

K-12

# EDUCATORS' GUIDE

TO FIRST AMENDMENT FREEDOMS IN PUBLIC SCHOOLS

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ALLIANCE DEFENDING  
FREEDOM

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# THE PROBLEM

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The freedom of educators and students is becoming increasingly restricted due to unconstitutional policies adopted by schools. The concept of “separation of church and state,” widely misunderstood and misapplied over the years, has stifled the expression of beliefs and faith within classrooms and on public school campuses.

**The Constitution protects the right of every American to speak freely**

**and exercise their faith in the public square.** Public schools and universities play a critical role in preparing citizens to partake in that privilege. Properly understanding constitutional freedoms is essential to a thriving environment for educators and students in the public K-12 schoolhouse.

Classrooms are for teaching and learning age-appropriate knowledge and skills, equipping students to be productive citizens as they enter higher education and the workforce.

Theories and philosophies can be appropriately introduced for thoughtful discussion and debate. However, harmful ideologies about race and gender are now permeating public school curricula and policies nationwide – compelling some teachers and students to speak and act in violation of their consciences, forced to endorse a position with which they disagree.

Some training materials encourage educators to treat students differently based on race. And some curricula teach students of certain ethnic backgrounds that they can never achieve the American dream no matter how hard they work and that others are oppressors simply because of their skin color.

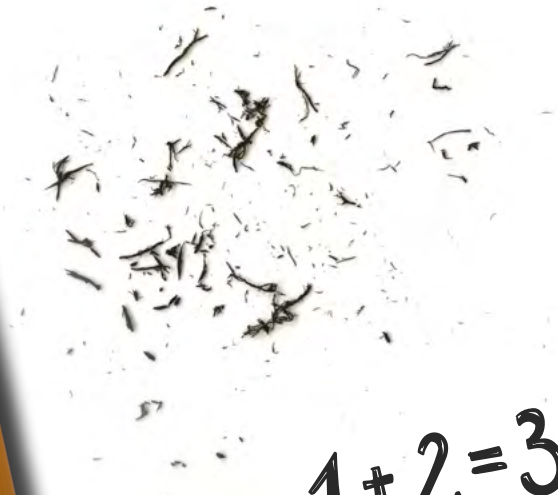
Some schools have also adopted **secret social-transition policies** that compel public school educators to affirm the government’s view on sex and gender – a view that denies biological truth, tells children they were born in the wrong body, and requires parents be deceived about their child’s gender-identity confusion. **Such policies undermine the fundamental right of parents to direct their children’s upbringing, education, and care.** In the end, it is children who are hurt the most.

Schools should never encourage educators and students to hide critical information from parents or exclude them from important decisions affecting their children’s education or physical and mental health. When parents are denied access to accurate details about their children, they are hindered from making well-informed decisions that are best for their unique child.

The Constitution protects the right of educators and students to participate in the public school system without being compelled to violate their values and beliefs. **Educators and parents must be free to partner and work together for the flourishing of every student.**

# 1. KEY PRINCIPLES

- a. Educators and students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.
- b. Educators should not be silenced or compelled to act or to speak in violation of their religious or moral beliefs to maintain employment.
- c. Educators play an important role in the lives of their students, and they should never be punished for expressing concern over the school's curriculum or policies that they believe pose a risk of harm to a child's education or physical or emotional well-being.
- d. Educators must be free to work together in partnership with parents — and never be forced to lie to or deceive parents — so that every student can flourish and benefit from their educators and family working together.



$$1 + 2 = 3$$



## 2. WHAT CAN EDUCATORS DO?

- a. Can a public school educator teach about religion in the classroom?

**Yes. Educators are permitted to teach about religion when it is relevant to the curriculum and is presented in an objective, unbiased way that does not elevate a particular religion over others.**

Educators may also use supplemental materials (e.g., religious texts as literature) if such materials are religiously neutral and appropriate given the topic of instruction. If used for a legitimate academic purpose — and presented in a balanced manner — sacred or religious literature, music, and historical figures may be used or discussed in the classroom or during other school-sanctioned activities.

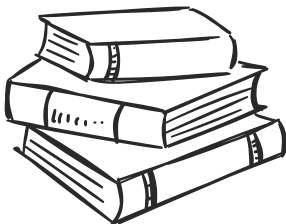
Permissible [public school](#) subjects about religion include “philosophical questions concerning religion, the history of religion, comparative religion, ... and the role of religion in the history of the United States and other countries.” It is also “permissible to study religious influences on philosophy, art, music, literature, and social studies.”<sup>i</sup>

For example, an educator can objectively teach the Bible for its historical, cultural, or literary value but cannot use it in a doctrinal or devotional manner.

**b. Can educators share their faith, study the Bible, and pray on school grounds?**

Yes. [Public school](#) educators are free to answer personal questions openly and honestly about their faith, which may be asked by students, parents, or other school employees. **Educators are not required to hide their faith or be silent about their religious beliefs.** They can freely and openly share what they believe and why they believe it, in the appropriate context. For example, in between classes, a teacher can freely initiate faith-related dialogue with a colleague in the teachers’ lounge, where other personal conversations and socializing regularly occur outside of the classroom.

Likewise, educators are free to study their Bible during breaks and to publicly pray before eating their lunch or when not engaged in their official duties.<sup>ii</sup> Educators may also meet with their colleagues for Bible study or prayer before or after school or during break time.





**c. Can an educator display religious symbols or visuals in the classroom and elsewhere on school property?**

Yes. Religious symbols (i.e., a cross, a nativity scene, or the Star of David) may be displayed in the classroom or on school property so long as other related secular symbols (such as Santa Claus or the Easter Bunny) are also included in the display.

All displays of religious symbols or visual aids must be **religiously neutral** and should not elevate one religion over others.

**d. Are there other specific religion-related activities that educators can undertake in the **public school** context?**

Yes. Educators can teach an after-school Bible study or Good News Club in which student attendance is optional and not mandatory. They can also sponsor a Christian club (e.g., Fellowship of Christian Athletes). However, any clubs occurring during school hours must be student-led.





## 3. SCHOOL POLICIES & MANDATED CURRICULA

- a. **Some school policies mandate that educators participate in the secret “social transition” of a student without parental knowledge or consent and/or conceal information from parents about their child (including a student’s use of a name and/or pronouns at school, which do not align with that student’s official records and/or sex).**

**Are educators required to comply with such policies when doing so would violate their sincerely held religious or moral beliefs?**

The answer will depend on the specific policy at issue. Questions surrounding teachers’ rights and school policies regarding names and pronouns are new, and the Supreme Court has not given a definitive answer on this topic. However, some general principles provide guidance:

First, although public school educators are government employees, they are also American citizens who benefit from the constitutional protections of free speech and the free exercise of religion under the First Amendment.

**An educator should not be forced to refer to students by names or pronouns that do not correspond with the student's sex or official records if doing so would violate the educator's religious or moral standards.** For

the same reason, educators cannot be required to lie to parents and/or hide critical information from parents about the child's physical or mental health (e.g., a student's desire to identify as the opposite sex and/or use a different name or pronouns at school).

It is important to note that these secret social-transition policies violate the fundamental and constitutionally protected rights of parents to direct the care, upbringing, and education of their children. **Parents, not the**

**government, are the primary decision-makers for their children, and they should never be kept in the dark about critical information regarding their child's education or physical or mental health.**<sup>iii</sup>

**For additional information on Alliance Defending Freedom (ADF) cases, see the [Case Addendum](#).**



b. **Are educators required to implement and/or use a school-mandated curriculum that incorporates the core tenets of critical race theory and/or culturally responsive teaching?**

An increasing number of schools have instituted policies, staff training, and classroom instruction based on Critical Race Theory and/or culturally responsive teaching. These programs mandate adherence to ideologies of white privilege, systemic racism, intersectionality, social justice, revisionist history, or being “anti-racist,” and they direct educators and students to view everyone and everything through the lens of race. Educators are finding themselves required to participate in these staff trainings and to implement these concepts as truth to their students by treating them differently based on race.

**Title VI of the Civil Rights Act prohibits schools from forcing teachers to actively promote racist ideas or implement discriminatory practices in the classroom.**

**Academic freedom is a principle that extends to both educators and schools, but it is a principle that requires a balance between the constitutional rights of educators and the school’s legitimate interest in reasonable decision-making authority regarding staffing, academics, and operations.**

While educators do retain some free speech rights in the context of their job, they work for public schools that have the freedom to establish academic standards, determine curricula, and hire personnel.

In addition, the concept of academic freedom is limited in K-12 education (as opposed to higher education) because K-12 education is designed to impart a particular knowledge set, while universities and colleges exist to provide a “marketplace of ideas” for the development of knowledge.

In general, K-12 educators are required to teach the material prescribed by their respective school districts. However, the First Amendment does protect an educator’s ability to creatively communicate the school’s curriculum and introduce diverse points of view for discussion – so long as the relevant topics are sufficiently addressed.

Schools, however, cannot instruct teachers to say whether any religion is true or false.

# THE SOLUTION

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Every American is entitled to the freedoms enumerated in the Constitution, which do not vanish when one steps on public school property. When government officials infringe on the First Amendment rights of teachers, counselors, administrators, and students, they are violating the Constitution, and they must be held accountable.

One of the most important factors in protecting academic freedom and First Amendment rights is the willingness to take a stand. When people stand up for their rights – instead of letting government officials or policies trample on them – everyone is better off.

**ADF is committed to ensuring that all educators and students nationwide are free to speak, live, work, and learn in accordance with their faith and conscience.**



# THE LAW

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## THE CONSTITUTION

### 1. What does the Constitution say about freedom of religion and speech?

The First Amendment to the U.S. Constitution contains three “complementary” clauses regarding religion and speech: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging freedom of speech” (U.S. Const. Amend. I).

The Establishment Clause prevents the government from establishing a national religion or coercing participation in a particular religion.

The Free Exercise Clause prevents the government from interfering with a person's religious expression or practice.

The Free Speech Clause prevents the government from interfering with a person's speech or expression of personal ideas, values, or opinions. It also prevents the government from compelling a person to speak or to endorse an idea with which they do not agree.

## 2. **Does the First Amendment apply to and protect K-12 public school educators (teachers, counselors, administrators, etc.), as well as students?**

**Yes. While public school educators are government employees who cannot promote or show favor to one religion over another, they are also American citizens who benefit from the First Amendment's protections of free speech and the free exercise of religion.**

The First Amendment protects the right of teachers and other public school employees (i.e., counselors or administrators) to speak freely and express their personal opinions **on their own time** about matters of "public concern,"<sup>iv</sup> including specifics related to their school district and how it operates.<sup>v</sup>

It also permits educators – when they are not acting in their official capacities – to engage in private religious expression (e.g., sharing their faith with a coworker while on break in the teachers' lounge) or brief personal religious observances (e.g., bowing their head and praying silently over their meal while on lunch break).

However, these First Amendment protections are not limitless and do not mean that educators can say whatever they want whenever they want.<sup>vi</sup> Students also benefit from First Amendment freedoms in the classroom. They are free to share their faith with faculty and peers and to wear clothing or carry items that display their personal beliefs or opinions.<sup>vii</sup>

**For additional information on ADF cases, see the [Case Addendum](#).**

# ESTABLISHMENT CLAUSE

## 1. Does the Establishment Clause mandate that public schools be religion-free zones?

**No. The Establishment Clause does not require that public schools be free from all religion or be religion-free zones. It requires only that the government – including public schools – be neutral on religion and not favor or promote one religion over another.**

“Nothing in the First Amendment ... converts the public schools into religion-free zones, or requires students, teachers, or other school officials to leave their private religious expression behind at the schoolhouse door. ... [S]chools may not discriminate against private religious expression by students, teachers, or other employees.”<sup>viii</sup>

Since ***Engel v. Vitale*** (1962), in which the Supreme Court held that the state may not pressure students to pray a certain way, a line of cases has created the false impression that the “separation of church and state” means that students cannot ever speak freely about their faith or engage in religious practices on school grounds or at school events.

While it is true that government employees cannot promote one kind of faith or religious practice over another and that public schools must remain neutral concerning religion, educators do **not** have to hide or deny their faith to keep schools free from **all** religion.



2. **Does the Establishment Clause require that educators prohibit students from openly sharing their faith or participating in religious activity during the school day?**

**No. Students also benefit from First Amendment constitutional protections at school and in the classroom.** Educators should permit students to share their faith, pray, or hand out religious materials when students do so on their own initiative in compliance with generally applicable school policies.

All students — regardless of their religious or faith background — should be treated with respect and allowed to express their faith-related beliefs and opinions freely.

The First Amendment protects freedom of speech and religion. It helps ensure that Americans, educators, and students enjoy the liberty — without fear of punishment — to exercise their faith and have opinions that do not necessarily conform to government orthodoxy.



# NEXT STEPS: **CONTACT ADF**

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ADF seeks to protect everyone's First Amendment freedoms. While many of our clients are Christians, we have also defended the rights of people from other religions and those with no faith. Religious freedom is for everyone. In our free speech work on school campuses, we have represented students of varied religious faiths and political beliefs.

Contact ADF at [ADFLegal.org/request-legal-help](https://adfllegal.org/request-legal-help) if you believe your First Amendment rights have been violated.

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# CASE ADDENDUM



## **Ricard v. USD 475 Geary County Schools School Board Members**

– ADF secured a successful settlement for Pamela Ricard, a public middle school teacher in Kansas who was reprimanded and suspended for addressing a student by the student’s legal and enrolled name, and who was forced by the school to violate her conscience and hide the student’s “social transition” from the student’s parents.

A federal court in Kansas halted enforcement of the parental communication portion of the school district policy, finding that Ricard was likely to prevail on her First Amendment free exercise of religion claim against the school district. The court acknowledged that Ricard could continue addressing students by their preferred names while avoiding pronouns for students who have requested pronouns inconsistent with their sex.



***Figliola v. Harrisonburg City Public School Board*** — ADF represents several Virginia parents and teachers in challenging a school policy that usurps the right of parents to direct the upbringing of their children and forces school staff to violate their religious beliefs by: (i) requiring staff to immediately begin asking students for their “preferred” names and pronouns, (ii) using those names and pronouns with the child while (iii) not sharing that information with their parents, and even while taking steps to actively mislead and deceive parents.



***McCord v. South Madison Community School Corporation*** — ADF represents Kathy McCord, a school counselor in Indiana who was fired after she truthfully answered a journalist’s questions about her school district’s policy mandating that school employees use names and pronouns for students that do not correspond with their sex, without requiring parental notification or consent. The policy also sometimes required employees to actively hide these actions from parents.



**Vlaming v. West Point School Board** – High school French teacher Peter Vlaming was fired from his job in West Point, Virginia, for declining to refer to a female student with male pronouns even though Vlaming consistently accommodated the student by using the student’s preferred name and by avoiding pronouns altogether. Vlaming sued the school board for violating his rights under the Virginia Constitution and Virginia law.

In a landmark decision, the Supreme Court of Virginia reversed the lower court’s dismissal of Vlaming’s lawsuit and reinstated his case. In doing so, the Court recognized that the Virginia Constitution “seeks to protect diversity of thought, diversity of speech, diversity of religion, and diversity of opinion” and the Court added that “[a]bsent a truly compelling reason for doing so, no government committed to these principles can lawfully coerce its citizens into pledging verbal allegiance to ideological views that violate their sincerely held religious beliefs.<sup>ix</sup>”



***Meriwether v. Hartop*** — ADF represented a college professor in higher education who objected to his university’s order that he must address a male student with feminine pronouns. The court held that “[p]ronouns can and do convey a powerful message implicating a sensitive topic of public concern\*” and that the university had no sufficient interest in forcing Professor Meriwether to speak its message on that topic by using feminine pronouns in reference to a male student.



***Barr v. Tucker*** — ADF settled a case for Lindsey Barr, a substitute teacher who was fired after expressing concerns (as a mother) over drawings in a picture book being presented to her young children and other students during a library read-aloud program at an elementary school in Georgia. After ADF filed a lawsuit against the school district on Barr's behalf, school officials agreed to reinstate Barr as a substitute teacher, pay \$181,000 in damages and attorneys' fees, and publicly express its regret for violating Barr's constitutionally protected freedoms under the First Amendment.





***Gill v. Loudoun County School Board*** — ADF is representing a high school teacher challenging a school board policy that: (i) forces teachers to deny truths about what it means to be male and female and (ii) requires them to help students deny their sex by using opposite-sex pronouns upon a student’s request. The challenge comes after another teacher, Tanner Cross, was suspended from his position for comments made in his personal capacity at a public board meeting in which the proposed policy was being considered — on his own time and after work hours. Tanner publicly expressed that requiring him to call students by names and pronouns that do not align with the students’ sex would force him to lie to his students and violate his sincerely held religious belief that God creates humans as male or female. The Virginia Supreme Court ruled that Tanner’s constitutional rights were likely violated, and Tanner was permanently restored to his position after settling his claims for reinstatement with the school board.



**L.M. v. Town of Middleborough** — ADF and Massachusetts Family Institute are representing Liam Morrison, who had to leave his middle school and miss the rest of his classes after he politely declined to remove a T-shirt that read “There are only two genders.” Liam wore the shirt to school to peacefully share his belief (informed by his scientific understanding of biology) that (i) there are only two sexes and (ii) that a person’s gender — their status as a boy or girl — is inextricably tied to biological sex. Once school officials censored Liam’s original message, he chose to wear an altered shirt that read “There are censored genders” to protest the fact that only some messages about gender are allowed at school. But Liam was told that he could not wear that shirt either.

School officials have adopted one particular view on the subject of sex and gender: that a person’s assertion of their identity determines whether a person is male or female, not a person’s sex. They admit that their policy permits students to express viewpoints supporting that view of gender but forbids students from expressing a different view.

ADF is asking the U.S. Court of Appeals for the 1<sup>st</sup> Circuit to rule that public school officials cannot force Liam to remove a shirt that peacefully and respectfully states his position when the school lets every other student wear clothing that speaks on the same issue.

# ENDNOTES

<sup>i</sup> See DOE Guidance, Sec. III, B (“Applying Constitutional Principles Regarding Religious Expression Other Than Prayer in Particular Public School Contexts,” “Teaching About Religion”), ([https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)).

<sup>ii</sup> In *Kennedy v. Bremerton School District* (2022), the U.S. Supreme Court held that a football coach’s private prayers on the 50-yard line after weekly football games were private, protected speech based on the timing of the prayers and the circumstances. The prayers were not part of the coach’s official duties, and the coach did not involve students or pressure them to participate ([https://www.supremecourt.gov/opinions/21pdf/21-418\\_i425.pdf](https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf)).

<sup>iii</sup> In *Mirabelli v. Olson* (2023), a federal court in California stopped enforcement of a school policy requiring teachers to hide information about students who identify as transgender from their parents. The court stated that the policy caused a “trifecta of harm” because it (i) harmed children who need the guidance of their parents and may need mental health intervention; (ii) harmed parents by denying their right to care, guide, and make health care decisions for their children; and (iii) harmed teachers by compelling them to violate parents’ rights – forcing them to hide critical information about their students and potentially violating their religious beliefs (<https://casetext.com/case/mirabelli-v-olson>).

<sup>iv</sup> In *Pickering v. Board of Education of Township High School District 205* (1968), the U.S. Supreme Court ruled that the First Amendment protects a teacher’s right to speak out on a matter of public concern when that right outweighs the interests of the employer to have an efficient workplace free from disruption. This is commonly known as the “Pickering balancing test” (<https://supreme.justia.com/cases/federal/us/391/563/>).

<sup>v</sup> However, in *Garcetti v. Ceballos* (2006), the Supreme Court ruled that the speech of public employees “pursuant to official duties” is not generally protected by the First Amendment. The context of the speech is

critical. The Court specifically held that its ruling did not address speech “related to scholarship or teaching,” and there is still some question as to how this holding applies to the K-12 context (<https://supreme.justia.com/cases/federal/us/547/410/>).

<sup>vi</sup> In *Kennedy*, the U.S. Supreme Court indicated that while educators have First Amendment protections to speak about matters of public concern on their own time, this does not mean “the speech rights of public school employees are so boundless that they may deliver any message to anyone anytime they wish.” “In addition to being private citizens, teachers and coaches are also government employees paid in part to speak on the government’s behalf and convey its intended messages.” Because Coach Kennedy was praying on his own time without inviting or encouraging students to participate, the school was prohibited from disciplining him and infringing on his right to the free exercise of religion ([https://www.supremecourt.gov/opinions/21pdf/21-418\\_i425.pdf](https://www.supremecourt.gov/opinions/21pdf/21-418_i425.pdf)).

<sup>vii</sup> In *Tinker v. Des Moines Independent Community School District* (1969), a case involving student speech, the U.S. Supreme Court declared that neither “students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Students generally have the right to speak so long as their expression does not cause “substantial disruption of or material interference with school activities” (<https://supreme.justia.com/cases/federal/us/393/503/>).

<sup>viii</sup> See DOE Guidance, Sec. III, B (“Applying Constitutional Principles Regarding Religious Expression Other Than Prayer in Particular Public School Contexts,” “Teaching About Religion”), ([https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html)).

<sup>ix</sup> *Vlaming v. West Point School Board*, 895 S.E.2d 705 (2023).

<sup>x</sup> *Meriwether v. Hartop*, 992 F.3d 492 (2021).



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