



## **2010 “Pro-life Day of Silent Solidarity” Participant Legal Information**

The Alliance Defense Fund (ADF) is a legal alliance defending the right to hear and speak the Truth through strategy, training, funding, and litigation.

Since each legal situation differs, the information provided below should only be used as a general reference and should not be considered legal advice.<sup>1</sup> If you think that your rights have been violated as a result of participating in the “Pro-life Day of Silent Solidarity,” please contact our Legal Intake Department so that we may review your situation and possibly assist you. You can reach us via telephone at 1-800-TELL-ADF (800-835-5233), or you can visit our website at [www.telladf.org/LegalHelp](http://www.telladf.org/LegalHelp) and fill out the “Get Legal Help” form to submit a request for legal assistance.

### **Introduction**

Students retain their First Amendment liberties while on campus. The Supreme Court has rightfully pointed out that “[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>2</sup>

Students have the right to wear armbands, remain silent, share their beliefs, pray, read scripture, and invite fellow students to participate in such activities so long as they are voluntary, student-initiated activities that are not disruptive or coercive. A school may not prohibit student expression during non-instructional time unless it (1) materially and substantially interferes with the discipline necessary to operate the school, or (2) infringes on the rights of other students.<sup>3</sup>

Importantly, the Supreme Court recently held that public schools cannot restrict religious speech simply because it may be perceived by some as “offensive” or “controversial,” because “much . . . religious speech might be perceived as offensive to some.”<sup>4</sup> The Third Circuit Court of Appeals has succinctly summarized this Supreme Court case law on this matter: “The Supreme Court has held time and again, both within and outside of the school context, that the mere fact that someone might take offense at the content of speech is not sufficient justification for prohibiting it.”<sup>5</sup>

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<sup>2</sup> *Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>3</sup> *Id.*

<sup>4</sup> *Morse v. Frederick*, 127 S. Ct. 2618, 2629 (2007).

<sup>5</sup> *Saxe v. State College Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001).

## **Your Rights**

1. ***Can I wear a red armband to school?***

Yes. Students have the right to express themselves at school by wearing colored armbands so long as the expression does not cause a material and substantial disruption.

2. ***Can I remain silent at school?***

You have the right to remain silent as long as it does not cause a material and substantial disruption. During class, if your teacher requires you to participate, you should obey so that there is no disruption. You should talk to your teachers beforehand about the “Pro-Life Day of Silent Solidarity” and ask if they will allow you to remain silent for the day. If students at your school are allowed to participate in the “other” Day of Silence, you should be allowed to participate to the same extent in the “Pro-Life Day of Silent Solidarity.”

3. ***Can I pass out flyers about the “Pro-Life Day of Silent Solidarity” at school?***

Yes, to the same extent that students are permitted to pass out other literature or flyers. However, you should only pass them out during breaks, lunch, and before and after school—not during class time. If the materials (1) substantially interfere with the operation of the school, or (2) infringe on the rights of other students, then the school may prohibit them. But schools may not impose an outright ban on the distribution of religious or pro-life materials if they allow students to distribute non-religious materials.<sup>6</sup>

Schools cannot claim that the so-called “separation of church and state” justifies banning religious materials on campus. Equally, schools may not ban pro-life materials simply because they might “offend” someone. The school does not endorse student speech, and federal courts have made it very clear that the school’s obligation is to educate the audience about the First Amendment, rather than silence the speaker out of fear that the audience will misperceive that the school, by allowing the speech, is endorsing it.<sup>7</sup>

4. ***Can I pray at school?***

Yes. You may pray anytime you wish during non-instructional time. During class, you should always pay attention, but it is okay to pray silently so long as you are completing your class work and not causing a disruption.

5. ***Can I bring my Bible to school?***

Yes. At a minimum, students have the same right to bring their Bible to school as they do to bring other personal items.<sup>8</sup> For example, if the school allows students to bring their own books from home to read during a free silent reading period or during breaks, the school cannot prevent students from choosing to read their Bible at these times.

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<sup>6</sup> *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993).

<sup>7</sup> *Rusk v. Crestview Local Sch. Dist.*, 379 F.3d 418 (6th Cir. 2004); *Hedges, supra*; *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044 (9th Cir. 2003).

<sup>8</sup> Excluding otherwise acceptable materials or activities based solely on the religious viewpoint is unconstitutional. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001); *Lamb’s Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

6. ***Can I wear religious or pro-life t-shirts, clothing or jewelry to school?***

Yes. Schools may not single out religious or pro-life clothing for unfavorable treatment.<sup>9</sup> Students may wear such clothing to school to the same extent that other similar articles of dress are permitted. For example, if the school allows students to wear t-shirts with messages on them, they cannot prevent a student from wearing a t-shirt with a pro-life message. Additionally, the wearing of clothing or jewelry bearing a pro-life message is considered student speech, which cannot be restricted unless it (1) substantially interferes with the operation of the school, or (2) infringes on the rights of other students.<sup>10</sup> A student may not wear clothing with a pro-life message if the school requires students to conform to a dress code that does not allow any messages to be displayed on clothing.

7. ***Can I talk to people at school about abortion or share my faith?***

Yes. Though the “Pro-Life Day of Silent Solidarity” is about remaining silent, if you have the opportunity to talk to someone, you certainly have the right to, provided it is not during instructional time and is not disruptive. If your teacher gives your class free time during which talking not related to the curriculum is permitted, you may also talk about those topics in class.

8. ***What should I do if I get in trouble, or the school tells me to take the armband/tape off?***

If a principal, teacher, or someone else in authority asks you to stop, graciously request that they check with a supervisor first. If they continue to insist that you stop, stop immediately. Please call 1-800-TELL-ADF, so that we can help resolve the situation quickly.

Other guidelines:

- Stay respectful.
- Obey authority.
- Call 1-800-TELL-ADF (800-835-5233), and be prepared to give your name, the name of your school, and the names of officials that required you to stop. If you are under the age of 18, we will also need to talk to your parents to get their permission to help you.

### **Conclusion**

We hope this information is helpful to you in understanding the rights of public school students to participate in the “Pro-Life Day of Silent Solidarity.” If you would like more information or assistance about a particular situation, please contact the Alliance Defense Fund with the information provided above.

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<sup>9</sup> See *Good News Club, supra*; *Lamb’s Chapel, supra*.

<sup>10</sup> *Tinker, supra*.