

Freedom FAQs



FREEDOM OF EXPRESSION

What Does Freedom of Expression Actually Mean?

The Bill of Rights (the first 10 amendments of the US Constitution) guarantees that the government can never deprive people in the US of certain fundamental rights, including freedom of religion and freedom of speech. If you're here...you're counted! You're free to express yourself...and it's the American Civil Liberties Union of Wisconsin's mission to preserve and protect those rights.

What does this mean for students?

In 1969, the Supreme Court held that students in public schools – which ARE run by the government – do not leave their First Amendment rights at the “schoolhouse gate.” Thanks to *Tinker v. Des Moines Independent Community School District* you can express yourself out loud, in writing, on flyers, buttons, armbands, t-shirts, etc...so long as you don't “materially and substantially” disrupt school activities and classes. Remember though, private schools have more leeway than public schools to restrict free speech rights.

What are we allowed to say in a school paper?

Good question. Answer: It depends. If it's an OFFICIAL SCHOOL PAPER you might have problems publishing an article about important, yet controversial issues like sex education, condom distribution, drug abuse, teen pregnancy, divorce, suicide, etc. In the 1988 case *Hazelwood School District v. Kuhlmeier*, the Supreme Court decided that public school administrators can censor student speech in official school activities and publications – like a school play, science fair, art exhibit, newspaper or yearbook – if the officials think students are saying something “inappropriate” or “harmful” even if it is not slanderous or obscene. This authority to censor doesn't apply to forums that have been created as “public forums for student expression.” School officials must also show some reasonable educational justification before they can censor. To protect free speech rights, some states like Colorado, Iowa, Massachusetts and California have created “High School Free Expression” laws. Contact youth@aclu-wi.org or visit the Student Press Law Center www.splc.org for more info.

Can we create/distribute an underground newspaper or zine?

If it is an entirely student-run alternative paper or zine (not sponsored or paid for in any way by the school), then the school may not censor what you say or stop you from handing it out unless the paper is “indecent” or it “materially and substantially” disrupts school activities. AND they have to prove substantial disruption. The school CAN place reasonable

limits on the “time, place or manner” of handing it out though. This holds true for anything else that you paid for, created and want to pass out, like pins, stickers, flyers, etc.

Can I pass out flyers and promote my student club or party?

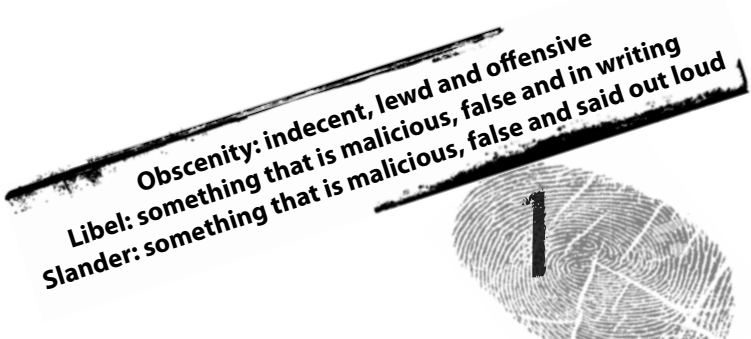
Yes, BUT the same rules apply as discussed in the underground zine question.

Can we slam a really bad teacher in the school paper?

Three words...slander, libel, obscenity. If it's none of the three, then you have the right to criticize how the people who run your school do their jobs. This is why ratemyteachers.com and ratemyprofessor.com exist...because students have ALWAYS critiqued their teachers. Problems occur when things are printed that are NOT true, or when someone knowingly impersonates a teacher and causes them personal or professional harm through this impersonation. Your opinion however...is not libel. Although you are personally responsible for anything libelous or slanderous that you write.

Can a student be punished for writing an essay about a teacher? Can a student be arrested for a threatening essay?

In the 2001 case of, *In the Interest of Douglas D.*, the Wisconsin Supreme Court ruled concerning a student who wrote an essay purporting to hurt a teacher. The DA tried to prosecute him AND the school tried to suspend him. The court ruled that the DA couldn't prosecute him because the essay wasn't a “true threat.” On the other hand, even though there was no real intention to carry out the threat, the court ruled the school could suspend the student because the essay was “disruptive.” In his essay a “character cuts a teacher's head off with a machete.” The court concluded that schools, because of their “unique role” of teaching “the habits and manners of civility,” could discipline crass and insulting speech, even though law enforcement could not prosecute it because the threats weren't true. So consider this next time you're tempted to write about happy slapping the principal.



Obscenity: indecent, lewd and offensive

Libel: something that is malicious, false and in writing

Slander: something that is malicious, false and said out loud



Can I wear this shirt, pin, button, hat? Is my school allowed to have a dress code or uniform? What about piercings, tattoos, funky hair color or the styles of clothing I choose?
There's no definitive answer to this question, unless "probably" is an answer. You CAN wear a "George Bush is an International Terrorist" t-shirt if you are going to a public school where you can wear t-shirts with writing on them. The school COULD BAN a t-shirt that promotes an illegal activity (for minors, etc...) like wearing a beer ad or an "I smoke the chronic" with a picture of a smoldering bong, because the subject matter is inappropriate and is an "unlawful" activity.

Really, at what point does your personal attire and grooming become disruptive? Revealing clothing is out. That's been ruled a disruption...but other stuff is probably harder to regulate because there is NO CLEAR ANSWER...why is long hair or a shaved head less disruptive than a Mohawk? How can you draw a legitimate line between one earring and two...three...thirty? Dress and grooming codes do exist and the odds are that your school has one...or none. Does it bother you? Is it wrong? Can you protest it? Sure... Visit our website or the National Youth Rights Association at www.youthrights.org for more.

Can the school library refuse to include certain books (a.k.a. "banned" books)?

Q: What do Maya Angelou, JK Rowling, Judy Blume and Mark Twain have in common with the author of "Where's Waldo"?
A: They've all had their books banned from schools!!! No kidding.

Schools definitely have the right to choose books, poems, and videos or DVD's they feel offer something useful and important to students. They can also reject those they feel have no educational value. On the other hand, if a school doesn't purchase a book or DVD for "narrowly partisan or political reasons" (because ... ahem ... they don't agree with the author's, poet's, or filmmakers viewpoints), that is censorship and censorship is unconstitutional. In the 1982 case *Island Trees v. Pico*, the Supreme Court ruled that school boards may not remove books from a school library just because they don't agree with the books' content! But in many communities around the state, school administrators and librarians are under heavy pressure from religious and other groups to censor what we read and study. Within the past few years people have tried to remove reading material from schools in Wales, Green Bay, Barron, Fond du Lac and Waukesha. If you believe that your school is censoring books because of their viewpoints, you can challenge book censorship at your school or in court. The freedom to read is the freedom to think and that's worth fighting for! Celebrate Banned Books Week with the American Library Association. It's usually the last week in September. Anyone remember Ray Bradbury's "thought destroying force" from Fahrenheit 451? Visit www.ala.org/ala/oif/bannedbooksweek or contact the ACLU of Wisconsin for more information regarding Banned Books Week.

My school board just cancelled our school play right before we went on stage....can they do that?

After the *Hazelwood* ruling, schools have a lot more leeway to choose what is said or done with the "imprimatur" of the school. If its "school-sponsored", as the "school play" almost certainly is, then the schools have greater ability to censor the content. If the school cancels because it thinks the play is "vulgar" or "obscene", not "age appropriate," or just sounds yucky to the administrators, they can probably get away with it. While the school can't censor a musical just because it doesn't like the political viewpoint, it's often very hard to determine a school's real motivation for canceling a performance. Most principals and school boards won't come out and say they are canceling a performance because they don't agree with its political message. So what can you do if the school cancels your play? Of course you can protest and appear in front of the school board to voice your disappointment and disgust. You can try to find a space or other venue to host, or sing some of the songs at the talent show. Make some noise - call your papers and press. Keep art alive!

Do I have to say the Pledge of Allegiance?

No way. The Supreme Court ruled in the 1943 decision *West Virginia Board of Education v. Barnette* that the government does not have the right to make you say the pledge. You have the right to sit silently during the pledge. Still...students have been wrongfully punished for doing so and the actions of their punishers needed to be addressed in court. Visit www.firstamendmentcenter.org for more info.

What can we do if the school tries to censor us? How can we change things?!

Ask to see the school's policies in black and white. They may not have this. Ask the school official for a written explanation when they want to ban the expression. Get petitions signed...by other students, parents, teachers, debate coaches, editors and anyone who understands the First Amendment. Write articles for your school paper. Call your local papers. Lobby at school board meetings and ask parent and community members to join you. You may have to struggle in school and perhaps even court. Debate, BLOG, promote and get as much publicity for the controversy as possible so that your speech overwhelms the imposed silence. Call the ACLU of Wisconsin for advice.

If you have any questions, please call us at 414.272.4032 x23, e-mail us at youth@aclu-wi.org, or visit our website at www.aclu-wi.org/youth to request our other Freedom FAQs.

