

# KNOW YOUR RIGHTS

## STUDENTS: KNOW YOUR RIGHTS ON **FREE SPEECH & PROTEST**



**Massachusetts students have free speech rights at school, but those rights do not always protect speech that may cause substantial disruption<sup>1</sup> or that invades the rights of others.<sup>2</sup>**

Example 1: A student wears a T-shirt to school with the words “Make America Great Again.” The school’s assistant principal tells the student to change the shirt or to cover it because it is “too political.” The student believes they have a right to wear it and to express their political views. The student is likely right, although all such situations must be evaluated based on the actual facts and surrounding circumstances, and the courts usually give deference to the school’s judgment about whether student speech creates a risk of substantial disruption or invades the rights of others.

Example 2: A student wears a T-shirt to school that says “White people are better” and school officials ask them to change it or go home for the day. The school cites concerns that the shirt invades the rights of students of color — particularly the right to a school environment in which they are accepted and do not experience discrimination on the basis of race or national origin. The school also cites a concern, based on past experiences, that the message may cause disruption at school. This situation requires a careful balance between rights of free expression and rights of equality and inclusion, both of which schools are required to uphold. The law is still evolving on where the right balance is struck.<sup>3</sup> To avoid discipline, students may wish to consider not displaying messages at school that suggest that other students do not deserve recognition or equal treatment based on their identities.

**Students have a right to protest. However, they can be disciplined 1) if protests cause substantial disruption at school or invade the rights of others (see above) or 2) for being absent from school or classes — although disciplinary action must not discriminate based on the students’ viewpoints and must be consistent with school policy.**

Example: Miles is absent for the 11th time this year, one more than the allowed 10 unexcused absences. He was at a protest demanding the city fire his school’s principal. The school suspends him for 3 days.

However, another student, Oz, has 11 unexcused absences after taking an extended vacation with his parents, gets only one hour of detention. Miles and his parents rightfully ask the school to explain the difference in punishment; getting no satisfactory answer, they follow the school’s process for formally challenging the discipline.

**In other words, there is no special right to miss school to engage in protests, rallies, or demonstrations. But schools can’t treat absences for rallies and protests more harshly than absences for other reasons, or punish you more based on the subject matter of a protest — unless the protest causes disruption or invades the rights of others.**

- Note that schools sometimes have policies to:
- Not discipline students for being absent until the number of absences exceeds a certain number; and/or
- Allow absences for certain reasons with permission of a parent and principal.

**Before you miss school for a protest, you should check your school’s policies to see if being absent might get you disciplined. Also, try to find out if there is a way to get permission so the absence won’t count. This way you’ll know in advance if you might get in trouble for missing school for the protest and can make an informed choice.**

<sup>1</sup>Massachusetts General Laws c. 71, § 82 <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section82>

<sup>2</sup>*Tinker v. Des Moines*, 393 U.S. 503, 513 (1969) (student speech is not immunized from discipline if it “materially disrupts classwork or involves substantial disorder or invasion of the rights of others”). See also G.L. c. 76, § 5 (schools may not discriminate against students with regard to advantages and privileges of an education based on race, color, sex, gender identity, religion, national origin or sexual orientation); G.L. c. 71, § 370 (schools have an obligation to prevent bullying).

<sup>3</sup>In *Mahanoy Area School Dist. v. B.L.*, 141 S. Ct. 2038, 2045 (2021) (Supreme Court suggests that speech that invades the rights of others may include but not necessarily be limited to “serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students”). See also *Doe v. Hopkinton Public Schools*, 19 F. 4th 493 (1st Cir. 2021) (bullying held to invade the rights of others).