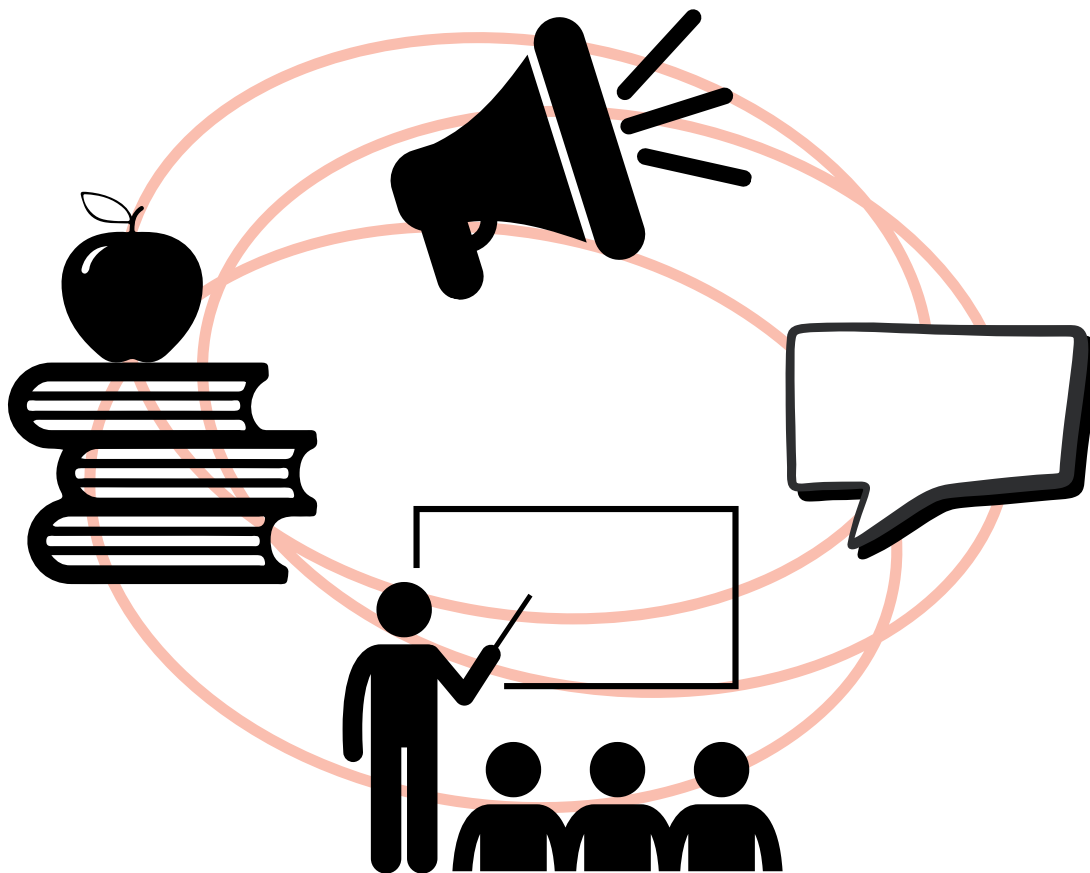


Free Speech Rights of K-12 Public School Teachers in Washington State



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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, especially as a public sector employee, 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.¹ Certain types of speech *outside* the school might 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?

- **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 a local newspaper article favorable to a political candidate on your Facebook timeline. 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 proposals. A court will likely consider that protected speech because you are expressing an opinion on a matter of public concern, like any other private individual.²

What are some examples of speech that lead to discipline?

- **Example 1:** You are instructed not to discuss your personal opinion on political matters with students. 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. This is because school districts have the authority to control course content and teaching methods. Teachers have limited freedom in what they are able to teach, and they are restricted to content that aligns with the school curriculum and their role as educators. For this reason, teachers in public schools are unable to use the classroom as a space to promote their personal political and religious beliefs. 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.³

¹ *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

² *Pickering v. Board of Education of Township High School District 205, Will County, Illinois*, 391 U.S. 563 (1968).

³ *Buchanan v. Alexander*, 919 F.3d 847 (5th Cir. 2019).

- **Example 2:** You post a “joke” on Facebook about your students being lazy. This type of speech is not protected even though you are doing it in your private capacity (not as part of your official duties). This speech might be interpreted as not addressing a matter of public concern, so the First Amendment may not protect you from being disciplined if the school concludes that your speech interferes with your job duties.⁴
- **Example 3:** You publish an online book containing explicit sexual passages and share book-related events on your personal Facebook page, where you have added students and their parents as friends. 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 find that the school could legitimately punish you if the school can prove that your speech created a disruption or could reasonably be expected to disrupt the school and your ability to teach.⁵ However, if you are facing discipline for expressing your views on non-school-related matters outside of school, there is a potential free speech problem, and you may want to let the ACLU-WA 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, the First Amendment does not protect you when you are speaking as part of your official duties, and you should be careful to follow the school curriculum and comply with school policies.⁶

What about classroom displays?

Classroom decorations, posters, and displays are generally considered speech as part of your official duties. 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 messages that are not connected to the curriculum.⁷

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

It depends. The U.S. 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 as 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 teachers can be disciplined if either the items cause disruption, or others would believe the teacher is speaking for the school by wearing the item.⁸

⁴ *Munroe v. Central Bucks School District*, 805 F.3d 454 (3rd Cir. 2015).

⁵ *Melzer v. Board of Education of the City School District of the City of New York*, 336 F.3d 185 (2nd Cir. 2003).

⁶ *Lee v. York County School Division*, 484 F.3d 687 (4th Cir. 2007); *Mayer v. Monroe County Community School Corporation*, 474 F.3d 477 (7th Cir. 2007).

⁷ *Johnson v. Poway Unified School District*, 658 F.3d 954 (9th Cir. 2011).

⁸ *Weingarten v. Board of Education of City School District of City of New York*, 591 F.Supp.2d 511 (S.D.N.Y. 2008) (upholding policy prohibiting teachers from wearing political buttons); *Montle v. Westwood Heights School District*,

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

Generally, yes. But if the school can show that your speech is disruptive or would be harmful to your workplace functioning, the First Amendment may not protect you. For example, a court found that a teacher caused a disturbance and could be disciplined after he wore a t-shirt indicating that he was working without a contract and argued with co-workers about the issue, leading to complaints.⁹

Can a school discipline a teacher for their speech outside of school?

It depends. Generally, your speech outside of school 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.¹⁰ 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 guide.

Can a school discipline me for speech on social media?

It depends. 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 post things on social media that impair your ability to function as a teacher, the First Amendment may not protect you.¹¹

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

Under some circumstances, yes. Washington law (RCW 49.44.200) prohibits employers from obtaining your passwords. However, an employer may require access to a personal account during 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 possible that others may repost or share your statements with third parties, including the school.

What about speech on union issues?

The National Labor Relations Board has issued some guidance and opinions in recent years protecting work-related postings on social media when that speech could be deemed “concerted

437 F.Supp.2d 652 (E.D. Mich. 2006) (upholding discipline of a teacher who wore a shirt with a political message at school and engaged in “confrontational behavior” with other teachers about the issue, because the school district’s interest in ensuring good relations among faculty outweighs the teacher’s right to speech during the workday).

⁹ *Montle v. Westwood Heights School District*, 437 F.Supp.2d 652 (E.D. Mich. 2006).

¹⁰ *Munroe v. Central Bucks School District*, 805 F.3d 454 (3rd Cir. 2015).

¹¹ *Spanierman v. Hughes*, 576 F.Supp.2d 292 (D. Conn. 2008) (teacher could be fired for inappropriately communicating with students on social media “as if he were their peer”).

activity” – i.e., union organizing. This is a complex legal issue, and you should consult others with expertise on union issues regarding this question.

Can I speak to the press?

Speaking to the press and sending letters to the editor are usually protected under the First Amendment, as long as it is clear that you are not speaking on your employer’s behalf and your speech does not disrupt the school environment or invade the rights of others. Off-campus speech can lose its protection if it causes a disruption at school. Defamatory speech and protest activities that result in disorder or breaking the law might also not be protected.