

TO COMMAND TRESTS

WE TESTANT OF WARM DAILY

Student Rights Handbook'06



(Learn Know. Act.)



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Student Rights Handbook

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How to use this book

- 1. Rights are listed by issue in the Table of Contents above.
- 2. Each entry will consist of:

An interpretation by the authors of the Handbook

"EXACT text of the bill or decision in quotes and italics. The most relevant sections were selected for quoting."

- A citation in one of two formats:

For US Supreme Court Decisions:

Case name, Decision number (Year) US Supreme Court For US Bills:

Bill Popular Name. US Code Citation.

3. You may wish to use the citation to do further research on the full text of the bill or decision. This can be found at:

Supreme Court: http://www.findlaw.com/casecode/supreme.html **Bills:** http://www.findlaw.com/casecode/uscode.html

4. If you believe one of these rights is being violated, bring the text and citation to your school administration. See the next section for more details.

Amendments I-X to the United States Constitution

The following selected amendments could relate to Student Rights, but except in a few cases, have not been determined to guarantee these rights.

Amendment I - Freedom of Religion, Press, Expression. Religious beliefs or practices cannot be enforced upon citizens, free speech that does not hurt anyone else must be permitted and nonviolent protests are legal.

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

Amendment IV - Search and seizure.

Police must have a warrant (signed by a judge) or "probable cause" in order to search a person or a building. Probable cause means reasonable evidence that a crime has been committed or contraband is present, and equally reasonable evidence linking the person being searched to the crime or contraband.

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

Amendment V - Trial and Punishment, Compensation for Takings.

A trial and conviction is required in order to take away freedom from any citizen (or property, without paying the owner for it.) No person being tried for a crime can be forced to tes-

Q. What can I do to help this project?

A. Tell your friends in your school and other schools about this book, and encourage them to get copies. If you really want to help, order a box of them (contact us at nyra@youthrights.org) and distribute them at your school or in your town. Obtain permission before distributing them on private or school property.

Q. What is the National Youth Rights Association?

A. The National Youth Rights Association (NYRA) works to help young people gain the same rights taken for granted by those over 18 or 21 both in school and in areas such as voting. Visit our website at www.youthrights.org for more information.

Q. Who should I contact with questions or comments about this book?

A. Visit our website (www.youthrights.org) or contact us by e-mail at nyra@youthrights.org.



Frequently Asked Questions

Q. What if my school doesn't grant these rights?

- A. Except in certain cases (see below), they are required to grant the rights listed on pages 6-16. If they don't:
 - 1. Request to speak with an administrator (or write a letter.) Always make an appointment (never barge into an office) and take along another trustworthy student.
 - 2. Bring this handbook and, if possible, the full text of the bill or decision (see page 3.)
 - 3. Don't threaten a lawsuit or protests for the moment, and overall BE POLITE. The administrator may not be aware of the court decision.
 - 4. If the school refuses to change the policy, you may have the right to pursue legal action. Contact your local American Civil Liberties Union affiliate (http://www.aclu.org/affiliates/) or the National Youth Rights Association (cbatchelor@youthrights.org.)

Q. Does it matter what state I live in?

A. No. All decisions or bills listed in this handbook are federal and apply anywhere within the United States. However, your state may grant more rights to students beyond those listed here. Do some research on the Internet or contact us at nyra@youthrights.org if you have questions about your state.

Q. What about private schools?

A. Private schools have much greater leeway in determining students' rights. Some of these rights still apply in private schools, but many of them do not.

tify against himself. This is called "taking the fifth."

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

Amendment VI - Right to speedy trial, confrontation of witnesses.

Anyone accused of a crime must be given a trial by jury and be allowed to confront the witnesses accusing him and present a defense, with a lawyer if he wishes.

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

Amendment VIII - Cruel and Unusual punishment.

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

Amendment IX - Construction of Constitution. Rights granted elsewhere, but not in the Constitution, still apply.

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

Rights Granted Explicitly to Students

Education and School

Students being suspended for 10 days or less must be notified beforehand and be given a chance to defend themselves.

"Students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause of the Fourteenth Amendment... Due process requires, in connection with a suspension of 10 days or less, that the student be given oral or written 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."

-Goss v. Lopez, 419 U.S. 565 (1975) US Supreme Court.

Students have the right to form extra-curricular clubs at their school if there are other extra-curricular clubs at that school. If the school permits some students to form non-curricular clubs, it cannot discriminate because of the political, philosophical or religious content of the meetings.

"It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings...." -Equal Access Act. 20 USC 4071.

incrimination. We therefore hold, in agreement with Chief Judge Fuld in dissent in the Court of Appeals, 'that, where a 12-year-old child is charged with an act of stealing which renders him liable to confinement for as long as six years, then, as a matter of due process ... the case against him must be proved beyond a reasonable doubt.'"

-In re Winship, 397 U.S. 358 (1970) US Supreme Court

The Fourteenth Amendment right to due process (see below) must be followed in juvenile criminal sentencing proceedings.

"Kent v. United States, 383 U.S. 541, 562 (1966), held 'that the [waiver] hearing must measure up to the essentials of due process and fair treatment.' This view is reiterated, here in connection with a juvenile court adjudication of 'delinquency,' as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution. The holding in this case relates only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. When proceedings may result in incarceration in an institution of confinement, 'it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase 'due process.'"

-In re Gault, 387 U.S. 1 (1967) US Supreme Court

All citizens of the United States tried in criminal cases in the United States must be given a fair trial and be allowed to present a defense.

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

- Amendment XIV, US Constitution

Religion

Schools may not force students to say prayers in the school environment.

"We think that by using its public school system to encourage recitation of the Regents' prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause."

-Engel v. Vitale, 370 U.S. 421 (1962) US Supreme Court.

Students may not be coerced or pressured to participate in a prayer as part of a public school graduation.

"A reasonable dissenter of high school age could believe that standing or remaining silent signified her own participation in, or approval of, the group exercise, rather than her respect for it. And the State may not place the student dissenter in the dilemma of participating or protesting... the State may no more use social pressure to enforce orthodoxy than it may use direct means... In this society, high school graduation is one of life's most significant occasions, and a student is not free to absent herself from the exercise in any real sense of the term 'voluntary."

-Lee v. Weisman, 505 U.S. 577 (1992) US Supreme Court.

Criminal Proceedings

As in adult criminal proceedings, guilt in juvenile trials must be proven "beyond a reasonable doubt."

"In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault-notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-

Military Recruiters

Although schools are required by the No Child Left Behind Act to provide the military with contact information for all students over 16, parents (and students in some areas) have the right to request that this information not be sent. If it is specifically requested, the school may not release this information. Students and parents also have the right to be notified of their ability to make this request.

"A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request."

- The No Child Left Behind Act. 20 USC 7908.



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Press

Students are subject to a principal's oversight and authority over a school-sponsored publication. A school does not have to tolerate student speech that is inconsistent with its "basic educational mission."NOTE: Hazelwood does not specifically mention non-school-sponsored (independent or "underground") publications, but according to the Student Press Law Center, these are allowed and have looser restrictions. Visit their website at http://splc.org/legalresearch.asp for more information. "Accordingly, we held in Fraser that a student could be disciplined for having delivered a speech that was 'sexually explicit' but not legally obscene at an official school assembly, because the school was entitled to 'disassociate itself' from the speech in a manner [267] that would demonstrate to others that such vulgarity is 'wholly inconsistent with the fundamental values of public school education.' 478 U.S., at 685-686. We thus recognized that '[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board, 'id., at 683, rather than with the federal courts. It is in this context that respondents' First Amendment claims must be considered...

"One might reasonably infer from the full text of Policy 348.51 that school officials retained ultimate control over what constituted "responsible journalism" in a school-sponsored newspaper. Although the Statement of Policy published in the September 14, 1982, issue of Spectrum declared that "Spectrum, as a student-press publication, accepts all rights implied by the First Amendment," this statement, understood in the context of the paper's role in the school's curriculum, suggests at most that the administration will not interfere with the students' exercise of those First Amendment rights that attend the publication of a school-sponsored newspaper. It does not reflect an intent to expand those rights by converting a curricular newspaper into a public forum...

Pleage of Allegiance

Students who, for religious reasons, do not wish to say the Pledge of Allegiance, may not be forced to say it. NOTE: This case involved a student who was a strict Jehovah's Witness and believed that the flag constituted a prohibited graven image. Thus, Freedom of Religion was involved in this decision and the ruling should only be applied to students dissenting for religious reasons. To this day, the Supreme Court has declined to comment on the overall Constitutionality of the pledge.

"To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism [319 U.S. 624, 642] and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order...We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

-West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943) US Supreme Court.

Speech

(cont'd)

Schools may restrict speech by students that would be considered obscene, lewd, vulgar, or offensive to a mature audience.

"Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening to others. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

"The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order... The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy...

"The First Amendment does not prevent the school officials from determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission. A high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students."

-Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986) US Supreme Court.

"Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school. Hence, a school may in its capacity as publisher of a school newspaper or producer of a school play 'disassociate itself,' Fraser, 478 U.S., at 685..."

-Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1987) US Supreme Court.

Search and Siezure

Schools may conduct random drug tests on any students involved in voluntary extracurricular activities.

"Tecumseh's Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren and does not violate the Fourth Amendment... Because searches by public school officials implicate Fourth Amendment interests, see, e.g., Vernonia, 515 U. S., at 652, the Court must review the Policy for 'reasonableness,' the touchstone of constitutionality. In contrast to the criminal context, a probable-cause finding is unnecessary in the public school context because it would unduly interfere with maintenance of the swift and informal disciplinary procedures that are needed. In the public school context, a search may be reasonable when supported by 'special needs' beyond the normal need for law enforcement."

-Board of Education v. Earls et al. 536 U.S. 822 (2002) US Supreme Court

Search and Siezure (cont'd)

School officials, although not legally required to have a war-

rant, are restricted in their ability to search students or their belongings. A search must be reasonable and justified (based on reasonable suspicion) when it is begun and must be conducted appropriately given the age and gender of the student. "The Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials and is not limited to searches carried out by law enforcement officers. Nor are school officials exempt from the Amendment's dictates by virtue of the special nature of their authority over schoolchildren... school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. And such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the infraction." -New Jersey v. T.L.O., 469 U.S. 325 (1985) US Supreme Court.

Speech

Students have the right to First Amendment protected free speech in schools as long as it does not disturb the functioning of the school.

"In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State... In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."

-Tinker v. Des Moines School District, 393 U.S. 503 (1969) US Supreme Court.

Schools may not remove books from a school library based on content.

"As noted earlier, nothing in our decision today affects in any way the discretion of a local school board to choose books to add to the libraries of their schools. Because we are concerned in this case with the suppression of ideas, our holding today affects only the discretion to remove books. In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to 'prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."

-Board of Education v. Pico, 457 U.S. 853 (1982) US Supreme Court.