

Speaking Out with Your T-Shirt

A quick guide for lesbian, gay, bisexual, and transgender high school students

Why? T-shirts – as well as hats, buttons, and other wearable items – are a common way for students to express their views on everything from political races to social issues. Schools have a long history of trying to censor this form of speech, especially when it’s about lesbian, gay, bisexual, and transgender people.

In 2005, the ACLU filed a lawsuit in federal court against a Webb City, Missouri high school that twice punished LaStaysha Myers, a heterosexual 15-year-old student, for wearing t-shirts expressing her support for gay rights. In contrast, administrators routinely allowed students to wear shirts expressing other messages, including endorsements of the Bush and Kerry presidential campaigns and opinions on abortion. The lawsuit was settled when the school promised that it would no longer censor Myers for wearing t-shirts bearing gay-supportive messages.

The ACLU often hears from students whose schools have told them they can’t wear t-shirts with messages about their opinion on LGBT people. If you’re thinking about wearing an LGBT-positive t-shirt to school and you expect trouble, here’s what you should know and what to expect.

No Obscenities, No Threats, Nothing Lewd or Vulgar

Wearing an LGBT-positive t-shirt is speech or expression, protected by the First Amendment to the U.S. Constitution. In *Tinker v. Des Moines Independent Community School District*, the landmark case establishing student free speech rights, the Supreme Court said that students are not required to “shed [their] constitutional rights to freedom of speech or expression at the schoolhouse gate.”

This does not mean that you can put anything on your t-shirt and parade it around the campus. The law allows schools to ban obscene, threatening, or “lewd or vulgar” speech. You probably get what “obscene” or “threatening” speech is, but what is “lewd or vulgar?” The best way to explain that is to give you a real-life example. In *Bethel School District No. 403 v. Fraser*, the Supreme Court ruled that a school could suspend a student for making this speech nominating another student for student government office:

I know a man who is firm – he’s firm in his pants, he’s firm in his shirt, his character is firm – but most of all, his belief in you, the students of Bethel, is firm.

Jeff Kuhlman is a man who takes his point and pounds it in. If necessary, he’ll take an issue and nail it to the wall. He doesn’t attack things in spurts – he drives hard, pushing and pushing until finally – he succeeds . . .

Well, you get the point.

Nothing That Will Disrupt Classes

The law says that other than for speech that falls into one of the banned categories listed above, students may express their views freely. There is a big “but” to this rule and that’s where most of the court battles about t-shirts have focused. Students may express themselves freely *but* this may not significantly disrupt classes or interfere with the rights of others.

In deciding whether school authorities acted lawfully when punishing a student for wearing a particular t-shirt

or forcing a student not to wear a controversial t-shirt, courts rigorously examine the facts of the matter to make sure that what’s really going on is not flat-out censorship of an unpopular opinion – something the law is clear that schools can never do. If school authorities claim that a message on a t-shirt will cause a disruption, their fear of disruption must be backed up by facts.

Tinker provides a good example. In this case, a group of students who wanted to protest the Vietnam War planned to wear black armbands to school. When school officials learned of the plan, they adopted a rule banning the armbands. The Supreme Court decided that despite strong feelings surrounding the war and student dissent of it (a former student of the high school had been killed in the war), school authorities did not have enough evidence to support their fear that wearing black armbands in class to protest the war would significantly disrupt the school or impair the rights of others.

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Courts are clear that a school's concern about *other* students' possible hostile reactions to a message on a t-shirt does not justify censoring it. This point is critical because school officials often try to justify censoring LGBT-positive expression by claiming that they are fearful of disruptions caused by students offended by the expression.

Two examples. In *Boyd County High School Gay Straight Alliance v. Boyd County Board of Education*, a federal court ruled that public protests over the presence of a GSA at a high school, including a sick-out by half of the high school, did not justify shutting down students' expressive activity, which was not itself disruptive. And in *Fricke v. Lynch*, another federal judge ruled that a principal's concern about other students' possible violent reactions if a gay couple were allowed to attend the prom did not justify suppressing the couple's right to free expression. This judge explained his decision this way: "[t]o rule otherwise would completely subvert free speech in the school by granting other students a 'heckler's veto,' allowing them to decide through prohibited and violent methods what speech will be heard."

Legal Tips

If you end up in a fight with school authorities over your t-shirt, the facts are critically important, so collect and write them down. Find out, for example, whether the same or similar t-shirts have been worn to school and what, if anything, happened. Keep track also of when school authorities stepped in to tell you to turn your shirt inside out or to send you home to change. If it happened before classes started, for example, it's pretty hard to say that your t-shirt disrupted anything.

Find out, too, whether other students have been allowed to express opinions at odds with yours at school. In a recent case the ACLU did in support of a student wearing a t-shirt that said "I'm gay and I'm proud," the fact that another student had earlier worn a t-shirt that declared "Adam and Eve, not Adam and Steve" without interference from the principal was critical to the success of the case.

If you're censored, keep things cool and simple. Remain calm and polite and comply with any order from your

principal or teacher. Obeying an order from a school official does not mean you agree with it and does not affect your right to challenge it through the proper channels later on. Refusing to change t-shirts or getting into an argument with school officials only muddies the issue, and not cooperating might provide the school with an excuse to deflect blame for its censorship onto you by saying you were insubordinate or disruptive. Remember to keep a copy of any written document the school gives you on this matter and to write down the name and contact information of any person who witnessed any exchange between you and a school official over your t-shirt.

You should know that the law about expressive t-shirts in school as described above applies just to students in public schools. Private school students have fewer rights.

Got more questions? In giving you this summary of the law on t-shirts and student expression in schools, the ACLU does not mean to discourage you from speaking out in support of equality for LGBT people. That so many schools today treat their LGBT students with fairness and respect is due directly to students like you who spoke up against injustice. If you decide to speak out, whether it be through your t-shirt or otherwise, and get in trouble, let us know. We can help. Contact us at aclu.org/safeschools! It's confidential – we won't ever contact your school, your parents, your friends, or anyone else without your okay, and any communication between you and the ACLU is private.