

Public Schools and Sexual Orientation

A First Amendment framework for finding common ground

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In recent years, many public schools have increasingly become a front line in the escalating debates over homosexuality in American society. Conflicts over issues involving sexual orientation in the curriculum, student clubs, speech codes and other areas of school life increasingly divide communities, spark bitter lawsuits, and undermine the educational mission of schools.

These fights are unfortunate, but hardly surprising. Since the earliest days of the common school movement, Americans have viewed the schoolhouse as a microcosm of the public square, an arena where we debate and define who we are as a people. But when these disputes degenerate into personal attacks, ridicule, false characterizations of opposing positions, and similar tactics, they tear communities apart and alienate large numbers of citizens from their local schools. If we cannot find ways to negotiate our differences in public schools with more civility and respect, then schools – and the nation – face a difficult future.

The advice in this guide is built on the conviction that we urgently need to reaffirm our shared commitment, as American citizens, to guiding principles of the First Amendment to the U.S. Constitution. The rights and responsibilities of the First Amendment provide the civic framework within which we are able to debate our differences, to understand one another, and to forge public policies that serve the common good in public education.

What divides us

Few issues expose our national divide more starkly than the conflict over how to deal with sexual orientation in public schools. Advocacy groups on both sides are working hard to promote their perspective in the schools – or at least to prevent the other side from promoting theirs.

On one side, many argue that public schools should not deal with homosexuality at all, believing that such discussions should be left entirely to parents. Citing moral and religious convictions, they believe that any state effort to normalize society's perception of same-sex relationships is harmful to family life and a violation of the deeply held beliefs of many Americans. In their view, public schools should uphold a view of family that affirms sexual abstinence until marriage between one man and one woman.

On the other side, many argue that such convictions about homosexuality are primarily a private and religious matter that should not be used as a basis for public school policy. In their view, families with same-sex parents must be included in the school's definition of family. They point out that harassment based on actual or perceived sexual orientation is a pervasive

problem in public schools that adversely affects the academic performance of students who experience it – and sometimes leads to violence and even suicide. They contend that the issue for schools is sexual orientation and identity, not sexual behavior. And they advocate school policies and practices that require school officials to deal with discrimination against gay and lesbian students.

These differences are deep – and difficult to negotiate. Current efforts to legalize or ban same-sex unions in the courts, in legislatures and on ballot initiatives have only exacerbated the debate in schools and raised the stakes for public school officials. Every act by one side is seen as a hostile move by the other. A “Day of Silence” to promote awareness of discrimination against gays and lesbians is now followed by a “Day of Truth” to promote conservative religious views of homosexuality. A T-shirt proclaiming “Straight Pride” is worn to counter one professing “Gay Pride.”

Even finding the right terminology to discuss these differences that neither side will see as problematic can prove extremely difficult. One student's call for toleration is perceived by another student as a challenge to deeply held convictions. And one student's religious convictions are perceived by another student as hostility toward gays and lesbians. One parent is concerned that the school's definition of family might exclude his family, while another parent worries that a definition inclusive of same-sex parents will undermine what her children are taught at home and at church.

Even the most well-intentioned efforts by school officials to address these differences can easily trigger angry protests from one side or the other.

The role of public schools

In light of these passionate differences, it is important to reaffirm that public schools belong to all Americans. The role of school officials, therefore, is to be fair, honest brokers of a dialogue that involves all stakeholders and seeks the common good. Policy decisions about issues concerning sexual orientation should be made only after appropriate involvement of those affected by the decision and with due consideration for the rights of those holding dissenting views. Under the First Amendment, all sides have the right to express their points of view.

School officials struggle to reconcile deeply conflicting community views and legal imperatives on these issues. Sometimes difficult choices must be made, and sometimes there is no option that will satisfy all parties. In some cases, however, school officials mistakenly assume that they must choose sides in

the debate over homosexuality – and that schools will promote the side they choose. Some are convinced that the only way to address this issue is to insist that one view be imposed on all students and parents. But too often this approach only provokes more conflict and solves nothing.

If schools are going to win the peace, it will not be by choosing a side and coercing others to accept it. When matters of conscience are at stake, this strategy is both unjust and counterproductive. It is possible, however, to find areas of agreement if school officials create a climate of mutual respect and honest dialogue.

It would serve us all to remember that the core mission of public schools is to prepare young people for citizenship in a democratic society. This means, first and foremost, maintaining a school environment that respects the rights of students to free speech and free exercise of religion while simultaneously ensuring that student speech does not degenerate into name-calling, bullying, or attempts to silence other views.

Under the First Amendment, a school is both safe and free when students, parents, educators and all members of the school community commit to addressing their religious and political differences with civility and respect. A safe school is free of bullying and harassment. And a free school is safe for student speech even about issues that divide us.

When Americans disagree deeply about religious or political questions, public schools should try hard to avoid taking sides. School officials should address the controversy fairly and openly by including all of the stakeholders in the effort to develop policies that promote fairness for all and practices that can be widely supported.

First Amendment ground rules

No ideological or religious consensus is possible – or perhaps even desirable – in our diverse society. But a civic agreement across differences is not only possible but absolutely essential for civil dialogue. The place to begin is to agree on the guiding principles of rights, responsibilities and respect that flow from the First Amendment. These “three Rs” provide a shared framework within which Americans are able to negotiate conflicts over public policy in schools:

- **Rights.** Religious liberty and freedom of expression are inalienable rights for all guaranteed by the First Amendment to the U.S. Constitution. The very purpose of the First Amendment is to safeguard individual rights from actions of majorities and governments. Every effort should be made in public schools to protect these rights for all students and parents.
- **Responsibilities.** As American citizens, we have a civic responsibility to respect these rights for others, including those with whom we deeply disagree. Rights are best guarded

and responsibilities best exercised when each person and group guards for all others those rights they wish guarded for themselves.

- **Respect.** Conflict and debate are vital to democracy. Yet if controversies about sexual orientation and schools are to advance the best interests of the disputants and the nation, then how we debate, and not only what we debate, is critical. All parties involved in public schools should agree to debate one another with civility and respect, and should strive to be accurate and fair.*

A principled compact that spells out the rights, responsibilities and respect required by our commitment to the First Amendment creates a common ground that serves the interests of our religious and political diversity. Within these ground rules, all sides come to the table prepared to seek a greater common good.

Finding common ground

In a growing number of school districts, these First Amendment principles provide a civic framework for constructive dialogue and a basis for cooperation across deep differences. Parents and educators on all sides are reaching across the cultural divide and finding ways to work with people who see the world very differently from themselves. How is this possible? Although individual districts use a variety of strategies, successful school and community leaders adopt the following principles and practices:

1. **Create a “common ground task force,” appointed by the school board and consisting of representatives with a wide range of community views.** Such a task force can help to advise the district on a range of issues involving sexual orientation such as how to create safe schools, develop balanced curricula, and protect appropriate student expression. By building relationships among people with opposing views, the task force builds trust and mutual respect that can translate into shared agreements on school policy and practice.
2. **Agree on the civic ground rules and understand current law.** A good first step is to make the First Amendment principles of rights, responsibilities and respect the ground rules for the discussion. Then, come to a shared understanding of what current laws and regulations in your state and district may say about the issue of sexual orientation in general and in public schools specifically. The laws of each state (which vary widely and change frequently) are both the starting point and framework for addressing sexual orientation in local schools.

* This definition of the First Amendment principles of rights, responsibilities and respect is drawn from the Williamsburg Charter, a reaffirmation of religious liberty drafted by representatives of America’s leading faiths and signed by nearly 200 leaders from every sector of American life in 1988.)

Public schools are required to represent and carry out the laws of the land. Within this civic and legal framework, all sides come to the table understanding the parameters of the discussion and prepared to engage the issues with civility and respect.

3. **Include all stakeholders.** In public schools, there must be room for people who see the issue from a variety of perspectives in an environment that calls for everyone to respect the right of others to hold their views. Democratic citizenship does not require a compromise of our deepest convictions. But at times it will require us to work with others who may hold views we find offensive. It is the civic responsibility of people on all sides to state their views in as respectful a manner as possible. Through constructive dialogue we can often find creative solutions that will treat others the way we want to be treated.
4. **Think outside the box of “us vs. them” politics.** As deeply as we may feel about this issue, we must refrain from using the public schools to impose our views on others. Advocacy groups play an important role in a democracy. But public schools have a very different role. Schools serve the entire community and, in so doing, cultivate a common good that includes us all.
5. **Listen to all sides.** Given the opportunity, the vast majority of parents, students, administrators and school board members will commit to a principled dialogue and will work for

solutions that bring the community together. While it may be true that a small number of people on both sides resist any attempt to find common ground, most people will support a process of deliberation that is open and fair.

6. **Work for agreements on civic principles and safe schools.** It is important to start deliberations where agreement is most likely to be achieved. All parents, for example, want schools to be safe learning environments where no student is harassed or bullied for any reason. And most people will support policies that prohibit the mistreatment of any individual or group and provide appropriate avenues for redress of grievances.
7. **Provide educational opportunities for administrators, teachers, parents and students in the First Amendment principles of rights, responsibilities and respect.** When people understand their constitutional rights and civic duties, they are better prepared to engage in civil dialogue – and work together for a learning environment that is safe and free for all students.

This guide is not an attempt to ignore or minimize differences that are important and abiding, but rather a reaffirmation of what we share as Americans across our differences. First Amendment principles can and do work to advance the best interests of education and the nation, but only when they are understood and applied by citizens committed to advancing a common vision of the common good.

Tips for school officials

1. **Take seriously complaints of name-calling, harassment and discrimination regardless of the reason.** Do not dismiss it as playground teasing or tell the student or staff to “toughen up.” Investigate the complaint and intervene directly when it has merit, making clear that such behavior is unacceptable on the public school campus. The public school environment cannot be a hostile place to study or work.
2. **Assure parents and students that the school district will listen carefully, be fair to all parties, and try hard to avoid choosing sides in the broader national conflict.**
3. **Don’t be afraid to talk openly about these issues.** Some districts may seek to avoid controversy by trying to fly under the radar when dealing with this complicated issue. Whether it is students asking to form a gay-straight alliance, a new textbook introduced into the curriculum, or a new video adopted for family-life education, parents don’t like surprises. When it finally becomes known, as it always does, parents will lose trust with a district that will not be straightforward with them and will respect the one that is.
4. **To the extent practical, strive to keep your community discussion a local one.** This doesn’t mean that outside groups and individuals can’t be helpful facilitators or resources, and some perspectives that are important to the discussion may not be well represented in your community. But neighbor-to-neighbor dialogue works best when a local disagreement doesn’t become a national controversy.
5. **While your district will have to respond fairly and equitably to the variety of home environments of your students, it does not have to define family in the broader culture to do so.** Family is a term often defined in state law and schools can acknowledge that various groups use it differently.
6. **Be careful that you do not discriminate against student clubs or expression simply because the political or religious message is unpopular or potentially offensive to some.** Educators can and should require that all viewpoints be expressed in a respectful manner, but they may not exclude some views merely because they don’t agree with them. To do so constitutes viewpoint discrimination in violation of the First Amendment.

Tips for parents and students

1. **Don’t jump to conclusions about your school district based on news reports about the national conflict over these issues.** Local control and varying state laws make it unlikely that any one approach will be implemented universally across the country without regard to the different perspectives in your community. Start by finding out what is happening in your district. Ask questions and seek information rather than making accusations.
2. **If you have concerns about what is happening in your school, start by sharing them with those closest to the problem.** If the issue is with your own school, start with teachers or school administrators. If the concern is districtwide, bring it to the attention of district administrators and your local school board. Civil local discussions that lead to solutions are less costly, less divisive, and more effective than lawsuits or shouting matches in the media.
3. **Realize your district not only has a responsibility to address the needs and wishes of your family, but it must also provide a fair and safe environment for people who view this issue differently than you do.** We all have a vested interest in ensuring that public schools are a safe learning environment for every student and staff member.
4. **Remember the civic duty to respect the First Amendment rights of others, including the rights of those with whom you deeply disagree.**