



Freedom of Speech

Do public school students have an absolute right to express their opinions in school?

It is not an absolute right, but you have a right to political and religious speech. Generally political and religious speech is protected. The U.S. Supreme Court ruled that a student wearing black armbands in protest to the Vietnam War in *Tinker vs. Des Moines* is protected speech and the school could not suspend the students. “Students have First Amendment rights to political speech in public schools.” *Brandon v. Bd. of Educ.*, 635 F.2d 971, 980 (2d Cir.1980).

Protected speech under the 1st amendment also includes expressive and symbolic conduct. *M.B. ex rel. Martin v. Liverpool Central School Dist.*, 487 F.Supp.2d 117 (N.D. NY 2007) (School district violated elementary student's free speech rights by prohibiting her from distributing religious flyer based on the flyer's content). *University of Utah Students Against Apartheid v. Peterson, President of the Univ. of Utah*, 649 F. Supp. 1200 (D. Utah 1986) (holding that student-erected “shanties” were “symbolic expression” to protest South Africa’s apartheid and university investment policies entitled to First Amendment protection).

Are there limitations on a student’s right to express themselves in school?

Yes. Although a student’s right to free speech and symbolic expression including political speech “does not end at the school house gate,” U.S. Supreme Court rulings have provided that:

- A school may regulate the time, manner and location of speech within limits, but must be content neutral to both subject matter and viewpoint
- A threat of violence and speech that incites violence is not protected speech for safety reasons. *Cuff ex rel. B.C. v. Valley Cent. School Dist.*, 677 F.3d 109, 113-115 (2d Cir.2012), *Smith et al v. Novato United School District* (Schools may only limit speech that incites disruption, either because it specifically calls for a disturbance or because the manner of expression (as opposed to the content of the ideas) is so inflammatory that the speech itself provokes the disturbance.
- Obscene, lewd, sexually explicit, and vulgar speech is not protected speech in the primary and high school setting. *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986); *Board of Education v. Pico*, 457 U.S. 853, 871–872 (1982).
 - But must occur on school property and/or school controlled setting. *Thomas v. Board of Ed., Granville Central School Dist.*, 607 F.2d 1043 (2d Cir. 1979)
- **However**, controversial speech is protected speech.
 - *Papish v. The Board of Curators of the University of Missouri*, 410 U.S. 667, 670 (1973) (university may not “shut off” the “mere dissemination of ideas” in the name of “conventions of decency”).
 - *Virginia v. Black*, 538 U.S. 343, 358 (2003) (“The hallmark of the protection of free speech is to allow ‘free trade in ideas’—even ideas that the overwhelming majority of people might find distasteful or discomforting.”)
 - *Smith et al v. Novato Unified School District*, 150 Cal. App. 4th 1439 (2007) (holding that Student's editorial was protected speech and violated students right

to exercise freedom of speech statutory rights to free speech, where school district superintendent ordered retraction of students editorial publication in the school newspaper on illegal immigration)

Can a school regulate what students wear?

Schools can adopt a dress code if it serves a specific educational purpose such as teaching students socially appropriate behavior or to promote safety. However, a dress code may not be based solely on taste or fashion, and students cannot be restricted from wearing clothes that make a political or religious statement unless it is deemed disruptive or offensive.

However, in schools where uniform or dress code not required, the school has some limits. For example, in *Guiles ex rel. Guiles v. Marineau*, the court held that school's censorship of student's shirt depicting alcohol and drug images violated student's free speech rights.

Do these ruling apply to private schools?

No. The First Amendment limits government restrictions on your freedom; however, private schools are not limited by the First Amendment in the restrictions they may impose. The rights of private school students are generally governed by the contractual arrangement between the school and parents or by a student handbook.

Are students in public college entitled to First Amendment protection?

Yes. Since most college students are not minors, the courts have almost always extended full First Amendment protections. In public college, students generally would enjoy constitutional free speech protections and such right may even be greater than those enjoyed by public elementary and secondary students.

Public colleges are considered public forums, and content-neutral time, place, and manner restrictions are permissible only if they are narrowly tailored and leave open other avenues for expression.

Do I have a right to participate at a political protest?

Yes. You have a right to engage in political protest and speech. In *NAACP v. Claiborne Hardware*, the U.S. Supreme Court held that non-violent protests, rallies, petitions, and sit-ins were protected speech. More examples of protected speech include *Shuttlesworth v. City of Birmingham* (marching), *Brown v. Louisiana* (library sit-in), *Edwards v. South Carolina* (demonstration), and *Thornhill v. Alabama* (picketing).



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However, a school may impose limits such as location and time regulations for safety and security of campus, and so as to not impose disruption. But even school regulations have limits.

- *Aryan v. Mackey*, 462 F.Supp. 90 (N.D. Tex. 1978) (holding that university could not prohibit Iranian student organization from wearing masks during anti-Shah demonstration simply because violence had erupted in other cities during similar demonstrations)
- The fact that the University is involved in the financing of the magazine does not permit its officials to limit and/or suppress speech. *Korn v. Elkins* (President of the University of Maryland), 317 F. Supp. 138, 143 (1970)
- *Antonelli v. Hammond*, 380 F. Supp. (Massachusetts state college did not have the right to censor content, concededly not unconstitutionally obscene, in a student publication, the expense of which publication were payable by the college from funds received from compulsory student activity fees)
- *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995) (holding that a university which provides funding for printing student publications may not deny funding because of religious viewpoint)

Do I have a right to video record the police conduct?

Yes you have a right to record police conduct in a public space, such as at a demonstration or protest. *ACLU v. Alvarez*, 679 F.3d 583, 594 (7th Cir. 2012); *Glik v. Cunniffe*, 655 F.3d 78, 85 (1st Cir. 2011) (concluding that the right to record police is both “fundamental” and “self-evident”); see also *Mesa v. City of New York*, No. 09 Civ. 10464(JPO), 2013 WL 31002, at *25 (S.D. NY 2013) (“photography and recording of police officers engaged in their official duties ‘fits comfortably’ within First Amendment principles”).

Additionally, the United States Department of Justice has taken the position that the First Amendment protects the right to record police officers performing their official duties even in courts where that principle is not a matter of binding precedent. See, e.g., Statement of Interest of the United States, *Garcia v. Montgomery Cnty., Md.*, No. 8:12-cv-03592-JFM (D.Md. 2013).

You should make clearly known that you are recording the police for 1st Amendment activity, and actually make this statement out loud. But do not actively disrupt police activity nor interfere or engage in a violent manner.