

# Student Free Speech Rights

## OVERVIEW

### **Q. Do students have free speech rights?**

**A.** Yes. The California Education Code protects a student's free speech rights.

Education Code Section 48907 protects the free speech rights of students attending California public schools. It provides: "Students of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school." This section authorizes the governing boards of school districts to adopt reasonable time, place, and manner restrictions on the exercise of free speech rights and contains provisions relating to the regulation of student newspapers.

Education Code Section 48950 protects high school students at both public and private high schools from disciplinary sanctions for engaging in free speech rights. It provides that "School districts operating one or more high schools and private secondary schools shall not make or enforce any rule subjecting any high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution." However, this section does not apply to "any private secondary school that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization."

### **Q. Are the rights of public college and university students protected?**

**A.** Yes. Education Code Section 66301 provides protections to students attending the University of California, the California State University, or community colleges. It provides: "Neither the Regents of the University of California, the Trustees of the California State University, nor the governing board of any community college district shall make or enforce any rule subjecting any student to disciplinary sanction solely on the basis of conduct that is speech or other communication that, when engaged in outside a campus of those institutions, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution."

### **Q. Do students at private colleges and universities have free speech rights?**

**A.** Yes. Education Code Section 94367 provides free speech protections at private colleges and universities. It provides: "No private postsecondary educational institution shall make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus or facility of a private postsecondary institution, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution." However, this provision does not apply "to any private postsecondary educational institution that is controlled by a religious organization, to the extent that the application of this section would not be consistent with the religious tenets of the organization."

### **Q. How do I get more information about my right to protest in public places?**

**A.** The National Lawyers Guild has a pamphlet entitled "Your Rights to Demonstrate and Protest." It can be found on our website at [www.nlg-la.org](http://www.nlg-la.org).

## STUDENT WALKOUTS

### **Q. Can a student of a public school be suspended or expelled for participating in a walkout?**

**A.** Public school students can only be suspended or expelled for committing specific offenses set forth in the Education Code. Education Code Section 48900 sets forth the grounds upon which a student may be suspended or expelled. These include a student's commission of specified offenses such as using force against another person, possessing weapons, or damaging school property. Education Code Section 48900(k) provides that students may be expelled or suspended for having "[d]isrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties." This section might be used by school authorities to try to suspend or expel a student for engaging in a student walkout. However, other provisions of the Education Code limit the authority of a public school to suspend or expel a student for walking out of class.

Education Code Section 48900(u) provides: "It is the intent of the Legislature that alternatives to suspensions or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities." Therefore, the California Legislature has plainly said that other means of discipline must be used when students are absent from school. (Other means of discipline might include detention or community service on school grounds.) This language should prevent all expulsions and suspensions.

Nevertheless, since many school walkouts occur in direct defiance of directives from teachers, principals, or other administrators, school officials might argue that discipline is not being imposed for an absence from school, but rather for defying the valid authority of school personnel. This argument would directly contradict the plain working of Section 48900(u) that alternatives to suspensions and expulsion "be imposed against any pupil who is truant, tardy, or otherwise absent from school activities." If school officials took this position, other provisions of the California Education Code also would bar suspensions and expulsions for most students.

Suspensions of student walkout participants would be barred by Education Code Section 48900.5, which provides: "Suspension shall be imposed only when other means of correction fail to bring about proper conduct." Moreover, this section further provides that for a suspension arising from a violation of Education Code Section 48900(k), the principal must determine that "the pupil's presence causes a danger to persons or property or threatens to disrupt the instructional process." In connection with a student walkout, no reasonable argument can be made that a student's presence at school "causes a danger to persons or property." Likewise, although the student leaving might disrupt the instructional process, the student wanting to return to school would not disrupt the instructional process and should not be the basis for a suspension. However, this section might successfully be used to suspend student organizers of the walkout who were distributing flyers and refused to stop such activity, since their continued presence on campus arguably "threatens to disrupt the instructional process." Distributing flyers at school that urge students to violate school regulations would not likely be found by a court to be protected by the First Amendment.

Expulsions for student walkout participants are barred by Education Code Section 48915(e) unless one of the following findings is made (1) that other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or (2) that due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. It is unlikely that such findings could be reasonably made, either for a participant or one of the organizers. However, repeated participation in walkouts might satisfy the first finding should a court conclude that suspensions and expulsion are not barred altogether as discussed above.

Keep in mind that the law will not stop a principal from unlawfully suspending students. Suspensions can be immediately imposed for up to five days with nothing more than an informal conference. Moreover, under Education Code Section 48910, a teacher may suspend a student from her or his class for the day of the suspension and the day following for any act in violation of Education Code Section 48900. Additionally, the law will not protect you from adverse consequences such as a lower grade if you miss an exam because of the walkout.

Expulsions require a much more formal process and are not likely to be used.

Finally, this discussion might not apply if the student engaged in other prohibited conduct during the walkout. For example, if a student stood up while class is in session and urged other students to follow him out of the classroom, this conduct would disrupt an ongoing class and be subject to discipline. To avoid disruption of a class in session, the walkout might be scheduled for a time between classes.

**Q. What are the likely consequences for walking out of school?**

**A.** Public school students should look to their school's student handbook. The handbook will discuss the school's attendance policy and the consequences for missing school. Students who participate in walkouts should not be subject to any punishment different from the punishment normally used when students miss school. It would violate the First Amendment for students who leave school to attend an anti-war protest to receive harsher punishment than students who leave to go to a Dodger baseball game, for example.

**Q. Are private school students protected by these provisions of the Education Code?**

**A.** No. The Education Code provisions on suspensions and expulsions only apply to public schools through high school. Private high school students enjoy certain protections under Education Code Section 48950 discussed above; however, this section would not protect a student for discipline for an unauthorized absence from school. The act of leaving school, even if for a political reason, would not be protected speech.

**Q. Can college students be disciplined for staging a student walkout?**

**A.** No. California's compulsory education law does not require that students attend college. Students come and go at college campuses according to their own schedules. However, since each teacher has his or her own attendance policy, you need to determine whether missing a particular class will lower your grade or result in your being dropped from the class.

**Q. Can a student be arrested for walking out of school?**

**A.** Many cities have passed ordinances addressing truancy. For example, Los Angeles Municipal Code Section 45.04 makes it "unlawful for any minor under the age of 18, who is subject to compulsory education or to compulsory continuation education, alone or in concert with others, [to] be present in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places of amusement and eating places, vacant lots or any place open to the public during the hours of 8:30 a.m. and 1:30 p.m. of the same day on days when said minor's school is in session." There are numerous exceptions to this provision. For example, if a public rally is held in conjunction with the walkout, the student could argue that the section does not apply because the student is "attending or going to or returning directly home from a public meeting." Municipal Code Section 45.04(b)(6). Nevertheless, one cannot predict how the police might apply this section. If your school is not located within the City of Los Angeles, you should check your city's local ordinances which usually can be found on the city's website. Of course, these truancy laws have no application to students 18 and older.

***Municipal Code Section 45.04***

(a) Curfew. It is unlawful for any minor under the age of 18, who is subject to compulsory education or to compulsory continuation education, alone or in concert with others, be present in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, places of amusement and eating places, vacant lots or any place open to the public during the hours of 8:30 a.m. and 1:30 p.m. of the same day on days when said minor's school is in session.

(b) Exceptions. The provisions of this section shall not apply when:

1. The minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor;
2. The minor is on an emergency errand directed by his or her parent or guardian or other adult person having the care and custody of

the minor;

3. The minor is going or coming directly from or to their place of gainful employment;

4. The minor is going or coming to or from a medical appointment;

5. The minor has permission to leave campus for lunch and has in his or her possession a valid, school-issued, off-campus permit;

6. The minor is attending or going to or returning directly home from a public meeting, or place of public entertainment, such as a movie, play, sporting event or school activity; or

7. The presence of such minor in said place or places is connected with or required with respect to a business, trade, profession or occupation in which the minor is lawfully engaged.

8. When the minor is involved in an emergency such as a fire, natural disaster, automobile accident, a situation requiring immediate action to prevent serious bodily injury or loss of life, or any unforeseen combination of circumstances or the resulting state which calls for immediate action; or

9. When the minor is in a motor vehicle involved in interstate travel; or

10. When the minor is on a sidewalk abutting the minor's residence.

11. The minor is authorized to be absent from his or her school pursuant to the provisions of California Education Code Section 48205, or any other applicable State or federal law. (Added by Ord. No. 172,603, Eff. 6/28/99.

(c) Violation. Each violation of the provisions of this section shall constitute a separate offense and shall be an infraction unless the minor requests that a petition be filed under Section 601 and 602 of the Welfare and Institutions Code.

(d) Penalties for Violation. Any person convicted of willfully violating this ordinance is

guilty of an infraction punishable by a fine not exceeding \$250.00 and/or perform community service for a total time not to exceed 20 hours over a period not to exceed 30 days, during times other than his or her hours of school attendance or employment.

Notwithstanding any other provisions of this Code, when a person under the age of 18 years is charged with a violation of this ordinance, and a peace officer issues a notice to appear in Superior Court to that minor pursuant to Welfare and Institutions Code Section 256, the charge shall be deemed an infraction unless the minor requests that a petition be filed under Section 601 or 602 of the Welfare and Institutions Code.

(e) Severability of Provisions. If any severable provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect other provisions or applications of the ordinance which can be given effect notwithstanding such invalidity.