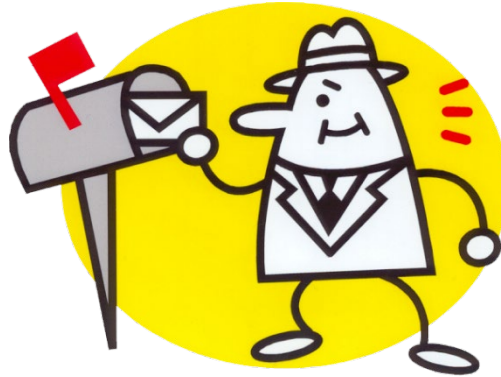


LEGAL MAILBAG – SEPTEMBER 18, 2025



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

In this fraught environment following the assassination of Charlie Kirk, I am confused about what teachers can say and what they can't say. As the principal of an elementary school, I have received several complaints from parents about a post on social media by a teacher in my school, and I am wondering what I can do and what I should do in response to his post.

I have read in the news about various people getting fired for celebrating this horrific assassination in posts on their social media. That is not the situation I confront. Here, the teacher starts the post by stating that he is not expressing any joy at Mr. Kirk's death, and that he would not celebrate the death of anyone. However, his post then goes on and on with his view of what a bad person Mr. Kirk was.

Given the timing of the post, it has caused some upset. One parent sent me an email asking what I am going to do about the post, and another parent even asked that her child be removed from this teacher's classroom. Was this post simply an exercise of free speech, or can it be the basis for disciplinary action?

Signed,
Perplexed Principal

Dear Perplexed:

Teachers have a right under the First Amendment to express their views on matters of public concern. However, when their speech disrupts the school district or impairs their ability to do their jobs, their right of free speech gives way to legitimate operational concerns. Accordingly, teachers may be disciplined in some cases (in extreme cases even terminated) as a consequence of their posts on social media.

The United States Supreme Court has addressed the free speech rights of public employees on several occasions. The traditional view was that, given their public service, public employees were not protected by the First Amendment. The sentiment was expressed most memorably by Justice Oliver Wendell Holmes in 1892, when while sitting on the Supreme Judicial Court of Massachusetts he wrote:

The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional right of free speech, as well as of idleness, by the implied terms of this contract. The servant cannot complain, as he takes the employment on the terms which are offered to him.

McAuliffe v. Mayor of New Bedford Massachusetts (1892). However, in 1968, the United States Supreme Court decided to the contrary that public employees are protected by the First Amendment. In *Pickering v. Board of Education* (U.S. 1968), the Court overruled a decision of the Illinois Supreme Court that had affirmed the termination of Mr. Pickering, a teacher in Illinois, for writing a letter that criticized (in some ways inaccurately) the superintendent and the board of education of the district that employed him as a teacher. In that case, the Court ruled that speech by public employees on matters of public concern is protected by the First Amendment unless the disruptive impact of the speech outweighs the importance of the speech.

Fifteen years later, the Court then elaborated on this principle in *Connick v. Myers* (U.S. 1983), establishing the general framework for assessing whether the private speech of a public employee is protected by the First Amendment. First, we must determine whether the speech relates to a matter of public concern; speech by a public employee that involves a purely personal concern or grievance is not protected by the First Amendment. When such speech does relate to a matter of public concern, we must now apply a balancing test to determine whether the importance of the speech outweighs any disruption it causes. Depending on how those interests are balanced, speech may or may not be protected by the First Amendment.

The Court further clarified the rules governing speech by public employees in *Garcetti v. Ceballos* (U.S. 2006). There, the Court held speech by public employees that is “pursuant to duty,” *i.e.*, expressed in doing one’s job, is not subject to First Amendment protections.

Applying these rules, we note that the post was not speech pursuant to duty because the teacher was not performing his job duties in posting his comments about Charlie Kirk. Those comments, however, do relate to a matter of public concern. Consequently, you and the

district must apply the *Connick v. Myers* balancing test to weigh the disruptive impact of the speech against the importance of the speech. Whether and what disruptive impact a teacher's private speech has on school district operation is a factual question for school officials to determine. In one case, for example, posts by a teacher on social media undermined that teacher's effectiveness, and on review the court upheld the termination. Here, however, your brief description of events did not convince Legal Mailbag that discipline would be appropriate. Rather, you should continue to monitor the situation to determine if and when the comments do become disruptive.

Finally, you may wish to talk with the teacher to inform him that his comments on social media have antagonized some parents. Moreover, you may wish to warn the teacher that his posts on social media are at his own risk because significant parent pushback may result in disciplinary action. But before you do, Legal Mailbag suggests that you reflect on whether your concern rises to that level. Any conversation with the teacher expressing displeasure over that teacher's speech can invite a retaliation claim by the teacher later if you have need in the future to discipline the teacher or give the teacher a negative evaluation. Before engaging with the teacher on the topic of social media posts, you must decide whether such a conversation is worth that risk.