

FREE SPEECH RIGHTS of PUBLIC SCHOOL TEACHERS in WASHINGTON STATE

Do I have free speech rights as a public school teacher?

Yes, but there are many limitations, especially for a K-12 teacher. Generally, the First Amendment protects your speech if you are speaking as a private citizen on a matter of public concern. However, if you are speaking as part of the duties of your job, your speech will not necessarily have the same protection. What you say or communicate inside the classroom is considered speech on behalf of the school district and therefore is not entitled to First Amendment protection. Certain types of speech outside the school might also not be protected if the school can show that your speech created a substantial adverse impact on school functioning or that your speech was made in accordance with your job duties. We provide some examples below.

What are some examples of protected speech versus speech that can be disciplined?

Example 1: You attend an anti-war rally on the weekend. You cannot be disciplined for exercising your First Amendment right to free speech.

Example 2: You post on your Facebook wall a local newspaper article favorable to a political candidate. The First Amendment will protect you from discipline.

Example 3: You write a letter to a publication that is critical of the school board for one of its actions or ideas. A court will likely consider that protected speech because you are expressing an opinion that is a matter of public concern, like any other private individual.

Example 4: You are instructed not to discuss with students your personal opinion on political matters. In a classroom discussion on racial issues in America, you let your students know that you have recently participated in a Black Lives Matter demonstration. This “speech” may not be protected. Courts have found that teachers can be disciplined for departing from the curriculum adopted by the school district, and inserting your personal experience as a protester could be considered such a departure. This is because school districts have the authority to control course content and teaching methods. It is not as clear whether the First Amendment would protect you if you had not been specifically instructed not to share your political beliefs. Some courts have ruled that schools may not discipline teachers for sharing certain controversial words or concepts in class that are relevant to the curriculum.

Example 5: You post a “joke” on Facebook about your students being lazy. This type of speech is not protected even though you are making it in your private capacity (not part of your official duties). This speech might be considered as not addressing a matter of public concern, so the First Amendment may not protect you from being disciplined.

Example 6: You publish an online book containing explicit sexual passages. Even though this is speech in your private capacity (i.e., not part of your official duties) and may even be on a matter of public concern, a court might not consider it to be protected speech. The court would balance the school’s interests and your free speech rights. It could determine that the explicit sexual content would prevent you from being an effective teacher and would have a substantial impact on school functioning. However, if you are facing discipline for expressing your views on non-school matters outside of school, there is a potential free speech problem and you may want to let the ACLU know about it.

How do I know what is protected speech inside my classroom?

School districts have the authority to control course content and teaching methods. You are generally considered to speak for the school district when you are in your classroom. Therefore, your speech in the classroom does not have much First Amendment protection. This can be a murky area, however. Some courts have ruled that schools cannot discipline teachers for sharing words or concepts that are controversial as long as the school has no legitimate interest in restricting that speech and the speech is related to the curriculum. In general, you should exercise caution so as not to give the appearance that you are advocating a particular religious or political view in the classroom. Prayers and moments of silence can be prohibited in public K-12 schools based on constitutional principles barring the government from endorsing religion.

What about classroom displays?

“Speech” also includes classroom decoration, posters or displays. Because schools have the authority to control what happens in the classroom, courts have allowed school districts to require teachers to remove in-class banners and displays conveying a religious message. It is likely that the school could require you to remove political signs from the classroom.

Can I wear items conveying political or religious opinions in the classroom?

The Supreme Court has ruled that students can wear armbands to school as an expression of their political views and that their right to free speech can only be limited if the speech would cause “substantial and material disruption.” The right of teachers to express their views in school on public matters is not so clear. The courts in Washington state have not yet looked at this issue, and courts from other states have come to different conclusions. The trend seems to be that, if the items are not disruptive, they are protected as free speech. For example, you can probably wear a necklace with a religious symbol on it. However, a court has ruled that a school may ban teachers from wearing buttons supporting a current political candidate, as this could be considered “disruptive.” Courts have also upheld discipline for teachers wearing T-shirts with political messages or slogans. The same rule applies to classroom decorations or displays: it is best to avoid any appearance that you are advocating a particular religious or political view.

Is my speech to colleagues during breaks or casual conversations protected?

Generally yes. But if the school can show that your speech would be harmful to your workplace functioning or is disruptive, the First Amendment may not protect you.

How do I know what is protected speech outside my school?

Generally, your outside school speech that is not related to your work and is on a topic of public importance is protected by the First Amendment. However, if school officials can show that your speech could adversely affect school functions or your effectiveness as a teacher, the First Amendment may not protect you. Additionally, there are narrow categories of speech that courts have held are generally outside of First Amendment protection, such as defamation, obscenity, and “true threats.” Defining these categories can be complex, and is outside the scope of this document.

Can a school discipline me for speech on social media?

Yes. The law is continuing to evolve on this issue. In general, if you use social media in your private capacity to express your beliefs on a matter of public concern, you may be protected. However, if you use social media to comment about students, school or other work-related matters, or you use it to engage in what might be considered conduct impairing your functioning as a teacher, the First Amendment may not protect you.

For example:

- a court upheld a demotion of a teacher who posted derogatory comments about a school administrator on her blog.
- a court upheld the firing of a teacher who communicated with students through MySpace inappropriately, “as if he were their peer.”
- A court upheld the firing of a teacher who posted sexually explicit Craigslist ads (“immoral conduct” made him unfit to teach).

Can the school demand access to my personal social media account?

Under some circumstances, yes. Teachers do have some privacy protections in Washington State related to their personal online activities. A law adopted in 2013 (RCW 49.44.200) prohibits employers from obtaining your passwords. However, an employer may require access to a personal account in the course of an investigation into work-related misconduct. You should also be aware that school authorities may be able to access content that you post on social networking sites without having direct access to your personal profile. Even when you maintain a “private” page on a social networking site, it is always possible that others may repost or share your statements with third parties, including the school. The biggest problem areas in use of social media are derogatory comments about students, administrators, or co-workers (like an instance where a teacher referred to students as “future criminals”), or anything that could be seen to compromise your professionalism as a teacher. The First Amendment may not protect that type of speech.

What about speech on union issues?

The National Labor Relations Board has issued some guidance and opinions over the past couple of years protecting work-related postings on social media when that speech could be deemed “concerted activity” – i.e., union organizing. See <http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media>. This is a complex legal issue, and you should consult others with expertise on union issues regarding that question.

Case References:

Garcetti v. Ceballos, 547 U.S. 410, 417 (2006)
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In re O'Brien, 2013 WL 132508, *4-5 (N.J. Super. Ct. App. Div. Jan 11, 2013)
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Weingarten v. Bd. Of Educ., 591 F. Supp. 2d 511 (S.D.N.Y. 2008).
James v. Bd. Of Educ., 461 F.2d 566, 573 (2d Cir. 1972).
Richerson v. Beckon, 337 Fed. Appx. 637 (9th Cir. 2009).
Spanierman v. Hughes, 576 F. Supp. 2d 292, 313 (D. Conn. 2008).
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