

FREE SPEECH RIGHTS of PUBLIC-SCHOOL TEACHERS in CALIFORNIA by ACLU of Northern California

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

Yes, but there are limitations. Generally, the First Amendment protects your speech if you are speaking as a private citizen on a matter of public concern.¹ By contrast, the First Amendment does not protect your speech if you are speaking while performing job functions within the scope of your employment because that speech is generally considered to be speech on behalf of the school district.²

There are times, however, when speech outside the scope of your employment *might* not receive First Amendment protection. You could face consequences for your speech, if—for example—the school can show that its legitimate interest in regulating your speech outweighs your individual interest,³ or if your speech disrupts the school’s operations or otherwise demonstrates that you are unfit to be a teacher.⁴

Examples of when a school cannot discipline you:

- You attend an anti-war or Black Lives Matter protest over the weekend. Because you were speaking as a private citizen on a matter of public concern, the school cannot discipline you for attending the protest.
- You write a letter to a local newspaper in support of a controversial ballot measure unrelated to your work. The school cannot discipline you for this letter.
- You write a letter to a local newspaper that is critical of the school board for one of its actions or policies. The school likely cannot discipline you for this letter because you were expressing an opinion on a matter of public concern, like any other private citizen.⁵

Examples of when a school may discipline you:

- You bring students to an anti-war or Black Lives Matter protest. The school may be able to discipline you because its legitimate interests in student safety and pedagogical oversight outweigh your interest in attending the protest with students.⁶

¹ *Pickering v. Bd. of Educ. of Tp. High Sch. Dist. 205, Will County, Ill.*, 391 U.S. 563, 574 (U.S. 1968); *see also Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2423 (2022) (affirming *Pickering* framework).

² *Kennedy*, 142 S. Ct. at 2423; *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

³ *Garcetti*, 547 U.S. at 417, 423; *Pickering*, 391 U.S. at 568.

⁴ *Riley’s Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 725 (9th Cir. 2022); *San Diego Unified Sch. Dist. v. Comm’n on Pro. Competence*, 194 Cal. App. 4th 1454 (2011).

⁵ *Pickering*, 391 U.S. at 574–75; *see also Bauer v. Sampson*, 261 F.3d 775 (9th Cir. 2001) (community college violated First Amendment by disciplining professor for publishing hyperbolic criticism of community college district in campus newspaper where his expression “dealt with matter of public concern” and there was no evidence it impacted professor’s “professional responsibilities” even if it caused some “disharmony”).

⁶ *Hudson v. Craven*, 403 F.3d 691 (9th Cir. 2005).

- You post on your Facebook a “joke” about your students being lazy or future criminals. Even though you made this post in your private capacity, the school may be able to discipline you because the speech is not addressing a matter of public concern and may have a substantial, disruptive impact on school functioning.⁷

What is considered within the scope of my employment as a public school teacher?

Public school teachers generally act within the scope of their employment when they are performing duties “ordinarily within the scope” of their job as a teacher—such as attending school, teaching or coaching students, attending an off-campus school function—or when they could reasonably be perceived as a school official.⁸ Public school teachers generally do not act within the scope of their employment when they are on their own “free time” and not performing tasks that would ordinarily be considered part of their job duties—even if they are still at school or at a school function.⁹

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

School districts have the authority to control classroom content and curriculum.¹⁰ While in the classroom, you are acting within the scope of your employment and are generally considered to speak for the school district. Therefore, your speech in the classroom does not have much First Amendment protection. This area can be a murky, however. Some courts have held that schools cannot discipline teachers for sharing words, ideas, or concepts that are controversial so long as the speech relates to the curriculum and the school does not have a legitimate interest in restricting that speech.¹¹

Can I speak with my students about religion or politics?

It depends. If the speech relates to the curriculum, yes. But if the speech does not relate to the curriculum or is a matter of personal opinion, the school likely has a legitimate pedagogical interest in regulating that speech and you could be disciplined for giving the appearance of advocating a particular religious or political view in the classroom.

Examples of protected speech:

- While discussing historical events, a student asks about the political context of a historical event, and you explain it from an objectively neutral perspective. This speech is protected by the First Amendment.

⁷ See also *Richerson v. Beckson*, 337 F. App’x 637 (9th Cir. 2009) (school did not violate First Amendment after transferring employee to another position in response to personal blog post that “included several highly personal and vituperative comments about her employers, union representatives and fellow teachers”).

⁸ See *Kennedy*, 142 S. Ct. at 2424; *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 957, 968 (9th Cir. 2011).

⁹ See *Kennedy*, 142 S. Ct. at 2424–25 (high school football coach engaged in private, not government, speech falling outside “the scope of his duties as a coach” during post-game period when school employees “were free to attend briefly to personal matters”).

¹⁰ *Downs v. L.A. Unified Sch. Dist.*, 228 F.3d 1003, 1015–16 (9th Cir. 2000) (listing cases).

¹¹ *Dibona v. Matthews*, 220 Cal. App. 3d 1329 (1990).

Examples of speech that is not protected:

- Contrary to the school district’s policies, you teach your high school biology students both evolution and creationism. This speech is not protected by the First Amendment.¹²
- You discuss your personal religious beliefs with students during instructional time or lead your students in a prayer at the start of class. This speech is not protected by the First Amendment.¹³
- You pray quietly to yourself while on campus, but during your free time. Even if some students see you praying, so long as you do not encourage, pressure, require, or otherwise coerce students into joining your private prayer, this speech is protected.¹⁴

What about classroom displays?

Classroom displays, posters, and decorations are considered speech. Because schools have the authority to control what happens in the classroom, courts have allowed school districts to require public-school teachers to remove classroom banners and displays that convey religious messages.¹⁵ Courts would likely also allow school districts to require you to remove political signs from your classroom.

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

It depends. The Supreme Court of the United States has recognized that students and teachers do not shed their constitutional rights at the schoolhouse gates. For example, the Court has held that students can wear armbands as an expression of their political views and that this right to free speech can be restricted only if the speech causes or is likely to cause “substantial and material disruption.”¹⁶ The right of teachers to express their views in school on public matters is less clear. For example, you can probably wear a necklace with a religious symbol on it because it would be difficult for the school to argue that such a necklace causes a substantial and material disruption. However, a court has ruled that a school may ban teachers from wearing buttons supporting a current political candidate or opposing a statewide school program while in class or on campus, as this speech could be considered “disruptive.”¹⁷ Courts have also held that a school may discipline teachers for wearing T-shirts with political messages or slogans, and for putting up political classroom decorations.

Generally, outside of school grounds, when not engaged in curricular activities, or otherwise in your role as a private citizen, you have First Amendment protection to wear these items.¹⁸

¹² *Pelozo v. Capistrano Unified Sch. Dist.*, 37 F.3d 517, 521 (9th Cir. 1994).

¹³ *Id.* at 522.

¹⁴ *Kennedy*, 142 S. Ct. at 2415, 2429–30 (school district violated First Amendment after disciplining high school football coach when “he knelt at midfield after games to offer a quiet prayer of thanks” while “school employers were free to...attend to [] matters” and “students were otherwise occupied” and there was no evidence that students were coerced into participating in post-game prayers).

¹⁵ *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (9th Cir. 2011).

¹⁶ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

¹⁷ *CTA v. San Diego Unified Sch. Dist.*, 45 Cal. App. 4th 1383, 1390–91 (1996).

¹⁸ *Id.* at 1392–93.

Is my speech to colleagues protected?

Generally, yes. Your faculty lounge and faculty lunchroom, for example, are places in which conversations among teachers take place while off-duty, during noninstructional time.¹⁹ As such, it is likely that a school district may not have a legitimate reason to restrict those conversations. But if the school can show that your speech is harmful or disruptive to the workplace environment, the First Amendment may not protect that purportedly harmful speech.

Can my school discipline me for speech on personal social media accounts?

It depends. Generally, the First Amendment protects your speech if it occurs outside school and is both unrelated to your work and on a matter of public concern. So, if you use social media in your role as a private citizen to speak on matters of public concern, your speech is likely protected. If, however, you use social media to comment about students, school, or other work-related matters, or you use social media in a way that might be considered to adversely affect school functions or your ability to teach, the First Amendment may not protect you.²⁰

Example of speech that is protected:

- You share on your personal Twitter an article in support of a political candidate. This expression is protected under the First Amendment.

Example of speech that is not protected:

- You write on your social media page that your students are “future criminals.” This is not protected by the First Amendment because this speech can be seen to compromise your professionalism and demonstrate a bias in your teaching.

Can my school demand access to my personal social media accounts?

In California, public school teachers have some privacy protections related to their personal social media accounts.²¹ California law prohibits employers from requiring or requesting access to your personal social media accounts. However, an employer may require access to a personal social media account in the course of an investigation into work-related misconduct or legal violation. A school may also access information on a school-issued electronic device. Keep in mind that the law does not prohibit your employer from accessing content that is otherwise publicly available. For example, even if you maintain “private” social media pages, it is possible for others to share or repost your content with third parties, including the school.

For resources by ACLU of Northern California relating to student speech please visit:

[Know Your Rights: Student Walkouts & Political Speech](#)

[Know Your Rights: Free Speech, Protests & Demonstrations](#)

¹⁹ *L.A. Teachers Union v. L.A. City Board of Educ.*, 71 Cal. 2d 551 (1969).

²⁰ *San Diego Unified Sch. Dist. v. Comm’n on Prof’l Competence*, 194 Cal. App. 4th 1454 (2011).

²¹ Cal. Lab. Code § 980.