

Student Teacher Rights – Condensed for Coaches

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FCA Public School Handbook

Student Teacher Rights

Generally, coaches and teachers are free to talk about religion in an objective manner.⁵⁴ However, when acting as a school employee, they may not engage in a discussion of their own religious beliefs with students, whether that is part of a student meeting or not. Courts have two main concerns that school employees' speech present which do not arise with student speech. The first is a concern that it will appear that the school endorses the teacher's religious views. Courts have held that, simply because of the teacher's position in the school, "a teacher's speech can be taken as directly and deliberately representative of the school."⁵⁵ If this happens when a teacher or coach engages in religious speech, the school could face problems with the Establishment Clause.

The second concern is that because teachers give grades, and similarly, coaches evaluate athletes, when teachers and coaches share their religious beliefs, it could have a coercive effect on the students.⁵⁶ Students and student athletes may feel that if they shared the religious views of their teacher or coach, they would be given more recognition; or conversely, if they did not share the views, then they would be penalized by receiving lower grades or being put on the bench.

Teachers should take care to separate their private religious speech from their role as a public employee to preserve FCA's opportunity to exist on campus. While faculty may serve as advisors to a Huddle, or gather with students outside of their school responsibilities to discuss personal views, they must prevent their support of FCA or other religious clubs from coming across as favoritism toward participating students. In one instance, a head coach's strong personal support for an FCA chapter on his campus led to a harassment complaint. As a result, the school adopted a "closed forum" policy which eliminated recognized student clubs from campus.⁵⁷

Q May coaches lead prayer at practices and games?

A Since coaches are employees of the school, they may not lead prayer at either practices or games. The dangers of an appearance of school endorsement and fear of coercion are present with coaches as well as teachers, because coaches are also employees of the school and represent the school to the athletes during these times.⁵⁸ While the restriction on religious speech of coaches in this context may be viewed as a violation of the coach's First Amendment rights, courts have said that "free expression rights must bow to the Establishment Clause prohibition on school-endorsed religious activities."⁵⁹ In addition, the possibility of athletes feeling compelled to participate in the religious activity is great.

Even if the coach wants to propose a voluntary extension of practice time for those who would like to stay and pray, this is likely to be considered unconstitutional, mostly due to the concern that athletes may feel coerced to participate.⁶⁰ The best practice is for students to have their own times of prayer (as long as they initiate it and lead it) that take place immediately before or after practices and games. The coach may be present at the place and time to maintain order and discipline, but as soon as the coach takes part in the prayer, while still acting in his or her official capacity as coach, it "cross[es] the line between respect for religion and endorsement of religion."⁶¹

Q What if students ask me as a faculty member about my religious beliefs?

A If a student asks a faculty member about his or her personal religious beliefs, the teacher or coach should politely decline to discuss their personal views while acting as a school employee. A teacher may invite further dialogue when not acting as a school employee, as long as it is clear that the discussion is private speech rather than anything endorsed or supported by the school. It is also important to protect students from the coercive effect of a teacher's beliefs, and therefore the teacher should make it clear that the discussion is unrelated to class or grades.

While acting as a school employee, teachers and coaches may explain what being a Christian means, but it must be done in an objective manner, and not one that is coercive or indoctrinating.⁶³ For example, a teacher may say "Christians believe that ..." as opposed to "I believe that ..." to make the answer informational rather than personal

What Differences in the Law Will FCA Face on a Public University Campus?

The main difference between a high school and a university campus that courts have noted is that students at the university level are deemed more mature. This means that they are better able to distinguish between the views of the school and the views of the teacher or coach, and therefore Establishment Clause concerns are not as great.⁶⁷ However, there is still a concern with the possibility of teachers' personal beliefs having a coercive effect on the students.

In general, university and college professors have greater leeway in their religious speech than public school teachers. The courts recognize professors' constitutionally-protected right of academic freedom as a form of free speech.⁷⁰ Although the boundaries of this freedom are not well defined, case precedent indicates that a university administration must have a strong reason to interfere, and still must limit its intrusion.⁷¹ However, this does not mean that professors can openly discuss personal religious beliefs at any time. In a public university setting, there must be adequate separation so that an employee's views are not perceived as connected to a university course.⁷² Such restrictions, though, do not apply to extracurricular meetings with students to discuss religious issues, as long as they are held completely separate from class.⁷³

Generally, if a professor's speech is considered a "matter of public concern," it is protected as free speech under the First Amendment.⁷⁴ The key is to have an appropriate balance between a professor's free speech rights and the school's interest in efficiently providing educational services.⁷⁵ Courts will look to a professor's or coach's motivation behind the speech to determine whether it comes from his status as a public citizen or public employee.⁷⁶ Generally, speech used to motivate students or athletes in a professor's role as state employee is not considered a matter of public concern and therefore not individual, protected speech. For example, coaches may not be able to claim motivational purposes for leading teams in prayer before games. However, an optional prayer session or Bible study held separately from game preparation would be appropriate as an exercise of a coach's protected First Amendment rights.

Q What if students in my class or on my team ask what my religious beliefs are? What am I allowed to discuss in class or with the team?

A As in the high school context, professors and coaches must present beliefs objectively, by discussing aspects of Christian faith rather than putting forth their own personal beliefs, due to the potential coercive effects on the students. However, keeping in mind the fact that college students are less impressionable and more likely to separate the teacher's personal views from those of the university, there is more leeway for professors and coaches to discuss their own beliefs, as long as it is not in the context of official school activities such as class or athletic practice.⁷⁷

Glossary of Terms

Associated Student Body (ASB) Funds/Student Organizational Funds – Funds derived from student fees, as opposed to taxpayer dollars given to the school by the government.

Closed Forum – a forum where schools have the greatest discretion to restrict speech. Schools may disallow all student groups, or set neutral policies as to which groups are allowed, but cannot regulate or discriminate based on viewpoint.

Equal Access Act – Government Act granting recognized student clubs in public high schools equal access to school facilities and benefits, regardless of their religious or political views.

⁷⁷ Bishop, 926 F.2d at 1076.21

First Amendment

- Establishment Clause – “Congress shall make no law respecting an establishment of religion,”
- Free Exercise Clause – “Congress shall make no law ... prohibiting the free exercise thereof,”
- Free Speech Clause – “Congress shall make no law ... abridging the freedom of speech,”

Limited Open Forum – defined in the Equal Access Act as existing “whenever [a] school grants an offering to or opportunity for one or more noncurriculum related student groups [or clubs] to meet on school premises during noninstructional time.”

Limited Public Forum – a forum that is reserved for certain groups or the discussion of certain topics, but not limited in a way that discriminates against speech based on viewpoint. The limitations must be reasonable in light of the forum's purpose. *Good News Club v. Milford*, 533 U.S. 98, 106-07 (2001).

Matter of public concern – issue one would discuss that is of interest to the general public, not simply an internal workplace matter.

Noncurriculum Related Student Group – “best interpreted broadly to mean any student group that does not directly relate to the body of courses offered by the school.” *Pope by Pope v. East Brunswick Bd. of Educ.*, 12 F.3d 1244, 1251 (3d Cir. 1993) (citing *Mergens*, 496 U.S. at 239)). The Pope court also said that religious and political clubs by their nature are noncurriculum related. *Id.*

Noninstructional Time – “time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.” Equal Access Act, § 4072(4).22

Nonschool Persons – anyone who is not affiliated with the school, as either an employee or a student.

Private Group/Community Group – a group which is not a recognized school club and therefore whose access is not protected by the Equal Access Act. These groups’ access will be evaluated under the First Amendment free speech clause, depending on what type of forum the school has created for community groups (e.g., limited open, closed—see this glossary for definitions).

Private Speech – individual speech that is always protected.

Sponsorship – “includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.” Equal Access Act, § 4072(2).

Student Rights and the Public School

Coaches & Teachers

When considering involvement with a religious club, teachers should take care to separate their private religious speech from their role as a public employee, to preserve the club's opportunity to exist on campus. While faculty may serve as advisors to a religious club or gather with students outside of their school responsibilities to discuss personal views, they must prevent the impression that their support of a religious club indicates favoritism toward participating students.

Question

May coaches lead prayer at practices and games?

Answer

Since coaches are employees of the school, they may not lead prayer at either practices or games. This could create an appearance of school endorsement, because coaches represent the school to the athletes during these times.⁵⁹ In addition, athletes may feel compelled to participate in the religious activity.

Students may have their own times of prayer (as long as they initiate it and lead it) that take place immediately before or after practices and games, and the coach may be present at the place and time to maintain order and discipline.

Generally, coaches and teachers are free to talk about religion in an objective manner.⁵⁶ But when acting as school employees, they must be more careful when engaging in a discussion of their own religious beliefs with students, whether or not the discussion is part of a student meeting. Courts have two main concerns with school employees' speech that do not arise with student speech.

The first is a concern that the school will appear to endorse the teacher's religious views. Courts have held that, simply because of the teacher's position in the school, "a teacher's speech can be taken as directly and deliberately representative of the school."⁵⁷ If a teacher or coach engages in religious speech, concerns may arise under the Establishment Clause.

The second concern is that because teachers give grades and coaches evaluate athletes, the sharing of religious beliefs by teachers and coaches could have a coercive effect on students.⁵⁸ Students and student athletes may think that if they share the religious views of their teacher or coach, they will be given an advantage; or conversely, if they do not share the same views, then they will be penalized by receiving lower grades or being put on the bench.

Religious Expression In Public Schools

Teachers, Administrators, and other School Employees

When acting in their official capacities as representatives of the state, teachers, school administrators, and other school employees are prohibited by the Establishment Clause from encouraging or discouraging prayer, and from actively participating in such activity with students. Teachers may, however, take part in religious activities where the overall context makes clear that they are not participating in their official capacities. Before school or during lunch, for example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversation or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies.

Moments of Silence

If a school has a "minute of silence" or other quiet periods during the school day, students are free to pray silently, or not to pray, during these periods of time. Teachers and other school employees may neither encourage nor discourage students from praying during such time periods.

Accommodation of Prayer During Instructional Time

It has long been established that schools have the discretion to dismiss students to off-premises religious instruction, provided that schools do not encourage or discourage participation in such instruction or penalize students for attending or not attending. Similarly, schools may excuse students from class to remove a significant burden on their religious exercise, where doing so would not impose material burdens on other students. For example, it would be lawful for schools to excuse Muslim students briefly from class to enable them to fulfill their religious obligations to pray during Ramadan.

Where school officials have a practice of excusing students from class on the basis of parents' requests for accommodation of nonreligious needs, religiously motivated requests for excusal may not be accorded less favorable treatment. In addition, in some circumstances, based on federal or state constitutional law or pursuant to state statutes, schools may be required to make accommodations that relieve substantial burdens on students' religious exercise. Schools officials are therefore encouraged to consult with their attorneys regarding such obligations.