

Addressing Employee Concerns and Criticism

The District recognizes that it benefits from employees sharing their insightful comments and constructive criticism with their immediate supervisor who will in turn address the employee's concern.

Scope of Regulation

This Regulation provides guidance in implementing Policy 4022 in a manner which:

1. Protects the First Amendment rights of employees to comment on matters of public concern;
2. Clarifies the circumstances when employee input, feedback and other forms of expression related to the school system and its programs is disruptive to District operations and therefore prohibited;
3. Protects students, parents and other non-District employee members of the school community from being subjected to inappropriate and potentially disruptive comments from employees about District programs and operations made by the employee to advance the employee's standing or work conditions; and
4. Minimizes disruption to District operations.

Communication made in public settings by District employees that references the School District, its programs and its operations is covered by this Policy.

Core Principles Established By Law

The speech of public employees, including public school district employees, is constitutionally-protected under the First Amendment only if:

- employees are speaking as citizens (i.e., "citizen speech")
- on matters of public concern.

Examples of citizen speech:

- A teacher writes a letter to the editor of a local newspaper as a private citizen stating personal beliefs and/or opinions about a matter of interest to the community.
- Teachers are gathered socially outside of work and engage in discussions regarding politics.

A matter of public concern is speech relating to any matter of political, social, or other concern to the community. Also, courts determine whether or not a public employee's speech addresses a matter of public concern by considering the content, form, and context of a given statement as revealed by the particular situation's total facts.

The speech of public employees, including public school district employees, is not constitutionally protected by the First Amendment and can be the basis for permissible employer discipline and/or discharge if such individuals are both speaking:

- as employees and
- on matters of merely personal concern, such as workplace objections.

In addition, when public employees speak while performing their official duties, this speech is not constitutionally protected by the First Amendment and can be the basis for employer imposed discipline up to and including discharge. This "job duty speech," or speech that occurs in the course of performing job-related duties, is not protected under the First Amendment even in the event that employees communicate to their supervisors in regard to wrongdoing or misconduct.

Test for Determining Whether Speech is Protected Under The First Amendment

When District employees speak as employees and not as citizens, the following analysis applies for purposes of determining whether employee speech is entitled to First Amendment protection:

1. Does the speech address a matter of public concern in that it relates to any matter of political, social, or other concern to the community?
2. If yes, do the employee's free-speech interests outweigh the District's efficiency interests by resulting in such situations that include but are not limited to:
 - Weakening discipline or harmony among co-workers;
 - Causing a negative impact on close working relationships for which trust and confidence are necessary;
 - Interference with the normal operations of the District's business.

Guidelines

When engaging in speech outside the scope of the employee's duties but still referencing the School District and its programs, employees should not:

1. Direct such statements toward any individuals with whom they would normally be in contact in the performance of duties, in order to avoid the disruption of cooperative staff, parent and student relationships.

2. Refrain from making comments that would interfere with the maintenance of discipline by school officials.

In situations in which an employee not engaged in the performance of professional duties makes public statements on matters of public concern in non-school settings, the employee should:

1. Recognize that as a District employee, their comments referencing the School District and its programs will generally be viewed as representative of the District.
2. State clearly that their comments represent personal views and are not those of the District.
3. Refrain from making public statements known to be false or made without regard for truth or accuracy.
4. Refrain from making threats against students, co-workers, supervisors or District officials.

Notice

This Regulation constitutes notice to District employees in regard to their First Amendment freedom of speech rights as public employees.

Violations as described by this Regulation may constitute cause for disciplinary action consistent with any applicable collective bargaining agreement.