NATIONAL EDUCATION ASSOCIATION



EDUCATOR RIGHTS

Speaking Up for Public Education & Our Students

2023

NATIONAL EDUCATION ASSOCIATION

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Educator Rights

SPEAKING UP FOR PUBLIC EDUCATION & OUR STUDENTS

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Introduction

This guide provides educators with an overview of your rights at school and outside of school to advocate to meet the needs of students and educators and to stand up for public education. This advocacy guide should help you:

- Feel confident about your rights as an activist;
- Understand the type of conduct that is not protected and can land you in trouble;
- Deal with public backlash related to advocacy efforts; and
- Locate additional resources.

As always, this guide is intended to provide general information. After explaining the general protections that apply, the guide provides ideas and examples of best practices and ways to approach different situations. For specific advice, you should always contact your local union or attorney.



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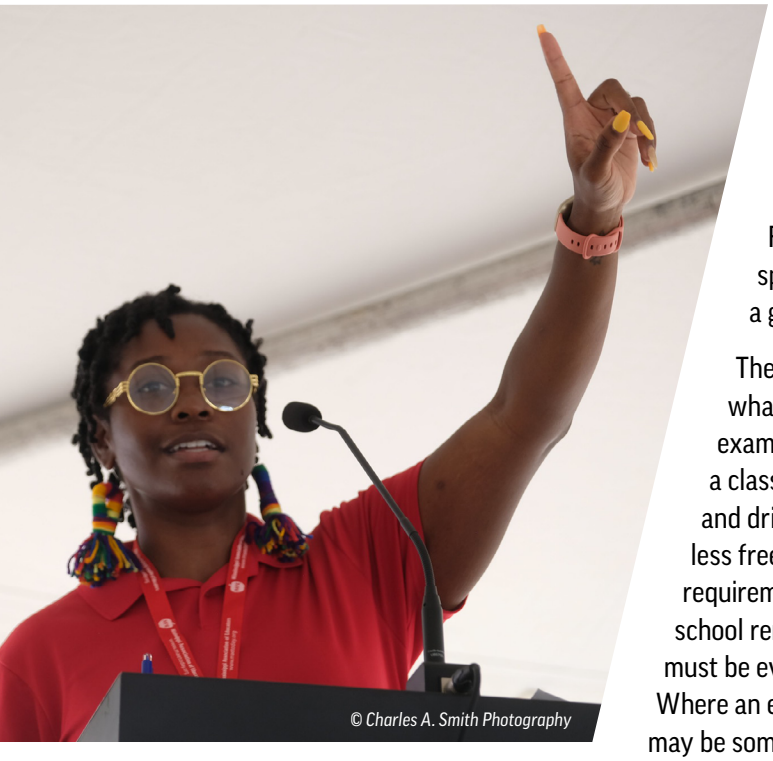
General Protections for Educators

Federal and state laws provide protections to citizens, employees, educators, and unionized workers.

Together, these protections allow educators to do their jobs without fear of being disciplined unfairly for advocating for students, reporting misconduct, teaching, or organizing to improve working conditions. But these protections are limited, and only cover educators under certain circumstances. General information on these protections is available here. More specific examples of how you can advocate within the bounds of these protections can be found later in this guide.

THE FIRST AMENDMENT

The First Amendment generally protects the right to free speech, meaning your right to speak or not speak, your right to write, advertise or otherwise make your views known through words. The First Amendment also protects symbolic speech such as contributing money to political campaigns, choosing what to wear, and certain symbolic protest activities. Speech is "free" because the government usually cannot penalize or censor it, but can place reasonable time and place restrictions on it.


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But when the government is acting as an employer, the opposite rule applies. When the government is a public school, it has broad authority to limit educators' speech on the job as well as to limit speech off the job that directly impacts the workplace.

A few key questions help determine when that's the case. First, is the speech part of the educator's job? Second, is the speech about something personal? Third, does the school have a good reason for preventing the speech?

The first question is the most important. Schools may control what their employees say as part of their official duties.[1] Common examples of where this is so include when educators are teaching a class, coaching a team, holding a parent-teacher conference, and driving a school bus. In those settings, the educator has much less freedom and must follow state and school district curriculum requirements.[2] Schools may also restrict educators' speech so that the school remains neutral on controversial topics, but such restrictions must be even-handed and may not silence only disfavored viewpoints.[3] Where an educator is on the clock but not engaged in official duties there may be some First Amendment protection for their speech—for example,

[1] *Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966 (9th Cir. 2011).
[2] *See Mayer v. Monroe Cty. Cmty. Sch. Corp.*, 474 F.3d 477, 480 (7th Cir. 2007).
[3] *Weingarten v. Bd. of Educ. of City Sch. Dist. of City of New York*, 680 F. Supp. 2d 595, 602 (S.D.N.Y. 2010).

a private prayer said in between classes is likely protected by the First Amendment, as long as the educator does not pressure students to join.[4] Similarly, a personal comment made at a time and place when educators are free to attend to personal issues may likewise be protected.

The subject of the educator's speech also matters. Educators have the most protection when they are talking about issues of public interest.[5] They have less protection when talking about something personal. Statements about a school can fall into either category. For example, the public has a much greater interest in hearing an educator argue that schools should ditch high-stakes testing than it does in hearing an educator complain that the principal is too strict.

Finally, schools may sometimes limit educators' speech because it is too disruptive or it is disrespectful. This may be true even when the educators are not at work and are speaking as private citizens on matters of public interest. Speech may be too disruptive when it provokes protests, complaints from students and their families, and negative attention from the broader community.[6] Disrespectful speech is more likely to be disruptive than respectful speech. Courts balance the school district's interest in controlling speech against the educator's interest in free speech to determine if the speech may be restricted or penalized.

Professors at public institutions of higher education enjoy greater academic freedom than educators at the K-12 level. The Supreme Court has acknowledged that academic freedom in higher education is of "transcendent value" and is a "special concern of the First Amendment."[7] As a consequence, professors generally have more freedom to speak on matters of public concern in the classroom and to determine their curriculum. Speech made during the course of a professor's official duties is likely protected under the First Amendment if the speech is related to their teaching or scholarship.[8] But a professor's speech may be unprotected if it does not relate to the subject matter of their class, serves no academic purpose, or is unduly disruptive.[9]

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[4] *See Kennedy v. Bremerton School District*, -- U.S. --, 142 S.Ct. 2407 (2022). This recent Supreme Court decision was based on a narrow set of facts related to prayer, and its implications for other forms of on-duty speech will only become clear with time and additional litigation.

[5] *Connick v. Myers*, 461 U.S. 138, 146 (1983) (matters of public concern include those that can be "fairly considered as relating to any matter of political, social, or other concern to the community").

[6] *Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 466 (3d Cir. 2015).

[7] *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967).

[8] *See Meriwether v. Hartop*, 992 F.3d 492, 504-05 (6th Cir. 2021) (finding that *Garcetti* does not apply to speech related to scholarship or teaching); *Adams v. Trustees of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562-64 (4th Cir. 2011) (same); *Demers v. Austin*, 746 F.3d 402, 410-12 (9th Cir. 2014) (same).

[9] *See, e.g.*, *Buchanan v. Alexander*, 919 F.3d 847, 852-54 (5th Cir. 2019) (holding that professor's discussion of sex life with college students was not protected under First Amendment).

PROTECTIONS FOR REPORTING WRONGDOING

Federal civil rights laws such as Title VII and Title IX protect very specific forms of speech. The primary focus of these laws is to stop discrimination based on race, color, age, sex (including sexual orientation, gender identity, and pregnancy), religion, national origin, and disability status.[10] Schools must follow these civil rights laws, which means they cannot discriminate on these bases against their students or their employees. Most states also have their own civil rights laws that prohibit discrimination. State laws often provide the same or broader coverage than their federal counterparts. For more information about protections from discrimination and how to file a claim, see NEA's **Harassment and Discrimination Toolkit** and detailed **guidance on LGBTQ+ rights** and **sex-based discrimination.**

These laws also protect speech when the speaker is objecting to discrimination. They prohibit schools from punishing students, families, and educators for speaking up against discrimination.[11] Schools may not fire, transfer, demote, or otherwise retaliate against an educator because that educator complained about illegal discrimination. This is true regardless of whether the educator is complaining about discrimination they personally experienced or speaking out about discrimination against students or other staff.[12] Some of these civil rights laws provide overlapping protections; for example, an educator who complains about potential violations of the Individuals with Disabilities Act (IDEA) or otherwise advocates for students with disabilities may be protected from retaliation under the Americans with Disabilities Act (ADA) and Section 504 of the 1973 Rehabilitation Act. Similarly, an educator who is from Palestine and wears a hijab as a Muslim is protected against discrimination based on their national origin and/or their religious faith.

An educator who is retaliated against by their employer for complaining about discrimination can sue under these civil rights laws, though they may first need to file a complaint with an administrative agency such as the Equal Employment Opportunity Commission (EEOC), the U.S. Department of Education Office of Civil Rights, or a related state agency. The educator must be able to show three things. First, that they complained about illegal discrimination in a way that connects the employee's complaint to discrimination. For example, it is not enough for the coach of a girls' basketball team to complain that the team's budget is too small. The coach would have to complain that his athletes are receiving less money because they are girls. The coach can make his case stronger by comparing the girls' budget to the boys' budget.[13] Second,

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[10] Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, 2000e *et seq.*; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681.

[11] 42 U.S.C. § 2000e-3(a).

[12] *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 179 (2005) (holding that employee can bring a retaliation claim based on complaints of discrimination against others); *Barker v. Riverside Cty. Off. of Educ.*, 584 F.3d 821, 826 (9th Cir. 2009) (holding that a special education teacher had standing to bring a retaliation claim under Section 504 of the Rehabilitation Act); *Whittaker v. St. Lucie Cty. Sch. Bd.*, No. 10-14172-CIV, 2011 WL 3424564, at *4 (S.D. Fla. Aug. 5, 2011) (same); *see also* U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter (April 24, 2013), **https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html**.

[13] *See, e.g., Jackson,* 544 U.S. at 171.

educators must reasonably believe that they are complaining about illegal discrimination.[14] It is okay for the educator to be mistaken about the law or about the facts. But it must be an honest mistake, and the mistake must have been reasonable.[15]

Finally, the educator must be able to connect the discipline or adverse action by the employer to the complaint. This may be difficult to prove. Schools will rarely announce that they are firing a teacher because the teacher told the school to stop discriminating. More often, educators will have to rely on other circumstances of the discipline. A bus driver might show that the school fired her immediately after she complained that the school provided better, safer buses for white students than for students of color. She can strengthen her argument by showing that she has never been in trouble with the school before and always received positive reviews. Or she could compare how the school treated her to how the school treated another bus driver.

Other federal laws protect educators from retaliation for other protected conduct such as filing a complaint under the Fair Labor Standards Act or the Family and Medical Leave Act.[16] In addition, state whistleblower statutes may offer protections for reporting violations of other state laws.

TEACHER TENURE

Tenure status often provides the broadest protections for teachers at the K-12 level and for professors at the higher education level. At the K-12 level, tenure laws prevent a school district from dismissing a tenured teacher without good reason. These protections are not available to all educators–tenure is generally limited to teachers, and only teachers who have worked in the school district for a certain number of years are eligible. In addition, tenured teachers generally cannot transfer these protections to a new district if they change schools. A few states, as detailed below, have largely eliminated tenure protections. The following describes how state tenure laws work.

Tenure Basics

State tenure laws reflect deliberate legislative judgments that new teachers need time and support to develop into great teachers. As a consequence, tenure laws provide employers with broad authority to dismiss teachers during their first years of employment in a particular school district. Once teachers earn tenure, state tenure laws protect the investment that both the teacher and the school district have made in professional development by ensuring that tenured teachers cannot be fired for poor or arbitrary reasons. To that end, state tenure laws provide tenured teachers with "due process," meaning the right to know why they are being dismissed and the opportunity to challenge a dismissal that a teacher believes is unfounded.

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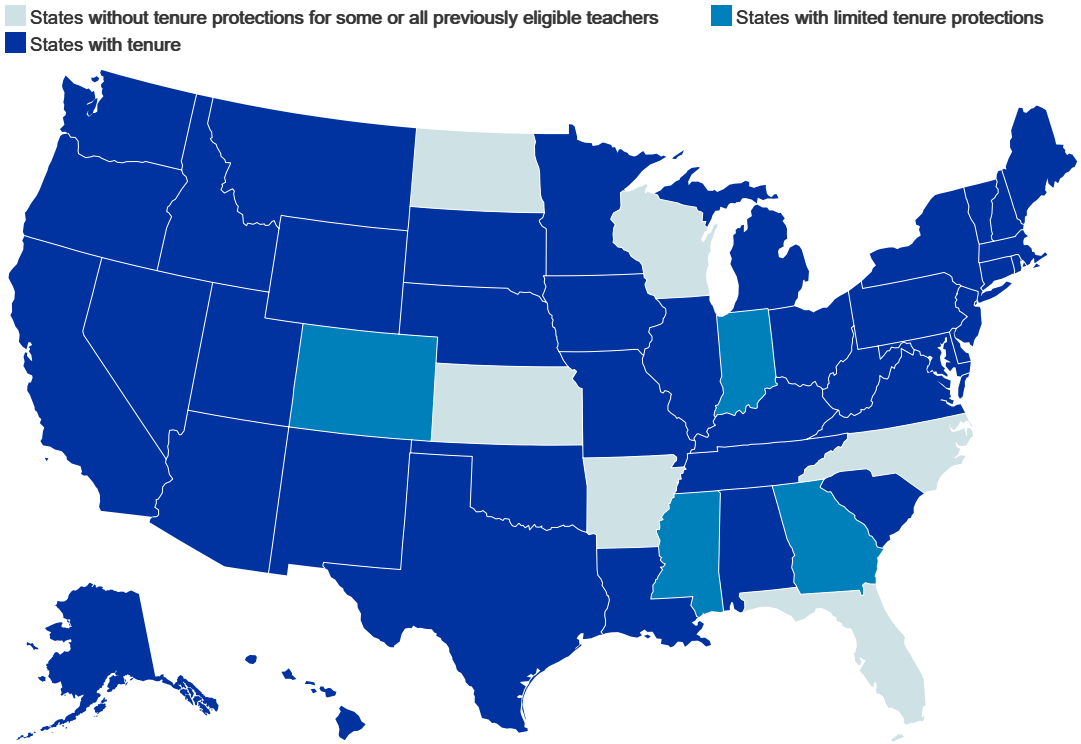
[14] *Moyo v. Gomez*, 32 F.3d 1382, 1385 (9th Cir.), *amended on other grounds*, 40 F.3d 982 (9th Cir. 1994).

[15] *Id.* at 1386-87.

[16] *Retaliation*, U.S. Dep't of Labor, Wage & Hour Division, **https://www.dol.gov/agencies/whd/retaliation** (last visited Mar. 27, 2023).

Due process policies like tenure give good teachers the freedom they need to give students the best education possible. They make sure that teachers can challenge the reasoning of poor administrative decisions and advocate on behalf of their students without fear of being fired for doing what is best for their students.

Tenure and Due Process Protections



Note that tenure laws can be complicated, and the map provides a basic overview as of March 2023. Some states impose additional requirements for earning tenure.

How Tenure Works

Almost all states offer some form of due process protections, but the details of those protections vary from state to state.[17] These state laws are commonly referred to as "tenure" laws, but a number of states use different terms such as "continuing contract," "permanent," "career," or "post-probationary" employees to refer to teachers with such protections. As of 2023, three states have effectively eliminated tenure for most teachers (FL, NC, and WI), and four other jurisdictions offer no tenure protections at all (AR, DC, KS and ND).[18] A few other states have significantly reduced tenure protections by providing for performance-based reversion to probationary status for permanent or tenured teachers (for example, IN and TN),

[17] Summary information in this section is based on an NEA survey of tenure statutes in all states and D.C. More information on tenure in your state can be found online at https://www.nea.org/resource-library/teacher-tenure-due-process-protections-educators

[18] In March 2023, Arkansas repealed its Fair Dismissal Act, which provided due process protections to teachers. The repeal (Act 237) goes into effect in the summer of 2023 and eliminates "just and reasonable cause" protection for tenured teachers. Educators are still entitled to (1) notice of a recommendation for termination from the superintendent and (2) an opportunity for a hearing before the school board concerning the recommendation for termination. School districts cannot provide additional rights to employees.

by allowing school districts to place teachers on indefinite unpaid leave without cause or a hearing in a number of circumstances (CO),[19] or by permitting school districts to waive compliance with tenure laws when the district converts to a charter system (GA).[20]

In states that offer tenure, teachers are eligible for tenure after they have taught in the same district for a certain number of years, called a probationary period. Most states require a probationary period of at least three years, and in ten states the required probationary period is four or more years.[21] In many states, tenure is granted if the lengthy probationary period is completed or the teacher's contract is renewed for the next year following completion of the probationary period. But some states have additional requirements, often related to performance evaluations.[22] The probationary period may also include mentorship by a more experienced teacher or a formal induction program designed to support new teachers as they begin their careers.[23]

Once a teacher has tenure, they can be dismissed only for specific causes outlined in state law. Common causes for dismissal are incompetency, insubordination, neglect of duty, immorality, violation of school board rules, unprofessional conduct, and reductions in the work force due to economic or enrollment conditions. Some states also include conviction of a felony or other specific crimes within their list of causes justifying dismissal of a tenured teacher. And most states have a catch-all provision allowing dismissal for "any good or just cause."



If a school wishes to dismiss a tenured teacher, it must first provide the teacher with notice of the reasons for dismissal and an opportunity for the teacher to request a hearing on the dismissal charges. Depending on the state, a hearing can be conducted by the board of education, an independent hearing officer, an administrative law judge, or an arbitrator. In states where a hearing officer conducts the hearing, the board of education typically votes to either adopt or reject the recommendation of the hearing officer. Each state has laws governing the time period within which a teacher must request a hearing, when the hearing must occur, and when a final decision must issue.

In most cases where the school board upholds a teacher's dismissal, the teacher may choose to appeal that decision. Based on the state, the appeal may be before a state court, the state board of education, the state secretary or commissioner of education, the city superintendent, or an arbitrator. But a few states (IN and OK) provide no opportunity for appeal of a board of education dismissal decision.

At the higher education level, tenure works in much the same way, although tenure is only available to a small percentage of professors after an extensive review process. Institutions of higher education and courts generally interpret "just cause" more narrowly in this context, providing professors with greater

[19] *Sch. Dist. No. 1 v. Masters*, 413 P.3d 723 (Colo. 2018); *Johnson v. Sch. Dist. No. 1*, 413 P.3d 711 (Colo. 2018).

[20] *Day v. Floyd Cty. Bd. of Educ.*, 775 S.E.2d 622 (Ga. App. 2015). However, Fulton County Superior Court has ruled that the waiver provision is unconstitutional as applied to educators in the Fannin County School System who earned tenure protections before the system became a charter system. *Barnes v. Bearden*, No. 2018-cv-301254 (Feb. 1, 2023).

[21] Some states offer a shorter probationary period for teachers transferring from other districts within the state.

[22] *E.g.*, Nev. Rev. Stat. Ann. § 391.820(6) (requiring "a designation of 'highly effective' or 'effective' on each of [the teacher's] performance evaluations for 2 consecutive school years" in addition to probationary period and notice of reemployment).

[23] *E.g.*, N.J. Stat. Ann. § 18A:28-5(b) (requiring completion of a mentorship program during the initial year of employment as a prerequisite for tenure eligibility); S.C. Code Ann. § 59-26-40(B) (requiring that each school district provide probationary teachers with a formalized induction program developed in accordance with state regulations).

leeway in their teaching and scholarship. Because of these stronger protections and an increased political focus on how controversial issues are taught at all levels of education, tenure at the university level has faced renewed attacks across the country, most recently in South Carolina and Texas.[24]

Tenure Limitations

Tenure offers important protections to teachers, but school boards still have considerable leeway over dismissals. In twenty-nine states, a teacher can be dismissed for "any good or just cause" in addition to the specific causes identified in the state statute. This vague wording gives school boards substantial discretion in dismissal decisions. Other common causes give school boards discretion to determine whether conduct was immoral or unprofessional or whether school board policies were violated. This discretion can be especially problematic in states without an independent hearing officer conducting the hearing or where the only review is by the school board—the same entity making the initial termination decision.

Tenure and Advocacy

Despite these limitations, state tenure laws do help protect teachers' professional judgments and advocacy on behalf of their students. Tenure has protected teachers who teach controversial subjects, protect students from abuse, challenge improper actions by their school district, and act as whistleblowers. Tenure also protects teachers who are wrongly charged with misconduct for political reasons.

For example, tenure saved the job of a teacher who protected a student's privacy after the student confided to the teacher that she was pregnant and had safety concerns if her parents learned of her condition. In contrast, a non-tenured guidance counselor was fired for "spend[ing] too much time" fulfilling her mandatory reporter obligations by alerting appropriate authorities that some of her students had told her that they had been the victims of incest. Because the counselor did not have tenure, her discharge for making the reports was upheld despite her otherwise excellent evaluations.[25] Tenure also saved the job of a veteran math teacher who protested the elimination of a district math tutoring program and complained about district pressure to inflate grades. Meanwhile, non-tenured teachers have had to go to court to challenge their discharges for reporting that students were not receiving the special educational services, equipment and resources required by law.[26] In one trial, educators testified that tenure made teachers feel more comfortable choosing to teach topics that they knew would be controversial—for example, teaching about the Muslim world to middle schoolers in the wake of 9/11 or discussing with colleagues how to prevent the bullying of LGBTQ+ students.

PROTECTED CONCERTED UNION ACTIVITY & SPEECH

States with public sector bargaining laws offer additional protection for union activity and educators' speech about workplace conditions. The protections vary by state, but generally prevent employers from firing, disciplining, or threatening employees for engaging in union activity or working together to address workplace concerns. If you are not sure whether your state has public sector bargaining, check the maps in the appendix to NEA's **Collective Bargaining Report**.

In states that have modeled their public sector bargaining law on the National Labor Relations Act (which applies only to private-sector employers and employees), educators are protected when they are engaging

[24] H.B. 4522, 124th Gen. Assemb. (S.C. 2021); Kate McGee, *Lt. Gov. Dan Patrick proposes ending university tenure to combat critical race theory teachings*, Texas Tribune (Feb. 18, 2022), **https://www.texastribune.org/2022/02/18/dan-patrick-texas-tenure-critical-race-theory/**.

[25] *Leonard v. Converse Cty. Sch. Dist. No. 2*, 788 P.2d 1119 (Wyo. 1990).

[26] *Rodriguez v. Int'l Leadership Charter Sch.*, No. 08 Civ. 1012(PAC), 2009 WL 860622 (S.D.N.Y. Mar. 30, 2009); *Stahura Uhl v. Iroquois Cent. Sch. Dist.*, 836 F. Supp. 2d 132 (W.D.N.Y. 2011).

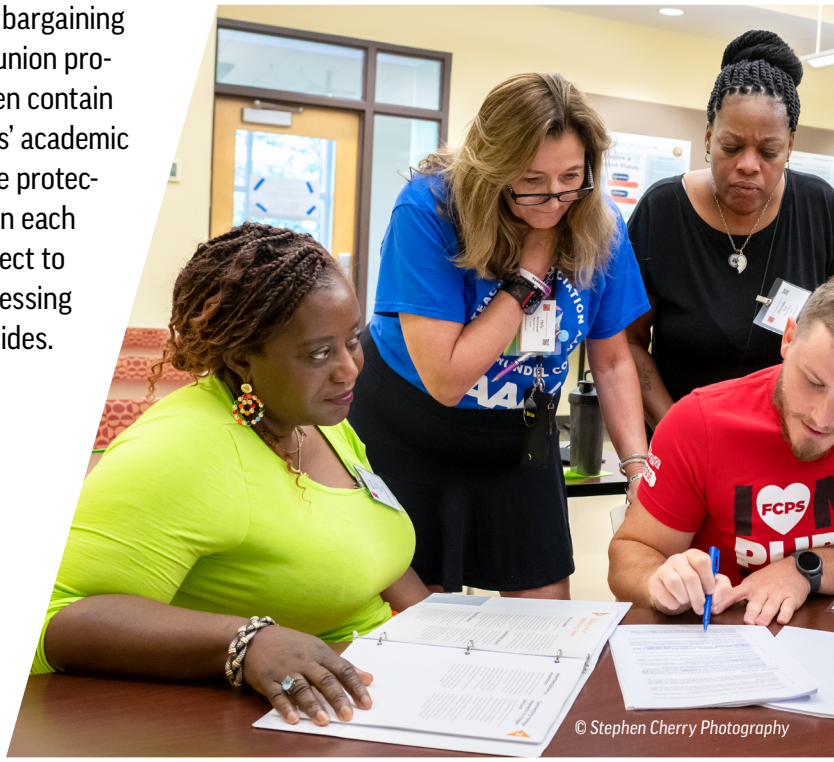
in "concerted activity," meaning actions or discussions that employees take to address the terms and conditions of their employment. The general rule under the National Labor Relations Act is that even individual employee speech and action can be protected, if the speech attempts to persuade other employees to join in addressing wages, benefits, and working conditions, for example by starting a petition. Depending on the circumstances, those protections can extend to employees' distribution of union literature or posting of union signs in non-work areas during non-work time as well as to wearing union buttons and clothing bearing union insignia on work time. Because the availability of these protections are highly fact-sensitive, this is an area in which it is particularly important to consult union counsel if you have a question whether any particular activity is protected.

State collective bargaining law varies, however, even in states that generally follow the National Labor Relations Act. Some state bargaining laws provide narrower protections than those of the National Labor Relations Act. Washington, for instance, protects educators' right to organize unions and collectively bargain, but does not provide broad protections for concerted activities, and only protects speech and activity that are directly related to union representation and collective bargaining.

Public sector bargaining laws typically do not protect speech that is just "griping" or complaining about workplace conditions without calling for any change in those conditions. These laws also do not prevent an employer from disciplining or firing you for knowingly making false statements about your school, doing or saying something offensive, or publicly disparaging the school without tying your complaints to working conditions. But remember, you may have First Amendment protections for off-duty complaints about your school on matters of public concern as detailed on page 6.

COLLECTIVE BARGAINING AGREEMENTS

For states or school districts where public sector collective bargaining is required or allowed, the collective bargaining agreement (CBA) between the district and the local union provides additional protections for educators. CBAs often contain provisions related to discipline of educators, teachers' academic freedom, and safety protections for educators. These protections vary based on the specific agreement in place in each district at the given time. If your employment is subject to a CBA, contact your local union for assistance in accessing the CBA and understanding what protections it provides.



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Your Greatest Protections for Advocacy are for Speech and Activity Done Off Duty and Away from School

You have the greatest freedom of speech and other protections when you are advocating off duty and away from school. As we detail below, when you are off duty, you generally have the same rights as any other person to advocate for your views, support your candidates of choice, march and attend protests, sign petitions on issues you care about, and communicate with your elected representatives about those same issues.

Whenever you are involved in any of these activities, you should be clear that you are speaking and acting for yourself or for your union, not on behalf of your school. If you are writing something that members of the public might see, for example a letter to the editor or a Twitter thread, include a disclaimer that makes clear you are speaking only for yourself and/or for your union, and not as a school representative. For example, "The opinions and positions expressed are my own and do not necessarily reflect my school district's position, strategies, or opinions."

SPEAKING TO THE PRESS AND WRITING LETTERS TO THE EDITOR

Speaking to the press and writing letters to the editor are classic protected First Amendment activities, provided you make clear you are not speaking on behalf of your employer and your speech does not "materially disrupt[] classwork" or involve "substantial disorder or invasion of the rights of others."[27] You should rarely, if ever, publicly speak critically about specific students. And as always, you should be respectful, even when being critical.

Even if speech is made off-campus, it can lose protection for foreseeably causing a material disruption at school where, for example, the speech threatens or harasses a student or educator publicly on social media.[28] Similarly, if your speech defamed someone it would no longer be protected by the First Amendment. If your protest activity is reported in the press, that activity generally is protected by the First Amendment. You could lose that protection if your protest activity results in "substantial disorder,"[29] as would be the case where a protest turns violent or involves participants breaking the law.

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[27] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969); *Mahanoy Area Sch. Dist. v. B.L.*, -- U.S. --, 141 S. Ct. 2038, 2047-48 (2021).

[28] *Kowalski v. Berkeley Cty. Schs,*, 652 F.3d 565, 573-74 (4th Cir. 2011); *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 398-400 (5th Cir. 2015).

[29] *Tinker*, 393 U.S. at 513.

Tenure will also provide some measure of protection for such speech and activity, but tenure laws generally hold educators to higher standards than other members of the public. Speech or activities that are out of step with community norms are generally not protected under tenure laws.

POLITICAL PARTICIPATION

You also have strong First Amendment rights to engage in political activity on your own time and in your personal capacity. But courts still balance your right to free speech against your school's interests in controlling the speech. You should avoid actions that could tip the balance in a school's favor. First, you should make it clear that you are not speaking for your school or acting on its behalf. Second, you should make sure that the event relates to the public interest, and not a private matter at the school. Finally, you should avoid activity that is truly offensive and inflammatory. If you follow these rules, the balance will nearly always tip in your favor for political speech.

Marches, Rallies, and Protests

You are free to attend political gatherings. Those can include marches, rallies, protests, and national conventions. You can speak to reporters at rallies. You can carry signs. You can post pictures of yourself at rallies on social media.



The only limited exceptions to this general rule are if you associate with hate groups or similarly offensive groups or events. For example, a court in Alabama ruled that a police department could fire an officer based on his membership in a white nationalist hate group.[30] Even then, the court considered that the police department had warned the employee to make sure he kept his job as a police officer separate from his membership in that organization. The employee ignored that warning. Instead, the officer made a speech to the organization about policing. He also tried to recruit other officers to join the organization. Finally, the department gave the employee a chance to denounce the organization before it fired him, and he refused. That was an extreme case. Not only was the organization itself repulsive, but the employee also ignored warnings and turned down chances to distance himself.

So long as you are not attending outrageous and offensive political events, you can rely on the First Amendment for protection. Amnesty International and the ACLU both have resources for how to protest safely, available here and here.

[30] *Doggrell v. City of Anniston, Alabama*, 277 F. Supp. 3d 1239, 1258 (N.D. Ala. 2017).

Donating and Fundraising

Because some districts have specific rules about political activity, you should review your district's policies before donating to or fundraising for political candidates. Generally, you may donate to groups that engage in advocacy. You may also donate to candidates' campaigns. You can attend fundraisers for groups and candidates. But you should do so on your own time, on your own computer or phone, should keep this activity separate from your work, and should do so off school premises.



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Petitions

You are generally free to sign political petitions or start your own. However, you should make it clear that you are signing in your personal capacity. You should read the whole petition and be sure you know what you are signing. Avoid signing petitions that include racist, offensive, or otherwise inflammatory language. As with other speech, the First Amendment will only protect petitions on matters of public concern, which may not include petitions authored by students or some petitions about workplace conditions. The labor laws in your state may protect petitions calling for changes in workplace conditions as concerted activity.

Civil Disobedience

Some protests include acts of civil disobedience, meaning peaceful actions that violate the law in order to make a point about the need for a particular change. For example, a group may stage a sit-in on private property, which can lead to arrests for trespassing. Police will sometimes attempt to shut down a protest, arguing that it has become dangerous or it is interfering with traffic. Police may arrest protesters who refuse to leave.

You should be aware that an arrest might affect your employment. Some collective bargaining agreements (CBAs) require educators to notify their employer within 24 hours of an arrest for anything other than a traffic offense.[31] School districts may also discipline educators, including with termination, if they are convicted of certain crimes.[32] State laws may also prohibit hiring educators based on their criminal history, although protest-related arrests would usually not automatically disqualify an educator.[33]

If you are attending a protest where there is a risk of arrest, plan ahead. Write down key phone numbers of anyone you would need to call. Because you may not have access to your phone or other belongings,

[30] *See, e.g.*, Master Agreement between the Zanesville Education Association/OEA/NEA and the Board of Education of Zanesville City Schools, Zanesville, Ohio, effective August 1, 2017 to July 31, 2020 ("Zanesville CBA"), Art. V, ¶ 3.4 p.4.

[32] *See, e.g.*, Contract between Los Gatos Union School District and the Los Gatos Union Classified Employees Association, July 1, 2019-June 30, 2021 ("Los Gatos CBA"), Art. 15, ¶ E. p. 15-2, https://4.files.edl.io/c23a/06/28/21/204638-d7f67b41-8f17-4c7e-aa60-310c1419fb35.pdf.

[33] *See, e.g.*, Ohio Rev. Code § 3319.39(B)(1)(a).

you may want to write phone numbers of lawyers providing legal assistance to protestors on your arm in permanent marker. Many National Lawyers Guild chapters operate Legal Support Hotlines. You can check if a chapter near you operates a hotline here.

Elections & Campaigns

You can participate fully in elections and campaigns. As with other forms of activism, you must do it on your own time and should not use school resources. You may support and endorse political candidates. Except in very rare circumstances that are not relevant here, public employers cannot punish their employees for their political affiliation.[34] You may volunteer on campaigns. Some CBAs will allow educators to take a leave of absence, without pay, to campaign for office or to campaign for a candidate.[35]

You may also run for office! Some school districts may ask that educators notify the district if they plan to run for office.[36] Apply to NEA's See Educators Run program. NEA hosts three-day trainings with experts and top political consultants to help educators develop the confidence and skills needed to run a successful campaign.

> "Politicians make so many decisions that affect my classroom and the profession. I need to be involved so we elect people who are going to make those decisions in a way that is favorable toward public education, public school workers, and the students we serve."



– Amy Harrison, special education teacher, North Carolina

PUBLIC TESTIMONY

You can speak at school board hearings, state legislative sessions, and federal Congressional hearings. NEA members have shared their experiences with elected representatives on some crucial issues, including the need for honesty in education, ways to support LGBTQ+ youth, and more. Elected representatives need to hear from you as they make decisions that will affect public education.

You should be careful that your actions and speech do not violate community norms or expectations as to how educators should behave. Educators can be held to higher standards than other members of the public, resulting in greater scrutiny of the subject and content of your speech. The First Amendment does not protect speech on private matters. It also may not protect speech that is offensive or disrespectful. Similarly, tenure laws broadly protect teachers from being terminated for off-duty conduct, but not where

[34] *Hager v. Pike Cty. Bd. of Educ.*, 286 F.3d 366, 372 (6th Cir. 2002) (citing *Elrod v. Burns*, 427 U.S. 347, 375 (1976) (Stewart, J. concurring)).

[35] *See, e.g.*, Hoboken Board of Education and the Hoboken Education Association Certified Personnel, July 1, 2016 through June 30, 2019 ("Hoboken CBA"), Art. XVIII, ¶ 18.3 p. 20.

[36] For example, Seattle Public Schools encourages any employee who intends to run for elected political office to submit a letter of intent to the superintendent two weeks before the filing date. Seattle Public Schools, Staff Participation in Political Activities, Superintendent Procedure 5252SP (Oct. 19, 2011), https://www.seattleschools.org/wp-content/uploads/2021/07/5252SP.pdf.

the conduct violates community norms or expectations of how educators should behave. In the next section discussing Social Media Activity, we provide further detail about how the context and content of your speech impacts the extent to which it is protected. Some of the advice is specific to social media, but you should keep the general principles in mind for all out-of-school speech.

SOCIAL MEDIA ACTIVITY

Social media can be an amazing advocacy tool. NEA members have used Twitter, Facebook, and other platforms for organizing, boosting social movements, and sharing resources. Because social media has worked its way into every corner of our lives, many school districts have their own social media policies. This section provides general guidance for using social media, but you should check to see if your district has its own social media policy.

Political Posts on Social Media

The good news is that most political posts on social media deserve First Amendment protection. The posts are not a part of your job. You are not speaking for the school. And political speech is generally on a matter of public concern. All of these factors support your right to free speech. Even so, school districts may attempt to justify discipline on the ground that your social media post has materially disrupted the school environment. As a matter of First Amendment law, courts have to balance the school district's interest against your and the public's interest.[37] The stronger the public interest in the speech, the more disruption the school must show. You will have more protection when your speech is public, focuses on larger issues rather than personal gripes, and is respectful.[38]

Social Media Posts about Your School, Coworkers, and Students

As public school employees, posting about public schools can be tricky. On the one hand, the public cares a great deal about public schools. As educators, you are experts on public schools, so the public has a strong interest in hearing from you. On the other hand, schools are your employers. The public does not have a strong interest in hearing you complain about your coworkers, bosses, or students.[39]

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[37] *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty., Illinois*, 391 U.S. 563, 568 (1968) ("The problem in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.").

[38] *Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 467 (3d Cir. 2015) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)) (noting that the "inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern," but holding that courts may consider the form and circumstance of the employee's speech).

[39] *Id.* at 469 (determining that a teacher's blog, which referenced important public issues, was not speech on a matter of public concern because it was intended to be shared only with friends and was predominantly personal in nature); *see In re O'Brien*, No. A-2452-11T4, 2013 WL 132508, at *4 (N.J. Super. Ct. App. Div. Jan. 11, 2013) ("O'Brien was not endeavoring to comment on a matter of public interest, that is, the behavior of students in school but was making a personal statement...").

Compare the following actions. First, a high school teacher emails other teachers and staff at her school to say that she is tired of students falling asleep in her first period class. She complains that she is tired in the morning too, but she drinks her coffee and forces herself to come to school. She suggests that the students are lazy and probably stay up too late playing on their phones. She ends by asking her coworkers for ideas about dealing with sleepy students. Second, a high school teacher sees that the school board is considering delaying the high school start time by several hours. She tweets a link to a newspaper story about the proposal, adding a brief message in support of the change. She notes that her students seem to struggle in the morning, often falling asleep in her first class, but do much better later in the day.

The second teacher's social media post will receive much more protection than the first teacher's email. The first teacher's email was internal. The second teacher posted her message publicly. The first teacher wrote about her own problems with classroom management. The second teacher focused on a district-wide change that would affect the whole community. The first teacher insulted her students. The second teacher noted a problem her students were having but did not call them names. A court would likely find that there was no or very limited public interest in the first teacher's email. Moreover, the school district would likely be able to show that the email might disrupt the school community if made public. Therefore, the school would likely be able to discipline the first teacher but not the second.

While it may be appropriate to post your critique or disagreement with a new school policy, do not make public posts that insult your coworkers or, even worse, your students. Schools cannot operate unless students and families trust educators. An educator destroys that trust by showing disgust or disrespect for their students. For example, one teacher insulted her students in a blog post, suggesting that some dressed like "streetwalkers" and were "the devil's spawn." When students discovered the blog, they and their families complained to the school. Several families requested that their students have a different teacher. Eventually the school fired the teacher. A court determined that the school had the right to fire the teacher because her posts disrupted the school and made it difficult for the teacher to do her job.[40] Another teacher was dismissed after she referred to her first grade students as "future criminals" and complained that she could not bring them to a "scared straight" event at the school.[41] Negative posts about coworkers may raise the same concerns. Many school districts have policies about social media that prohibit educators from insulting their students, coworkers, school, and school district.[42]

> **"A lot of teachers say, 'I'm not political,' but from our local school boards to the state legislature, that's who's deciding the content we teach, the days we have to teach it, the books we'll use, the state of the buildings we will teach in, to how many children are in our classroom."**



–Karen Lauritzen, 4th Grade Teacher, Post Falls, Idaho

Connect with NEA on Social Media @ NEAToday!

[40] *Munroe*, 805 F.3d at 472.

[41] *In re O'Brien*, 2013 WL 132508, at *1.

[42] *Id.*

Avoid Offensive Posts

The tone of an educator's speech plays a role in determining whether it disrupts school life.[43] You should be careful to avoid using offensive language or stereotypes. For example, a school placed a teacher on leave after he tweeted that it was "awesome" that Rush Limbaugh was dying and that Limbaugh, who for years has been infamous for making racist, sexist, and otherwise offensive comments, "absolutely should have to suffer from cancer."[44] By engaging in personal and vicious commentary, the teacher became an easy target for local outrage. The school district received numerous tweets asking the district to fire the teacher and asking whether the school found that kind of language acceptable or appropriate from someone teaching impressionable children. The district issued a statement clarifying that the teacher spoke only in his personal capacity and that he was on leave pending further investigation. If the teacher had objected to specific offensive statements made by Limbaugh, he probably would have been fine. It is clear, however, that the manner in which the teacher criticized Limbaugh mattered.

You should also monitor the social media groups you belong to. There are good reasons to form a group, especially for activists. For example, educators may want to plan events with other local educators or coordinate a nationwide day of action. Unfortunately, social media groups can turn rotten. Over 60 federal border agents were members of a private Facebook group in which some members posted sexist and racist images and made sexist and racist comments. One of the Customs and Border Patrol officials told reporters that merely belonging to the group would not automatically trigger discipline, but suggested that employees who were active in the group or knew about the offensive comments and did not report the misconduct might face discipline.[45]

Navigating School-Sponsored Social Media

Schools or school districts may have their own social media accounts or even their own social media platforms. They may encourage educators to create pages for their classes. Any posting you do on school-sponsored accounts is unlikely to receive First Amendment protection. First, you are more likely acting as an employee because the platform is school-sponsored. Second, the audience for these is the school community, rather than the public. Third, the content will likely be specific to the school, rather than generally applicable. Finally, controversial posts on these platforms are more likely to disrupt the school environment, since the point of the platform is to reach members of that community. Accordingly, you should be very careful about what you post on these sites.

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43 *Munroe*, 805 F.3d at 474.

44 Rhea Mahbubani, *'It's awesome that he's dying': A Milwaukee teacher was suspended following his tweets about Rush Limbaugh's cancer*, Business Insider (Feb. 6, 2020), **https://www.businessinsider.com/milwaukee-teacher-suspended-travis-sarandos-tweet-rush-limbaugh-cancer-2020-2.**

45 Zolan Kanno-Youngs, *62 Border Agents Belonged to Offensive Facebook Group, Investigation Finds*, N.Y. Times (July 15, 2019), **https://www.nytimes.com/2019/07/15/us/politics/border-patrol-facebook-group.html.**

Connecting with Students

You should be very cautious about interacting with students on social media. Your district may have a policy that prohibits or discourages educators from connecting with their students on social media.[46] Interacting with students on social media raises concerns about student privacy and maintaining appropriate boundaries. You should also be careful about posting information about your students on social media, regardless of whether you tag them. The Family Educational Right and Privacy Act ("FERPA") prohibits schools from sharing some types of information about their students without written consent.[47] In some cases, posting photos or videos of students could be considered a violation of FERPA. The best practice is not to publicly share any information about your students, including video, photos and names, without written permission from their parents.

Maintaining boundaries between educators and students is also important. Connecting with students may let students access your personal information, or vice versa. Parents or school administrators may also be uncomfortable with educators having unsupervised, private contact with students. For example, a school in Connecticut decided to non-renew a non-tenured teacher's contract, in part based on his inappropriate contacts with students through social media, including informal messages to students.[48] The educator likely meant to be funny and friendly, but his school found that his conduct could disrupt the school's learning atmosphere. To avoid such situations, some educators choose to use an alternate name on social media sites to make their profiles more difficult for students to find.

[46] *See*, *e.g.*, Seattle Public Schools, Maintaining Professional Staff / Student Boundaries, Policy No. 5253 (Sept. 9, 2020), **https://www.seattleschools.org/wp-content/uploads/2021/07/5253.pdf**.

[47] Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

[48] *Spanierman v. Hughes*, 576 F. Supp. 2d 292, 312-13 (D. Conn. 2008).

Avoid Political Advocacy at Work

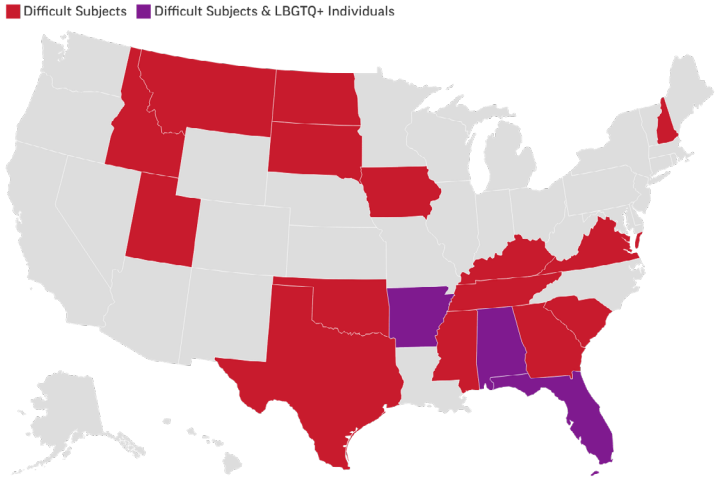
Your speech rights are more limited at school. As a matter of both federal and state law, public schools have the right to control what their employees say on the job. That is so because when an educator is speaking in their official capacity, people may assume the educator is speaking for the school. State laws and court decisions give schools significant control over speech in schools. Moreover, the school has an interest in controlling its own message. Schools also have an interest in running their schools efficiently, which means minimizing disruptions and community concerns. Finally, schools may have an interest in remaining neutral on controversial topics. For all these reasons, you should proceed with caution when engaging in advocacy at school or in your school role. That said, there are still some ways to advocate for your students within the bounds of these constraints.

TEACHING

There are no one-size-fits-all rules about what teachers may say in their classrooms. Educators teach about many important historical and contemporary issues, including discussions about racism and LGBTQ+ individuals. But there may be limits to how you can teach certain topics. Your freedom in this context will depend on the rules set by your state, school and school district. This section provides general guidance and real-world examples. Because professors at public institutions of higher education enjoy greater speech protections while teaching, the following section is focused on the limitations that apply at the K-12 level.

Statewide Restrictions on Course Topics and Discussion

Some states restrict the ways educators can teach difficult subjects, like the history of racism or sexism in America. Some also prevent educators from discussing or potentially even recognizing LGBTQ+ individuals.



As of March 2023. Many districts may have enacted similar policies at the local level. Check with your local education association to see if there are any additional restrictions on how you can teach these topics.

Discussing Controversial Issues in Class

Within the last few years, eighteen states have passed laws or issued statewide rules (AL, AR, FL, GA, IA, ID, KY, MS, MT, ND, NH, OK, SC, SD, TN, TX, UT & VA) that aim to restrict the ways educators can teach difficult subjects, like the history of racism or sexism in America. Three others (AL, AR & FL) have passed laws preventing educators from discussing or potentially even recognizing LGBTQ+ individuals. These laws are political efforts to distract from the real issues facing our schools. There are multiple lawsuits now pending that challenge several of these laws, including lawsuits supported by NEA and its affiliates. If you work in a state with one of these laws, check out NEA's state-specific Know Your Rights guides to understand what the law in your state prohibits and, just as importantly, what it does not. For all educators, remember that instruction on many controversial issues is part of existing state content standards and teaching students

to think critically about difficult issues and develop their own views is one of the overriding goals of public education. The following tips will help you develop a lesson plan that engages with controversial issues while minimizing the risk of any backlash from your school or community.

In general, if you are planning a discussion about current events that raise controversial issues, be sure that your curriculum is (1) age-appropriate, (2) aligned with state standards, and (3) in line with past practices in your school. If you expect that your lesson will be controversial, run the plan by your principal first. This will give your administrator a chance to suggest changes or prepare for a negative response from the community.

Following these steps is particularly important in school districts that skew more conservative or that have been targeted by far-right activists. You should be aware that NEA and its affiliates have pushed back against extreme efforts by school administrators to censor instruction, but the cases can be difficult and our efforts have not always been successful. For example, a Texas school district told teachers that, in order to comply with their new law, they would have to teach both sides of the Holocaust. The district later reversed course, retracted the guidance and apologized.[49] More recently, a tenured Tennessee teacher was fired over his use of a Ta-Nehisi Coates essay and a spoken word poem called "White Privilege."[50] The district claimed that the issue was that the language in the works was inappropriate for high school students and that the teacher did not present varying viewpoints on the issue. NEA and TEA continue to press the teacher's case to try to win his job back, but during the initial steps of the process—a hearing before an independent hearing officer and the action of the school board in reviewing the hearing officer's report—the school district has prevailed.

If you are in a state or school district in which public sector collective bargaining is required or allowed, your collective bargaining agreement (CBA) may provide some protection for teachers' academic freedom. Often, CBAs recognize the role that academic freedom plays in encouraging students to think critically and independently.[51] CBA provisions may allow teachers to present controversial issues to their students, if they follow certain rules. Common rules include: (1) the

> **"I believe we have an ethical responsibility to our profession to tell the truth and teach the truth. It's not our responsibility to teach students what to think, but it is our responsibility as educators to teach them how to think critically. If we're going to really make things better and improve society, then that work starts with how we educate our students."**



–Taunya Jaco, 6th grade English Language Arts and Social Studies Teacher
San Jose, California

[49] Namita Singh, *Texas school district apologizes for telling teachers they must include 'opposing views' on Holocaust*, Independent (Oct. 16, 2021), https://www.independent.co.uk/news/world/americas/us-politics/texas-schools-books-opposing-holocaust-b1939480.html.

[50] Shannon Larson, *A Tennessee teacher taught a Ta-Nehisi Coates essay and a poem about white privilege. He was fired for it*, The Boston Globe (July 11, 2021), https://www.bostonglobe.com/2021/07/11/nation/tennessee-teacher-taught-ta-nehisi-coates-essay-poem-about-white-privilege-he-was-fired-it/.

[51] *See, e.g.,* Jefferson County Board of Education – Jefferson County Teachers Association Agreement 2018-2023 ("Jefferson County CBA"), Art. 6, § A p. 16, https://www.jefferson.kyschools.us/sites/default/files/JCBE%20JCTA%20Contract.pdf ("The Parties agree that young people should be educated in the democratic tradition which fosters a recognition of individual freedom and social responsibility, inspires meaningful awareness of and the respect for the Constitution and Laws and instills appreciation for the value of individual personality. It is recognized that these values can best be transmitted in an atmosphere which is free from censorship and artificial restraints upon free inquiry and learning, and in which academic freedom is encouraged and enjoyed.").

lessons must relate to the teacher's subject or the official curriculum; (2) the lessons must be appropriate for the students' age; and (3) the teacher must be fair, balanced, and not advocate a particular viewpoint.[52] Some also require teachers to clear controversial lessons with administrators beforehand.[53]

Discussing Acts of Violence

Far too often in America, violence rips apart communities. When that happens, students are likely to ask you questions about the event. As an educator, you want to support your students, acknowledge the pain, fear, or anger they may be feeling, and help those in need access mental health resources. After one of these events, consider taking time at the start of your day to address recent events and allow students an opportunity to express their feelings. Where possible, coordinate with your school or district administrators to have a consistent response throughout the school. For example, after the massacre of Black members of their community at a grocery store, the Buffalo Public Schools district requested that all principals start the day with counseling circle meetings for students and provide safe spaces and mental health resources for students and staff.[54] The National Association of School Psychologists also has tips for parents and teachers on **Talking to Children about Violence**. The National Child Traumatic Stress Network has guidance on **Assisting Parents/Caregivers in Coping with Collective Traumas**.

When racism and hate motivate the violence, as in shootings by white supremacists, or when the violence exposes systemic racism within our society, as with a cop shooting an unarmed Black child, these conversations are even more difficult but even more important. The Anti-Defamation League offers curriculum on **Responding to Violence and Hate** and the Western States Center has a toolkit for **Confronting White Nationalism in Schools**. As always, make sure your conversations are age-appropriate and in line with school policy or state law on these topics. In some states, the recently enacted censorship laws detailed above at page 22 require you to take particular care in classroom discussions about the systemic racism that drives this violence.

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[52] *See, e.g.*, CBA between Delano Joint Union High School District and Delano Joint Union High School District Teachers' Association/CTA/NEA 2020-2023 ("Delano CBA"), Art. XXXII, ¶ A p. 79, **https://www.djuhsd.org/site/handlers/filedownload.ashx?moduleinstanceid=1353&dataid=5111&FileName=May%2012update%202020-2023%20wMarch%202021%20TA%20Changes%20and%20Appendices-FINAL-DL593.pdf** ("It is the policy of Delano Joint Union High School District that all instruction shall be fair, accurate, objective, and appropriate to the age and maturity of the pupil(s), and sensitive to the community needs and the needs and values of our diverse cultures and heritages."). *See also* 2019-2022 Agreement Los Angeles Unified School District and United Teachers Los Angeles, ("Los Angeles CBA") Article XXV, §1.0(b)-(c), p.266, **https://achieve.lausd.net/cms/lib/CA01000043/Centricity/domain/368/utla/utla%20contracts/2019%20-%202022%20UTLA%20Contract.pdf**; Instructional Staff Contract between Liberty County School Board and Liberty Education Association, 2017-2020 ("Liberty CBA"), Article XIII, ¶1 p. 18; Agreement between the Delaware City School District Board of Education and the Delaware City Teachers Association, August 1, 2018 Through July 31, 2021 ("Delaware City CBA"), Art. 33. P. 98; Agreement Between Montgomery County Education Association and Board of Education of Montgomery County Rockville, Maryland 2018-2020 ("Montgomery County CBA"), Art. 11 ¶ D p. 21; Master Contract between the Dayton Education Association and the Dayton City School District, July 1, 2017 through June 30, 2022 ("Dayton CBA"), §§ 14.01-1404, p. 30, **https://www.dps.k12.oh.us/wp-content/uploads/2021/07/17-MED-05-dea-contract.pdf**.

[53] Liberty CBA, Art. XIII, ¶ 3, p. 18.

[54] Dr. Tonja M. Williams, Interim Superintendent of Schools, *Letter to BPS Staff and Families*, Buffalo Public Schools, Office of the Superintendent (May 15, 2022), **https://www.buffaloschools.org/cms/lib/NY01913551/Centricity/ModuleInstance/123515/BPS%20Letter%20to%20Staff%20and%20Families.pdf**.

Bringing in Guest Speakers

Guest speakers are a wonderful way to introduce students to new ideas and perspectives. It is easier than ever to bring in guest speakers virtually. But you should exercise good judgment and plan ahead so that you are complying with any school or district rules. Schools may exercise similar control over invitations to guest speakers as they do over teachers' lessons.[55]

Many school districts require teachers to seek prior written authorization from their school principal before a guest speaker's appearance. When a speaker is likely to be controversial, schools may require teachers to notify parents in advance and provide opportunities for students to opt-out of attending the appearance. For example, a high school teacher in Illinois brought in numerous guest speakers for an elective class called, "Conflicts and Mysteries."[56] Members of the community were outraged after he invited a practicing Wiccan to speak about the Occult. Parents supported the teacher, noting that he sent several notices about the guest speakers and required students to get parental permission. The school board cancelled and then reinstated the course. Similarly, a middle school in California has Planned Parenthood teach sex education.[57] The school sends notices to the families ahead of time so they can review the curriculum and, if they choose, have their students opt out.

Selecting Instructional and Classroom Materials

Districts and schools will often prescribe the curriculum, including the textbooks and instructional materials for specific subjects.[58] Teachers' freedom to supplement that curriculum with materials they choose varies enormously. Some CBAs explicitly allow teachers to do so.[59] Other CBAs require advance approval of any materials that are outside the standard curriculum.[60]

Many educators also have classroom libraries where students can access books on topics that may or may not be related to the course materials. In response to recent state laws that restrict teaching in honest and inclusive ways, school districts across the country have increased efforts to ban books touching on subjects of race and gender from school libraries and educators' classroom libraries.[61]

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55 *See, e.g., Silano v. Sag Harbor Union Free Sch. Dist. Bd. of Educ.*, 42 F.3d 719, 723 (2d Cir. 1994).

56 Heather Greene, *Small Town Teacher Invites Wiccan Guest Speaker into Classroom*, The Wild Hunt, Pagan News & Perspectives (Dec. 29, 2013), **https://wildhunt.org/2013/12/small-town-teacher-invites-wiccan-guest-speaker-into-classroom.html**; KHQA Newsdesk, *Illini West teacher sparks controversy*, abc7KHQA (Dec. 18, 2013, updated Dec. 19, 2013), **https://khqa.com/news/local/illini-west-teacher-sparks-controversy**.

57 Robin Abcarian, *Column: A school decided to let Planned Parenthood teach sex-education classes. Trouble ensued*, L.A. Times (Apr. 12, 2019), **https://www.latimes.com/local/abcarian/la-me-abcarian-sex-ed-20190412-story.html**.

58 *See, e.g.*, Triangle Lake CBA, Art. I, ¶ B.11, p. 5.

59 *See, e.g.*, Los Angeles CBA, Art. XXV, ¶ 1.0 (b), p. 266.

60 *See, e.g.*, Burgettstown Area CBA, Art XVII, ¶ 1, p.34 (requiring teachers "to obtain a second voice of affirmation for the inclusion of any unapproved material.").

61 Hannah Natanson, *Hide your books to avoid felony charges, Fla. Schools tell teachers*, Wash. Post (Jan. 31, 2023), **https://www.washingtonpost.com/education/2023/01/31/florida-hide-books-stop-woke-manatee-county-duval-county-desantis/**; Jonathan Friedman & Nadine Farid Johnson, *Banned in the USA: The Growing Movement to Censor Books in Schools*, PEN America (Sept. 19, 2022), **https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/**.

Make sure that curricular materials and other books in your classroom are age-appropriate and in line with school and district policy. If administrators at your school have directed you to remove specific books from your classroom, remove the books in a timely manner. But contact your local union if it is unclear what books are permitted or if the restrictions are being implemented in a way that disproportionately targets and removes books that cover topics of race or LGBTQ+ issues. There are several lawsuits now pending that challenge various restrictions on instruction on the issues of race, gender, and sexual orientation, and efforts to ban books in libraries or classrooms raise similar issues. For example, the ACLU of Missouri recently filed a lawsuit challenging a school district's book removal policy that resulted in the removal of a book with a non-binary character before a review process was completed.[62]

Expanding the curriculum to ensure it is inclusive and makes all students feel respected and represented is an important tool for building student engagement and learning. Classroom libraries can also provide students with important opportunities to learn using materials that may powerfully engage them by reflecting the experiences of people and families that represent them or by helping them better understand people with different backgrounds and experiences. Talk to your principal about the importance of making sure that all students feel seen and supported in your school and classroom and ways that the school can make sure this happens.

Disclosing a Personal Opinion about a Controversial Issue

Schools may prohibit teachers from voicing their personal opinions, even when they allow teachers to discuss controversial topics in class.[63] For example, a court upheld a school board's decision not to renew the contract of a teacher who told her students, in response to a student's question, that she did honk when she passed protestors against the Iraq war holding signs saying, "Honk for Peace."[64]

If your work is covered by a CBA, read your CBA carefully to determine what your district allows and consult with your union representative. Some CBAs specifically prohibit sharing personal beliefs. For example, the Burgettstown Area CBA allows teachers to introduce controversial materials and opinions but requires those teachers to make it clear that the teacher is not expressing a personal opinion and is not speaking on behalf of the school district. Other CBAs allow teachers to present their personal opinions, but include restrictions. For example, in the Triangle Lake School District in Oregon, teachers may express their personal opinions but only on matters that are relevant to their course content. Moreover, the opinion may not conflict with an established school board policy and/or the approved curriculum. Finally, teachers must explain that they are speaking personally, not on behalf of the school in any way. In Montgomery County, teachers may express their own opinions on controversial issues "provided that the total presentation is essentially balanced and fair" and that the teacher is not promoting their own political aims.

If your work is not covered by a CBA, check with your union and school administrators to see what is or is not allowed in terms of sharing your personal views about a controversial issue with students in class. As a general rule, unless you have approval to do so, either directly or in school district policy or practice or a CBA, you should not share your personal views about a controversial issue with students in class.

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62 Jodi Fortino, *ACLU sues Independence School District over book removal policy*, NPR Kansas City (Dec. 7, 2022), https://www.kcur.org/education/2022-12-07/aclu-lawsuit-book-ban-missouri-independence-school-board.

63 *Mayer v. Monroe Cty. Cmty. Sch. Corp.*, 474 F.3d 477, 480 (7th Cir. 2007).

64 *Id.* at 478.

Advocating a Position

You should not try to convince your students in class to take your side on any controversial issue, support a particular point of view, or adopt a certain religious view. Many school districts explicitly forbid teachers from advocating a particular viewpoint in class. In addition, recently passed anti-honesty in education laws in some states explicitly prohibit advocacy about certain concepts, although advocacy is not clearly defined in those laws.

SUPPORTING STUDENT ACTIVISM

Students across the country are increasingly using their voices to raise awareness of issues that matter to them, including climate change and gun violence. Student activists have staged protests over the police killings of unarmed Black people and walkouts over inadequate Covid safety protocols and gun violence.

You have broad protections off duty to support such student activism, as is discussed on page 14. At work, however, your rights are much more limited. Where student demonstrations occur at school or during the school day, you should work with your administrators to have plans ready for student activism.

Student Walkouts

Educators should engage with local districts to encourage districts to adopt plans about how to respond to student walkouts before the walkouts happen. Such plans should address educators' duties during student walkouts, including whether educators are supposed to accompany students during the walkout to ensure their safety. Plans can facilitate student protest activity in a safe and educational manner by, for example, providing time and space for student demonstrations and guaranteeing that neither students nor educators will be penalized for participating in a walkout. Plans should also address how families will be notified of planned walkouts, so that parents know their children may be out of school and unsupervised. Schools may also consider designating staff members to supervise the students or providing a safe space on campus for students to protest.

Absent the agreement or support of school administrators, educators should not lead or assist in organizing walkouts from school, as such efforts would likely be considered an unlawful strike in violation of state and

> "Students came to me and said, 'We don't see ourselves in our building, and we need your help. We'd like put up a Black Lives Matter banner somewhere in the school.' So I said, 'let's do it. Let's make it happen.' We had some obstacles in our way, but now we have a banner that proudly hangs in the cafeteria right now."



– Rahaf Othman, high school history teacher, Illinois

local laws or school district policies. Neither the First Amendment nor state and local collective bargaining laws and agreements give educators a right to join student walkouts. As a consequence, you could face discipline or even termination for joining a walkout or helping students to organize a walkout.

To illustrate the point, a recent walkout that was conducted with the support of school administrators involved middle school students in San Francisco, California walking out for one period to demand a better wellness center with social workers and therapists. Teachers and a school resource officer joined the students outside to make sure they were safe. The school district held community meetings for parents to express their concerns. There was no report of students facing discipline.[65] The San Francisco school supported and protected its students.

By contrast, at a high school in Warwick, Pennsylvania nearly all of the students who participated in a walkout received in-school suspensions.[66] The students were protesting anti-LGBT bullying in the community. They missed their lunch period and one class. After the walkout, the school principal called students into her office one at a time and issued the suspensions for leaving class without permission and for being out of their assigned areas.[67]

Student Clothing Demonstrations

Often, students demonstrate by wearing specific clothes and accessories. In a famous case from the 1960s, students wore black armbands to protest the Vietnam War. More recently, students have worn black to show solidarity for students of color.[68] They have also deliberately violated school dress codes to protest gender or racial bias in enforcement.[69]

The more general the action, the more likely it is that educators can participate. NEA members have worn specific colors to support other causes for years. For example, in recent years NEA has encouraged members to wear orange to urge support for gun reforms.[70] Similarly, NEA and many NEA affiliates encourage members to wear red for ED on particular days. These general showings of support for a cause have largely been permitted at schools without any disciplinary actions.

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65 Melanie Woodrow, *San Francisco's Aptos Middle School students walk out of class in demand of improved wellness center*, abc7NEWS (Feb. 21, 2020), **https://abc7news.com/society/aptos-middle-school-in-sf-students-walk-out-for-improved-health-resources/5956561/.**

66 Alex Geli, *At least 11 Warwick students receive in-school suspension after Wednesday's walkout*, LNP | LancasterOnline (Feb. 16, 2020), **https://lancasteronline.com/news/local/at-least-warwick-students-receive-in-school-suspension-after-wednesday/article_ae1a5ba8-4f7f-11ea-ad42-1364a50ac4b4.html**; Alex Geli, *Warwick High School students walk out over use of homophobic, racial slurs*, LNP | LancasterOnline (Feb 13, 2020), **https://lancasteronline.com/news/local/warwick-high-school-students-walk-out-over-use-of-homophobic/article_ea51f-3ca-4dd5-11ea-8464-bfa72e47ae16.html.**

67 In a statement that the district released after the student protest, the district asserted that "each student spent time with district administrators to share their concerns, which were previously unreported to the school." It appears that the school did not have advance notice of the protest. *Message from the Warwick School District*, Warwick School District (Feb. 14, 2020), **https://www.warwicksd.org/website/news.php?id=2958**.

68 Tracey Taylor, *Berkeley High students wear black to show solidarity*, Berkeleyside (Nov. 13, 2015), **https://www.berkeleyside.org/2015/11/13/berkeley-high-students-wear-black-to-show-solidarity**.

69 Liz Brazile, *A new dress code for Seattle schools looks to eliminate gender and racial bias*,Crosscut (Aug. 16, 2019), **https://crosscut.com/2019/08/new-dress-code-seattle-schools-looks-eliminate-gender-and-racial-bias**.

70 *7 Questions Educators Are Asking About Their Rights to Speak Out, Protest, and Engage in Activism*, NEA EdJustice (Mar. 12, 2018), **https://neaedjustice.org/2018/03/12/7-questions-educators-asking-rights-speak-protest-engage-activism/**.

But schools can have school district policies that limit the messages educators convey in school, provided those policies are enforced in an even-handed manner and do not penalize only certain viewpoints. In workplaces covered by bargaining laws, wearing union buttons and shirts is sometimes protected as concerted activity under state labor laws. And, in some instances, wearing buttons or shirts supporting specific actions at work may be protected as well. You should always check with your union and understand your district's policies before wearing buttons or shirts that advocate for specific movements or wearing buttons in support of a political cause or candidate.

Student Organizations



Students demonstrate at school to raise concerns that the school and/or society is not meeting. Educators can help give students an outlet to use their voice by supervising or sponsoring clubs that support students, such as a **Gender & Sexuality Alliance** (GSA) or a **Black Student Union**. Under the Equal Access Act, students in secondary schools have the right to form student groups like GSAs, so long as the school authorizes other extracurricular student groups and the group is student-initiated. Schools cannot discriminate against these groups based on their politics or viewpoint. They cannot single out some groups for extra restrictions or prevent them from using school bulletin boards, making announcements, hosting fundraisers, or engaging in other activities that the school allows other extracurricular groups to do.

Petitions

Because most schools want to appear neutral on controversial issues, educators generally should not sign student petitions. When educators sign a petition, students in the community may believe the school itself is supporting the petition. Even when they understand that educators are signing as individuals, students may feel pressure to sign a petition if their teacher signs it because of educators' positions of authority and influence over students. Even online petitions are problematic, as educators could sign them outside of school only to have their students display them in school and ask other students to sign.

CREATING AN INCLUSIVE CLASSROOM

Educators often use decorations to set the tone for their classrooms, school buses, lunchrooms, and other workspaces. You can use your work environment to show support for students of all backgrounds–for example, by hanging a Black Lives Matter poster or Pride flag or making clear

that you will use a student's personal gender pronouns. However, schools can control these messages, which are on school property and part of a teacher's job. And displays that include religious, political, or controversial messages raise particular concerns and you should not post them unless there is a clear district policy allowing those or similar displays.

Symbols of Diversity & Inclusivity

Displaying a Black Lives Matter, DREAMers, or Pride flag or poster is a great way to show your support for students and let them know that your classroom will be a safe and welcoming space. Many school districts or school boards have official policies in favor of diversity, equity, and inclusion. Those schools may specifically encourage displays of inclusivity. For example, the Madison Metropolitan School District in Wisconsin has chosen to support transgender, non-binary, and gender-expansive youth. The district made beautiful posters, which are on display in school buildings across the district.[71] Similarly, the public school districts in Seattle and Chicago have policies in favor of diversity and multiculturalism.[72] Both districts encourage schools to create welcoming environments for all students. Chicago specifically notes that displays in the hallways and school bulletin boards should reflect the school's diversity.

> **"I do more good work in creating a mindful student who looks at the world through equity, justice, and love, than if I censor myself."**
> *–Franchesca Mejia, music teacher, Hutto Independent School District, Texas*

It is important to keep in mind that schools control displays in classrooms, school buses, lunchrooms, and other spaces where educators interact with the student body.[73] If you have not seen others posting similar items in their classrooms, make sure to tell the appropriate school administrator before posting, so that you can address any concerns that they may have.

Your school might prohibit workplace displays such as flags, signs, symbols, or buttons at school—for instance, a Black Lives Matter poster in the classroom or a rainbow Pride button worn during the school day. Whether such prohibitions are lawful will depend on whether there was a pre-existing policy, and whether that policy is viewpoint-neutral and applied in a viewpoint-neutral manner. For example, a school's demand that an educator remove an inclusive flag or poster would likely be legal if there was a written policy prohibiting all non-district sponsored materials and the school had asked educators to take down materials representing other viewpoints as well. On the other hand, a local union in

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[71] *Know Your Rights*, Madison Metropolitan School District, **https://drive.google.com/file/d/0BxQaX4hYfVJaajE3Sjh-vbWQ3T29yNi1XSkhMWXJjNWR6OUdv/view** (last accessed Sept. 27, 2022).

[72] Seattle Public Schools, Ensuring Educational and Racial Equity, Policy No. 0030 (Nov. 4, 2020), **https://www.seattleschools.org/wp-content/uploads/2021/07/0030.pdf;** Chicago Public Schools Policy Manual, Multicultural Education and Diversity, Section 102.2, Board Report: 91-1023-P01 (Oct. 23, 1991), **https://policy.cps.edu/download.aspx?ID=88.**

[73] In *Lee v. York County School Division*, 484 F.3d 687, 700 (4th Cir. 2007), the court held that the First Amendment did not apply to certain classroom displays because they were "curricular in nature" and thus were part of an ordinary employment dispute, rather than a matter of public concern. The court also held that the postings "plainly constitute[d] school-sponsored speech bearing the imprimatur of the school," because "they were constantly present for review by students in a compulsory classroom setting" and "students and parents are likely to regard a teacher's in-class speech as approved and supported by the school." *Id.* at 698. *See also Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966-70 (9th Cir. 2011) (holding that the First Amendment did not protect a teacher's classroom displays because, though they constituted speech on a matter of public concern, decorating a classroom was speech as part of the teacher's official responsibilities, not speech in his private capacity).

Oregon was recently successful in challenging a ban on educators displaying Black Lives Matter and Pride symbols; the school board unanimously voted to rescind the policy after settling a lawsuit with the union that alleged the policy violated educators' constitutional rights and would be enforced in a discriminatory way.[74]

If your administrator objects or your school has specific policies against displaying these types of signs, consult your union representative about how best to proceed. You may face discipline if you knowingly violate school rules.



Although schools control what messages can be displayed, you can push your school administrators and school boards to adopt and support messages of inclusivity. NEA has developed model school board resolutions to support **honest and inclusive education practices** and to **protect LGBTQ+ youth** and **immigrant students**. These policies have been adopted in some form by a number of school boards throughout the country.[75]

Also note that schools can and in some instances must prohibit teachers from posting messages that are discriminatory. A teacher in Los Angeles posted items condemning homosexuality in response to the messages supporting LGBTQ+ students featured on bulletin boards as part of the district's Gay and Lesbian Awareness Month.[76] The school principal ordered him to take the items down. The teacher sued but lost because the bulletin boards reflected the school's policy—and the school did not have to include messages that contradicted its own policy.

Using Students' Requested Name and Personal Gender Pronouns

LGBTQ+ students may request that educators refer to them by specific personal gender pronouns such as she/her, he/him, or they/them, or use a different name than the name that is on a class roster. As long as there is no school policy stating otherwise, address students in the way they identify themselves to show that you respect them and are a person they can trust. Educators may also introduce themselves

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[74] Gary Allen, *Union settles lawsuit against Newberg School District, board*, Pamplin Media Grp. (Jan. 16, 2023), **https://www.koin.com/news/education/union-settles-lawsuit-against-newberg-school-district-board/**.

[75] *E.g.*, Prince George's County Board of Education, *Resolution Regarding Black Lives Matter at School*, **https://www.boarddocs.com/mabe/pgcps/Board.nsf/files/AVJKN2527B44/%24file/Black%20Lives%20Matter%20at%20Schools%20Week.pdf (last accessed May 24, 2022);** *D.C. State Board of Education Recognizes the Black Lives Matter at School Week of Action*, D.C. Area Educators for Social Justice (Mar. 28, 2019), **https://www.dcareaeducators4socialjustice.org/news/dc-state-board-education-resolution-black-lives-matter**; William Penn School District Board of School Directors, *Resolution Supporting Black Lives Matter Week of Action in Schools* (Jan. 22, 2018), **https://resources.finalsite.net/images/v1593459126/williampennsdorg/papdybya3t9rd9sylsac/ResolutionJan2018.pdf;** *Policy 443: Creating Welcoming and Affirming Schools for Transgender and Gender Nonconforming Students*, Board of Education of Frederick County, Md. (2019), **https://apps.fcps.org/legal/documents/443**.

[76] *Downs v. L.A. Unified Sch. Dist.*, 228 F.3d 1003, 1006 (9th Cir. 2000).

to students using their personal gender pronouns or include their pronouns in an email signature or other prominent place to let students know that the classroom is a safe place for everyone no matter how they identify.

In recent years, school boards have adopted policies to prevent educators from referring to students with the names and pronouns they identify with and to bar educators from sharing their own pronouns.[77] Because schools can control most of an educator's in-classroom speech, check with your local union if your school or district has such a policy, as knowingly violating school rules may result in discipline.

That said, such a prohibition may violate state or federal law. Forbidding the use of certain pronouns or names may amount to discrimination based on gender identity, in violation of Title IX and possibly other state or federal anti-discrimination laws. In addition, such a policy may not be consistently applied. For example, a school may have a policy that only a student's given name can be used in the classroom unless a parent has authorized use of another name. In this case, to enforce the policy in a nondiscriminatory way the school would need to request permission from the parents for a student named John wanting to be called Johnny, as well as for a transgender student wanting to use a name that better matches their gender identity.

Your local union can help you identify whether such a policy is lawful and if not, how best to challenge it. Remember that speaking out at local school board meetings is an important advocacy tool. You can also advocate for your school to adopt an affirmatively inclusive policy, such as NEA's **model policy** supporting LGBTQ+ students.

Remember that affirming students' identities is extremely important and valuable. Consider asking all students at the beginning of the school year to indicate how they would like to be referred to, including any nickname or preferred name and pronouns, so that transgender or gender non-binary students will not feel singled out. If school policy prohibits doing that, consider other ways of addressing students in an inclusive manner. For example, an educator might refer to all students by their last name, or might use students' names instead of pronouns. Additional information from NEA on how to support LGBTQ+ students can be found **here**.

Promoting or Endorsing Religion

You do not have the right to display materials in the classroom that promote or endorse a religion.[78] In fact, the Constitution prohibits public schools from endorsing or promoting religion.[79]

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[77] Emily Rizzo, *Central Bucks West tells teachers not to use students' preferred names and pronouns without parental approval*, WHYY (Sept. 15, 2022), **https://whyy.org/articles/central-bucks-west-students-pronouns-gender-policy/**; Evan Casey, *Community outraged after school districts says pride flags, pronouns in emails aren't allowed for staff*, Wisconsin Public Radio (Aug. 18, 2022), **https://www.wpr.org/community-outraged-after-school-district-says-pride-flags-pronouns-emails-arent-allowed-staff**.

[78] *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 966-67 (9th Cir. 2011) (holding that a teacher's two banners promoting religion were on a matter of public concern, but that, by posting them in his classroom, he was acting as a public employee, not a private citizen). In *Lee v. York County Sch. Division*, 484 F.3d 687, 700 (4th Cir. 2007), the court held that the postings "plainly constitute[d] school-sponsored speech bearing the imprimatur of the school," in part because, "students and parents are likely to regard a teacher's in-class speech as approved and supported by the school." *Id.* at 698.

[79] *Edwards v. Aguillard*, 482 U.S. 578, 583–84 (1987) (relying on the Establishment Clause, which prohibits federal, state, and local governments from enacting any law respecting an establishment of a religion).

Because context matters, displays can mention religion and God without endorsing religion. Eight states require classrooms and schools to display America's motto, "In God We Trust."[80] Those same words may promote religion, depending on the display. One teacher in California posted banners emphasizing religious references in America's founding documents. He displayed one banner stating "IN GOD WE TRUST"; "ONE NATION UNDER GOD"; "GOD BLESS AMERICA"; and "GOD SHED HIS GRACE ON THEE"; and another stating, "All men are created equal, they are endowed by their CREATOR." [81] The court held that the overall effect was clearly to promote religion. It upheld the school's order that he take the posters down.

Educators should carefully consider what message their displays send and take care to avoid creating displays that explicitly or implicitly promote a single religion.

Political Messages

You should not post any political endorsements in your classrooms. Schools have an interest in remaining politically neutral. Political endorsements in the classroom violate that interest. As with religious materials, not all displays that refer to politics are political endorsements. For example, a government or civics teacher might bring in yard signs from a variety of campaigns in order to have her students compare different styles and messages, but could not put up signs for just one political candidate to show her support for that candidate.



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Whether teachers can display nonpartisan but potentially controversial messages in class will depend on school district policy and school administrators. If you are concerned about a particular message that you plan to post, check with your union first and consider letting a school administrator know of your plans to get their explicit or implicit approval in advance of the posting.

[80] John Hanna, *Kansas considers requiring 'In God We Trust' in classrooms*, Associated Press (Jan. 30, 2020), https://apnews.com/87de52f3fe4c2e6f12dcaf35ee857ada.

[81] *Johnson*, 658 F.3d at 958-59, 965.

Risks and Potential Consequences

Most of this guide has focused on educators' rights and the limits of schools' rights to control their employees in different settings. The reality is that someone may contend that your conduct has crossed the line. Even worse, you may face backlash from the school or community, even when you have complied with all school district policies and are acting within your rights. This section provides information on what to expect and how to respond if that happens.

DISCIPLINE BY THE SCHOOL DISTRICT

State and local laws, school district policies, employment contracts, and collective bargaining agreements may limit how and when employers may discipline educators. The laws vary, but in most states, districts must have just cause in order to fire a teacher who has tenure or refuse to renew a tenured teacher's contract. Specific causes can be found in state statutes and frequently include insubordination, immorality,or unprofessional conduct. Tenure laws also provide procedural protections for a dismissed teacher, including notice and an opportunity to challenge the dismissal through a hearing before the school board or a hearing officer. For educators who do not have tenure, contracts can often be non-renewed for any reason, though state law may still require districts to have good reasons to fire a teacher mid-year. Generally, these laws only protect educators who are teachers. For more information about tenure, see the Teacher Tenure section on page 9.

In states with collective bargaining, collective bargaining agreements, or CBAs, regulate discipline. The contracts may establish the process by which districts discipline educators and the substance of the punishment itself. Typical procedures include giving the educator notice and time to prepare, allowing the educator a representative, having a hearing, and requiring districts to have evidence. CBAs may also provide a rubric for deciding what discipline is appropriate for certain types of misconduct. Frequently, CBAs require districts to use progressive discipline.[82] Except in extreme cases, the school should deal with an educator's first offense by an informal warning. Formal discipline starts with written reprimands, then suspensions with or without pay, and then discharge.[83] Still, CBAs typically recognize that in some cases an educator's misconduct will be too severe to follow progressive discipline.[84]

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[82] *See, e.g.*, Collective Bargaining Agreement between Seattle Public Schools and Seattle Education Association Certified Non-Supervisory Employees, 2019-2022 ("Seattle CBA"), Art. III, § C, ¶ 5, p. 26, https://www.seattleschools.org/wp-content/uploads/2021/07/A02_20191016_2019-2022-Seattle-Education-Association-Collective-Bargaining-Agreement.pdf ("No employee shall be disciplined without just and sufficient cause. A process of progressive discipline will be used."); Los Angeles CBA, Art. X-A 3.0(b) p. 79.

[83] Dayton CBA, Art. 48, ¶¶ 48.01-48.02, p. 85.

[84] *Id.*

You can check your contract and school district policy to see what rules are in place about handling discipline. If you are represented by a union, contact your union for assistance. Your union representative can help you determine what rights you have under any collective bargaining agreement with your school district and under your state's tenure law.

If you receive notice of dismissal, especially in response to any of the types of advocacy detailed in this guide, contact your local or state union immediately. It is possible the dismissal is improper under state tenure law or your CBA. Your local union will be able to help you request a hearing in the proper time frame, understand the process, and prepare a defense. Your union can provide representation during the hearing and may help you with an appeal if the dismissal is upheld.

But it's important to note that a school can generally suspend a teacher pending the dismissal proceedings. Whether the teacher continues to receive their salary during the suspension varies by state. If the teacher's termination is overturned, they are typically entitled to back pay for any time during the hearing process that they were suspended without pay. If the dismissal is upheld, the appeals process in court is lengthy and reinstatement could take significant time.

PARENT AND COMMUNITY COMPLAINTS

As part of their efforts to intimidate educators and censor classroom discussions, some states have established ways for parents to complain about educators directly to the state government or district officials, either by phone, email, or submission of an online form. In Virginia, Governor Glenn Youngkin created a tip line for parents to report teachers for teaching so-called "divisive practices." This process bypassed conversations at the local level and was designed to try to intimidate teachers.[85] But after less than a year the tip line was shut down because it was not receiving many complaints.[86] In states or districts that do not have a designated tip line, parents or community members may reach out to school officials directly to report concerns about educators. These complaints may include concerns about specific classroom discussion topics, course materials, or available books, especially those relating to race or LGBTQ+ identities.

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85 Eugene Daniel, *Virginia Education Association: Gov. Youngkin's tip line to report 'divisive practices'* is designed to intimidate teachers, 13 News Now (Jan. 26, 2022), https://www.13newsnow.com/article/news/local/mycity/norfolk/virginia-governor-glenn-youngkin-school-tip-line-criticism/291-af50154d-ab59-41f1-97a8-bb909fbbd845.

86 Scott Simon & Ben Paviour, *A 'tip line' championed by Virginia Gov. Youngkin last year has been quietly shut down,* NPR (Nov. 5, 2022), https://www.npr.org/2022/11/05/1134514204/a-tip-line-championed-by-virginia-gov-youngkin-last-year-has-been-quietly-shut.

If you become aware of a complaint against you, contact your union representative for advice about the next steps to take. It may be important to connect with counsel early on to get advice on how to speak to your principal or other administrators about the issue to avoid or minimize disciplinary action. Keep in mind throughout the complaint resolution process NEA's guidance above on avoiding political advocacy at work and how to teach within the bounds of recent anti-honesty in education laws.

HARASSMENT

Over the past few years, school districts across the country have experienced an increase in violence and harassment directed toward educators fueled by some politicians who are bent on dragging their culture wars into our public schools. They want to censor the truth, ban books, whitewash history, and keep educators from doing their jobs in order to undermine trust in our educators and public education – even by stoking violence, fear, and intimidation.

This harassment often takes the form of verbal threats, online harassment, intimidation, and sexual harassment, and it can escalate to physical violence.[87] Educators have reported a recent increase in online harassment, including doxxing—the practice of publicly revealing another's private or identifying information on the internet. Much of this harassment has been directed toward LGBTQ+ educators and educators who promote an honest and inclusive education.[88]

Prevention

You can take steps to minimize your risk, especially before any media appearances that may attract unwanted attention from members of the public. First, secure your online presence. Create secure passwords and use multi-factor authentication to prevent online accounts from being hacked. You should also scrub private information from the internet. Google yourself and search online white pages to see if any personal information (e.g., home address, cell phone number) is publicly available. If you find your information on a public website, follow the site's opt-out procedures to remove information that you do not wish to share. You should remove personal contact information from any public resume or CV.

You should also review the privacy settings on your social media accounts. Confirm that only those who you wish to see your social media posts have access. Some educators choose to use an alternate name on social media sites, so that it is more difficult for students and families to view their profile. If you have a public profile, review and consider deleting old posts that may be controversial. Antagonistic members of the public may find old posts and take them out of context to paint you in an unflattering light.

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87 American Psychological Association, Violence Against Educators and School Personnel: Crisis During COVID, Policy Brief 2 (2022), https://www.apa.org/education-career/k12/violence-educators.pdf.

88 See Tim Walker, *The Culture War's Impact on Public Schools*, NEA Today (Feb. 17, 2023), https://www.nea.org/advocating-for-change/new-from-nea/culture-wars-impact-public-schools.

If you plan to speak with the press about an issue that may lead to harassment, you may consider speaking anonymously or under a pseudonym. You may also consider notifying friendly school officials of events that might lead to public backlash, but only if you believe that prior notice would help them assist you in the event of harassment.

Ongoing Harassment

If you are already experiencing threats or harassment, take steps to protect yourself by documenting the harassment. Take screenshots of all threatening messages or posts, including a timestamp and URL, and log other threatening communications such as phone calls. Keeping these records will preserve evidence of the harassment for use in any civil or criminal proceedings or school disciplinary action.

If you are experiencing harassment over social media, use the platform's mechanism for reporting harassment or hate speech. You may also consider blocking or muting harassers on social media platforms. Harassers may also attempt to dox you, i.e. reveal private information about you, including your home address or phone number, without your consent. If that happens, use the website or social media platform's procedures to remove the information as quickly as possible. You may want to change your passwords in case any of your personal accounts were compromised. The PEN America **Online Harassment Field Manual** provides additional guidance on how to protect yourself online.

In addition to these personal steps, which you can take immediately, you should reach out to your union. Your local affiliate may be able to help you engage with your employer and connect you with information and resources specific to your state or locality. Your local can help you check your CBA and school board policies for relevant protections. Work with your local to demand that your employer provide the required protections and to file a grievance if the employer fails to comply with the CBA.

You should also reach out to your school officials. As your employer, your school has an affirmative obligation under federal law to investigate and address certain kinds of harassment, even from third parties–but only if the employer knows about the harassment. Immediately reporting any issues ensures that the school is responsible for taking steps to prevent further harassment. Your CBA, school board policies, and state law may provide additional protection. If the employer refuses to provide these protections after your request, file a grievance using procedures in the CBA. School board policies may also cover bullying and harassment, as well as workplace safety and abuse of school IT resources. Such policies can be an important tool to protect educators–for example, a school district in Maine recently filed a lawsuit against a member of the community who was harassing its teachers, arguing that the district had a duty under state law and school board policy to protect its educators from harassment.[89]

Additional Actions

If you are receiving threats, you may report them to the FBI tip line. Call 1-800-CALL-FBI or use the **online form**. The FBI investigates violations of federal criminal law, including transmitting a threat through the U.S. mail or interstate commerce (including most online communications). You may also consider reporting the threats and harassment to local law enforcement. State criminal laws may ban threats, harassment,

[89] Lia Russell, *Herman schools say conservative activist made it a 'personal mission' to bully teacher*, Bangor Daily News (May 12, 2022), **https://fox23maine.com/news/local/hermon-schools-say-conservative-activist-made-it-a-personal-mission-to-bully-teacher**.

cyberstalking, hate crimes, recording without permission, threats directed toward public school employees, or threats intended to influence school or government action. Some state criminal codes also include enhanced penalties for assault against an educator or other public employee. However, if you know that the person threatening you is a student, attempt to resolve the situation through school discipline channels before invoking law enforcement.

You may also consider filing a civil lawsuit or a complaint with the Equal Employment Opportunity Commission or the Department of Education's Office of Civil Rights. Consult a lawyer about these options. It may be necessary for you to file a complaint with the government before you can bring a lawsuit and you may have to take action by a certain deadline. The NEA Harassment and Discrimination Toolkit offers detailed information on characteristics protected by federal employment discrimination laws and advice for how educators should respond when facing discrimination or harassment.

Conclusion

As educators, your work is vital to our nation. Your work builds our future by teaching and supporting students as they learn and grow into engaged members of the community. In that role and in your personal life, you often encounter opportunities for advocacy, some of which are protected and others that may lead to discipline from schools. In light of recent state laws targeting educators, it is more important than ever that you understand the power you have to advocate for change, as well as how to use that power within the relevant legal frameworks. We hope this guide helps you in deciding how best to advocate for your students and public education. As always, if you have legal questions about your specific situation, reach out to your union or an attorney for assistance.



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