

PROTECTING FREE SPEECH

in public K-12 schools



A pocket guide to navigating unconstitutional
censorship on school grounds

the basics

Speech is anything that conveys a message



The First Amendment protects **every** citizen's right to speak and not to speak, **unless** they are engaging in:

DID YOU KNOW?

The 1A protects "hate speech" and "offensive speech."

The government can't choose which ideas are OK or not OK.

1. Defamation – spreading false rumors about others

2. Obscenity – depicting lewd and sexually explicit messages

3. True threats of violence – putting others in fear for their physical safety

4. Inciting lawlessness – encouraging others to commit a crime or use violence

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the basics

Students and teachers do not shed their rights to free speech at the schoolhouse gates

Any time the government tries to restrict speech, it generally falls into one of three categories

VIEWPOINT BASED RESTRICTION

NEVER OK

A school can never treat speakers differently or otherwise restrict their speech based on their beliefs, no matter their age.

For example, a school could not allow one student to wear a BLM hat while refusing to let another student wear a MAGA hat.

CONTENT BASED RESTRICTION

ALMOST NEVER OK

Sometimes schools ban the discussion of an entire subject, like political speech.

This is ONLY OK if the restriction serves a grave concern for public health and safety AND is very narrowly drawn.

For the most part, they are unconstitutional.

CONTENT NEUTRAL RESTRICTION

OK, BUT...

Schools may regulate the time, place, or manner of speech, but they must apply these kinds of restrictions equally to everyone.

Schools and school boards often abuse restrictions that seem neutral, including during public comment periods at school board meetings.

the basics

Where you are standing matters

Americans' free speech rights are stronger or weaker depending on what type of government property, or "forum," they are standing in



Traditional Public Forums

- Outdoor areas like sidewalks and parks
- Content-neutral time, place, and manner restrictions are allowed and must apply equally to everyone
- Speech rights are most secure here

Designated Public Forums

- Places that have been opened for public use, like an auditorium
- Once opened, the same rules as traditional public forums apply

Nonpublic Forums

- Areas with higher expectations of privacy, like offices or classrooms
- Content-based restrictions are OK but the government still can't restrict viewpoint
- Any restrictions must be reasonable

Limited Public Forums

- A fourth category that some courts recognize and some do not
- They are usually treated the same way as nonpublic forums

at board meetings

The First Amendment gives members of the public the right to redress grievances

When someone is censored at a school board meeting, a court will first consider what forum they were in before determining whether their rights were violated

Q: WHAT FORUM IS MY SCHOOL BOARD MEETING?

Whether a school board meeting is a traditional, designated, limited, or nonpublic forum is unsettled law and depends on your local court's rules.

Most courts say that the public comment portion of a school board meeting is a **limited public forum**, meaning school boards can restrict what is discussed.



Q: WHY CAN THE GOVERNMENT RESTRICT CONTENT?

The government needs to accomplish its business. You don't have an unlimited right to protest in the middle of a police station or at the DMV.

School boards also have business to accomplish, so some courts let them restrict speech to certain topics. Unfortunately, boards often abuse their power so that the public can never meaningfully redress grievances.

at board meetings

Since the forum test is unsettled, your school board may be able to restrict more speech than it should...but you still have rights!

Here are some common restrictions you may encounter during the public comment portion of a school board meeting and how your rights may vary depending on the forum

RESTRICTION	TRADITIONAL OR DESIGNATED FORUM	LIMITED OR NONPUBLIC FORUM
Agenda: you are limited to speaking on an agenda item	NOT OK: content-based restriction	OK if the school board applies this rule equally to everyone
Time: there are time limits on speech	OK if reasonable and applied equally	OK if reasonable and applied equally
Advanced Approval: you must get approval on a topic	NOT OK: content-based restriction; potential viewpoint-based restriction	OK if the policy requires you to stick to agenda items; NOT OK if used as a prior restraint based on views
No "lewd" speech: you can't read library books aloud because they are "lewd"	PROBABLY NOT OK if books are allowed in the library; content-based restriction and unreasonable	PROBABLY NOT OK if books are allowed in the library; unreasonable
Mics: your mic is cut off mid-speech	DEPENDS: if you went over time, OK; if based on views or content, NOT OK	DEPENDS: if you went over time, OK; if based on content, MAYBE OK; if based on views, NOT OK
No "abusive" comments: you can't say anything "abusive"	NOT OK: content-based restriction; potential viewpoint-based restriction	NOT OK if applied based on viewpoint, which almost always happens

in the classroom

Sometimes, courts allow a few more restrictions on speech in K-12 schools than in other settings



indecent, lewd, or vulgar speech



speech promoting illegal drug use



speech on behalf of the school, like a newspaper



speech that materially and substantially disrupts school operations



what does “materially and substantially disrupt” mean?

courts are still working to define it, but we know:

it must invade the rights of others, like a threat of violence

it must be so distracting that teachers can't control their classroom

it is a **high bar** for schools to meet

TEST IT OUT

A student has a sticker on her laptop that says “there are only two sexes.” A classmate complains to the teacher, who tells her to remove it.

This is likely unconstitutional viewpoint discrimination. The student is not causing a substantial disruption, and the teacher is singling out her viewpoint.

in the classroom

The First Amendment gives everyone the right to speak and not to speak, even in the classroom

Students

Students cannot be forced to affirm beliefs they do not agree with.

The key question is: **is this a belief or a fact?**

Students can't be required to say the Pledge of Allegiance or identify where they fall on an oppression matrix.

Students can be required to give a correct answer on a math test.



Teachers

Teachers and staff also have the right not to affirm beliefs on school grounds.

The key question is: **does it fall within the employee's job duties?**

Science teachers can be required to teach the science curriculum.

Science teachers can't be required to voice support for a school board candidate or to denounce Christianity.

Q: WHAT ABOUT OUTSIDE OF THE CLASSROOM?

So long as it does not cause a substantial disruption, students have a lot of freedom to engage in speech both on and off campus. Posting a harmless video that students talk about in class is not a substantial disruption, but posting a video that is overt bullying could be a substantial disruption.

Schools can **never** compel speech by requiring individuals to affirm beliefs, whether on school grounds or off.

put it to the test

Do you have what it takes to defend your 1A rights? Test your knowledge.



Your child is instructed to create a pledge to be “anti-racist” as part of a class assignment.

This is probably unconstitutional. Students have a right *not* to affirm beliefs they do not support. Schools cannot force students to make a pledge to *any* cause, including the national Pledge of Allegiance. Remind your child’s school of this. If they refuse to back down, contact an attorney.

A teacher is disciplined for using a student’s “dead name” and biologically correct pronouns.

Although the law is still evolving here, this is unconstitutional. Teachers cannot be forced to affirm beliefs they do not support while rejecting basic biology. The same is true for any students in this position.

If you are disciplined for this, speak to an attorney ASAP.

Your child is punished for wearing a t-shirt to school that says “Gun Rights Matter” because it is offensive and threatening.

This is probably unconstitutional. The school is restricting your child’s speech based on both content and viewpoint. Your child is not threatening physical violence, nor does he appear to be invading the rights of others or causing a material and substantial disruption.

If this happens, request to meet with administrators. Ask to see the policy they are relying on and ask how the t-shirt caused a substantial disruption.

If they can’t provide satisfactory answers, it may be time to speak to an attorney.



put it to the test

Do you have what it takes to defend your 1A rights? Test your knowledge.



Your child believes she received a bad grade on a paper because of what she wrote.

If a teacher gives a bad grade based on a viewpoint expressed, that would be unconstitutional. However, it is very hard to prove because teachers could offer other pretextual reasons for the bad grade. Keep records of your and your child's interactions with the teacher that may help prove the teacher's bias and present them to school administrators.

Your school district has adopted a "human rights policy" that lets boys use girls' facilities, and your daughter is afraid to complain about it.

This is unconstitutional. Schools cannot "chill" speech by causing students to self-censor out of fear of punishment if they express their real views.

If your school district has adopted a policy that is vague, confusing, and makes your child feel like he or she cannot speak up, it may be time to speak to an attorney.



put it to the test

Do you have what it takes to defend your 1A rights? Test your knowledge.



You were speaking at a school board meeting when you were abruptly cut off for failing to stick to the agenda.

Whether this is constitutional depends on the forum.

If your local court has said that school board meetings are designated forums, this would be unconstitutional because you are being censored for the topic (content) of speech.

If your court has said that school board meetings are limited forums, this may be constitutional because content-based restrictions are allowed here. However, the school board must still act reasonably and neutrally. Have they cut off other members of the public who have strayed from the agenda? If the board is showing favoritism, it is unconstitutional no matter the forum.

Your school board won't let you speak again after making "lewd" and "abusive" comments.

This also depends on the forum but is likely unconstitutional.

Even in a limited forum, restrictions must be viewpoint-neutral and reasonable.

The government is allowed to restrict lewd and obscene speech. But if you are reading from a school library book, it is hardly reasonable to silence you for obscenity while making the books available to your child.

Also consider: what counts as "abusive"? Who decides? If you suspect that your school board is silencing you because it doesn't like your views, it is time to speak to a lawyer.





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