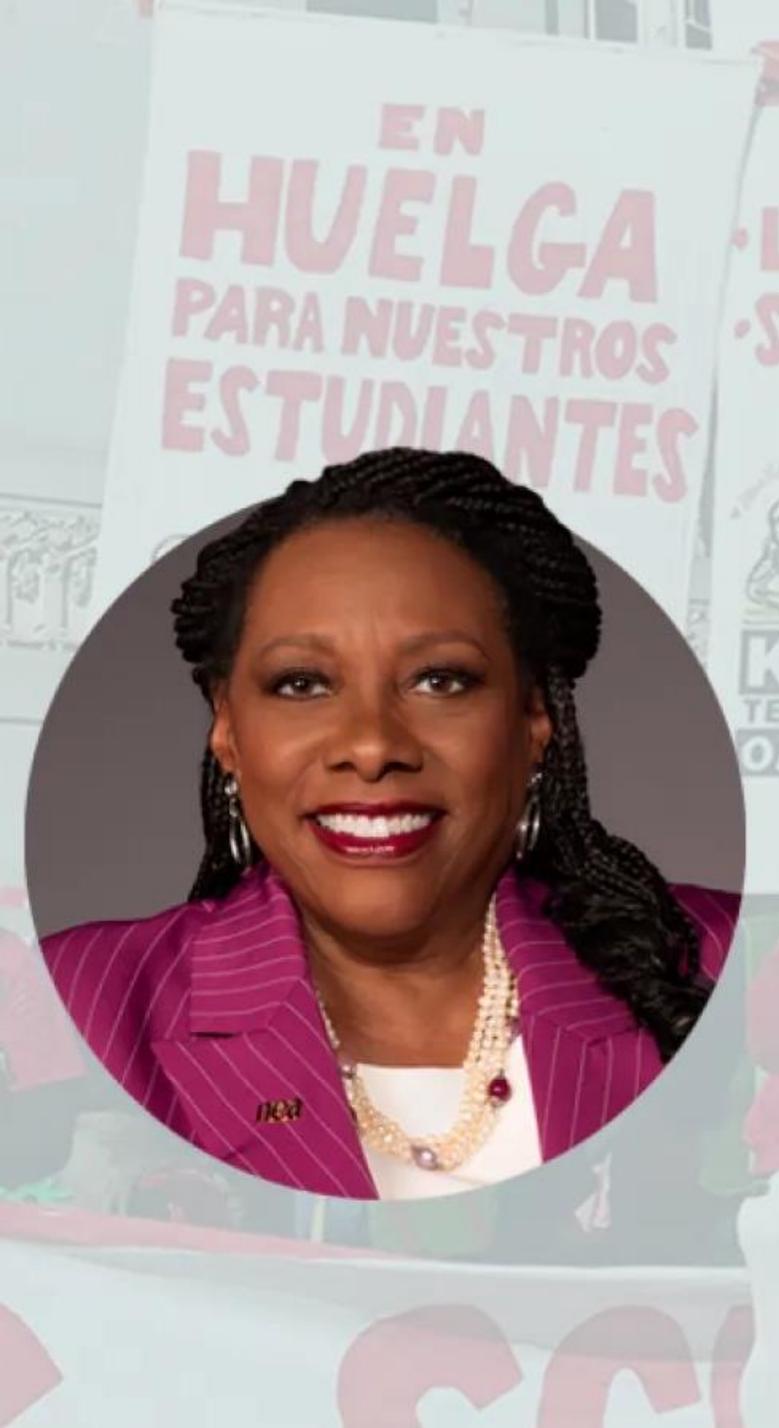




Advocacy and Free Speech Rights for K-12 Educators

February 23, 2026





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Our Agenda

- ▶ Understanding current threats to educator voice and academic freedom, as well as the risks of educators face when speaking out.
- ▶ Understanding the sources of legal protection for educator voice.
- ▶ Understanding general guidelines for when legal protections will be more robust or when educators may be more at risk.
- ▶ Reviewing tools and practical considerations for educator-activists.
- ▶ Reviewing and understanding scenarios involving educator voice and advocacy.

Threats to educator voice
and academic freedom...

*...and the risks educators
face when speaking out*

Attacks on honesty in education and educators' professional autonomy

The New York Times

A Legal Battle Over Trump's Threats to Public School Funding Has Begun

Can President Trump withhold federal funding for low-income students? A brewing fight over diverse programs may force the courts to decide.

With Sweeping Executive Orders, Trump Tests Local Control of Schools

The orders seek to encourage "patriotic education" and restrict discussions about racism and gender by threatening to withdraw federal funding. But schools are often resistant to change.

With ED OCR now actively committed to *violating* civil rights, vulnerable students need advocates

Trump Signs Two Orders to Dismantle Equity Policies

The administration will take steps to roll back federal support for racial equity and protections for transgender people.

The New York Times

Trump Firings Gut Education Department's Civil Rights Division

Many of the office's cases over the decades have served as a catalyst for broader policy change and social reforms.

Listen to this article · 8:36 min [Learn more](#)

 Share full article



Demonstrators in Washington on Tuesday protesting cuts to the Education Department. Eric Lee/The New York Times

DHS immigration “enforcement”
terrorizing communities and punishing
dissenting voices

D.H.S. Cited Foreign Students’ Writings and Protests Before Their Arrests

Documents unsealed by a federal judge on Thursday revealed dossiers that investigators prepared on pro-Palestine activists before they were targeted for deportation.

ICE Arrests Disrupt Schools, Prompting Fear Among Families

President Trump’s immigration crackdown has at times resulted in arrests near schools, setting off concerns among parents, educators and students.

An unprecedented push to criminalize speech and political opposition

Trump Signs Order Targeting Antifa Movement

President Trump's executive order threatens to criminalize individuals who support antifascist philosophy and terrorism designation that doesn't exist.

U.S. NEWS Don Lemon arrested after covering protest at Minnesota church

Attorney General Pam Bondi said Friday that Lemon and three others were arrested in connection with the protest, which she described as a "coordinated attack on Cities Church in St. Paul."

White House Use of 'Domestic Terrorist' Doesn't Match Legal Reality

The Trump administration has used the term as a cudgel against political adversaries, especially this month to defend immigration officers who had killed two protesters in Minneapolis.

Democracy itself is at stake

NEWS ANALYSIS

Ramping Up Election Attacks, Trump Does Not Let Reality Get in His Way

President Trump increases his attacks when he fears an election loss. With midterm elections approaching, he has gone into overdrive as Republicans face potential losses.

Democracy
Docket

White House claims Trump was 'joking' when he talked about canceling election

Democracy
Docket

Steve Bannon says ICE will 'surround the polls' as Trump doubles down on taking over elections

By Matt Cohen | February 4, 2026



It's not just the
Trump
Administration...



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**A Wave of New Legislation Aims to Ban DEI
in Public Schools**

**Students Across the U.S. Are
Protesting ICE. Texas Wants to Punish
Their Schools.**

In dozens of states, students have staged walkouts over immigration enforcement. In Texas, they're doing so despite threats from Gov. Greg Abbott.

**Charlie Kirk's death prompts Iowa bill revoking
teacher licenses for celebrating political violence**

...it's Red State
governments as well

...and
reactionary
online mobs

“Libs of TikTok” has used Twitter to target over 200 individual teachers, schools, and districts in 2022 for supporting LGBTQ students

Right-Wing Activists Urge Followers to Expose Those Celebrating Kirk Killing

The widespread and fast-moving campaign has already resulted in lost jobs, suspensions and internal investigations, heightening tensions online between supporters and detractors of Charlie Kirk.



In the face of all of this, we've seen incredible mobilization, bravery, and solidarity

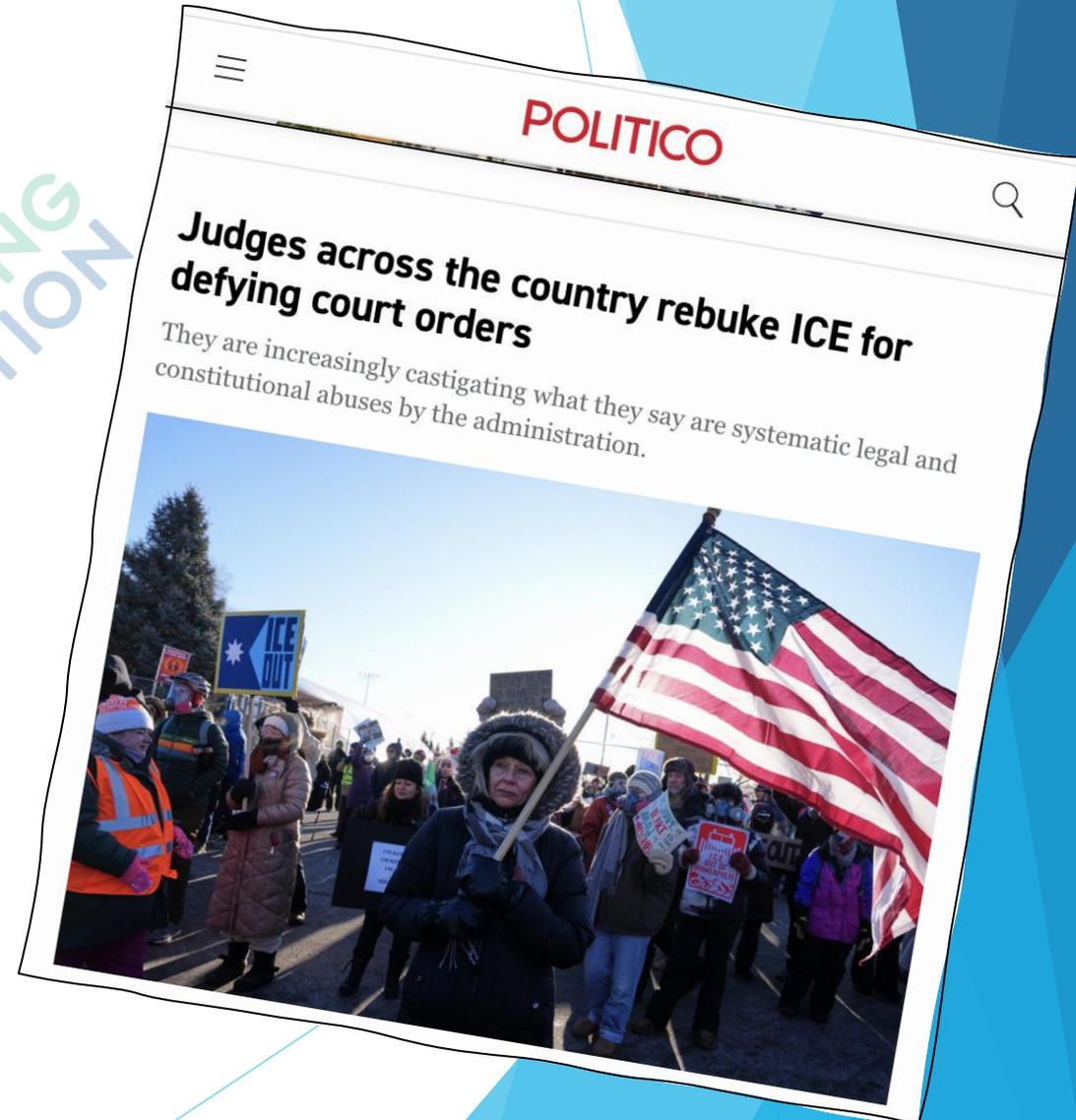
But the
potential
risks are
real...

- ▶ Termination or discipline at work
- ▶ Loss of union rights
- ▶ Arrest, criminal charges, and imprisonment
- ▶ Immigration consequences, including detention and deportation
- ▶ Harassment and doxxing
- ▶ Physical confrontation or violence

Risks and legal protections are often a matter of degrees

- ▶ Context matters for most legal protections; there are few absolutes.
- ▶ Even where legal protections are clear, this Administration can't be counted on to respect them.
- ▶ The goal of this webinar is to provide tools and guidance so that you, as educator-activists, can make informed decisions and be strategic in using your voice.

Resource: Educator Advocacy Rights (nea.org)



Sources of legal protection for educator voice



The First Amendment

- ▶ At times, the Supreme Court has talked a good game about the importance of protecting public employee speech.
- ▶ But the reality is often very different.
- ▶ Public employees, including K-12 educators, have limited First Amendment rights when it comes to their jobs.

Resources: The First Amendment - Protections for Educators, NEA's Summary of First Amendment Protections for Educators (nea.org)

SUPREME COURT OF THE UNITED STATES

Syllabus

LANE *v.* FRANKS ET AL.

Speech by citizens on matters of public concern lies at the heart of the First Amendment, which “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people,” *Roth v. United States*, 354 U. S. 476, 484 (1957). This remains true when speech concerns information related to or learned through public employment. After all, public employees do not renounce their citizenship when they accept employment, and this Court has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights. See, e.g., *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U. S. 589, 605 (1967); *Pickering*, 391 U. S., at 568; *Connick v. Myers*, 461 U. S. 138, 142 (1983). There is considerable value, moreover, in encouraging, rather than inhibiting, speech by public employees. For “[g]overnment employees are often in the best position to know what ails the agencies for which they work.” *Waters v. Churchill*, 511 U. S. 661, 674 (1994) (plurality opinion). “The interest at stake is as much the public’s interest in receiving informed opinion as it is the employee’s own right to disseminate it.” *San Diego v. Roe*, 543 U. S. 77, 82 (2004) (*per curiam*).

The First Amendment's limited protection for public employees

- ▶ Public K-12 educators or other public-employees can be disciplined or terminated for speech unless they can show that they...
 - ▶ spoke as a **citizen** (not as part of one's responsibilities as an employee), and
 - ▶ spoke on a **matter of public concern** (not a mere private concern).
- ▶ Even then, **citizen** speech on a matter of public concern can still lose its protection if a court determines that the employee's interest in speaking is **outweighed** by the employer's interest in preventing **workplace disruption**.



The First Amendment and Academic Freedom

- ▶ In higher education, courts have recognized First Amendment protections for academic freedom.
- ▶ But in K-12, courts have generally rejected academic freedom arguments, holding instead that classroom speech can be dictated by the school.
- ▶ Protection for academic freedom in K-12 would need to come from another source (ex. tenure laws, a CBA, or school board policy).
- ▶ Successful legal challenges to K-12 anti-DEI/CRT restrictions have focused on protections *other* than the First Amendment, such as vagueness under the 14th Amendment.



The First Amendment and religious liberty

- ▶ The Supreme Court has become increasingly protective of religious speech and expression—even for K-12 educators who engage in that activity while on duty.
- ▶ The Court is increasingly willing to allow religious opt-outs to generally applicable rules.
- ▶ Some religiously conservative educators have used these arguments to claim that they cannot be required to use a student's preferred name or pronouns.
- ▶ But maybe similar arguments could be used to resist anti-trans pronoun laws that would require educators to act in conflict with religiously liberal principles?

Resource: NEA Religious Expression Toolkit for Educators ([nea.org](https://www.nea.org))



Other sources of protection for educator voice...

- ▶ **Public-sector collective bargaining laws**
 - ▶ Most state bargaining laws protect employees from retaliation for engaging in union activity or other concerted activity for mutual aid and protection.
- ▶ **Collective-bargaining agreements**
 - ▶ Can include a variety of protections for on- and off-duty speech (more on that later).

Resources: Understanding Collective Bargaining, Educator Protections for Union Activity & Speech (nea.org)



Other sources of protection for educator voice...

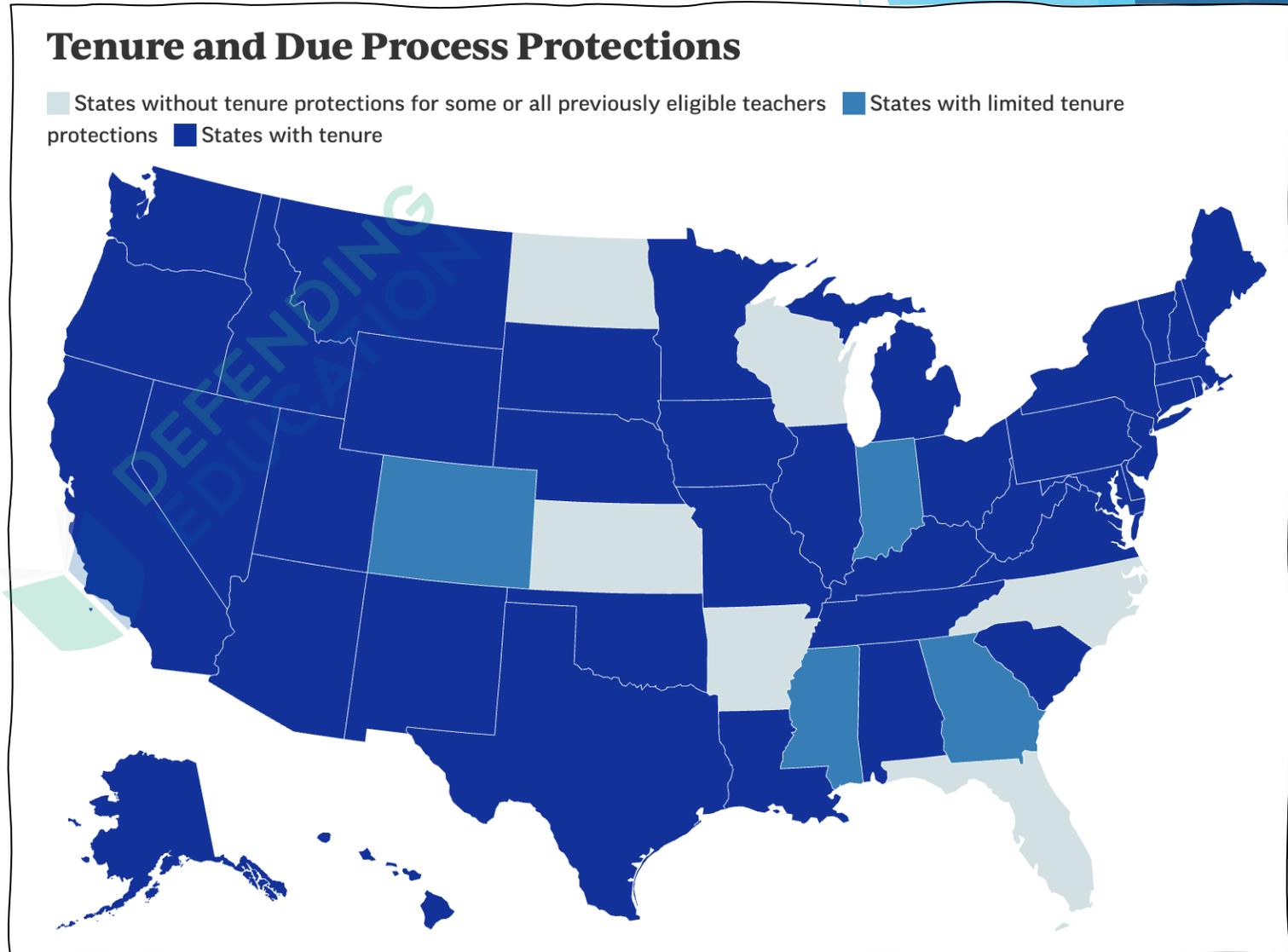
▶ Teacher tenure laws

- ▶ “Just cause” protections can protect educators from retaliation for their speech.

▶ School board policies

- ▶ School boards may have the authority to enact policies protecting educator’s off-duty speech or in-class academic freedom.

Resource: Teacher Tenure & Due Process Protections for Educators (nea.org)



General guidelines:

When are legal protections for educators more robust?

When are educators more at risk?



Speech and advocacy that are *more* likely to be protected...

▶ Topics:

- ▶ **Matters of public concern:** Political and social issues occupy the “highest rung” of constitutional protection.
- ▶ **Union speech:** Advocacy on broad workplace conditions.

▶ Time, place, and manner:

- ▶ **Off-duty:** On your own time and using non-work resources.
- ▶ **Thoughtful:** Conveying a clear and coherent point that is focused on relevant issues
- ▶ **Non-disruptive, peaceful, and in compliance with the law.**



Speech and advocacy that are *less* likely to be protected...

▶ Topics:

- ▶ **Matters of mere private concern:** Personal grievances
- ▶ **Advocating or participating in unlawful strikes:** Can result in termination for the employees and a loss of bargaining rights for the union.

▶ Time, place, and manner:

- ▶ **On-duty:** Using work time and/or resources. This is particularly true for electoral advocacy.
- ▶ **Intemperate or disparaging:** This could be viewed as impairing your ability to care for children or serve the public.
- ▶ **Disruptive, violent, defamatory, trespassory, destructive, or otherwise in violation of the law.**

Social media and the risks of going viral

- ▶ Libs of Tik Tok and other right-wing outlets weaponize outrage over social media posts, leading to harassment of educators and demands for their firing.
- ▶ Many First Amendment cases handle this badly.
 - ▶ Speech on a matter of public concern that reaches a large audience *should* receive more protection.
 - ▶ But some courts blame the employee for disruptions caused by the weaponized outrage of others.

Resource: Educators' Rights on Social Media (nea.org)

First graders banned from performing 'controversial' Miley Cyrus-Dolly Parton song
"I'm just so angry," Wisconsin first grade teacher Melissa Tempel says. "This has gone way too far."

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The Waukesha teacher who criticized the school district's 'Rainbowland' ban has been fired

Wisconsin teacher loses lawsuit after Dolly Parton song controversy

Former first-grade teacher Melissa Tempel lost her federal lawsuit against Waukesha School District after being fired for publicly opposing a Dolly Parton song ban

Tools and practical considerations for educator activists

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Tool: Protecting educator voice through collective bargaining and organizing to influence school board policy

- ▶ Collective bargaining or policy language to:
 - ▶ allow/require educator input on instructional speech, including curriculum selection and delivery of instruction.
 - ▶ and ensure protection against retaliation for off-duty speech and association.

Resource: NEA Model Legislation and CBA Language for Protection Educator Voice (nea.org)

Bargaining for protections

- ▶ Education Minnesota Model
 - ▶ Educator responsibility for providing students with the opportunity to investigate various sides of the topics presented in their courses.
 - ▶ Permission to select relevant materials and curriculum based on their professional judgement.
 - ▶ Academic freedom implies that educators must teach with an understanding and respect for the individuality of each pupil, and with a scrupulous regard for honesty and accuracy, without distortion or falsification.
 - ▶ Culturally-responsive teaching practices are both responsible and necessary in classrooms for the welfare of all students and are protected under this agreement.



Bargaining for protections



- ▶ Colorado Education Association Model
 - ▶ Both parties acknowledge the fundamental need to protect teachers from any censorship or restraint, in order to ensure thoughtful discussion and intellectual inquiry in the classroom.
 - ▶ No discipline due to teaching controversial topics, or expressing their opinions on those topics so long as they:
 - ▶ present a balanced lesson consistent with recognized and accredited scholarship on the topic;
 - ▶ use materials which are relevant to the levels of ability and maturity of the students;
 - ▶ maintain a classroom environment which is conducive to the free exchange and examination of ideas.
 - ▶ Right to fully participate in the political process.
 - ▶ Right to publicly present opinions on matters of public concern or which have significant artistic value outside of work without discrimination, intimidation, or retaliation.

Tool: Protecting educator voice through legislation

- ▶ Protections for Off-Duty & Other Protected Speech & Advocacy
- ▶ Protections for Professional Practice
- ▶ Due Process Requirements
- ▶ Independent review of discipline & discharge decisions
- ▶ Protection against Doxxing & Other Abuse

Resource: NEA Model Legislation and CBA Language for Protection Educator Voice (nea.org)



Model legislative language:

- ▶ No teacher or other school employee may be dismissed, demoted, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for providing instruction, selecting curriculum, or offering or developing educational programming that they believe in good faith is aligned with relevant state standards and accepted teaching standards. Such accepted teaching standards shall include the teacher's own prior instructional practice as well as that of other teachers instructing similar classes.
- ▶ No teacher or other school employee, or employee of a higher education institution, may be dismissed, demoted, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for their lawful off-duty speech or conduct unless their employer shows that the speech or conduct actually did, and was reasonably likely to, substantially disrupt their ability to provide instruction or otherwise perform their regular job duties.

Scenarios: What have we learned about protections for educator voice and advocacy?

Scenario #1 - Classroom Displays

- ▶ It is the beginning of a new school year and a member is excited to decorate their classroom to show their students that the classroom is an inclusive space. After they hang up a Pride flag and a Black Lives Matter poster, a colleague suggests that those displays might get them in trouble. The member asks you if they should take down the flag and poster.



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Symbols of diversity and inclusion

- ▶ Schools generally control displays in classrooms, school buses, lunchrooms, and other spaces where educators interact with the student body.
- ▶ If the member has not seen others posting similar items in their classrooms, they should notify the appropriate school administrator before posting and address any concerns in advance.
- ▶ If the district prohibits certain displays, ask:
 - ▶ Was there was a pre-existing policy?
 - ▶ Is the policy viewpoint-neutral and applied in a neutral manner?

Resource: Educator Rights to Create an Inclusive Classroom ([nea.org](https://www.nea.org))



Scenario #2 - Honesty in Education

- ▶ A member (who is a high school history teacher) is preparing lesson plans about the civil rights movement. She wants to introduce primary sources discussing the systemic racism and violence prevalent at the time, but she is concerned about potential parent complaints. She asks for guidance in selecting materials for the lesson.
- ▶ How does this guidance change if the member works in a state with an anti-honesty in education law?



Teaching Controversial Issues

- ▶ If a member is planning a discussion about current events that raise controversial issues, they should be sure that the curriculum is:
 - ▶ age-appropriate,
 - ▶ aligned with state standards, and
 - ▶ in line with past practices in their school,and they should run the plan by their principal first.
- ▶ CBAs or School Board Policies may include provisions about teaching controversial issues.
- ▶ Members should not advocate for a specific position on a controversial issue.

Resource: Protecting the Right to an Honest and Culturally Inclusive Education (nea.org)

Scenario #3 - Student Walkouts

- ▶ Students at a member's school are planning a walkout over ICE's activity near the school. The member wants to know if they can help the students with the walkout and if they can walk out with the students.



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Supporting Student Activism - Walkouts

- ▶ Absent the agreement or support of school administrators, educators should not lead or assist in organizing student walkouts from school.
- ▶ 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 whether educators are supposed to accompany students during the walkout to ensure their safety.

Resources: Guidance on Immigration Issues, Educator Rights to Support Student Activism (nea.org)



Scenario #4 - Pronouns

- ▶ A member teaches a transgender student in their classroom. The member has been addressing the student using the name and personal gender pronouns the student has requested. A school administrator overhears this and tells the member that he is required to use the name and gender pronouns from the student's school records. What should the member do?

Using Students' Requested Name and Personal Gender Pronouns

- ▶ As long as there is no school policy stating otherwise, members can (and should address) students in the way they identify themselves.
- ▶ District policy preventing educators from doing so may conflict with an educator's religious beliefs and may therefore raise a First Amendment issue. It may also violate Title IX or other state or federal anti-discrimination laws, or may be unevenly applied (e.g., nicknames).
- ▶ Members can advocate for their district to adopt an inclusive policy, such as NEA's model policy supporting LGBTQ+ students.

Resource: Defending the Freedom of our LGBTQ+ Students to be Themselves (nea.org)

Scenario #5 - Online Harassment

- ▶ A member mentions to you that she plans to participate in an interview with a local news channel about the increase in banned books in the district and the effect of this on BIPOC and LGBTQ+ students, who no longer have as much access to stories where they see themselves represented. But she is worried about the reaction from some parents and community members.



Responding to Online Harassment

- ▶ As a First Amendment matter, this is citizen speech on a matter of public concern. But:
 - ▶ The First Amendment wouldn't protect against online harassment.
 - ▶ If threats and harassment are directed at the school and cause disruption, the school could argue that the speech is unprotected.
- ▶ There may be other remedies, so members should reach out to their local union and notify their employer!
 - ▶ Antidiscrimination laws may require your school to take steps to protect you from harassment on the job.
 - ▶ Criminal and civil laws against cyberharassment may apply.

Responding to Online Harassment

- ▶ Members can take proactive steps to protect themselves, including:
 - ▶ Securing their online presence by creating secure passwords and removing personal information.
 - ▶ Reviewing privacy settings and post history on social media accounts.
 - ▶ Considering speaking anonymously.
 - ▶ Notifying friendly school officials in advance of press appearances.
- ▶ If harassment/doxxing has already occurred, members should:
 - ▶ Document the harassment (e.g., screenshots, call log).
 - ▶ Report to the relevant social media platforms.
 - ▶ Consider blocking/muting harassers on social media.
 - ▶ Manage compromised personal information.

NEA Resources

- ▶ Model Legislation and CBA Language to Protect Educator Voice
- ▶ Defending the Freedom of our LGBTQ+ Students to be Themselves
- ▶ Educator Advocacy Rights
- ▶ Educator Protections for Union Activity & Speech
- ▶ Educator Rights to Create an Inclusive Classroom
- ▶ Educator Rights to Support Student Activism
- ▶ Educators' Rights on Social Media
- ▶ First Amendment Protections for Educators
- ▶ Guidance on Immigration Issues
- ▶ Protecting the Right to an Honest and Culturally Inclusive Education
- ▶ Religious Expression Toolkit for Educators
- ▶ Summary of First Amendment Protections for Educators
- ▶ Teacher Tenure & Due Process Protections for Educators
- ▶ Understanding Collective Bargaining
- ▶ Coming soon: Short slide deck on safe advocacy to share with members

Sign up for PEP course on
First Amendment & Educator Advocacy



Wrap up

- ❖ Pushing back on threats to educator voice
- ❖ Speech & advocacy rights of K-12 educators
- ❖ Advocating for greater protections
- ❖ Take advantage of resources available for NEA members & staff

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Thank
you!