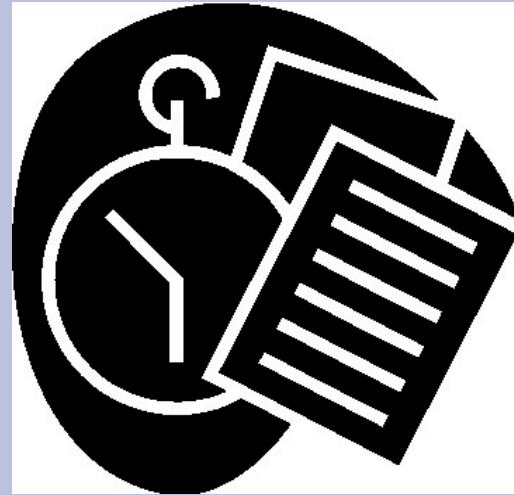


NJPSA



Education

Law Primer

Chapter 7
Public Schools and the
First Amendment



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EDUCATION LAW PRIMER

Chapter 7 - Public Schools and the First Amendment

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INTRODUCTION: PUBLIC SCHOOLS AND THE FIRST AMENDMENT

THE FIRST AMENDMENT – U.S. CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

N.J.S.A. CONST. ART. 1, 6 – NEW JERSEY CONSTITUTION

Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. ...

Both provisions establish the freedom of individual expression. The First Amendment provides the protection of the federal government, and Article 1 Paragraph 6 sets forth the corresponding state protection. The language found in the First Amendment and in Article 1 Paragraph 6 is straightforward and simple. The government is prohibited from adopting laws that interfere with religious exercise, the right of expression, the right to assemble and the right to bring to any government entity issues of concern. Yet, the language of the First Amendment and the corresponding provision found in New Jersey's Constitution and the principles they embody have inevitably found controversy and have often proved difficult to implement. At their core they both speak to the interest of individual expression. The challenge has always been to balance that interest with the need for the government to maintain order, whether in the case of a member of the general public shouting obscenities at a public official, or students having a "sit-in" protest outside the principal's office. In terms of the general public, the latitude given has always been greater than in the case of the student in the classroom. Still, however mindful the courts have been of the need for schools to maintain discipline to achieve their educational mission, the courts also have found – at least in the last 40 years – that students too have rights; that they do not "shed their constitutional rights at the schoolhouse gate."

This "primer" focuses on how the courts have sought to preserve school authority while protecting student expression; on how courts have sought to protect students' free exercise of religion with the need to maintain government neutrality. If there is a rule established by the cases, it is that student speech that does not disturb or undermine a school's mission, and does not interfere with someone else's right, is to be protected, whereas language or acts that prevent schools from achieving their mission, or which interferes with the rights of others may be regulated or banned altogether.

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