

Where do schools draw the line with freedom of expression? ACLU of Utah publishes ‘Know Your Rights’

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ST. GEORGE — In order to address and help clarify issues and trends relevant to 2020, the ACLU of Utah published an updated version of “Free Speech Rights of Public-School Teachers and Staff in Utah,” a Know Your Rights advisory guide for education professionals employed in K-12 settings.

Like students, public school teachers and staff retain First Amendment rights both inside and outside school settings. This guide addresses questions like, “Can I wear items conveying political or religious opinions in the classroom?” and “Is my speech to colleagues during breaks or casual conversations protected?” It also provides context on how speech outside of school can be viewed differently than speech inside a school or classroom.

John Mejia, legal director of ACLU Utah, told St. George News that what prompted this document was an uptick in inquiries from educators about issues dealing with what is accepted expression inside and outside of the classroom. While there are some differences, much of what is acceptable comes down to whether a teacher’s expression disrupts his or her effectiveness as an educator.

One case in question, previously reported by St. George News, was when some Washington County staff members reportedly posted on their personal social media pages for parents to not get their children tested for COVID-19, in which no specific disciplinary action was taken.

From the perspective of the ACLU, Mejia said in this instance, he thinks they would “lean” more toward freedom of expression because this happened outside of the school, which is also the resolution the district made.

Attendees at the “End the Mask Mandate Rally” hold up signs in front of the Washington County School District offices, St. George, Utah, Aug. 21, 2020 | Photo by Hollie Stark, St. George News

The line drawn would be in the case of something happening outside of the classroom that negatively impacted a teacher’s ability to have “an orderly and safe school environment” or affected the fundamental ability to teach.

“Every case is going to depend on the facts. It seems like the school looked at those messages and decided that that wasn’t the case for that particular instance,” he said.

One example where the court could find an issue, he said, would be if a teacher posted something on social media that insulted a student. Even though that occurred outside of school bounds, that could be deemed by the school as impacting the effectiveness of that teacher.

“But it’s not absolute,” he said.

When it comes to accepted expression inside the classroom, Mejia said they have tried to emphasize that schools should try to create curriculum and policies as inclusive as possible. One of the gray areas when it comes to freedom of expression inside a classroom can be an accidental misstep of perception, Mejia said.

“Because a lot of teachers want to follow the rules, but they also want to be as inclusive as possible, and so some teachers want to have messages or put up signs or otherwise communicate to students inclusive messages,” he said. “And sometimes those inclusive messages could be viewed as potentially controversial.”

Steven Dunham, district communications director for the Washington County School District, told St. George News that a similar type of unintentional misstep typically seen in the district every election cycle is when a teacher “will say something that upsets somebody somehow.”

“They recognize they can’t say certain things,” he said. “In some instances, it’s misconstrued. A teacher might be giving a lecture on the electoral process and talk about things and somebody would’ve taken offense.”

In other cases, it’s not just the lesson that a student has taken offense to; it is a mistake on the side of the teacher, he added.

There was one recent issue where a student misinterpreted something having to do with the election and told their parents, Dunham said.

“I believe it was the teacher’s personal beliefs toward one candidate,” he said. “It’s very likely, with how this year went, that there were other instances that I have not heard about where we may have had to talk to somebody and just clarify what is and what is not acceptable in the classroom.”

Dunham said the district is in the middle of updating their social media policy to refine guidelines that are needed to help adults better navigate the digital world where the lines between public and private, personal and professional are “blurred” while also reminding all district employees to remember that they are representatives of Washington County School District.

While students are extremely savvy in the digital world, he said adults are often less adept than they think they are.

“They feel like the screen is a barrier and they can say whatever they want, and people need to understand that, no, that isn’t the case.”

The main thing they encourage all staff is to carefully consider what they’re posting before they post it and to imagine how a student might perceive it.

“When viewed from that mindset, typically people will tone down what they’re putting online,” he said. “Once information is posted in cyberspace, it’s permanent. You can never retract it. It’s so easy for someone to do a screen capture, and it’s out there forever.”

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