Know Your Rights Manual
National Lawyers Guild San Francisco Bay Area Chapter

Rights with Law Enforcement

- Law enforcement includes city police, campus police, law enforcement officials from federal agencies, BART police, etc.
- When dealing with police, do not unnecessarily antagonize them; do not make sudden movements; keep your hands visible. Do not touch the officer or her/his equipment.
- Police Encounters – 3 basic types: conversation, detention, and arrest.
    - Conversation
        - When law enforcement officers don't have enough information or evidence to legally stop you, they may just ask you questions and spark up a conversation. They may be looking for the evidence they need to detain or arrest you.
        - You are not required to speak with them.
        - You can say: "I'd rather not speak to you; I'm going to keep walking." You can also ask if you are being detained. If they say "no," equivocate, try to intimidate you, or ask you a question in return, you are free to walk away.[1]
    - Detention
        - When you are detained, you are not arrested, per se, but nor are you free to leave.
        - Generally, officers must have "reasonable suspicion" that you are involved in a crime to be able to legally detain you.[2]
        - Detention should only last a short time – no longer than necessary to confirm or dispel the suspicion.[3] During a detention, officials may be allowed to pat you down and may be able to look into your bags, but they should not go into your pockets unless they felt a weapon or contraband during the pat down.[4] If they say you are being detained or can't leave, you may want to ask why.
        - But if they ask you questions you may invoke your right to remain silent only by saying words to the effect, "I am going to remain silent. I want a lawyer," and then *remaining silent*.
        - Note that outside of California it may be a crime to not give your name, and thus a reason to turn a brief detention into an arrest.[5]
        - You don't have to show an ID to police unless you are driving a car.[6]
    - Arrest
        - Police can only arrest you if they have probable cause that you are involved in a crime.[7] If you are under arrest they can search you and the belongings you have near you.[8]
        - Miranda
            - The constitutional privilege against self-incrimination applies with equal force to people of all ages[9]

        - Police do not necessarily have to read you your rights when you are arrested, only if they are going to interrogate you while in custody, and only if it is a police officer that will interrogate you.[10]
        - Even then, they may not read you your rights and whatever you tell them can still be used against you, so if you want to invoke your Miranda rights, it is best to say "I am going to remain silent. I want to speak to a lawyer."[11]

- Interrogation
    - Police are trained to use numerous tricks to get you to talk, and they are fully authorized to lie. Also, be alert to the innocent sounding conversation which does not sound like interrogation or the non-officer asking you questions.
    - If you answer some questions accidentally, you can still invoke your rights later.
    - To fully protect your rights, you should not speak with law enforcement without your attorney present.
    - It can be a serious crime to make a false statement to police or other officials, so you are better off not talking than furnishing false information.[12]
    - Note that it is not a crime or even unconstitutional for police to make a false statement to you to get you to talk,[13] e.g., "we have evidence that you did it."
    - When you invoke your Miranda rights, the police are supposed to stop questioning you, at least for a while.[14] However, since the repercussions for police are minor, they often violate this rule, and are often trained to violate it.
    - Role Play – I'm a cop and you are in custody. How would you respond?
        - "You're not a suspect – just help us understand what happened here and then you can go."
        - "Answer my questions and you won't go to jail."
        - "All of your friends have cooperated and we let them go home. You're the only one left."
        - "If you're not guilty, why don't you talk?"
    - Other techniques
        - Good Cop/Bad Cop.
        - Splitting up a group of people, and questioning them separately, looking for inconsistencies in order to create reasonable suspicion or probable cause.
        - They lie by telling you your friends snitched you out, simultaneously telling your friends the same thing in other cells.
- Searches
    - You never need to consent to a search, even if the police have a warrant. If the police want to, they will search you or your property regardless. By consenting, you waive various rights. You can simply say, "I do not consent to a search."
    - Not consenting may not stop them, but it may allow you to suppress evidence from being presented in court.[15]
    - Do not physically resist a search by police.

- Remember if a cop stops to talk to you, you may ask, "Am I being detained?" If the cop does not tell you that you are being detained, you are free to walk away.
- If arrested, to invoke your rights always say and repeat as often as necessary, "I am going to remain silent. I want to speak to a lawyer."
- Document what you can: names, agencies involved, badge numbers, witnesses and contact information.

Free Speech Rights

- Your right to assemble and speak out and hold placards and hand out flyers is generally protected. There can be time place and manner restrictions.[16]
- Depending on where you are located while engaging in expression, you may have different levels of protection. For example, you have more protections in a "public forum" (such as a sidewalk or a park), then on private property, or school grounds, or sensitive government property.[17]
- Permits
    - When a permit is probably necessary:[18] While marching in the street or blocking streets;[19] while amplifying sound;[20] while protesting in certain places, for instance, in so-called "designated free speech zones" or on certain school campuses.
    - Permit issuing procedures may not be arbitrary, or viewpoint discriminatory and they must serve some legitimate purpose, such as traffic control or public safety.[21]
    - This permit process cannot be overly burdensome, cannot leave too much discretion to the permitting agency, and cannot require so much advance notice as to prevent or greatly dilute the effect of rallies or demonstrations that are rapid responses to unforeseeable and recent events.[22]
- If you don't have a permit, you can stay on the sidewalk so long as you and your group do not impede pedestrians or entrances to buildings. This includes setting up an informational table on a public sidewalk or handing out literature.[23]
- Counter-demonstrators have the right to be present and to voice their concerns.[24] However, they may not physically disrupt the event they are protesting. Police can keep two opposing groups separated, but they have to allow them to be within the general vicinity of each other.[25]
- Groups cannot be discriminated against or treated differently based on the content of their speech or their message.[26]

Youth

Rights in School

- Searches
    - As a student at a public school, you are protected by the Fourth Amendment from unreasonable search and seizure.[27]

- Again, outside of school, law enforcement officers must have "reasonable suspicion" that you are involved in a crime to be able to legally detain you. However in California, police officers or school officials do not need reasonable suspicion to detain you at school.[28] Therefore, a school official (a principal or teacher) is allowed to stop you to ask you questions, move you from one classroom to another or into the hallway as long as their actions are not *arbitrary and capricious.*[29]
  - School officials may search you if they have reasonable suspicion that the search will produce evidence that you are violating the law or school rules.[30]
  - The search must be reasonable in terms of what officials are looking for and your age.[31]
  - In California, reasonable suspicion requires that any searches of students be based on "articulable facts" that lead to the suspicion that the student is violating some school rule, regulation, or criminal statute.[32] For example, if they have reasonable suspicion that you have a stolen soccer ball from the gym, they should not be able to search your wallet or small purse.
  - Lockers are much less protected, so be aware that school officials have been given more leeway to search lockers.[33]
- Just because you are at school, doesn't mean that you no longer have rights to free speech and political expression.[34]
- As elsewhere, political and/or religious speech is protected more than other forms of expression.[35]
- Generally, you have the same rights in public and private schools, except that a religious private school may be allowed to further restrict your rights if your activity goes against the religious tenets of that school.[36]
- Your school can impose certain time, place and manner restrictions on your speech rights.[37] This generally means that schools are allowed to limit free speech activities if they are disruptive of the educational process.
- You do not have the right to vocally protest in the middle of a class and disrupt that class, for example.[38] That doesn't mean you shouldn't do it, but you should realize that there may be consequences.
- Consequences
  - Suspension
    - The California Education Code limits a school's ability to suspend students. Generally, you can only be suspended for certain enumerated activities such as possessing weapons or damaging school property.
    - Suspension should be used as a last result AND only when a student's presence "causes a danger to persons or property or threatens to disrupt the instructional process."[39]
    - Further, the act which the student is suspended for must be "related to school activity or school attendance."[40]
    - The principal of a school can suspend a student for a *maximum* of five consecutive days, and cannot do so without an informal conference with the student, and notification to the guardians.[41] Nevertheless, the principal cannot suspend a student for reasons beyond those

enumerated in the Education Code.[42] If the principal suspends a student in violation of these regulations, the student can appeal.[43]

- Expulsion
  - The standards for expulsion are even higher.[44]
  - The Principal or Superintendent may only *recommend* suspension, unless the student has committed one of several specific acts – e.g., possession of a firearm, brandishing a knife at another person, selling a controlled substance, committing sexual assault, and possession of an explosive.
  - The school board may only expel a student if she commits one of the defined acts in the Education Code, such as assault, possession of a controlled substance, robbery, or causing serious physical injury.[45]
  - The governing board which orders the expulsion must show that 1) other means of correction are not feasible or have failed; or 2) the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

- Truancy
  - The law says that other means of discipline must be used for truancy or absences from school, not suspension or expulsion.
  - You must be absent from school without a valid excuse 3 full days; or tardy or absent more than 30 minutes of a school day on 3 occasions in one school year without a valid excuse.[46]
  - If you are found to be truant, your parents may be contacted and there may be other consequences depending on your school district.
- What if law enforcement finds you away from school during school hours?
  - Police may be able to arrest you for not being in school depending on the law in your city. These offenses are generally infractions, and the officer generally is required to deliver the student back to school, to a parent or to a center specifically designated for truant students – not to jail.[47]
  - San Francisco, Oakland and San Jose do not have these daytime curfew laws.

<u>Rights with Respect to Military Recruiters</u>

- The Supreme Court has said that military recruiters must have the same access as other employers or the school can lose federal funding.[48]
- Administrators can organize protests.[49] We have found that sometimes administrators actually help recruiters. This is an important point. If the school says it is against recruitment but has no choice, tell them they should help organize a protest and make other statements against the recruiters while they are on campus.
- Release of Directory Information
  - Schools may release directory information to the public, including recruiters. However, the Family Educational Rights and Privacy Act requires schools to honor a guardian's affirmative request that any or all of that information not be released without guardian consent.[50]
  - The No Child Left Behind Act also forces high schools that receive federal funding to release the name, address and telephone number of students to

military recruiters and institutions of higher education upon request. In this case, a student *or* parent can opt out of consent to dissemination of such information.[51]

- Speaking to military recruiters: *You don't have to*. You can tell them you're not interested and ask them not to contact you again.
- Recruiters Lie, and the courts have relieved the military of honoring their contractual *promises* to enlistees – such as to discharge you by a certain date.[52]
- Be careful before signing anything.
    - An actual enlistment contract will bind both you and the government for military service (but you more than the government).[53]
    - Courts have ruled that once you have enlisted, the military and the executive – i.e. the president – can block your discharge indefinitely.[54]
- Delayed enlistment
    - You can get out. You can simply not go on your ship date.[55]
    - You may also consider writing a letter to the commander of the recruiting center where you were recruited stating that you don't plan to enlist.[56]
    - Don't let recruiters intimidate you or talk you out of seeking legal recourse just because you've "made a commitment."[57]

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[1] *Florida v. Bostick*, 501 U.S. 429, 434 (1991) ("So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required.")

[2] *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (Police officer "must be able to point to specific and articulable facts" to justify a "stop and frisk."); *Wyoming v. Houghton,* 526 U.S. 295 (1999) (Courts must evaluate the constitutionality of a search or seizure based on traditional reasonableness standards); .

[3] Generally, courts treat interrogations as "seizures" under the Fourth Amendment. See Lee Remington, *The Ghost of Columbine and the Miranda Doctrine: Student Interrogations in a School Setting.* 41 Brandeis L.J. 373, 379 (2002); Rules on detention conditions vary in accordance with jurisdiction. See In re Randy G., 26 Cal. 4th 556, 563-564 (Cal. 2001) (officials can bring a student into the hallway or to the side for questioning); Stockton v. City of Freeport, 147 F. Supp. 2d 642 (D. Tex. 2001) (upheld search, handcuffing, and transportation of students into police vehicles without a warrant on school grounds).

[4] *In re Randy G*., 26 Cal. 4th 556 (upheld pat-down in seizure); *Terry,* 392 U.S. at 30-31 (upheld patdown where officer had reasonable grounds to believe that the arrestee was armed).

[5] Cal Pen Code § 647(e) (California's "stop and identify" statute was overturned as unconstitutional); See also *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County,* 542 U.S. 177, 178 (2004) (upheld Nevada's 'stop and identify' statute, ruling that asking for one's identification does not implicate the Fourth Amendment. *Id.* at 185. Note also that the statute in *Hiibel* required reasonable suspicion for interrogation); See Ala. Code §15—5—30 (West 2003); Ark. Code Ann. §5—71—213(a)(1) (2004); Colo. Rev. Stat. §16—3—103(1) (2003); Del. Code Ann., Tit. 11, §§1902(a), 1321(6) (2003); Fla. Stat. §856.021(2) (2003); Ga. Code Ann. §16—11—36(b) (2003); Ill. Comp. Stat., ch. 725, §5/107—14 (2004); Kan. Stat. Ann. §22—2402(1) (2003); La. Code Crim. Proc. Ann., Art. 215.1(A) (West 2004); Mo. Rev. Stat. §84.710(2) (2003); Mont. Code Ann. §46—5—401(2)(a) (2003); Neb. Rev. Stat. §29—829 (2003); N. H. Rev. Stat. Ann. §§594:2 and 644:6 (Lexis 2003); N. M. Stat. Ann. §30—22—3 (2004); N. Y. Crim. Proc. Law §140.50(1) (West 2004); N. D. Cent. Code §29—29—21 (2003); R. I. Gen. Laws §12—7—1 (2003); Utah Code Ann. §77—7—15 (2003); Vt. Stat. Ann., Tit. 24, §1983 (Supp. 2003); Wis. Stat. §968.24 (2003)..

[6] *Hiibel* applies only to providing officers with one's *name,* not proper identification.

[7] *Illinois v. Gates,* 462 U.S. 213, 230-231 (1983) (replaced the *Spinelli* two-prong test with a 'totality of the circumstances' test, but maintained the requirement of probable cause for arrests).

[8] *United States v. Robinson*, 414 U.S. 218, 226 (1973) ("When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape.")
[9] *In re Gault,* 387 U.S. 1, 55 (1967)
[10] *Miranda v. Arizona,* 384 U.S. 436, 444 (1966).
[11] Courts will apply a "totality of circumstances" test when determining whether or not a young person has waived her Miranda rights. Hence, it is safest for the student or youth to state explicitly that she is invoking her Fifth Amendment rights. See *Fare v. Michael C.*, 442 U.S. 707, 728 (1979); "Uniform Juvenile Court Act provides that a child charged with a delinquent act need not be a witness against or otherwise incriminate himself, and any extra-judicial statements that are obtained in violation of the Uniform Act or the Constitution cannot be used against him." Lee Remington, *The Ghost of Columbine and the Miranda Doctrine: Student Interrogations in a School Setting.* 41 Brandeis L.J. 373, 379 (2002); Uniform Juvenile Court Act § 27(b) (1968).
[12] See generally, 66 A.L.R.5th 397 § 8 for case law on obstruction of justice on the basis of false statements to officers for several states.
[13] *Colorado v. Spring, 479* U.S. 564 (1987) (upholding police officers misrepresenting the focus of the interrogation); *Oregon v. Mathiason*, 429 U.S. 492 (1977) (upheld conviction where police falsely stated that suspect's fingerprints had been found at the crime scene).
[14] *Miranda v. Arizona* 384 U.S. 436, 473-474 (1966) ("If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease."); *Michigan v. Mosley,* 423 U.S. 96, 104 (1975) ("The admissibility of statements obtained after the person in custody has decided to remain silent depends under Miranda on whether his "right to cut off questioning" was "scrupulously honored.")
[15] *Mapp v. Ohio*, 367 U.S. 643, 653 (1961) (The trial court decides reasonableness of a search based on a factual finding.)
[16] *Tinker v. Des Moines Indep. Sch. Dist*., 393 U.S. 503 (1969) (Recognizing the right to non-disruptive speech); *Grayned v. City of Rockford,* 408 U.S. 104, 124, (1972) (Holding time, place, and manner restrictions as constitutional); Board of Educ. v. Mergens, 496 U.S. 226 (1990) and Widmar v. Vincent, 454 U.S. 263 (1981) (finding that high schools and universities respectively cannot prohibit a voluntary student organization prayer group from using school facilities to meet on an equal access basis)
[17] *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n,* 531 U.S. 288, 296 (2001) ("The fundamental inquiry is whether the action in question is "fairly attributable" to the state…entwinement will support a conclusion that an ostensibly private organization ought to be charged with a public character and judged by constitutional standards."); Robins v. Pruneyard Shopping Center 582 P.2d 341, 347 (1979) (the California Constitution protects speech and petitioning, reasonably exercised, in shopping centers even when such centers are privately owned); U.S. v. Grace 461 U.S. 171, 177 (1983) (free speech activities are protected in public forums or traditionally public forums).
18 *Cox v. State of New Hampshire*, 312 U.S. 569 (1941) (considered the reasonableness of permit fees for demonstrations); *Walker v. Birmingham,* 388 U.S. 307, 315-316 (1967) (Upheld a permit requirement for the city of Birmingham, ruling that the "free passage of traffic and the prevention of public disorder and violence" are both legitimate state concerns.); *Coates v Cincinnati,* 402 US 611 (1971) (permit ordinance struck down for vagueness); See San Francisco Municipal Ordinance Article 6 for permit requirements – a protest with under 50 people should not require a permit.
[19] *Shuttlesworth v Birmingham,* 394 US 14 (1969) (Reversed conviction for demonstrating without a permit where they did not block traffic or pedestrians); *Adderley v Florida,* 385 US 39 (1966) (upheld criminal trespass conviction where demonstrators blocked vehicular passage).
[20] *Kovacs v. Cooper,* 336 U.S. 77 (1949) (Upheld conviction under Trenton ordinance that prohibited amplified sound based on local police power to protect the community from "loud and raucous" disturbance).
[21] *Walker v. Birmingham,* 388 U.S. 307.
[22] *N.A.A.C.P., Western Region v. City of Richmond*, 743 F.2d 1346, 1355-1356.
[23] *Lovell v. City of Griffin, Ga.* 303 U.S. 444, 451 (1938); This is true as long as there is no time, place and manner ordinance relevant. *U.S. v. Kokinda,* 497 U.S. 720 (1990); See *Adderly*, supra note 35.
[24] The law may not discriminate among speech by content rather than form. *Regan v. Time, Inc.,* 468 U.S. 641 (1984) (Court struck down content-based portion of a NY statute regulating illustrations of federal currency. "Regulations which permit the Government to discriminate on the basis of the content of the message cannot be

tolerated under the First Amendment." *Id.* at 648-649); See also *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 763 (1994) (upheld anti-abortion protest injunction. "Our principal inquiry in determining content neutrality is whether the government has adopted a regulation of speech 'without reference to the content of the regulated speech.'")

[25] *Madsen v. Women's Health Ctr., Inc.,* 114 S. Ct. 2516 (1994) (allowed for a 36-foot "buffer-zone" between parties); *Grayned v. Rockford*, 408 U.S. 104, 115-16 (1972) (The government may prohibit two parades from marching on the same street); See generally, Kevin Francis O'Neill and Raymond Vasvari, *Counter-Demonstration As Protected Speech: Finding the Right to Confrontation in Existing First Amendment Law,* 23 Hastings Const. L.Q. 77 (1995).

[26] See supra note 39.

[27] *New Jersey v. T.L.O.,* 469 U.S. 325, 333 (1985) ("Equally indisputable is the proposition that the Fourteenth Amendment protects the rights of students against encroachment by public school officials…" *Id.* at 334)

[28] *In re Randy G.,* 26 Cal. 4th 556, 562 (Cal. 2001) (Seizure by campus security officers, where officer pulled student from the classroom for questioning and patdown upheld by the Supreme Court of California); A number of other states also do not require a showing of reasonable suspicion for detention of students in schools. Pennsylvania, See *In re D.E.M.*, 1999 PA Super 59 (Pa. Super. Ct. 1999) (Rejected requirement for reasonable suspicion based on specific and articulable facts where school officials removed student from classroom and detained him at the principal's office); Florida, See *W. J. S. v. State,* 409 So.2d 1209 (Fla.Dist.Ct.App. 1982) (Did not require reasonable suspicion for seizure involving a security guard bringing students to the principal's office).

[29] *In re Randy G*., 26 Cal. 4th 556, 563-564 (Cal. 2001)

[30] *New Jersey v T. L. O.,* 469 U.S. 325 (1985) (The first test for a fourth amendment violation asks whether the search or seizure was reasonable, and next whether or not there existed reasonable suspicion of the violation).

[31] *N.J. v. T. L. O.*, 469 U.S. 341("Determining the reasonableness of any search involves a twofold inquiry: first, one must consider whether the . . . action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place."); Reasonable grounds for search can be justified by facts such as the appellant's age; his history and record within the school system. *Rone v. Daviess County Bd. of Education,* 655 S.W.2d 28, 31 (Ky. Ct. App. 1983); *Cales v Howell Public Schools* 635 F Supp 454 (ED Mich 1985).

[32] Cal. Const. Art. 1, § 13; *In re William G.,* 40 Cal.3d 550, 554 -555 (Cal. 1985) (Established suspicion standard for Fourth Amendment protection in public school settings in California: "this standard requires articulable facts, together with rational inferences from those facts, warranting an objectively reasonable suspicion that the student or students to be searched are violating or have violated a rule, regulation, or statute." *Id.* at 1295. Court found that assistant principal lacked reasonable suspicion to search a student where the school official lack any prior knowledge or information relating student to drug use or possession, and relied solely on "furtive gestures" and appearance that he was tardy or truant from class.)

[33] 31 A.L.R.5th 229, §10

[34] *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."); *Kleindienst v. Mandel*, 408 U.S. 753, 763 (1972) ("This Court has recognized that this right is 'nowhere more vital' than in our schools and universities.").

[35] *Morse v. Frederick*, 127 S.Ct. 2618, 2625 (2007) (While it was legal for a school principal to suspend a student for unfurling a banner reading "BONG HiTS 4 JESUS" at a school event, the Court explained that "this is plainly not a case about political debate over the criminalization of drug use or possession.")

[36] Because private schools are not always considered state actors, students may not be protected depending the state the school is located and the relationship between the government and the school. See *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass'n,* 531 U.S. 288, 296 (2001) (A private actor will be held to the same standards as a public actor if the court finds that the private action is so entwined with state actions to be functionally a state action.). In California, students in private schools are protected by § 48950, which protects private school students' speech and communication covered by the California and Federal Constitutions. Cal Educ. Code § 48950(a) and (c) (Westlaw 2006).

[37] *Consolidated Edison Co. of New York, Inc. v. Public Service Commission of New York* 447 U.S. 530, 535-536 (1980) ("This Court has recognized the validity of *reasonable* time, place, or manner regulations that serve a significant governmental interest and leave ample alternative channels for communication…But when regulation is

based on the content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been prohibited "merely because public officials disapprove the speaker's views."); This right does not extends to unprotected speech such as fighting words and speech which may incite violence. *e.g. Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942) (The government may suppress speech if it inflicts injury or tends to incite an immediate breach of peace).

[38] *See Grayned v. City of Rockford* 408 U.S. 104, 115 (1972) (School anti-noise ordinance upheld as a time, place, and manner restriction, as it disturbs or tends to disturb the school session.); In California, a student can be suspended or recommended for expulsion if she disrupts school activities or "willfully denies the valid authority" of a school official. Cal. Educ. Code § 48900(k). Subsections (f) and (i) authorize suspension for damaging school or private property and vulgarity respectively.

[39] Cal. Ed. Code § 48900.5; See also Cal. Educ. Code § 48900 (2003) ("Suspension shall be imposed only when other means of correction fail to bring about proper conduct"); § 48900(v) ("It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against any pupil who is truant, tardy, or otherwise absent from school activities."); *Tinker,* 393 U.S. 503 (1969) (Court struck down suspension based on non-disruptive speech).

[40] Cal. Educ. Code § 48900(r).

[41] Cal. Educ. Code § 48911 (Unless in emergency situations, a conference should be held with the pupil. § 48911(b) and (d), respectively).

[42] Cal. Educ. Code § 48911 (Principal can only suspend a student for those offenses in §48900, which does not include walkouts, unless the pupil is disrupting school activities.) Further, the school cannot suspend students for more than five consecutive school days. § 48911(a). In total, a school cannot suspend students for more than twenty school days in a given school year. § 48903.

[43] An appeal of suspension would most likely come from opportunities within the school administrative system, the school superintendent, or the local county board.

[44] Cal. Educ. Code § 48915 (e).

[45] Cal.Educ.Code § 48915 (a)

[46] Cal. Educ. Code §48260

[47] § 48265 ("Any person arresting or assuming temporary custody of a minor pursuant to Section 48264 shall forthwith deliver the minor either to the parent, guardian, or other person having control, or charge of the minor, or to the school from which the minor is absent, or to a nonsecure youth service or community center designated by the school or district for counseling prior to returning such minor to his home or school, or to a school counselor or pupil services and attendance officer located at a police station for the purpose of obtaining immediate counseling from the counselor or officer prior to returning or being returned to his home or school, or, if the minor is found to have been declared an habitual truant, he shall cause the minor to be brought before the probation officer of the county having jurisdiction over minors."); In California, police have authority to arrest students for truancy. § 48264; See *In re Humberto O.,* 80 Cal.App.4th 237, 242, 95 Cal.Rptr.2d 248, 251 (Cal. App. 2 Dist. 2000).

[48] 20 U.S.C.A. § 7908 (a)(3); *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.,* 126 S. Ct. 1297, 1305 (2006), The majority even suggested that the federal government could require access on behalf of recruiters outright, but to date, Congress has only attached the loss of funds condition. *Id*. at 1307. ("It is clear that a funding condition cannot be unconstitutional if it could be constitutionally imposed directly. Because the First Amendment would not prevent Congress from directly imposing the Solomon Amendment's access requirement, the statute does not place an unconstitutional condition on the receipt of federal funds.")

[49] *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.,* 126 S.Ct. 1297, 1307 (2006) ("Law schools remain free under the statute to express whatever views they may have on the military's congressionally mandated employment policy, all the while retaining eligibility for federal funds.…[Solicitor General acknowledging that law schools 'could put signs on the bulletin board next to the door, they could engage in speech, they could help organize student protests.']" (citations removed)).

[50] See 20 U.S.C.A. § 1232g.

[51] Section 9528 of the No Child Left Behind Act, 20 U.S.C.A. § 7908. Go to http://www.aclu.org/standup/images/pdf/militaryrecruit_optout.pdf for form to opt out of military recruiting. 20 U.S.C.A. § 7908 (2) "Consent. A secondary school student or the parent of the student may request that the student's name, address, and telephone listing described in paragraph (1) not be released without prior written parental consent, and the local educational agency or private school shall notify parents of the option to make a request and shall comply with any request."

[52] For more resources on recruitment tactics, see generally http://www.nlg.org/mltf/

[53] Generally, enlistment contracts are governed by traditional principles of contract law, and rescission of an enlistment contract is only permitted if the government induced enlistment through means of fraud. *Tartt v Secretary of the Army,* 841 F Supp 236 (ND Ill). For other resources on how to leave service such as conscientious objection, see http://objector.org/.

[54] Termed "Stop Loss" orders, the military can keep soldiers beyond their term of enlistment. See *Doe v. Rumsfeld,* No. Civ. S-04-2080, 2004 U.S. Dist. LEXIS 23338 (E.D. Cal. 2004) (Judge denied temporary injunction to prevent the military from deploying a soldier beyond his term of enlistment).

[55] USAREC Reg. 601-56, Chapter 3. See Table 3-1 for list of acceptable bases of separation, including conscientious objection, dependency, marriage, and *not reporting on date scheduled*.

[56] It is probably more advisable to write a letter than not. http://www.objector.org/helpingout/Helpingoutchapters/04_Delay_Enlist.pdf. See http://www.objector.org/girights/delayed-enlistment-program.html for tips on writing a letter, or call the GI Rights Hotline 800-394-9544, girights@objector.org.

[57] USAREC Reg. 601-56 §3-1(c) explicitly requires that recruiters "respond positively" inquiries regarding legal separation. Further, it prohibits threats, coercion, manipulation, intimidation, or obstruction of separation requests in such context.