

We Have Rights

A handbook for youth
in Florida

About This Handbook

You have rights. This handbook tells you about those rights, when you can use them, and when school officials and police can limit them. Refer to your Student Handbook for your school's policies.

ACLU of Florida presents this handbook to help educate Florida's youth, their families and mentors on youth rights. This handbook does not offer legal advice and is not a substitute for consulting an attorney. Please use this as a reference for information about your rights generally. The Florida Bar provides a free attorney referral service, which you can access at Irs.floridabar.org or 1-800-342-8011.

Supplemental materials for teachers and community leaders to present know-your-rights training sessions to youth are available at www.aclufl.org.

In partnership with Playground City and Paul C. Perkins Bar Association, the artwork presented in this handbook was created by Florida youth for Florida youth for the card game Rights! This multiplayer game helps young people learn how to exercise their rights through play. The premiering set of cards focuses on improving memory recall of their constitutional rights while at school and during police encounters. Rights! offers parents, teachers, and community leaders an opportunity to dismantle communication barriers, in a safe yet fun way, about the institutions that govern our everyday lives.

Bridge the gap through play by downloading this game and other supplemental material at www.playgroundcity.com

About the ACLU

The American Civil Liberties Union (ACLU) is a national non-profit organization dedicated to protecting the constitutional rights and civil liberties of everyone. The ACLU is committed to protecting students' rights, and we have defended many young people whose rights were violated by their schools. The ACLU of Florida is our state's ACLU affiliate and the state's premier guardian of liberty. We are working daily in courts, the legislature, and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States and the State of Florida. We have offices in Jacksonville, Pensacola, Tampa, and Miami, the state headquarters.

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WHAT KIND OF SCHOOL YOU ATTEND MATTERS

The Constitution preserves your rights against governmental action, not private action. Some laws do apply in any setting, such as those against racial discrimination.

Public School – Your school is a part of the government, so everything in this guide applies to you.

Charter School – Your school is performing a government function and paid for by public dollars, so it is a public school and most of the rights in this guide apply to you.

Private School – Your school is not a part of the government, so aspects of this guide limiting what your school can do may not apply.

WHAT THE ACLU BELIEVES

The ACLU of Florida believes that all schools should treat students with respect, and that school rules should be reasonable and consistent with fundamental American values.

We believe that students should be free to express themselves as long as they do not threaten or intimidate others.

We believe that schools should set a standard for reasonable, age-appropriate responses to student conflicts that promotes individual development and supports healthy school climates.

We believe that school rules should be enforced fairly and consistently, with no student singled out, picked on, or favored.

We believe that rules should be directly related to education and have an educational purpose. We believe that students' behavior during off-school hours and away from school is none of the school's business.

We believe that schools should adopt evidence-based discipline that helps young people grow instead of punishment that makes their lives harder. Such discipline may include restorative circles to help youth understand how their behavior impacts others, conflict resolution education to give youth the tools they need to navigate conflict and collaborative problem solving that involves youth in identifying and addressing their unmet needs

Many of the ACLU's beliefs are not reflected by current law, and there are many beliefs we have that courts may not accept. The ACLU's beliefs may someday be the law in Florida—issues that you, as students, bring to us may help us shape the law for future students.

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YOUR CONSTITUTIONAL RIGHTS

(and why you should care)

You know there's more to an education than books, tests and grades and that it doesn't only happen at school. Over your life, you will develop the skills and experience to direct your own life and help shape our nation. To really participate, though, you need to know your rights.

KNOWING YOUR RIGHTS IS THE FIRST STEP IN ASSERTING THEM.

The Bill of Rights includes ten amendments to the U.S. Constitution that protect the rights and liberties of everyone in the United States, to give each individual the freedom to live as he or she chooses, free from government control or interference.

What about kids?

Kids have rights – even at school. Like the rest of the law, what that means is constantly changing and depends on specific facts, so you will often hear, “it depends.”

Why so complicated? There are competing pressures and competing beliefs. Tragedies, like the mass shooting at Marjory Stoneman Douglas High School in 2018 and Columbine High School in 1999, lead policymakers, from local school board members to state legislators, to tighten control over students in the name of safety. Put simply, bad facts make bad law. This expansion of governmental control over kids is countered by the U.S. Constitution. It's up to the people, however, to ensure Constitutional safeguards are respected and maintained.

This work is done in the U.S. Supreme Court and other federal courts, the U.S. Congress, Florida courts, the Florida Legislature, local governments like city and county commissions, school boards and even at your school. Policymakers throughout these systems weigh your rights against others' rights to learn and safety. People, like you, stand up for those rights. Over time, a patchwork of laws and decisions develops to loosely define the rights of students in public schools. So, it depends.

YOUR RIGHTS ARE PRECIOUS. THEY'RE WORTH FIGHTING TO PRESERVE.

DO YOU THINK YOUR RIGHTS ARE BEING VIOLATED?

FIGHT FOR YOUR RIGHTS

We all find ourselves in situations where something just doesn't seem right. We know, in our core, it is wrong. But, is it legal? Understanding your rights is the first step to speaking up for yourself effectively to change a policy or rule that you believe is unfair.

STEP ONE: KNOW YOUR RIGHTS

- Don't wait for trouble – do your homework.
- Learn your school's written policies by reading the Student Code of Conduct. You can usually find this on your school's or school district's website, or you can ask the school's office for a copy. Find out if your school has an official way of handling complaints.
- Read this Handbook to learn about your rights and what you can do if they are violated.

STEP TWO: KEEP TRACK OF DETAILS

- As soon as possible, write a statement about the incident or violation that occurred. Include who was present, what happened, where and when it happened, and if you reported it.
- Keep copies of any documents you submit or that the school gives to you.
- If you feel safe doing so, ask for statements from witnesses, such as other students, school staff, and administrators.

STEP THREE: FIND ALLIES AND ORGANIZE

- Organize a meeting of students (off-campus, if necessary) to discuss if and how the school may be violating students' rights and what changes are needed. Develop a plan of action, which might include writing a complaint letter to the school board and school officials, sending out letters informing parents, writing to local government officials about the violations, or distributing fliers to alert other students to the problem.
- Enlist the support of sympathetic teachers, counselors, or parents for advice on how to address the problem.
- Contact the organizations or local attorneys for help.

STEP FOUR: MEET WITH DECISION-MAKERS

- Find out who the ultimate decision makers are (principal, school district superintendent, or school board) and investigate what steps you must take to bring your complaint to this decision maker.

If you think something is unfair or unreasonable, speak up! Others might agree.

STAY INFORMED | STAY VIGILANT | STAY ORGANIZED

You have rights: Equal Treatment

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.

U.S. Constitution, Amend. XIV, Section 1

All young people living in Florida have the right to a free and equal public education. They cannot be discriminated against at school because of their race, gender, religion, citizenship status, sexual orientation, or disability.

The Basics

You have the right to be yourself at school.

Protect Your Rights

1. Report any abuse to the school principal or the school staff identified in the student handbook as responsible for receiving reports of harassment or discrimination.
2. Keep a list of all the discriminatory incidents at your school.
3. Report the behavior to the superintendent of the school district or the school board.
4. Keep written records of everything you submit to, and receive from, the school or district about the abuse. Keep copies of any responses or materials you receive back in response.
5. File a complaint with the U.S. Department of Education's Office of Civil Rights.
6. Contact civil rights groups, like Disability Rights of Florida, Equality Florida, Florida Immigrant Coalition, and Florida State Conference of the NAACP, for help.

I WANT AN ATTORNEY!

Visit lrs.floridabar.org or call 1-800-342-8011 for a free referral to a free or low-cost legal consultation.

Students with disabilities

Students with disabilities have a right to a “free and appropriate education” (FAPE). This means your school must identify students with disabilities, and evaluate and meet their needs. Parents have the right to participate in decisions about their child’s education. Such decisions are made as part of a plan called an Individualized Education Plan (IEP).

Q. How can I get special education services at school?

A. The first step to receiving special education services at school is to be identified as possibly needing such services. The school may decide you should be evaluated, or your parent or guardian can request an evaluation. The process is outlined below.

1. Students are identified. If a parent or guardian requests their student be evaluated and the school district refuses, the parent or guardian has a right to a due-process hearing.
2. The student's parent signs a consent form to have the student evaluated.
3. Eligibility is determined based on the evaluation.
4. If eligible, an Individualized Education Plan (IEP) meeting is scheduled.
5. An IEP is drafted by the IEP Team.
6. Services are provided.
7. Progress and IEP are routinely reviewed and the student may be reevaluated.

Q. Do schools have to let students with disabilities play sports or be involved in extracurricular activities?

A. Yes. Students with disabilities must be given equal opportunity to be involved in extracurricular activities when possible. Schools have to make reasonable accommodations and changes for these students; however, schools may deny participation to a disabled student if there's a serious risk of injury to the student or to others, or if they can point to other non-discriminatory reasons for denying participation.

I NEED HELP

Disability Rights Florida | www.disabilityrightsflorida.org
800-342-0823

Student Immigrants

Q. I am not a U.S. citizen. Do I have the same rights at school as other students?

A. **Yes.** You have the right to enroll in your local public school, regardless of your immigration status. Once you are enrolled, you have the same rights as other students.

Q. My family is undocumented. Can the school report my family to immigration authorities?

A. Under federal law, your education records may not be shared without your or your parent's consent or a court order. This includes your immigration status. Similarly, federal law prohibits requiring students to disclose their immigration status at school and prohibits requiring teachers to report students to immigration authorities.

Q: Can my school expel me for being undocumented?

A: **No.** The U.S. Supreme Court has ruled that a school cannot expel you based on the fact that you are undocumented.

I NEED HELP

Americans for Immigrant Justice | www.aijustice.org
305.573.1106

Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Students

LGBTQ students have a right to be who they are and express themselves at school.

Q. Can students start a Gay-Straight Alliance at school?

A. Yes. If your school allows any nonacademic student organization, it must allow you to form a Gay-Straight Alliance.

Q. Can the school punish students for dressing in ways that do not conform to gender stereotypes?

A. Usually not. A school can require students to wear uniforms and can otherwise restrict what students may wear, but it cannot enforce dress codes on the basis of sex. This prohibition protects LGBTQ students as well.

Q. Can I be punished for holding hands with my same-sex partner?

A. Possibly. Most schools have a policy in the student code of conduct against public displays of affection. Check your student handbook to see if it has such a policy. If it does, you can be punished only for the same behavior different-sex couples would be punished for.

Q. Does my school have to protect me from bullying based on my gender identity or sexual orientation?

A. Yes. All schools have the responsibility to protect students from bullying and harassment. This includes teasing, social exclusion, threat, intimidation, stalking, physical violence, theft, sexual, religious, or racial harassment, public or private humiliation, and/or destruction of property.

Q. Can the school tell my parents or teachers that I am gay or transgender?

A. Probably not. Your sexual orientation and how you identify are confidential information. If your school reveals that to anyone without your permission, it could be violating federal law. Don't assume they understand that: if you don't want them revealing your private information, tell them very clearly that you want your information kept private and that they shouldn't out you to other students, parents, or anyone else without your consent.

I NEED HELP

Lambda Legal
www.lamdalegal.org
404.897.1880

**National Center for
Transgender Equality**
www.transequality.org

**National Center for
Lesbian Rights**
info@NCLRights.org
www.nclrights.org
415.392.6257



ARTWORK
ROSEMARY L., 15 YEARS OLD, ORANGE COUNTY

Pregnancy and Sexual Health

Q. Is my school required to teach sexual ed?

A. It depends. All schools have to teach comprehensive health education, including the benefits of abstinence and consequences of teenage pregnancy, but the local school district decides whether to offer comprehensive sex education, only abstinence, or something in between. You don't need your parents' permission to participate, but your parents can request, in writing, to remove you from sexual ed.

Q. Do I need my parents' permission to get birth control?

A. Possibly. No one needs permission to buy or use birth control or sexually-transmitted infection (STI) prevention methods that do not require a prescription to purchase, like condoms and the morning-after pill. If you would like to use prescription birth control, you'll need a parent's permission unless you are 18, married, have been pregnant before, or, in some cases, if you need the birth control for health reasons.

Q. Do I need my parents' permission to get an STI test?

A. No. You can be tested and treated for sexually transmitted infections, including HIV, without parental permission. Unless you agree, the doctor who treats you cannot tell your parents.

Q. I'm pregnant. Can I be forced to leave school?

A. No. Under federal law, schools are prohibited from excluding pregnant or parenting students from schools, classes or extracurricular activities. They must give pregnant students the same accommodations that students with other temporary medical conditions are able to receive. This can include extra time to make up missed classwork, attend doctor's appointments, and recover from childbirth.

Q. I'm pregnant and want to have an abortion. Do I need my parents' permission?

A. Probably. Florida passed a law in 2020 to require doctors get notarized proof of permission by a legal guardian or parent before terminating a pregnancy. This is in addition to a law requiring your parents be notified before the abortion. Florida is one of only a few states that require both parental notification and consent. The law does not apply in emergencies or if you have been emancipated, already have children or you are, or have been, married.

If you want an abortion and do not feel safe telling your parents or they won't support your choice, you do have options. You can ask a judge to waive the notification and consent requirements. This is called judicial bypass. You have to go to the courthouse and apply in person. If you ask for a court-appointed attorney, you will be given one to help you through the process. This won't cost you anything. Visit <https://floridareprofreedom.org/judicialbypass/> to learn more. You can also call or text Jane's Due Process hotline (866-999-5263) for support.

Q. I'm pregnant and would like to have a child. Do I need my parents' permission?

A. No. You have a right to carry your pregnancy to term, and you have a right to custody of your child unless a court finds you unfit.

I NEED HELP

Planned Parenthood
www.PlannedParenthood.org

Floridians for Reproductive Freedom
www.FloridaReproFreedom.org

Sex, etc.
SexEtc.org

You have rights: Express Yourself

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.

U.S. Constitution, Amend. I

You have a right to be yourself and to express your beliefs and opinions. Your school has an interest in maintaining order and building a safe, appropriate learning environment. These interests will sometimes compete with your rights. This section will help you predict when that might happen and be prepared to protect your rights if it does.

While you must follow your school's rules, there are limits on what your school can ban. School rules must have a logical relationship to the school's legitimate interests. They must also respect your fundamental rights, including your rights to free speech and due process.

The Basics

- You have the right to express yourself at school, within limits.
- School officials can limit your message if it includes threats, encouragements of unlawful activity, profanity or swear words, and lewd or vulgar expressions.
- School officials can limit your delivery to prevent major disruptions to class or school activities.

I WANT AN ATTORNEY!

Visit [Irs.floridabar.org](https://www.flsbar.org) or call 1-800-342-8011 for a free referral to a free or low-cost legal consultation.

SAY WHAT?

Substantial and material disruption: This is a serious physical disturbance of the school day. It could be disruptive to the whole school, such as a walkout, or to your class, such as breaking out in song and dance during your math final. The point is: does your act make it impossible for school officials to maintain order.

What You Can – and Can't – Say

School officials can limit your message to exclude threats, encouragements of unlawful activity, profanity or swear words, and lewd or vulgar expressions.

Q. Can I be punished for jokes about violence or school shootings?

A. Yes. School officials take threats of violence very seriously, often even when it is clear it was a joke. Students have been punished for things they've written on paper, jokes they've posted on social media and comments made in private text messages. You can be suspended, expelled, involuntarily committed for psychiatric evaluation or even arrested.

Q. Can I be punished for arguing for a controversial political position in a school paper or project?

A. No. As long as your assignment meets all the requirements set by your teacher, you cannot be penalized for your position on a controversial topic. However, you do not have a right to speak out in an assignment about something that is not related to the assignment.

Q. Can I be forced to say the Pledge of Allegiance?

A. No. State statute allows you to not participate in the pledge. You must have a parent or guardian send a written request to excuse you from reciting the pledge. Once you've submitted that, you do not have to recite the pledge, place your hand over your heart, or stand.

Q. Can I be punished for making a sexual joke at school?

A. Yes. The school can punish you for making sexually suggestive remarks.

What You Can Wear

School officials can limit what you wear or require uniforms, but usually cannot otherwise limit political or religious messages. Find your school's dress code in the Student Code of Conduct. See Protect Your Rights with School Officials at page 14 to learn more.

Q. Can boys and girls have different dress code requirements?

A. Probably not. Dress codes cannot explicitly discriminate based on gender or race. They also cannot be enforced in a discriminatory way. This law in this area is quickly developing. Schools have faced legal consequences for requiring girls to wear skirts and for excluding girls in tuxedos from the yearbook.

Q. Can I be punished for wearing a political hat?

A. It depends. If hats are allowed by the school dress code, you cannot be punished because of the political message on your hat. If the dress code doesn't allow any hats, you can't wear a hat even if it has a political message. Also, if the hat causes a substantial disruption in the classroom or school environment, you may be asked to remove it.

Q. Can the school prohibit hoodies?

A. Probably. While you have a right to express yourself, schools can prohibit hoodies and other head coverings, flipflops and other clothing based on arguments that they are unsafe, interfere with your school work or disruptive. However, they have to force this equally, and they must accommodate any religious or medical reason.

Q. I wore a T-shirt supporting gay rights. Some students called me names and interrupted class. Can the principal make me change my shirt?

Students who disagree with you shouldn't be allowed to prevent you from expressing yourself. School officials should discipline the disruptive students before banning your message. But if that doesn't stop the disruption, you may be required to cover the message on your shirt.

Your Right to Gather and to Protest

- Generally, you have the right to gather and to express yourself through protest, so long as it does not substantially and materially disrupt school functions.
- All student groups must be treated the same, regardless of what brings students together.
- Any student conduct associated with protest may be punished only to the same extent it would be without the protest.
- Find your school's rules about student groups in the Student Code of Conduct. See Protect Your Rights with School Officials at page 14 to learn more.

Q. Can the school stop a student group from meeting at school?

A. Schools can make rules about when and where student groups can meet, but they have to apply to all student groups. So, if the school allows any student groups to meet on school property, like chess clubs or community service groups, it must allow all student groups to meet on school property.

Q. Can the school limit protests at school?

A. Maybe. The school can only limit protesting if the protest causes any substantial disruption to the school activities.

Q. Can I be punished for participating in a protest?

A. School officials can't punish you just for your participation in a protest, but you may be punished for behavior that you could be punished for if you weren't protesting. Any behavior that causes a substantial disruption to the school activities may also be punished. For example, if you participate in a walk out and your school has rules punishing skipping class, you may receive the same punishment as a student skipping class.



ARTWORK
ROSEMARY L., 15 YEARS OLD, ORANGE COUNTY

Your Right to Publish and Distribute Your Ideas

- Schools have more power to censor school-sponsored student publications than students' independent publications.
- Schools can prohibit distribution of publications containing material likely to cause serious disruption of school functions, lewd or vulgar messages, and messages advocating illegal drug use.
- Schools can have reasonable rules limiting when and where you can distribute publications at school.

Q: Can the school restrict what I say in the yearbook or school newspaper?

A: Yes. School newspapers and yearbooks are usually run by other students and/or teaching staff. As these people are not state actors, the First Amendment does not limit their editorial capabilities.

Q: Can the school restrict what I say on my blog?

A: It depends. If you are on school property, or on a school sponsored blog, yes. If not, you still may be punished if it causes a material disruption to school activities or classrooms.

The Internet & Social Media

- Schools can limit students' internet activity on school-owned computers or other technology
- Schools usually monitor students' internet activity when they use school technology.
- Schools cannot limit students' internet activity when they are away from school but may punish students for activity that can cause substantial disruptions of school. See the Off-Campus Incidents at page 20.

Q: Can the school punish me for making fun of the principal online?

A: It depends. The school can punish you for online bullying and/or harassment. So if your post is cyberbullying, then it is best not to post it. Also, if you post about the principal while at school, or on school technology, then you can be punished.



You have Rights: School Discipline Process

No state shall...deprive any person of life, liberty, or property, without due process of law.

U.S. Constitution, Amend. XIV, Section 1

You have a right to a safe, high quality and free education. You also have to follow your school's written rules. There are limits on what the school can ban and how they can react. School rules must have a logical relationship to the school's legitimate interests. They must also respect your fundamental rights, including your rights to free speech and due process.

The Basics

- School officials may discipline you for a wide range of actions, including willful disobedience, violence, or any other acts which substantially disrupt the school process.
- You may be disciplined for some off-campus conduct. Be careful what you post online
- Behavior at school can have criminal consequences beyond school discipline.
- Before being suspended or expelled, you have a right to hear what rules were broken and to present your side of the story. If the school wants to suspend you for more than 10 days, you have enhanced rights.
- If you are expelled from school, you have the right to appeal (challenge) the school's decision
- Students receiving special education services have additional protections.
- Students have a right to see their own discipline records.

PROTECT YOUR RIGHTS WITH SCHOOL OFFICIALS

1. Stay calm.
2. You can ask for your parents/guardian or attorney to be in the room when the school officials are asking you questions. Unlike police officers, school officials may continue questioning you even after you've asked for help.
3. Know that anything you say can be used against you in a discipline or criminal case. Do not answer questions about a crime without a parent/guardian or attorney present.
4. You can be disciplined for not answering the school official's questions.
5. If a police officer, including a school resource officer, is present, they can use your statements in a criminal case. If they are questioning you, you have additional rights (see Police and School Resource Officers at page 22).

Q: Where can I find my school's discipline policies?

A: Your Schools Handbook or Student Code of Conduct. Each school district has an elementary and a middle/high school Code of Student Conduct that explains the specific grounds for discipline, discipline procedures, a dress code, etc. You should receive one at the beginning of the school year and can get a copy from your school or school district's office or website.

Q: My parents don't read English very well. How can they get information?

A: Your school must provide information to your family in a language they can understand. This includes parent handbooks, policies and procedures.

Suspensions, Expulsions and Alternative Placement

SAY WHAT?

Due Process: Due process means that the school can't take away your rights, like the right to go to school, without a fair process to determine that you actually broke a school rule. The more extreme the discipline, the more in-depth the process must be. Such procedures include:

- Telling you exactly what you are accused of doing wrong.
- Telling you exactly what the punishment will be.
- Giving you a chance to tell your side of the story before punishing you.

FORMS OF DISCIPLINE

The following are the most common forms of discipline implicating your rights:

Alternative Placement: Student is removed from the school for an offense, not expelled, and placed in an alternative educational setting or virtual school. Sometimes schools call this disciplinary reassignment.

Corporal Punishment: The moderate use of physical force or physical contact by a teacher or principal to maintain discipline or enforce a school rule. Such force cannot be "excessive."

In-School Suspension: The student can't go to their usual classes and activities but is placed in an alternative program for up to 10 days.

Out-of-School Suspension: The student can't go to any classes or school activities except as authorized by school officials for up to 10 days.

Expulsion: For a period longer than 10 days, the student is prohibited from attending a public school. They may be enrolled in other educational services, such as a disciplinary program or second chance school. Expulsions cannot last more than the remainder of the term or school year and one additional year.

YOUR RIGHTS IN SCHOOL DISCIPLINE

YOU HAVE A RIGHT TO VIEW YOUR DISCIPLINE RECORDS.

YOU HAVE A RIGHT TO PRIVACY.

The school cannot share your records without your, or your parent/guardian's consent.

YOU HAVE A RIGHT TO AN ESSENTIALLY FAIR DISCIPLINE PROCESS

- You may be suspended only in accordance with the school board's rules.
- A lower standard than criminal cases applies.
- The principal must make a good-faith effort to get your parent/guardian's help or use alternatives before suspending you, except in a case of emergency or disruptive conditions that require immediate suspension or a "serious breach of conduct" as defined by the school board's rules.

YOU HAVE A RIGHT TO NOTICE.

The principal has to try to immediately call your parents to let them know about the suspension and the reasons for it. They also have to mail a letter with this information.

YOU HAVE A RIGHT TO A HEARING.

- You have a right to hear what rules you are accused of breaking and to give your side of the story.
- If the school wants to expel you, you have a right to have your parents/guardian and an attorney present.

YOU HAVE A RIGHT TO APPEAL.

- If you are expelled or involuntarily reassigned to an "alternate placement," you can appeal to the relevant District Court of Appeal and argue that the expulsion was not supported by substantial, competent evidence and/or that the expulsion violates the constitution.
- If you are suspended, you can appeal through a trial court if you allege the suspension violates the constitution.

You may have your suspension or expulsion for drug use/possession waived, if (1) you offer information leading to the conviction of your supplier OR voluntarily disclose your unlawful possession prior to arrest, and (2) you complete a state-licensed drug-abuse program. *If you are in this situation, you should consult an attorney.*

Students with Disabilities

In addition to the general rights in the discipline process, students with disabilities are afforded additional protections under state and federal law. This is because the law recognizes that behavior may be a result of disability or the school's failure to address the student's needs. If you have an individualized educational plan (IEP) and are removed from your current education placement, as specified in your IEP, for more than 10 school days, it is considered a change in placement and the following apply.

YOU HAVE A RIGHT TO NOTICE.

The school district must notify your parent or guardian of the change in placement and procedure the day it decides to make the change.

YOU HAVE A RIGHT TO A MANIFESTATION DETERMINATION HEARING.

- Within 10 days.
- The meeting will include the IEP team, a parent or guardian, and school district representatives.
- Determine whether the conduct was caused by, or substantially related to, your disability or whether it was the direct result of the school district's failure to implement the IEP.
- If the team determines that the behavior met either of these, the district must create or modify the student's behavioral intervention plan.
- If the team determines that the conduct was not a manifestation of disability, the school may discipline you like they would anyone else, except that you must continue to receive educational services even if you are suspended or expelled.
- If a parent disagrees with the manifestation determination, they may appeal by requesting an expedited due process hearing. The hearing must occur within 20 days of the request, and the administrative law judge must make a decision within 10 days of the hearing. This decision may be appealed.

Under special circumstances, schools can transfer a student with disabilities to an alternative educational setting for up to 45 days without a manifestation determination if the student:

- possesses a weapon on school premises or at a school function;
- knowingly possesses or uses an illegal drug, or sells or attempts to sell a controlled substance; or
- inflicts serious bodily injury on another person on school premises or at school function.

Q: What are the grounds for suspension and expulsion?

A: Read your Student Code of Conduct or Student Handbook for your District's policies.

Generally, you can be expelled for "willful disobedience, open defiance of authority of a member or his or her staff, violence against persons or property, or any other act which substantially disrupts the orderly conduct of the school."

Typical Reasons for Suspension and Expulsion

Typical grounds for suspension and expulsion include:

1. Possession or distribution of drugs,
2. Violence or threats of violence,
3. Violation of the sexual harassment policy,
4. Disruptive conduct in the classroom or on the bus, and
5. Third violations of the school's dress code.
6. Certain criminal charges off-campus.

You cannot be suspended for unexcused tardiness, lateness, absence or truancy.

DISRUPTING CLASS

If your actions interfere with your teacher's ability to teach or your classmates' ability to learn, you could be removed from class and even expelled.

If your teacher doesn't agree to let you return to their class, a Placement Review Committee will decide where to place you.

Zero Tolerance

Florida statute requires each district's school board to adopt a zero-tolerance policy that includes mandatory expulsions of at least one year for

- Having a firearm or weapon, including a knife, slingshot, etc., at school, any school function, or on the bus.
- Making a bomb threat or false report of a bomb threat involving the school or school staff's property, school transportation or school sponsored activity.

Zero tolerance actions often lead to intervention or arrest by the police.

The ACLU believes zero tolerance policies lead to the unnecessary criminalization of normal behavior, increase drop-out and arrest rates and ultimately make schools less conducive to learning.

Q: Can I be suspended or expelled from the bus?

A: Yes. If you do something that that violates the district's transportation policies. You could also face other school discipline or even criminal penalties. For suspensions of bus-riding privileges, the principal or the principal's designee must give written notice to the student's parent or guardian and to the district school superintendent within 24 hours.

Q: Can my school expel me for being undocumented?

A: No. The U.S. Supreme Court has ruled that a school cannot expel you based on the fact that you are undocumented.

Q: I got caught with drugs at school, is there any way I can avoid a suspension or expulsion?

A: Possibly. You may be entitled to a waiver of discipline or expulsion related to drug possession if you: (1) offer information leading to the conviction of your supplier OR voluntarily disclose your unlawful possession prior to arrest, and (2) you complete a state-licensed drug-abuse program. If you are in this situation, you should consult an attorney.

I WANT AN ATTORNEY!

Visit [Irs.floridabar.org](https://www.flsbar.org) or call 1-800-342-8011 for a free referral to a free or low-cost legal consultation.

Q: Can my school force me to transfer to another school?

A: Sometimes. Schools will sometimes pressure students and their families to voluntarily transfer to an alternative, virtual school or even or homeschool. There are only a few scenarios where the school can force you to do so. Even in these scenarios, you have a right to a hearing and to appeal the decision. Remember, if you have disabilities, you have additional protections in this process.

Dropout Prevention and Academic Intervention Programs: If you're academically unsuccessful, have a pattern of excessive absenteeism, or have a history of disruptive behavior, the principal may place you in a dropout prevention and academic intervention program. They must notify your parent or guardian in writing and are entitled to an administrative review of the placement.

Alternative Placement: Schools sometimes force students to transfer to other schools or even homeschool through Alternative Placement. If the alternative placement amounts to an expulsion, such as if the student is forced to enroll in virtual school, the student and their family has all of the rights they would have under an expulsion, including the right to appeal.

What Happens Off Campus...

Students usually cannot be disciplined for actions that occur off-campus; however, if their actions harm or disrupt the school environment, they can be.

Be careful what you post online. Although schools generally can't punish you for even lewd or indecent online activity, they can if it disrupts the school environment. Since the mass shooting at Marjory Stoneman Douglas High School, schools and law enforcement have treated posts that could be interpreted as threatening mass violence with zero tolerance, even when clearly made as a joke.

Students have been suspended, expelled, and restricted from extracurricular activities based on their online activity, including what they email, text, or post on websites or social media.

DID YOU REALIZE?

Nothing that you send or post online is private—EVER.

What you post or share is one screenshot away from your family, your teachers, the police, and your future.

Bottom line: Don't post anything you don't want the world to see.

Off-Campus Conduct: Criminal Charges

You can be suspended if you are charged with a felony, even if it happened away from school. The school has to show that the incident has an “adverse impact on the educational program, discipline or welfare in the school.”

Students may be restricted, however, from extra-curricular activities (such as sports) based on off-campus activity because there is no constitutional right to participate in those activities.

Rights in School Discipline: Students Charged with Felonies for Off-Campus Behavior

1. You have a right to a hearing before being suspended.
2. The hearing will be to determine whether the incident has an adverse impact on your school.
3. The principal must immediately notify the student’s parent or guardian in writing of the specific charges, and a date for the hearing which has to be within 2 to 5 school days of the delivery of the notice. The notice must also include conditions under which a waiver of suspension may be granted.”
4. You have the right to have your parents or guardian and an attorney present at this hearing.
5. Disciplinary proceedings do not require the same safeguards afforded criminal defendants. In any administrative proceeding, satisfying due process means that the proceeding must be “essentially fair.”
6. If you are suspended, the period may be longer than 10 days, but you will be enrolled in an alternative education program.
7. If the court finds you did commit the felony, the school may expel you, but you may receive alternative education.

Corporal Punishment

Q: Can I be paddled at school?

A: Possibly. If your school district has a policy that allows corporal punishment, you may be paddled. Even if your school allows paddling, you have rights:

1. Physical discipline must be done pursuant to a school board policy and in the presence of another adult.
2. Your parent may request a written explanation of the reason for the punishment and the name of the other adult who was present.
3. The force may not be excessive to the point of “shocking the conscience.”

As of 2018, Florida was one of nineteen states that expressly allow schools to use corporal punishment. In the 2018-19 school year, 1,333 students were subjected to corporal punishment in Florida. This happened in 20 of Florida’s 67 regular school districts.

The ACLU believes no child should be hit.

The ACLU promotes an educational system that is free from punitive disciplinary methods such as corporal punishment.

You Have Rights: Police, School Security & Privacy

The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

U.S. Constitution, Amend. IV

You have the right to be left alone. You should not have to worry about unreasonable searches by the government or losing your freedom of movement. Police are tasked with enforcing the law. Your school has an interest in keeping all students safe and maintaining order. These interests will sometimes compete with your rights. This section will help you predict when that might happen and be prepared to protect your rights if it does.

The Basics

- Practice the following phrases and feel confident in using them:

“I want an attorney.”

“I want to remain silent.”

“I do not consent to this search.”

- Police need probable cause – a fair probability that a crime has been committed, is being committed, or will be committed – in order to search or arrest you.
- School officials may search you or your belongings anytime they have reasonable suspicion to believe a school rule or law has been violated.
- Searches must always be reasonable when they begin.
- Police officers working in schools, even if called “school resource officers” or something else, are police officers. Under some scenarios they may be treated like school officials and be more easily able to search you. You should always treat them like police officers.

ARTWORK
RORI Q., 12 YEARS OLD, ORANGE COUNTY



PROTECT YOUR RIGHTS WITH POLICE

1. **Stay calm.** Keep your hands where they can be seen. Do not run, resist, or try to stop the police.
2. Calmly **ask if you are free to leave.** If they say yes, silently do so. If you are not free to go, then you are in custody.
3. If asked, tell the officer your name. You have the right to remain silent. To use this right: Say, **“I want to remain silent.”**
4. If the police ask to search you or your belongings: Say, **“No, I do not consent.”**
5. If you are arrested, you have a right to an attorney. To use this right: Say, **“I want an attorney.”**

UNDERSTAND:

- Police officers are allowed to lie to you.
- Police officers do not have to call your parents before they question you.
- School resource officers are police officers.
- Anything you say can be used against you in criminal court. This includes recordings the police make of you without your knowledge, such as in their car or when you call or talk to your parents.
- **These restrictions apply to law enforcement, not school staff.** School staff may question you with police present. If you don't answer staff's questions, the school may discipline you. Anything you say may be used in school discipline or criminal cases against you.

BE PREPARED:

- Officers may search you or your belongings even if you don't consent. The fact that you tell them you don't consent may help you in any following criminal case.
- Officers are supposed to stop asking you questions when you tell them you are invoking your right to remain silent. If they continue trying to get you to talk, calmly repeat the phrase.
- The police officer may disagree with your understanding of your rights. Saying these phrases may not resolve the interaction, but it will preserve your rights in case you end up in court. Do not try to convince the officer of your understanding. Fight in court, not in the street.

IF YOU ARE ARRESTED:

- Keep quiet. You will likely be recorded, including when you talk with your family, and what you say can be used against you. Never talk about the facts of your case over the telephone or over a video call with anyone.
- Do not sign anything until you have talked to an attorney.

Q: Am I allowed to record the police?

A: Probably. Generally, everyone has to agree to be audio-recorded in Florida; however, police working in public do not have an expectation of privacy, so this likely does not apply to police. Keep in mind that you could face an arrest if you interfere with an officer doing their job.

Q: I've heard of kids being sent to teen court or another program instead of being arrested. How does that work?

A: Florida law requires every state attorney to offer a pre-arrest diversion program for juveniles. These programs vary by county. This essentially allows you and the state to skip the court process and go straight to interventions and any sanctions. If you fulfill the program, there is no arrest record. You can learn more about what's available in your area and the local eligibility criteria by searching the websites of the local state attorney and local law enforcement or the Fla. Dept. of Juvenile Justice, www.djj.state.fl.us.

In most parts of Florida, it is up to officer discretion whether to arrest you or give you a citation or referral.

Pros and Cons of Pre-Arrest Diversion:

Less disruption: An arrest means you and your family will have to miss school and work to attend meetings and court hearings. There are also more court fees and costs associated with an arrest compared to pre-arrest diversion.

Immediate help: If you and your family need intervention services, like counseling, you will get faster services through pre-arrest diversion.

No legal help: When you are arrested, you have a right to an attorney to help guide you through the process and ensure your rights are protected. Attorneys are generally not involved in pre-arrest diversion, although they can be.

Waive rights: When you agree to participate in pre-arrest diversion, you waive your right to have the State prove its case against you. While very few cases go to trial, and even fewer juvenile cases result in not guilty verdicts, you should understand what you are giving up.

No arrest record: The biggest benefit of pre-arrest diversion is that you avoid an arrest record. An arrest record can make it harder for you to get a job, housing (including your family's ability to get housing), go to college, join the military, etc. It is harder than many people realize to get your juvenile record expunged.



ARTWORK
ROBERTO S., ORANGE COUNTY

**DON'T SAY ANYTHING TO A SCHOOL RESOURCE OFFICER
YOU WOULDN'T SAY TO A REGULAR POLICE OFFICER.**

All police officers in schools, no matter what they are called, are first, and foremost, police officers. Their conduct may be limited by a written agreement, called a memorandum of understanding, with the school district.

Q. When does the school have to report behavior to the police?

A. It varies. Refer to your school district's zero tolerance policy, which should be in your Student Code of Conduct and must be outlined in an agreement with the local law enforcement. Schools are not required to inform police of such "petty acts of misconduct," which is defined locally.

Q: Can the police come to my school and question or arrest students?

A: Yes, but no one can make you talk to the police. You always have the right to remain silent when a police officer is talking to you, but school resource officers and police may not inform you of this right until they are actually arresting you.

The ACLU believes police officers should not be routinely present in schools.

When they are present, they should have appropriate training and their roles should be clearly defined to keep them out of disciplinary matters to avoid the criminalization of normal youth behavior.

SAY WHAT?

Probable Cause: The U.S. Constitution's Fourth Amendment requires there to be probable cause to search people and their property. The term is fluid and depends on context, but generally means there is a fair probability that a search will result in evidence of a crime.

Reasonable Suspicion: Reasonable suspicion requires only that school officials reasonably suspect that the search will turn up evidence of a violation of law or school policy. This is a much lower level of suspicion than probable cause.

School Searches Versus Police Searches

When you're at school, your right to privacy is balanced against the school's role as a stand-in for your parents or guardian and your school's interest in educating all students in a safe environment. So, your school can search you or your belongings in situations when a police officer could not.

	SCHOOL OFFICIALS	POLICE OFFICER
Investigatory detention: stop and ask questions	Any time	Reasonable suspicion of criminal activity
Pat down outer clothes for weapons	Reasonable suspicion of violation of school rule or law	Reasonable belief person is armed
Search person and person's belongings	Reasonable suspicion of violation of school rule or law	Probable cause

Q. What do I do if a school official or police officer asks to search me?

A. Say "No." Never agree to be searched if asked. If you give your consent, anything found can be used as evidence against you. You may not even know you have something suspicious. If you don't agree to the search, there is a possibility that anything found will not be used against you later. So, saying, "I do not consent to this search," preserves this opportunity, even if it ends up being unnecessary or ineffective.

Q. When can school officials search me?

A. *When they have reasonable suspicion of a violation of a school rule or the law.* Searches must be justified when they begin.

Q. When can school officials search my locker?

A. *When they have reasonable suspicion there's something prohibited by school rules or the law in your locker.* Searches must be justified when they begin. School officials need less suspicion to search school property, like lockers and school computers, than to search items that belong to you, like your car.

Q. When can police officers search me or my stuff?

Usually, police officers can only search you if they have a warrant. They get a warrant by proving to a judge that they have probable cause to believe the search will turn up evidence of a crime. You can ask to see the warrant. The police can only search in the areas listed and for the items listed. If they search in other areas, you can tell them, “I do not consent to this search.”

Police officers can search without a warrant, if they reasonably believe evidence may be destroyed or removed before they can do so. They will have to prove they had probable cause to do the search to use anything they find against you – unless you consented to the search.

Q. When can school resource officers search me?

A. School resource officers are police officers stationed in schools but may not need to meet the higher standard of probable cause. Some courts have found reasonable suspicion is enough for school resource officers to search students and their belongings. Regardless, the search itself must be justified when it starts. You can tell them that you do not consent to the search.

Q. Can police make me take a breathalyzer?

A. *If the police suspect you of drunk driving*, you may be required to take a breathalyzer test. Refusing to consent may lead to an arrest and suspension of your driver’s license.



ARTWORK

RORI Q., 12 YEARS OLD, ORANGE COUNTY

You and the Law

The ACLU of Florida advocates against the policing of students for normal adolescent behavior but recognizes that our ideal is not your reality. This section is intended to clear up common misconceptions to give you the best opportunity to stay on the right side of the law.

Clearing Your Juvenile Record

Q. My juvenile record is wiped clean at 18, right?

A. No. Your record will be automatically expunged:

At age 26: Those sentenced to a residential program or labeled a “habitual juvenile offender”

At age 21: Everyone else.

In the following situations, your juvenile record will be forever merged with your adult record:

- You are charged as an adult before you turn 18 for a felony involving the use or threat of physical force or violence against anyone. This includes such crimes as robbery, burglary, arson, and aggravated assault & battery.
- If, once you turn 18, you are charged with a felony involving the use or threat of physical force or violence against anyone.

Q. Is there any way to get my record cleared before 21?

A. Yes. If you’ve not been charged with a crime for 5 years, you can apply for an early expungement. There is a fee and the prosecuting state attorney has to agree. Visit the Florida Department of Law Enforcement, www.fdle.state.fl.us/Seal-and-Expunge-Process, to learn more.

Drugs and Juuls

Q. Can I get in trouble for sharing Juuls or other nicotine products with friends?

A. Yes. It is a crime under Florida law to give nicotine products to minors. If minors are caught with nicotine products, they can be punished with community services and fines. The third time a minor is caught, they may lose their right to get a drivers’ license. Keep in mind these products are addictive, so quitting after you’ve been caught may be very difficult.

Q. Can I get in trouble for smoking or vaping marijuana?

A. Yes. Although marijuana is legal in Florida for medical use, youth are often arrested or given civil citations for possessing marijuana without the necessary prescription.

Fighting

The most common charge students are arrested for at school is assault and battery.

Assault: An intentional threat to do violence to a person, the ability to do so, and doing something that creates a well-founded fear in the person that it will happen.

Battery: Intentionally touching or striking another person against their will or intentionally causes bodily harm to another person.

Disorderly Conduct: Acts that “corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them,” or fighting.

Learn other ways to resolve disputes and seek help from your teachers, counselors or other trusted adults. When confronted by school officials or police, try to stay calm. Even when you are right, your actions will be used against you. Instead of fighting in that moment, fight by advocating for changes to the policies that allowed that moment to happen.

Sex

Q. Can my older girlfriend get arrested for our relationship?

A. Maybe. If you are under 16, it is illegal for anyone 18 years old or older to have a sexual relationship with you. If you are 16 or 17, it is illegal for anyone 24 years old or older to have a sexual relationship with you.

Q. Can teens get in trouble for sexting?

A. Yes. Sending or receiving nude photos of anyone under 18 is prohibited under Florida law. The first offense is treated as a noncriminal offense, but the youth will get a civil citation and have consequences like community service, a \$60 fine, etc. The second offense is treated as a criminal offense and the third offense is a felony.

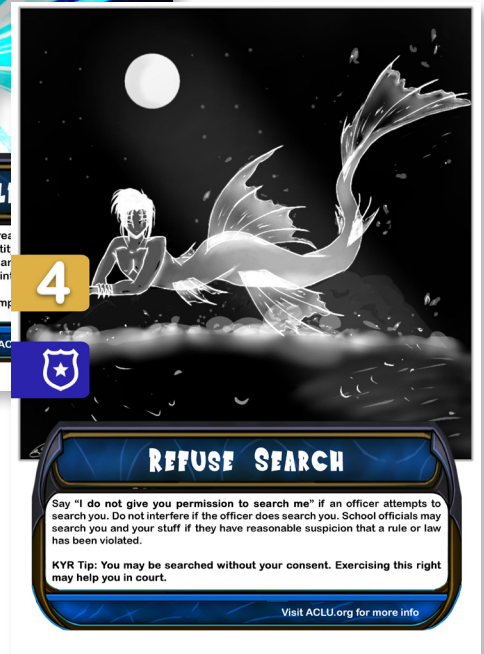
If you receive a sext you did not ask for, you can avoid prosecution by telling your parents and not resharing it.



KNOW YOUR RIGHTS CARD GAME



ARTWORK
FRANCISCO O., ORANGE COUNTY



ARTWORK
LILLY H., 14 YEARS OLD, SARASOTA COUNTY

Download the game
at [Playgroundcity.org](https://playgroundcity.org)





JOIN ACLU FL TO FIGHT FOR YOUR RIGHTS

- 1. Become a member of the ACLU.**
- 2. Recruit three or more friends to join the ACLU of Florida.**
- 3. Sign up to receive email Action Alerts.**
- 4. Follow us on Facebook, Instagram and Twitter. Help us spread our posts!**
- 5. Sign up to volunteer to assist the field team of organizers on the ACLU of FL's top priorities.**
- 6. Get involved with your local ACLU Chapter or start your own Student Chapter. Chapters often host public education events and set up tables at community events to sign up new members and to pass out ACLU FL materials and information.**
- 7. Represent the ACLU with clothing, stickers, pocket constitutions, and much more available at shop.aclu.org.**