

Balancing Students' Rights: A Child's Right to Free Speech and Another Child's Right to a Harassment-Free Learning Environment

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Reasonable rules against harassment on the basis of factors such as religion and sexual orientation do not violate the free speech rights of students and teachers. Here are some general guidelines for striking a balance between protecting free speech and protecting students against harassment.

Conduct by Students

Students do not abandon their rights to freedom of speech at the classroom door. A school should allow students to speak freely so long as their speech does not substantially interfere with the educational process or the rights of other students. However, certain conduct may be prohibited in a school setting even where it could not be punished in other settings.

For example, it does not violate freedom of speech when teachers require that students stop extraneous conversations and pay attention in class; this form of student speech interferes with the educational process. In the same way, harassment of students by other students interferes with the operation of the school and infringes on the rights of the harassed students to enjoy equal treatment under law and equal educational opportunity. Schools have a compelling interest in eliminating discrimination and harassment, and this goal may be pursued in a manner that does not abridge the right to freedom of expression.

Anti-harassment rules must be carefully written so that they do not punish speech, opinions, or beliefs in and of themselves, but instead punish impermissible conduct – conduct that targets a person for assault, threat, or vandalism on the basis of the victim's (actual or perceived) race, religion, national origin, disability, gender, or sexual orientation. They may also forbid harassing conduct, whether or not targeted to a particular person, that is so pervasive or intense as to create a hostile environment which hinders the ability of a person to get an education.

Well-written anti-harassment rules do not require anyone to change their beliefs about immigration or homosexuality, for example, whatever those beliefs may be. However, the rules do require students, faculty, and staff to adhere to appropriate standards of conduct. Assaults, threats, vandalism, or use of derogatory epithets violate this minimum level of conduct. Expression of a person's deeply held beliefs does not.

An anti-harassment rule that is written too broadly can infringe on free speech. For example, a rule forbidding any statements that are critical of immigrants or of Judaism or of homosexuals or homosexuality, is improper because it only allows a single government-approved viewpoint to be expressed. A rule forbidding any statement that offends another person is vague and unfair because the speaker could never know in advance when another person might be offended. However, schools may properly establish rules against deliberate statements, gestures, or physical contact which are intended to harass or interfere with another student's school performance or create an intimidating environment.

Conduct by Teachers

Like students, teachers have the right to form and express their own opinions. Nonetheless, a school district (like any employer) may legitimately expect its employees to fulfill their job responsibilities while they are at work. It is reasonable for a school district to include in its job descriptions a requirement that teachers treat all students with respect and without regard to race, religion, sexual orientation, etc. It does not violate teachers' free speech rights for the school to require them to abide by and enforce school rules of conduct, including rules against harassment.

For example, a teacher who tells jokes that disparage men or women in class is contributing to a hostile environment. A school could legitimately discipline this teacher for failure to perform job duties and for engaging in harassment or contributing to a discriminatory educational environment. On the other hand, a teacher could have a valid pedagogical purpose to discuss gender or sexual orientation as part of the district-approved curriculum. It is not necessary for a teacher to avoid mention of homosexuality, or even the topic of religion, if the topic arises during class discussion.

Schools not only must have rules against harassment on paper; they also must be committed to enforcing their rules in practice. Even the best-written anti-harassment rules will not help a school unless the educational staff clearly understands them and is committed to enforcing them in away that both upholds student free speech rights and protects students from harassment.

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