Your Child's Rights

and what to do about them

A parent's guide to saving America's public schools

This is for your general informational purposes only. It is not legal advice and does not create an attorney-client relationship between you and Southeastern Legal Foundation.

We're here to help.

The most important battleground in the fight to save our American republic is the public schools. How do we engage the public schools and actually win?

America's public schools have replaced color-blind education with race-based programming in the name of “equity.” They condition individuals to see only skin color, put everyone into a hierarchy of racial privilege, and pit racial groups against each other. Then they use the full power of government to investigate and silence criticism of this hateful ideology. This is totalitarian tyranny, not a democratic republic.

That's the bad news. The good news is that parents like you have had enough. You recognize that those putting this divisive and hateful ideology into practice are using our public schools to create a generation of “social justice warriors.” You are correct to recoil from “equity” and “anti-racism.” They are deeply destructive and controversial ideas, the very opposite of equality.

In our experience, many of you need an answer to your problems right now. That’s why we’ve compiled this guidebook. In it you’ll find an overview of what to look for in your schools, your rights as a parent, your child’s rights as a student, and hypotheticals to help you navigate the problems you may encounter.

The law can be a powerful weapon, offering hope for a lasting victory. Before you can successfully reclaim your schools, you must first understand your rights and lay out a strategy. It is our goal to give you the tools to stand up for your child in this fight for freedom. And we are ready to assist you every step of the way.

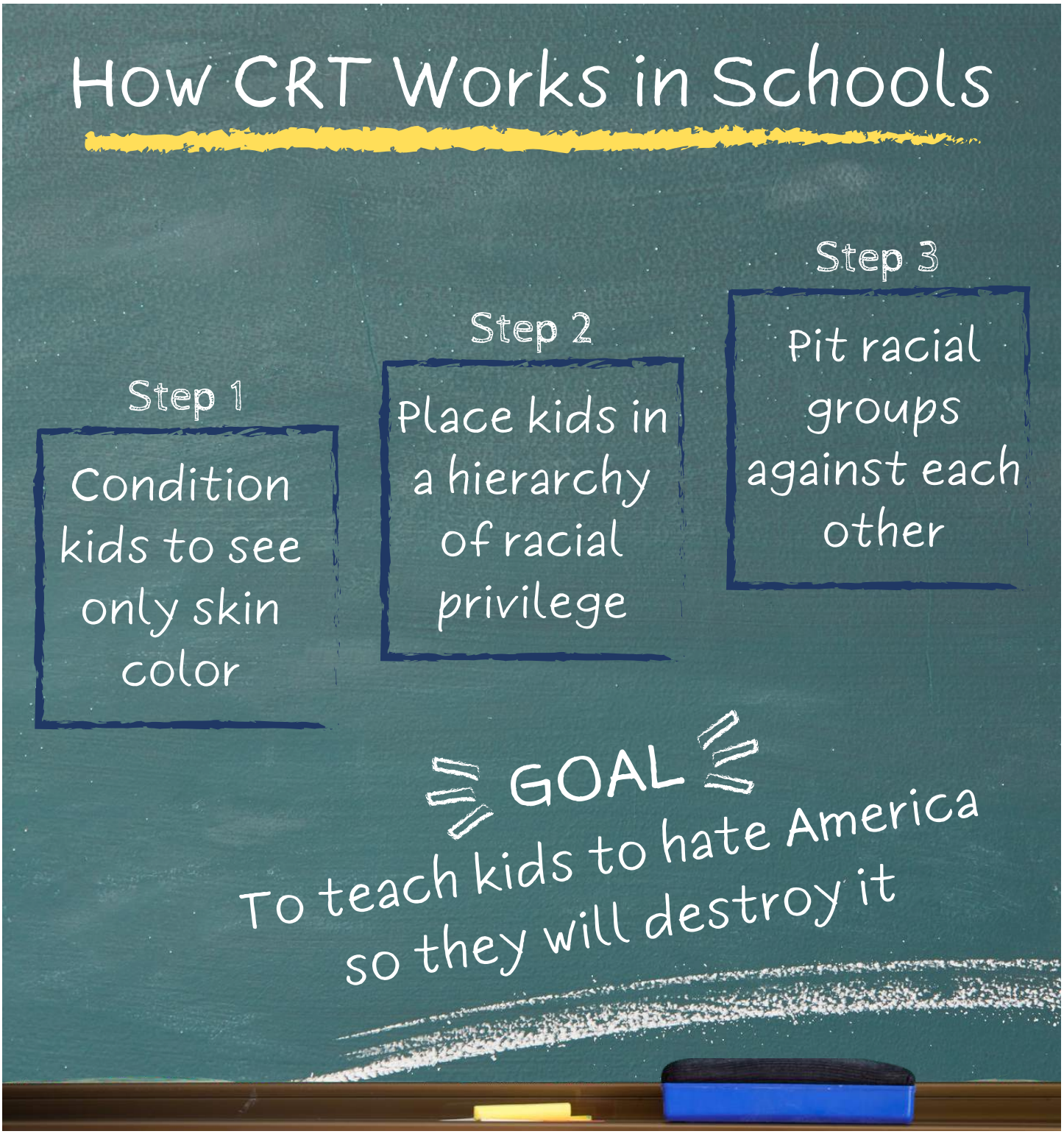
Yours in Freedom,

Kimberly

Kimberly Hermann
Southeastern Legal Foundation

Critical Race Theory

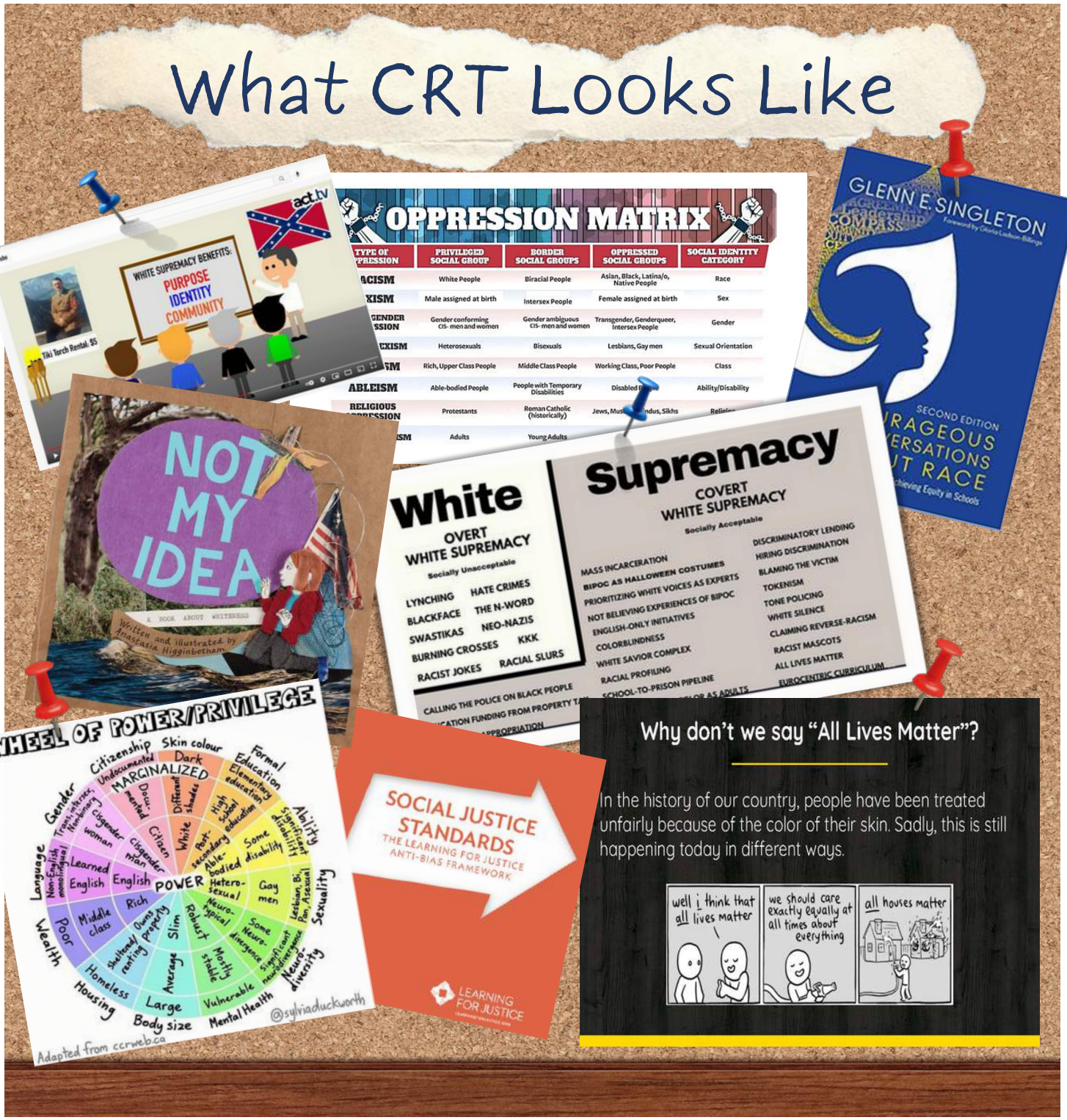
CRT holds that America was founded on white supremacy and oppression, and that racism is embedded in America's legal system, government policy, and the Constitution.



Red Flags

Diversity & Inclusion Culturally Responsive Teaching

Social Justice Implicit Bias Anti-Racism Equity



The First Amendment protects your right to speak.

It also protects your right to not speak.

Your Child's Right to Speak

Q: What is speech?

Speech is a broad term. It includes art, signs, symbols, publications, clothing, social media posts, flyers, symbols, film, and even hate and offensive speech.

It does not include obscenity, imminent incitement of violence, true threats against safety, or defamation.

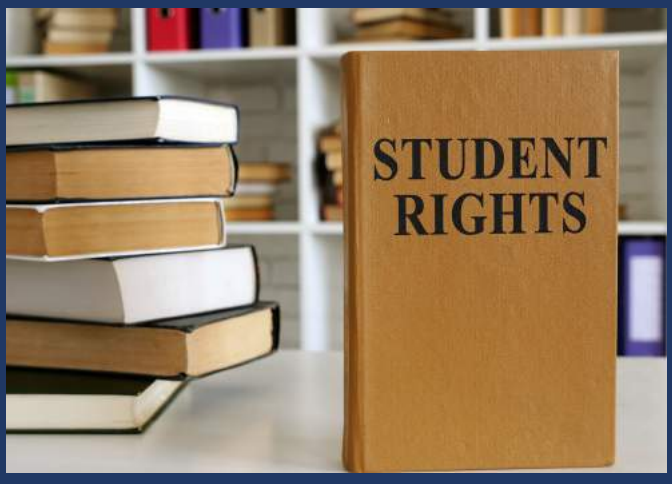
Q: What does materially or substantially disrupt mean?

A: Conduct that significantly interferes with classwork, disrupts the school environment through violence or harassment, or otherwise invades the rights of others.

Q: When can a school restrict student speech?

When speech occurs on campus and

1. Is indecent, lewd, or vulgar;
2. Promotes illegal drug use;
3. Materially or substantially disrupts school operations; or
4. Is on behalf of the school, like a newspaper.



Q: Can a school ban "offensive" speech?

A: No. A school cannot ban speech because it may offend or hurt someone's feelings.

Q: What is considered to be an "adverse action"?

A: Anything that would deter a student from engaging in that speech again. Examples include discipline, ostracization, and bad grades.

Your Child's Right Not to Speak

Q: Can a school require a student to engage in speech?

No. A school can't compel student speech on any topic or make students affirm a belief.

For example, a school can't require a student to pledge allegiance to a flag, make an anti-racist pledge, or identify as oppressed, oppressor, or privileged.

Schools Cannot Retaliate

Q: Can a school punish my child for speaking?

If your child's speech is protected by the First Amendment, a school cannot retaliate or take an adverse action against him.

Discrimination and unequal treatment

All students are entitled to equal treatment under the law.

The Constitution and Civil Rights Act of 1964 prohibit public schools from treating students differently because of skin color.

That means schools cannot:

- **Deny a benefit or service because of race**
- **Provide a different benefit or service because of race**
- **Physically segregate individuals based on race**
- **Restrict access to a benefit or service because of race**
- **Use race-based quotas to allocate benefits or services**
- **Consider race in admissions**
- **Discipline students differently based on race**

Q: If my child was discriminated against, what are my legal options?

Your legal options will vary state to state and based on your particular facts. But the legal avenues most frequently used when a public school has discriminated based on race are:

- **File a complaint with the Department of Education's Office of Civil Rights**
- **File a lawsuit in state or federal court**
- **File a state ethics complaint**

Q: What do I have to show to establish a Title VI Civil Rights Act violation?

In non-lawyer speak, you need to show that your child was treated differently because of her skin color. The four elements of a claim are:

- **Your child is a member of a protected class (e.g., race)**
- **Your child was qualified to participate in the educational benefit or program at issue**
- **Your child suffered an adverse action**
- **And the adverse action occurred under circumstances giving rise to an inference of discrimination (e.g., because of race)**

Transparency in education

Parents have a legal right to know what happens in school.

State Law

States' open records laws require schools, school boards, and functional equivalents to make their records available, including:

- Meeting agendas and minutes
- Contracts with third parties
- Video and audio recordings
- Curriculum including lesson plans, books, and presentations

Federal Law

Federal law requires schools to make the following records available upon request:

- Any instructional materials
- Student surveys
- Policies and procedures
- Your child's student record

Q: What is considered "instructional material"?

A: All documents used for student instruction such as teacher materials, surveys, lesson plans, books, and teacher trainings. It does not include tests or assessments.

Protecting your child's privacy rights

Families have a legal right to privacy.

Q: If my child's school violates federal privacy laws, can I sue the school?

A: Unfortunately, courts do not generally recognize a private right of action (claims) to sue for a violation of PPRA or FERPA.

Q: Can my child's school sell his personal information?

A: Maybe. If your child's school is going to sell your child's personal identifying information, it must provide you with notice and a chance to opt out.

Parental Consent

Schools must get parental consent before requiring a child to answer questions about:

- Political affiliations or beliefs
- Mental or psychological issues
- Sexual behaviors or attitudes
- Illegal, anti-social, self-incriminating, or demeaning behavior
- Critical appraisals of family members
- Legally privileged relationships (lawyers, doctors, clergy)
- Religious practices, affiliations, or beliefs
- Family income unless for program eligibility

The Real World

Here are some ways your child's school could violate his rights and some concrete steps you can take to do something about it.

1 Scenario: Your child's school is segregating students or teachers based on their skin color.

It's illegal and unconstitutional for public schools to separate individuals based on skin color. Any forced segregation violates Title VI of the Civil Rights Act and the Equal Protection Clause.

- **"Voluntary" segregation, like affinity groups, may also violate Title VI and the Equal Protection Clause if your school prevents students from joining a group based on skin color.**
- **If this is happening at your school, reach out to an attorney immediately.**

2 Scenario: Your child's school is conducting privilege walks or safe circles.

Privilege walks are essentially segregation because they group and separate individual students by skin color. They almost always violate Title VI and the Equal Protection Clause. Schools use safe circles to force students to disclose personal information and affirm beliefs, such as identifying preferred pronouns.

- **Forcing students to share private details about themselves can be a form of compelled speech in violation of the First Amendment.**
- **Determine whether the privilege walks or safe circles are optional.**
- **If they are mandatory, it may be time for legal action.**

3 Scenario: Your child is required to affirm an idea he doesn't agree with.

A school can't force students to accept or affirm beliefs.

- **First ask yourself: is the idea at issue a fact or an opinion? There can only be one right answer on a math test or a spelling quiz. But if your school forces your child to repeat a political slogan, or share how he is privileged or oppressed, it may be infringing on his First Amendment rights.**

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- **Next ask: was this voluntary or mandatory? If your child had no choice but to accept this idea as his own, the school has likely compelled his speech in violation of the First Amendment.**

4 Scenario: Your child's school requires your child to take an anti-racist pledge or pledge allegiance to the Black Lives Matter flag or LGBTQ+ flag.

The First Amendment protects students' rights not to speak. Forcing students to take a pledge and accept or adopt an ideology as their own is compelled speech.

- **If your child is forced to take a pledge, contact an attorney immediately.**

The Real World

Here are some ways your child's school could violate his rights and some concrete steps you can take to do something about it.

5 Scenario: Your child is asked to remove a social media post she shared off campus.

A school can't require a student to take down a social media post unless the post materially and substantially disrupts the classroom on campus.

- **If the post is not threatening, lewd, or advocating for illegal activity, it is likely constitutionally protected speech.**
- **Your child is within her rights to refuse to take down her post. If the school threatens punishment for failure to comply, it may be time to talk to a lawyer.**

6 Scenario: Your child is asked to revise an article she wrote for the school newspaper because her school disagrees with her views.

Just because school officials disagree with certain points of view does not necessarily mean the school can ban speech. A school can only restrict speech that impedes its educational mission.

- **Schools can monitor and even censor speech in school newspapers that bear the name and image of the school. But those restrictions must serve a legitimate educational purpose (e.g., be age appropriate and informative).**
- **If your child is expressing her views in a reasonable, peaceful manner, the school may be violating her First Amendment rights.**

7 Scenario: Your child is required to take a survey without your consent.

A school can't require your child to take a survey that asks about his or your political beliefs, mental health, sex behavior/attitudes, religion, income, privileged relationships like doctors, lawyers, or clergy, or illegal, anti-social, self-incriminating, or demeaning behavior.

- **First, if you don't have a copy of the survey, request it from your school. Your school is required to provide it and any related materials to parents upon request.**
- **Next, ask yourself: Does the survey ask my child to reveal any intrusive information that is legally protected?**
- **If the answer is yes, then your school may have violated state or federal law. If you believe it did, legal options may include filing a timely administrative complaint with the Department of Education or your state equivalent or asking your state attorney general to investigate the alleged violation.**

8 Scenario: Your child is required to complete an assignment revealing her sexual orientation, sexual behaviors, or gender identity.

A school cannot require a child to provide any of this information without parental consent.

- **If your child is required to provide this information without your consent, contact an attorney.**

The Real World

Here are some ways your child's school could violate his rights and some concrete steps you can take to do something about it.

10 Scenario: You suspect your child's school is implementing CRT, but you aren't certain.

Most states have open records laws that allow you to inspect any public documents, including lesson plans.

- **Submit an open records request to your child's school district seeking instructional materials.**
- **Most school districts have a records officer devoted to responding to requests. Check your school district's website to determine who to send your request to.**

11 Scenario: Your child's school district refuses to release records to you.

School districts often claim they can't find records, or the records can't be disclosed, or they charge a high fee to produce the records.

- **Talk to the records officer to learn more.**
- **Amend your request using different search terms, dates, and places where you think the documents may exist.**
- **Narrow your request to more specific search terms, dates, and places where the documents may exist.**
- **Remind the school district that federal law requires schools to make instructional materials available for public inspection.**

12 Scenario: You are a teacher and you don't want to violate your students' rights.

Many states set ethical standards that prohibit teachers from suppressing or distorting relevant subject matter, from denying varying points of view to a student or exposing a student to embarrassment or disparagement, and from treating students differently because of their race, sex, creed, or political or religious beliefs.

- **These ethical standards can operate as a shield for any teacher horrified at what she has been asked to teach.**
- **If you believe you are being asked to violate your state's ethics standards, you should talk to an attorney. You may be able to refuse or file an administrative complaint.**

13 Scenario: Your child's teacher says that if you voted for a certain candidate you are a bad person.

State Hatch Acts restrict political activity of government workers (e.g., teachers) on work time. Each works a little differently, but many subject violators to loss of job or other more severe penalties.

- **If your child's teacher is engaged in political activity or advocacy in the classroom, you should talk to an attorney in your state to learn how to report it.**

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