

Q. Does my free speech right protect me if I sexually harass someone at school?

A. No. Students are not permitted to engage in “sexual harassment,” which means unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when such conduct has a negative impact upon the other person's work or academic performance, or creates an intimidating, hostile, or offensive work or educational environment.

Q. What characteristics are protected under the laws prohibiting discrimination, harassment, intimidation and bullying?

A. Students are protected from discrimination, harassment, intimidation and bullying based on actual or perceived disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or association with a person or group with one or more of these actual or perceived characteristics. The free speech laws do not provide a valid defense for a student found to have engaged in discrimination, harassment, intimidation or bullying.



Q. Do I need to be concerned that my Facebook posts or other electronic communications might violate any criminal laws?

A. Yes. Several California criminal laws relate to electronic communications. Examples include:



- Penal Code 653m: It is a misdemeanor to engage in an electronic communication with another person, with intent to annoy, if you make a threat to inflict injury to the person or the property of the person.
- Penal Code 653.2: It is a misdemeanor to electronically distribute or post personal identifying information (including a photo) of another person if the message is of a harassing nature and would be likely to incite others to harass the person.
- Penal Code 528.5: It is a misdemeanor to knowingly and without consent credibly impersonate another person, through electronic means, for purposes of harming, intimidating, threatening or defrauding the person.

## How Free is My Speech?

### Guidance for California Public School Students



Most students know they have a right to “free speech” under the U.S. Constitution, but students also know they can get in trouble at school for certain speech, including bullying other students. This pamphlet is intended to help students understand the rules in regard to speech at school and speech that impacts the school environment.

# How Free is My Speech?



*Q. What laws protect free speech of students in California?*

A. The First Amendment to the U.S. Constitution and Article 1, Section 2 of the California Constitution prohibit the government from abridging (diminishing) the freedom of speech. This protection is reiterated in California Education Code section 48950. However, this does not mean students may say anything they want without consequence. Under California Education Code Section 48907, students may not engage in speech that is obscene, libelous, or slanderous. Speech that is false (not a matter of opinion) and exposes a person to hatred, contempt or ridicule is unprotected. Speech that is likely to cause substantial disruption at school also may be cause for discipline.

*Q. What if a student threatens another student with harm? Is that protected "free speech"?*

A. "True threats" are not protected speech. A "true threat" exists when a reasonable person who is the object of the statement would feel threatened. It is not necessary in all cases that the threat is made directly to the victim; it is expected that speech sent electronically will be forwarded to other people. Students may be suspended or expelled for (1) threatening to cause injury to another person, and (2) intentionally engaging in harassment, threats, or intimidation directed against students or school employees that is sufficiently severe or pervasive as to materially disrupt classwork, create substantial disorder, and invade the rights of students or school employees by creating an intimidating or hostile educational environment. Some threats will violate criminal laws as well.



*Q. When can bullying be cause for suspension or expulsion from school?*

A. To support a suspension or expulsion, bullying is any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act ... that has or can be reasonably predicted to have the effect of one or more of the following:

- placing a reasonable pupil in fear of harm to the pupil's person or property
- causing a reasonable pupil to experience a substantially detrimental effect on his physical or mental health
- causing a reasonable pupil to experience substantial interference with academic performance or the ability to participate in or benefit from the services, activities, or privileges provided by the school.

Note: Pupils can be suspended or expelled for acts related to school activity or attendance that occur at any time