include community service hours, counseling, and/or jail.

There are a few exceptions to the general attendance laws. With the permission of your school district, you may be allowed to study at home. If you're home schooled, you'll be tested on a regular basis to monitor your progress. Some parents are also sending their children to *charter schools*—smaller, specialized programs

Between 1999 and 2003, the number of young people being homeschooled increased by 29% to approximately 1.1 million students.

Source: *Homeschooling in the United States: 2003*, U.S. Department of Education

approved or licensed by the state department of education. In other words, you and your parents are free to decide the nature of your education and where you will attend school.

Exceptions are made for students who fall into exempt categories, such as actors and actresses. Child labor laws allow young people to work certain hours during the school year,* but the laws specify that their educational needs must be met through a tutor or some other arrangement.

Before starting school or transferring from one school to another, you must be current on all required immunizations. The school will want to see a record of your shots or a letter from your doctor. Most schools have the forms you need to file. If you're not up-to-date on your shots, or if you don't have a doctor, talk with the school nurse or principal. Arrangements may be made with the local health department to give you the needed immunizations. In all states, you're required to be vaccinated against diphtheria, measles, rubella, and polio.

* See Chapter 3, pages 55–57.

“How long do I have to stay in school?”

As the chart on page 180 shows, different states have different ages for compulsory school attendance. You can call any school or district office to find out what’s required where you live.

If you stop going to school before graduating from high school, you can still earn your diploma. Once you’re out of school for six months, you’re eligible to enroll in a GED (Graduate Equivalency Diploma) program. When you pass the test and receive your diploma, you’ll be able to continue with your education or return to it at a later date.

The law doesn’t mandate that you attend a mainstream high school. If your interests lie elsewhere, or your study habits require something other than six hours a day in a classroom, other programs are available. Look into a trade school or vocational program in your area.

Some states have increased the minimum level of education to the twelfth grade. Other states are considering suspending driver’s licenses for teens who don’t go to school. Generally, you can stay in high school until you graduate. You’re not excluded, for example, if you’re a sophomore at age eighteen or nineteen. Some states set a maximum age for regular school attendance at twenty-one.

To get high school dropouts involved in education, communities have developed a variety of nontraditional programs. Some help teens with substance abuse issues, while others address teen parenthood or delinquency problems. Project Challenge is a quasi-military federal program sponsored by the National Guard. It’s currently in operation in fifteen states: Alaska, Arizona, Arkansas, Georgia, Hawaii, Illinois, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Oklahoma, Virginia, and West

- Although **California** allows kids under 12 one free admission day at citrus fruit fairs, don’t make it a school day. It will be counted against you as an unexcused absence.
- Living on an island isn’t considered a good enough excuse for missing a day of school in **Massachusetts**. Transportation will be provided for you so you don’t miss any days.

Virginia. Project Challenge presents a blend of classroom study, community service, and physical training in a seventeen-month

If a student wants to drop out of North High School in Denver, **Colorado**, the school requires the student and his or her parents to sign a certificate that says: “The undersigned guardian and student accept full responsibility for the listed student being a high school dropout. By signing this disclaimer, I realize that I will not have the necessary skills to survive in the twenty-first century.” Most students choose to remain in school and participate in counseling or tutoring programs.

program for sixteen- and seventeen-year-old dropouts who are drug-free and not involved with the court.

If you’re pregnant or have children, you may either finish high school at your regular school, or the district may have a special program for teen mothers. Check with your school counselor for more details.

The National and Community Service Act provides another opportunity to help pay for an education or job training. The program is designed for young people who aren’t in school, who have limited English language skills, and/or are homeless or in foster care. You must be between ages sixteen and twenty-five to be considered eligible. Members perform community service work and are paid an allowance of up to \$125 per month during the first year. During the second year, members receive up to \$200 per month. Check with a high school counselor or your local youth services bureau for information on how to apply.

“What will happen to me if I ditch school?”

State law requires you to be in school for a certain number of days each school year. There is also a maximum number of days allowed for unexcused absences. Once you hit that number, you’ll either be suspended for a period of time or expelled. Either consequence is serious and affects your ongoing education and family life.

Thinking About Dropping Out?

Approximately 3,300 young people drop out of school *every day* in the United States. If you've dropped out or are thinking about it, consider these facts:

- 3.5 million persons ages 16–24 were high school dropouts in 2003; of these, 323,000 were ages 16–17.
- Reasons often given for leaving school include not liking school, failing grades, conflicts with teachers, suspension or expulsion, needing a job, and family-related reasons (e.g., pregnancy, etc.).
- The unemployment rate in 2004 among dropouts was 21%, compared to 13% for those who finished high school.

Now consider these average annual salaries (2002 figures):

Some high school but no diploma:

males	\$22,070
females	\$14,302

High school diploma or GED:

males	\$30,487
females	\$20,254

Two-year college degree:

males	\$40,056
females	\$26,474

Four-year college degree:

males	\$51,351
females	\$34,232

Regardless of your reason for leaving or wanting to leave school, there may be a program for teenagers in your same situation. You'll find continuing education programs for teen parents, substance abusers, working teens, and those with poor academic records. Contact a school counselor or district office for information about these opportunities.

Sources: *Digest of Education Statistics 2004*, U.S. Department of Education; *Statistical Abstract of the United States 2006*, U.S. Department of Commerce

Missing school without an acceptable excuse is called *truancy*. Your school's assistant principal or attendance officer may be

- An Alabama mother was arrested in 1996 for not sending her fourth and seventh grade daughters to school. She said she didn't like the school uniforms. She faced 90 days in jail and a \$100 fine.
- Two teenagers in Arizona often ditched school because their parents left for work early in the morning and weren't around to supervise. After several warnings by the court, the kids were placed in a foster home for a week while the parents went to jail.

authorized to issue tickets, order you to appear in court, or even arrest you and take you before a judge if you don't show up for school. The laws differ around the country, but all states have mandatory attendance laws.

Illness, a death in the family, or other emergencies are reasonable excuses for missing a class or a whole day of school. You may

also receive permission to miss school to take a special trip or attend a family function. If possible, let your teacher know in advance about any planned absence.

Schools and courts have become very serious about school attendance. In fact, legislatures are passing laws making parents

Half-year attendance for U.S. high school 10th graders (2002):

- 33% missed 3–6 days.
- 17% missed 7 or more days.
- 36% were late for class 3 or more days.
- 7% cut class sometimes.

Source: *Digest of Education Statistics 2003*, U.S. Department of Education

accountable for their children's truancy. Parents may be fined or jailed if the truancy continues. In Colorado, a fifteen-year-old girl was ordered to spend a month in a detention center for missing forty-three days of school and being late to school nineteen

times. Her parents were also sent to jail for ten days and fined \$300. A fifteen-year-old girl in South Carolina was *tied to* her mother, by court order, to make sure she went to school and stayed out of trouble.

“Do I have to obey my teacher?”

At the beginning of the school year, you may be given a copy of the school's rules regarding what's expected and the consequences

for noncompliance. When you break a school rule, you may face civil or criminal action or both.

Civil action, in the context of school behavior, means the school may discipline you. It can't lock you up or give you a criminal record, but the consequences may include suspension or expulsion. If what you did also violates the criminal laws of your state, you may be charged with a crime (or delinquent act). This means you'll have to go to court* and may end up on probation. This may seem unfair, since you get punished by the school and again by the court. But this has been determined appropriate, with no violation of your constitutional right against *double jeopardy* (double punishment for the same offense).

If you're sent home, suspended, or expelled for disruptive behavior, your parents will be notified. You're entitled to *due process*, meaning you have a right to be heard. You and your parents may meet with the principal

to discuss your behavior and the consequences the school has imposed. This doesn't happen for every infraction—usually only those that carry serious penalties and inclusion in your school record. You may also be entitled to a hearing.

Corporal punishment (swats or paddling) may be permissible in your school, as long as it's not excessive (see the chart on page 181). Physical discipline isn't prohibited by the U.S. Constitution, but it may be limited by state law or school policy. A reasonable amount of force may be used by school officials to break up fights, prevent damage to the school, take weapons from a student, or act in self-defense.

- If you spit at school in **Louisiana**, the penalty is \$5 to \$25 and 10 days in jail.
- In **Massachusetts** and **Rhode Island**, spitting at school carries a \$20 fine and possible arrest.

"The use of corporal punishment in this country as a means of disciplining school children dates back to the colonial period. . . . Teachers may impose reasonable but not excessive force to discipline a child."—U.S. Supreme Court (1977), *Ingraham v. Wright*

* See Chapter 7, pages 137–153.

Courts use the following test to determine if the discipline used at school was reasonable and not cruel or excessive:

- the student's age and maturity
- the student's past behavior
- the instrument used for discipline
- the motivation of the disciplinarian
- the availability of less severe discipline options.

A federal court suggested the following guidelines for school authorities using corporal punishment:

- Students must be given advance notice as to what behavior merits corporal punishment.
- Corporal punishment must not be used for a first offense.
- A second school official must be present when the punishment is carried out.
- A written statement about the incident, punishment, and witnesses must be given to the parent.

It's against the law to insult or abuse your teacher. Because of their special position in the community, teachers are given extra protection under the law. Hitting a teacher is a serious crime (aggravated assault) and carries an increased penalty, including probation, community service hours, fines, and/or time in detention or a state juvenile institution.

School officials are authorized to discipline students for swearing or making obscene statements or gestures. Although you have the right of free expression, it's not without bounds. The U.S. Supreme Court has held that if your activity is "materially and substantially" disruptive to normal school functions, or if you infringe upon the rights of others, restrictions may be imposed. Students should respect *all* school personnel and expect their respect in return.

Unless you're a student, you may not be permitted on school grounds or in a classroom without permission. Interfering with a class may result in charges and penalties for disorderly conduct and trespassing.

Then and Now

Here's how the top discipline problems and social issues in public schools have changed over the past 50 years:

1940s

Talking
Chewing Gum
Making Noise
Running in the Halls
Getting Out of Turn in Line
Not Putting Trash
in Wastebaskets

Today

Alcohol and Drug Abuse
Pregnancy
Suicide
Student Possession of Weapons
Rape and Assault
Murder
Vandalism
Racial Tension
Gang Warfare

Source: *Digest of Education Statistics 2003*, U.S. Department of Education, and other sources

“What if I damage school property?”

All students are responsible for taking care of their books and school materials. If yours are damaged or lost, you may have to pay the replacement or repair costs. You'll also have to pay the repair costs of minor acts of vandalism at school, such as a damaged locker, broken window, or graffiti. Stealing or damaging school property may result in suspension or expulsion, as well as having your grades or diploma withheld until the situation is corrected.

- Parents in **Alaska** may be billed up to \$2,000 for the acts of their children at school.
- In **Arizona**, parents or guardians are held responsible for all damage done at school by their children.
- In **Iowa**, students are fully responsible for any damage to their school books.

State laws often place financial responsibility on both the student and the parents. There may be a limit on the maximum liability, or the law may be silent on this subject, which means that you and your parents are fully accountable for *all* damage. In 1996, three twelve-year-olds (two girls and one boy) caused \$50,000 worth of damage to an elementary school in

rural Arizona. They were sentenced to two years probation, 300 hours of community service each, and \$1,000 in restitution to cover the school's insurance deductible. The children were also limited to five hours of television time a week while on probation, and they were expelled from their school.

If you damage school property, you may be charged with criminal damage or reckless burning, depending on what you did and how much harm you caused. If someone is injured by your actions, assault or endangerment charges may be filed against you. Intentional or irresponsible conduct at school can result in disciplinary action from both law enforcement and the school.

“Why can't I wear what I want to school?”

Not only has every parent in America been asked this question at one time or other; so have the nine justices of the U.S. Supreme Court. As a result of a decision they made in 1969, you may be attending a school with a dress code, uniforms, or strict rules about T-shirts and protest buttons.

The case was called *Tinker v. Des Moines Independent School District*. During the Vietnam War, a group of parents in Iowa decided to protest the war by wearing black armbands around town during the holiday season. Fearful that the parents' children or other students would do the same, the Des Moines school district passed a policy prohibiting all students from wearing armbands. Any student wearing one to school would be asked to remove it, and if he or she refused, suspension would follow. Three students wore armbands and were suspended, and they took the matter to court.

The Supreme Court crafted a test that still determines whether students' freedom of speech and expression can be restricted. The court emphasized that students are “persons” under the Constitution in school as well as out of school. As persons, their fundamental rights must be respected by the state.

The First Amendment protects not only pure speech but also *symbolic speech*, or nonverbal means of communicating ideas, such as a shirt with a slogan, or a pin or button. Since the armband was a form of symbolic speech, it was protected by the First Amendment. However, the court determined that a student's freedom of expression at school isn't unlimited. If the expression is either "materially or substantially" disruptive to the normal course of events at school, or if it impinges on the rights of others, it may be restricted.

In *Tinker*, the court held that simply wearing a black armband wasn't disruptive to school activities or the rights of other students. This decision opened the door for numerous challenges regarding student activities on campus. As a result, students may not be forced to salute the American flag or recite the Pledge of Allegiance, since these are protected symbols of speech.

Under the *Tinker* test, schools may prohibit certain items of clothing if it can be shown that wearing them is disruptive to the school environment or creates discipline problems. Recently, certain colors, gang insignias, some sports logos, or displays of profanity on clothes have been banned. Generally, if a school's dress code promotes discipline or good health, it will survive a legal challenge.

- A Kentucky eighth grader was suspended from school in 1996 for wearing black lipstick.
- An Ohio middle school has banned baggy, low-slung pants as a safety hazard. Too many boys were tripping at school.

The same principle applies to hairstyles at school. The Supreme Court, in *Oloff v. East Side Union High School District* (1972), said, "One's hairstyle, like one's taste for food, or one's liking for certain kinds of music, art, reading, or recreation is certainly fundamental in our constitutional scheme. . . ." However, if a school regulation (such as wearing a hat or hairnet when working in the school cafeteria, or around machinery in metal or wood shop) is related to safety or personal hygiene, it may be upheld as valid.

These rules also apply to private schools if the school receives any federal funding for programs or students. Otherwise, a private

school may set its own rules as long as the rules don't discriminate on the basis of race, gender, religion, or nationality.

Aside from the legal arguments about dress and personal appearance, there is also your parents' authority to set the rules. Regardless of what is or isn't allowed at school, if your parents have rules about your appearance or dress, you're expected to follow them.

“Can my property be searched and seized?”

The Fourth Amendment protects you against unreasonable searches and seizures. Does this apply to you at school? Yes. Does it mean that your locker or backpack are off-limits to school personnel? No.

Your school has a responsibility to you and the community to provide you with an education in a safe environment, and to maintain order in the classroom and on campus. This can only be done when problems are kept to a minimum at school. Keeping guns, gangs, drugs, and violence out of schools has become a priority across the nation. Strict rules regarding these activities are legal and enforceable.

A substantial number of sixth- to twelfth-grade students report high levels of violent crime, weapons, and gangs in their schools. Nearly all students are aware of incidents of bullying, physical attack, or robbery at school. Whether as victims or witnesses, students are equally likely to worry about school violence. The Safe Schools Act of 1994 provides funding for conflict resolution and peer mediation programs in schools. The courts have also addressed the issue of safety at school through a number of cases.

The leading case on this subject is *New Jersey v. T.L.O.*, the 1985 U.S. Supreme Court decision that set the standard for school searches. At a New Jersey high school, a teacher caught a freshman girl smoking in the bathroom. The girl was taken to the principal's office, where she denied everything. The assistant principal demanded to see her purse and proceeded to open and search it.

He found a pack of cigarettes, a small amount of marijuana, a marijuana pipe, empty plastic bags, a substantial number of \$1 bills, an index card listing students who owed her money, and two letters that suggested she was dealing drugs. When the girl confessed to the police that she had been selling marijuana at school, she was charged and placed on probation.

The court debated whether the search of her purse was a violation of the Fourth Amendment. The court ruled that a school official may conduct a search of a student if there is a “reasonable suspicion” that a crime has been or is in the process of being committed, or that a school rule has been broken. “Reasonable suspicion” means more than a hunch that you’re up to something unlawful or are about to break a school rule. Based on a totality of the circumstances—time, place, activity, your school record, age, and source of information—the search may pass the reasonable suspicion test.

Although the court recognized that students have privacy rights at school, these rights are balanced with the school’s need to maintain an environment where learning can take place. The court held that the standard to be applied in school searches is that of reasonableness. This covers not only your person, but your locker, desk, car, and backpack. Some cases have extended the search to off-campus incidents, if reasonably related to the school.

Schools are going to great lengths to provide a safe school environment. You may have seen metal detectors and uniformed police officers at your school, on city buses, and at school events. School resource and D.A.R.E. officers are being assigned to

- An 11-year-old South Carolina sixth grader brought a steak knife to school in October, 1996. Although it seemed to be an accident (she was helping her mom pack her lunch), she was suspended from school and charged with possessing a weapon on school grounds. The charge was dropped a few weeks later, and she returned to school.
- In Ohio, 14-year-old Kimberly gave her 13-year-old friend Erica some Midol at school. Kimberly was suspended for 14 days for distributing drugs, and Erica for 9 days for possession. TIP: Give all drugs—including prescription drugs and over-the-counter medications—to your school nurse!

elementary through high schools in a national campaign against drugs and violence at school. Some high schools are using drug-sniffing dogs to randomly check student lockers.

If you find yourself in a search situation at school, the principal and teachers have a right and a duty to question you. When you hear someone say they're "taking the Fifth," this doesn't apply at school unless the police are called in and the person is taken into custody. The "Fifth" here refers to the Fifth Amendment. It means that you don't have to say anything that would help the police charge you with an offense; you have the right to remain silent if charges are filed against you. School officials, however, aren't police officers. They have the authority to investigate school violations, and they can question you.

“Can I be forced to take a drug or urine test if I go out for sports?”

The issue of drug testing at school concerns everyone on campus. While in session, your school is considered to be your temporary guardian. In that capacity, the school exercises a degree of supervision and control over you. This may include a blood or urine test to check for alcohol or drug use.

In addition to offering the standard courses, your school may sponsor a variety of clubs, organizations, and sports. There is no law that automatically entitles you to participate in these activities.

- 25% of students say it's easy to obtain beer, wine, marijuana, or other drugs at school.
- Incidents of physical attack, robbery, and bullying at school increase significantly with the pressure of drug dealers at school.

Source: *Juvenile Offenders and Victims: A National Report*, National Center for Juvenile Justice (1995), with 1996 Update on Violence

A student *right* is not the same as a student *privilege*. The school may legally set standards for participation in the activity, including a minimum grade point average, a clean record regarding school infractions, or an initial (and/or random) drug test.

Like many other schools, the Vernonia School District in

Oregon adopted a Student Athlete Drug Policy, which authorized random urinalysis drug testing of students who participated in sports. The policy was adopted in the face of increased discipline problems and drug-related injuries to student athletes. The purpose of the policy was to prevent the use of drugs, to protect the students' health and safety, and to provide assistance for avoiding or quitting drugs or alcohol.

In 1991, the District's policy was challenged by a seventh grader who signed up for football but refused to sign the drug-testing consent forms. After a four-year legal battle, the U.S. Supreme Court ruled in support of the policy. In fact, Justice Ruth Bader Ginsburg wrote that consideration should be given to extending the random testing to *all* students, not just athletes. Some schools are using a low-tech version of the police breathalyzer to screen students attending school dances and graduation night parties.

The expectation of privacy that adults enjoy is somewhat lessened for minors in the school setting. There are certain intrusions into your privacy that go along with attending school. These include physical examinations, hearing tests, eye tests, and dental screenings. Student athletes should expect even less privacy due to the nature of school sports—public locker rooms, suiting up together, etc. By choosing to go out for the team, students voluntarily subject themselves to greater regulation than is usually imposed on students.

In applying the reasonableness test, and by balancing the school's interest in a peaceful campus against the limited surrender of a student's privacy, the court determined that random drug testing for athletes is constitutional: "Deterring drug use by our Nation's schoolchildren is . . . important." The results of the tests aren't made public, nor are they sent to the police for criminal prosecution. Deterrence and rehabilitation are the policy's goals.

“Do I have complete freedom of expression in school?”

No one, whether a juvenile or adult (student or not), has *complete* freedom of expression without some limits. The government may

place reasonable restrictions on our freedoms. For example, city laws about loud noise at night, dancing in the street, or trespassing after hours in a park have all been found constitutional.

Likewise, students and teachers aren't free to do anything they choose in the name of free speech or expression. Consider this example from U.S. Supreme Court (1988), *Hazelwood School District v. Kuhlmeier*:

My father "wasn't spending enough time with my mom, my sister, and I" before the divorce—he "was always out of town on business or out late playing cards with the guys" and "always argued about everything."

These statements are from a high school journalism class article about the impact of divorce. Other class articles covered teen pregnancy, sexual activity, and birth control. They were scheduled to be printed in the school newspaper. The principal, thinking that using the student's name in the quoted passage would offend her parents, and that the pregnant teens could be easily identified, withheld the stories from publication. A lawsuit was filed by the newspaper staff, claiming a violation of their First Amendment

freedom of expression.

"Students and teachers do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."—U.S. Supreme Court (1969), *Tinker v. Des Moines Independent School District*

What do you think? Should the stories have been printed? Should there be a limit on what goes into your school newspaper?

The court ruled that since the paper wasn't a forum for public expression, but would be publicly distributed, the school could exercise control over its content. Teachers are charged with seeing that student activities and personal expression at school are consistent with educational objectives. Offensive, vulgar, or racist expressions may be censored in print, in campaign speeches, and in theater productions.

In a 1996 case, the court spoke of balancing a school's interest in prohibiting profanity with a teacher's interest in using a certain method of teaching creative writing. Cecilia Lacks was a tenured teacher who taught English and journalism at a Missouri high

school. One of her assignments was to write and perform short plays. The classroom productions were taped by a school employee. Upon viewing six of the plays and reading two of the students' poems, the school board found that they contained "extensive profanity," which violated school rules. They fired the creative writing teacher. She sued the school district for reinstatement and back wages—and she won.

The court recognized that schools have broad authority to prohibit student profanity. It further stated that it's appropriate to consider the age and sophistication of the students, the relationship between the teaching method and educational objective, and the context and manner of the presentation. Because the context of the offensive language was part of a valid educational objective and not publicly distributed, the court decided it was improper to terminate the teacher. But the court also wrote, "A school must be able to set high standards for the student speech" that is generated at school. Schools may censor expression that is "poorly written . . . biased or prejudiced, vulgar or profane, or unsuitable for immature audiences."

FYI



Free Speech (Current Controversies) edited by John Boaz (Greenhaven Press, 2005). Explores the challenges of free speech after September 11. Covers the Patriot Act, commercial free speech, and media consolidation.

“Do I have to pray at school?”

In 1989, two prayers were given by a rabbi at a Rhode Island middle school graduation ceremony. Fourteen-year-old Deborah and her father objected to the prayers, but to no avail. School policy permitted principals to invite members of the clergy to offer prayers

at graduation ceremonies. Here is one of the prayers Deborah and her father objected to:

O God, we are grateful to You for having endowed us with the capacity for learning which we have celebrated on this joyous commencement.

Happy families give thanks for seeing their children achieve an important milestone. Send Your blessings upon the teachers and administrators who helped prepare them.

The graduates now need strength and guidance for the future; help them to understand that we are not complete with academic knowledge alone. We must each strive to fulfill what You require of us all: To do justly, to love mercy, to walk humbly.

We give thanks to You, Lord, for keeping us alive, sustaining us, and allowing us to reach this special, happy occasion. AMEN

Deborah challenged the practice as a violation of the Establishment Clause of the First Amendment. The purpose of the Establishment Clause is to maintain a strict separation between church and state. In other words, any government policy or practice must be *secular*—there is to be no state-sponsored religious exercise. States, including public schools, may not advance or inhibit religion, endorse one religion over another, or endorse religion in general. As the U.S. Supreme Court stated in *Lee v. Weisman* (1992), “All creeds must be tolerated and none favored.”

Religions may be studied or compared with one another, but public schools may not single out one religion over others to teach or implement its practices.

“Religious beliefs and religious expression are too precious to be either proscribed or prescribed by the State.” —U.S. Supreme Court (1992), *Lee v. Weisman*

Likewise, public schools may not break for certain holy days over others. As a student, you may observe religious days, such as Yom Kippur, Rosh Hashanah, or Good

Friday. These days off from school won't be counted against you as unexcused absences. However, you must make up the work for those days, turn in assignments, and take any missed tests.

The government may not coerce anyone, including students, to support or participate in religious exercises. Nor is it the business of government to compose prayers for any group to recite, or arrange for prayers at a function that students are required or obligated to attend.

Deborah succeeded in her challenge. Although her case was too late to change her middle school graduation, it did affect her high school ceremony. The law applies to every aspect of public school education—classes, assemblies, moments of prayerful silence, and Bible readings. A moment of silent meditation, without any religious overtone, is permissible. Private schools that don't receive federal money don't have these same restrictions.

“Are my grades public information?”

School records, which may include medical, legal, criminal, or mental health information, aren't public records. This means that only certain people have access to them. If you're under eighteen, you may be able to review your records. States and school districts set their own rules regarding access to students' records and transcripts. Once you're eighteen, federal law guarantees you access.

Your parents may view your records upon request. With their permission, usually written, others may be able to see them as well, such as your counselor, psychologist, the police, or a lawyer. Otherwise, the school is required to maintain confidentiality. A *subpoena*, or court order, may also result in disclosure.

When you're a junior or senior in high school and start applying to college or a trade or technical school, you'll take the Scholastic Aptitude Test (SAT), the American College Test (ACT), or similar tests. Your scores will be sent to the schools of your choice and, in turn, those schools will request your high school transcript. You and your parents will need to sign a consent authorizing the release of your records. If you're eighteen, your parents' signature isn't needed.

If, in looking at your high school records, you see something negative or false, you have a remedy. Due process gives you the right to ask the school to remove or correct the statement. If your request is denied, you may *appeal* that decision and ask for a hearing. The appeal process usually starts with the school principal. If you're unsatisfied with his or her decision, you may pursue it further—to the school board, the superintendent, and ultimately to the courts.

If you go to a private school, your rights may be different. Due process under the U.S. Constitution only protects students in public schools. However, most states have laws that provide these protections to private school students as well. Check with your school if you're unsure of your rights. You should be able to obtain a written copy of the school's policies.

“I’m a student with a disability. What rights do I have?”

Not long ago, children with disabilities were excluded from the same educational advantages given to students without disabilities. Beginning in 1975, a number of federal laws were passed by the U.S. Congress that drastically improved the life of children with disabilities. The Education of All Handicapped Children Act of 1975 and the Americans with Disabilities Act of 1990 (ADA) support the basic principle that *all* children are entitled to a “free, appropriate public education.” Schools must take a child’s disability into consideration in determining his or her needs and how to meet them.

If you're disabled, you're entitled to a complete evaluation to determine your “unique educational needs.” Your school is required to develop an Individualized Educational Plan (IEP) designed to allow you to benefit from your education. Your parents may participate in developing this plan. It's reviewed regularly to make sure that it reflects your performance, and it may be adjusted accordingly.

Depending on your IEP, you might be *mainstreamed* into regular classes with the rest of your grade. If you're unable to handle mainstream classes, you may be transferred to a special school or taught at

home. The school is required to provide whatever special services are needed to assist with your education, including psychological testing, speech therapy, and medical services. For a state-by-state chart about these special services, see page 182.

For students with disabilities, discipline at school is handled on a case-by-case basis. Your particular disability must be taken into consideration. You may not be suspended for more than ten days or expelled if your behavior is a result of the disability. The law requires that you be reevaluated to determine if a more restrictive school setting is necessary to meet your educational needs. In other words, you may be removed from the mainstream program and transferred to a special school.

Your attitude and willingness to cooperate with the services offered by your school will be a major factor in your academic and personal success. As disabled actor Christopher Reeve said, "Either you vegetate and look out the window, or activate and try to effect change."

At an end-of-the-school-year ceremony, 11-year-old J.R. was given three awards: the Pigsty Award, a Procrastinator's Award, and a World's Worst Athlete Award. J.R. is dyslexic (he has a reading disorder) and dysgraphic (he has a writing disorder). He also lacks motor skills. He has received special education since kindergarten.

Were the awards in bad taste, or in the spirit of fun? Is the school responsible for promoting equality among students? Do "joke" awards like these discriminate?

Here's what happened: J.R.'s father sued the school district for discrimination, and a settlement was reached. J.R. received public and private apologies, and the school district had to pay for four years of his college education and his family's attorney's fees.



Disability Resources on the Internet

www.disabilityresources.org

Compiled by Disability Resources Monthly, this site offers links to resources for people with all kinds of disabilities.

“Can I go to school if I have HIV or AIDS?”

Ryan White was thirteen years old when he was diagnosed with the virus that causes AIDS. He had been infected by treatments for his hemophilia. In 1985, he was barred from attending his high school in Indiana because school officials were afraid he might spread the virus to others. The family sued the school district, and in 1986 Ryan won the right to return to school. He learned to drive and, although the disease progressed, he never gave up. He spoke at schools and fund-raisers about misconceptions about AIDS. He died in 1990 at age eighteen. Soon after, Congress passed the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which funnels millions of dollars into AIDS research, education, and treatment.

School districts have attempted to keep children with HIV and AIDS from going to school. However, once health officials determine that a student presents no danger to others, attendance is approved. Research indicates that casual contact with someone infected with HIV isn't a health risk. If the student's behavior, on the other hand, presents a risk to others (for example, the student has open sores or is prone to biting or fighting with others), he or she may be kept from regular classes, and a special education plan will be developed.

Think About It, Talk About It

1. You have a friend who plays school sports. What would you do if you found out that he or she smokes marijuana over the summer?
2. Would you tell your parents if a younger brother or sister started ditching classes at school? If not, what would you do?
3. Do you feel safe at your school? Would you ever carry a weapon if you felt unsafe at school? What else could you do to protect yourself?
4. Would you like it if you had to wear a uniform to school? Do you think that all schools should require students to wear uniforms? Why or why not?
5. What if you learned that your best friend tested positive for HIV? What would you say? What if other kids at school found out and started to avoid your friend? What would you do?