
ACLU of Utah Guidance on Free Speech in Public School Settings

“[E]ducation is perhaps the most important function of state and local governments. . . [the opportunity to receive an education] where the state has undertaken to provide it, is a right which must be made available to all on equal terms” Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan., 347 U.S. 483, 493 (1954).

Today, the ACLU of Utah is releasing updated guidance on free speech for students in school settings. This update is designed to complement the ACLU of Utah’s recently released guidance on First Amendment protections for teachers and educational professionals.

The First Amendment’s protections of freedom of speech and expression are fundamental to the preservation of a democratic society. Nonetheless, these protections are not absolute, and many times may conflict with the constitutional rights and promises of other individuals.

As the Supreme Court recognized in its 1969 *Tinker* case, “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”ⁱ Schools have the ability to regulate certain types of speech in school settings, but this power is not absolute. Though schools may impose some limits in classrooms, schools, and school sponsored events, First Amendment protections do not cease to exist in those settings.

With these considerations in mind, the ACLU of Utah recognizes that the exercise of free speech rights in school can sometimes clash with other fundamental civil rights and liberties. School districts should carefully balance these competing interests to ensure that all students have access to an equitable learning environment. We urge school districts, local education agencies, school boards, and those making policy decisions in K-12 settings to ensure that their policies reflect a welcoming and equitable environment for all students.

Simply providing the same facilities, textbooks, teachers, and curriculums does not satisfy these guarantees if students cannot equally participate and enjoy the educational environment.ⁱⁱ In other words, every student is entitled to an equitable experience in school.

It cannot be ignored that certain symbols, and phrases are the product of and representative of centuries of hatred and oppression of Black, brown, and Indigenous and LGBTQ+ communities. The presence of these phrases and symbols in school settings can and does cause emotional harm for students of these communities, impeding them from enjoying the full benefits of the educational environment. If a school district chooses to permit these symbols within school settings, we strongly urge them to also adopt a race and LGBTQ+ conscious curriculum that educates students, staff, and administrators on the history of these symbols and the role they have played in this country’s history. Likewise, we urge school districts and administrators to take special attention to ensure that tolerance of “speech” and symbols does not create an environment where bullying and hostility towards Black, brown, Indigenous and LGBTQ+ students is tolerated and enabled.

As school districts and educational institutions balance competing interests in making policy decisions, we urge them to take into account the importance of creating and protecting an equitable and supportive environment for all students, particularly those with marginalized identities. The right to an equitable environment in a K-12 setting is one of the many promises guaranteed by the U.S. constitution. In ensuring this constitutional right of students to have equitable experience in school settings, we hope that school administrators adopt policies that allow teachers and staff to feel comfortable sending inclusive messages in their schools to ensure that all students within their facilities feel welcome and entitled to similar experiences in K-12 settings as their peers. Ultimately, it is school districts’ responsibility to ensure that all students have an equitable educational experience and to actively address issues which impede students—particularly those that are most vulnerable—from exercising the right to a public education on equal terms.

While the First Amendment protections on speech may be very fact-specific, we urge schools and administrators to be thoughtful in the way they exercise their ability to discipline speech by staff, teachers, and students. Schools should make sure that their policies and curricula are aimed at inclusiveness and equity in the school environment. We urge all school districts to strive to ensure these constitutional promises and work to guarantee that all students are able to access a meaningful education.

ⁱ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 736, 21 L. Ed. 2d 731 (1969)

ⁱⁱ See *Lau v. Nichols*, 414 U.S. 563, 566 (1974)