



First Amendment Protections for Educators

Last Updated: April 2025

WHEN IS SPEECH PROTECTED?

Educator speaking on a matter of public concern

- Issues of “social, political, or other interest to a community”¹
- NOT private, personal grievances or concerns²

Educator speaking as a private citizen

- Expression of personal opinion or research
 - Especially when part of academic freedom or outside of educator’s role
- NOT on behalf of institution

More protection when speech is regulated based on content/viewpoint

- Anti-DEI restrictions on teaching or research
- Presumptively invalid
- Institution or government must have compelling need to regulate
 - NOT just government’s disagreement

WHAT ARE LIMITATION ON PROTECTION OF SPEECH?

Speech within the scope of educators’ employment

- K-12 teaching content
- Administrative roles

Speech that overly interferes with institutional interests

- Denigrating institution or colleagues
- Undermining role as educator
- Violation of consistent policies; e.g., no flags as fire hazard

WHAT CAN ADVOCATES DO?

Challenging retaliation based on speech

- Assert and explain how the speech involves a matter of public concern, while also arguing that the speech was as a private citizen and carries the protection of academic freedom, rather than as being part of the faculty member's job duties
- Push for policies that define what speech is protected and under what circumstances, including support for educators' academic freedom

¹ *Connick v. Myers*, 461 U.S. 138, 146-48 (1983). See also *Buchanan v. Alexander*, 919 F.3d 847, 853 (5th Cir. 2019).

² See, e.g., *Tawwater v. Rowan College at Gloucester Co.*, 2023 N.J. Super. Unpub. LEXIS 700 (Sup. Ct. N.J. May 9, 2023). See also, *Jensen v. Brown*, No. 23-2545 (9th Cir. 2024)(appealing decision of district court that professor was not protected for speech re: curriculum standards at community college).