



## ACLU of California Student Protests and Political Speech at School

### **Q: Can I be disciplined for participating in a walkout or off-campus protest?**

Because the law requires you to attend school, the administration can take corrective action against you for missing school, even if you miss school to participate in a political protest. However, the school cannot punish you for missing school to participate in political protest more harshly than it punishes students for missing school for any other purpose. For example, you might have to serve detention or may receive a low grade for a missed test for being away from school to attend a protest if that is how your school typically deals with unexcused absences.

If possible, ask teachers and school staff if they can grant you permission to attend the protest and offer to make up the class time and assignments later.

### **Q: Can I be suspended for walking out of school to attend a political protest?**

**No.** The education code spells out what types of acts a school district can suspend a student for committing, and missing class is not on the list.<sup>1</sup> The law specifically says that “[i]t is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.”<sup>2</sup> The law is also clear that, except with certain serious offenses (which do not include unexcused absences), schools may only suspend students when they have tried other ways to correct the misbehavior such as restorative justice or other forms of discipline.<sup>3</sup>

Note, however, your school may suspend you if you damage property or are “disruptive” at school during a protest. For more information, check out “My School My Rights: School Discipline” an ACLU guide on suspension, expulsion and involuntary transfer in California public schools. This publication is available at <https://www.myschoolmyrights.com/school-discipline/>.

### **Q: What does it mean to be “truant”?**

A student is considered truant only if he or she is “absent from school without a valid excuse three full days in one school year or tardy or absent for more than a 30-minute period during the schoolday without a valid excuse on three occasions in one school year, or any combination thereof.”<sup>4</sup> In other words, if this is your first or second unexcused absence or tardy violation in this school year, you cannot be reported as truant.

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<sup>1</sup> Educ. Code § 48900.

<sup>2</sup> Educ. Code § 48900(w).

<sup>3</sup> Educ. Code § 48900.5.

<sup>4</sup> Educ. Code § 48260.

**Q: How can I be punished for truancy?**

If you really are truant (see above), your school may react differently depending on how many times you have been truant.<sup>5</sup> After any truancy, you may be required to attend makeup classes on a weekend. In addition, after the first offense, you and/or your parents or guardians may be called to attend a meeting with a school counselor and develop a plan to improve your attendance. After a second offense, a written warning may be put in your school file and given to the police and you may have to attend an afterschool or weekend study program. If you are truant a third time, you can be classified as a "habitual truant" and be required to attend a mediation program designed to help address the issues causing the truancy. After a fourth time, you can be made a "ward" of the court and be required to do community service, attend a court-ordered truancy program, give up your driving privileges, and you or your parents may be fined up to \$50.

If you are found away from your home and absent from school without a valid excuse, certain school employees or the police can assume temporary custody of you during school hours. If this happens, they must bring you to your parents or guardian, back to school, or to designated community center for counseling.

You may also be cited by police for violating certain "daytime curfew" laws. Curfew laws vary by city, but they generally make it unlawful for minors under the age of 18 to be in public places during school hours. For example, in Los Angeles, if you are found to violate the daytime curfew, you may be required to attend a program or community service or pay a fine of \$20.<sup>6</sup> Make sure to check your city's rules, which can be found in its "municipal code."

**\*Important:** Students without legal immigration status, and even those on Deferred Action for Childhood Arrivals (DACA), should be extremely careful about interacting with law enforcement. The Trump Administration has made clear that it will prioritize immigration enforcement actions on individuals who have been convicted of a crime or who have "committed" crime, so being cited or arrested by police may result in a referral to ICE. Some police departments have stated that they will not conduct immigration enforcement or share information with immigration authorities, but others have not, so you should be extremely careful and try to minimize contact with law enforcement. For more information about immigration rights, please visit:

[https://www.aclusocal.org/sites/default/files/student\\_immigration\\_rights\\_kyr\\_2.9.17\\_1.pdf](https://www.aclusocal.org/sites/default/files/student_immigration_rights_kyr_2.9.17_1.pdf).

**Q: What should I do if the school administration threatens to lock or block the school exits to prevent us from walking out of school in protest?**

Locking exits to the school can pose serious health and safety concerns for students and staff. In one instance, a local fire department responded to teachers' complaints about locked exits at a school by insisting that the administration unlock the exits to avoid a fire hazard. If the school administration threatens to lock students in your school to prevent walkouts, students should immediately notify their parents and the district superintendent's office. If you cannot reach your parents or superintendent's office and there is no way to exit the building in the event of an emergency, consider reporting the hazard to your local fire department.

**Q: Can I organize a protest at school?**

It depends on the specific activities you have planned and when the protest will take place. Remember that your school can adopt reasonable rules which regulate the "time, place, and manner" of when you can exercise your free speech rights. Thus, you cannot organize a protest if it will substantially disrupt the orderly operation of the school or if it will create the

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<sup>5</sup> Educ. Code. § 48264.5.

<sup>6</sup> Los Angeles Municipal Code § 45.05.

immediate danger of causing students to commit an act that is unlawful or in violation of school rules.

However, you can organize a peaceful, orderly protest at lunch or before or after school, for example. Note that the size of the demonstration, the level of noise you make, and other factors may affect when and where the demonstration may occur. If you are in doubt about whether your plans for a particular protest are permissible, you should check your school district's written rules around speech regulations.

### **Q: Am I allowed to express my political views while I am at school?**

**Yes.** The First Amendment of the U.S. Constitution and Article 1, Section 2 of the California Constitution guarantee freedom of speech and freedom of the press to all people, including students. In addition, two special laws in California specifically protect students' rights of freedom of speech and freedom of the press at school.

The California Education Code gives a special guarantee that students have a right to express their political opinions.<sup>7</sup> This includes, but is not limited to:

- wearing buttons, badges and other insignia (including armbands or message T-shirts)
- posting notices on school bulletin boards
- distributing petitions
- handing out other printed materials, such as leaflets
- writing in public school newspapers and yearbooks
- writing in "underground" (or unofficial) newspapers

These protections specifically apply to public schools and charter schools, but California law also extends free speech protections, including the U.S. and Constitutional protections, to private high schools in most circumstances.<sup>8</sup>

### **Q: Can my school place any limits on my ability to express my political views at school?**

**Yes.** Even though you have broad rights to express your views in a variety of ways, your school can adopt reasonable rules that regulate the "time, place, and manner" of exercising these free speech rights. For example, the school could adopt a rule that prohibits students from passing out leaflets during class time. On the other hand, a rule prohibiting the distribution of leaflets during lunch period or after school would not be allowed.

The school is not allowed to prohibit or censor speech or press activities by students based on its content (what you are saying), unless what you are saying falls within one of these three exceptions:<sup>9</sup>

1. it is legally "obscene";
2. it is libelous or slanderous (that is, it is making an untrue statement that harms someone's reputation); or
3. it creates the immediate danger of causing students to commit an act that is unlawful or in violation of school rules, or that would cause a substantial disruption of the orderly operation of the school.

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<sup>7</sup> Educ. Code § 48907.

<sup>8</sup> Educ. Code § 48950.

<sup>9</sup> Educ. Code § 48907.

So, even if your principal or teachers believe that something you say or write is controversial, divisive, in "bad taste," or expresses a political point of view with which the administrators disagree, they still cannot censor what you say or write unless it also falls within the three exceptions above.

Note that, in limited circumstances, schools may discipline students for speech they make off campus or during non-school time, including on the internet and social media. Schools may punish students if they make statements outside school that cause a material and substantial disruption to school activity.

**Q: Can school officials prevent students from expressing their opinions on a particular topic because they think the topic is too controversial?**

**No.** School officials may believe that talking about such topics as war, politics, or education budget cuts are too controversial. However, as described above, they cannot censor those topics unless there is clear evidence that the speech will incite students to commit unlawful acts or to disrupt the school. Even if discussion of war would provoke strong disagreement or upset some students, school officials still cannot censor it. Criticism of your school, criticism of students, teachers or school officials, or discussion about serious problems either at school or elsewhere is generally protected.

**Q: Can I be punished for saying or writing something provocative at school?**

Sometimes school authorities will try to punish students who make provocative statements or joke about violence. They may argue that the student is making a "terrorist threat." In order to be considered a "threat," you must intend that others take your words as a threat. In addition, your words must be so clear and convincing that they would cause another person to really believe that you intend to carry out the threat - and therefore to have a reasonable fear for their safety.

**Q: Can I write about my political views (for example, my views on the war or budget cuts in our district) in a school-sponsored publication?**

**Yes.** In California, our law is clear that freedom of the press applies to official school publications that are written by students, even if the school pays the costs of producing the newspaper. (That means that the school can only censor articles that are "obscene, libelous or substantially disruptive.") The law also says that student editors, and not teachers or administrators, are the ones responsible for assigning and editing articles. However, the journalism advisor can require that the newspaper conform to professional standards of English and journalism.

**Q: What can I do if the school tries to censor me?**

California Education Code Section 48907 requires each school district to put in writing the rules controlling speech and press activities. So, if you are faced with a school official who is trying to limit what you say or write, you should ask to see those written rules to determine whether the school official is following the rules they are required to follow.

But remember: sometimes exercising your free speech rights involves risks. Sometimes "reasonable people" -- like you and the school principal, for example -- can disagree as to what is "disruptive" or "libelous." And school officials do not always follow the law on this. You may be acting within your rights, but you may have a struggle in school or even need to go to court.

There are key steps you can take to fight censorship. Be sure to get in writing your school policies regarding banned expression. Show Education Code sections 48907 and 48950 to

school officials and ask them for a written response as to why they still want to ban the expression. Get petitions signed by other students, parents, and teachers (especially journalism or yearbook advisors, debate coaches, history and government teachers or others who really understand the First Amendment). Write an article in the school paper. Lobby at school board meetings and ask parents, community, and youth advocates and First Amendment experts to join you. Tell your local newspaper about the controversy. Contact the ACLU at:

- <https://www.aclusocal.org/en/legal-intake>
- <https://www.aclunc.org/our-work/get-help>
- <https://www.aclusandiego.org/request-legal-assistance/>