



## **K–12 TEACHERS: The First Amendment, Your Rights, AND HB 377**

**HB 377** is a state law that prohibits public schools and public charter schools from “direct[ing] or otherwise compel[ling] students to personally affirm, adopt, or adhere” to three tenets. The banned tenets are:

- “That any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior;”
- “That individuals should be adversely treated on the basis of their sex, race, ethnicity, religion, color, or national origin;” and
- “That individuals, by virtue of sex, race, ethnicity, religion, color, or national origin, are inherently responsible for actions committed in the past by other members of the same sex, race, ethnicity, religion, color, or national origin.”

It also states: “No distinction or classification of students shall be made on account of race or color.” HB 377 does not include a specific penalty provision.

After the passage of HB 377, many teachers wondered how the law might affect their teaching. A state law cannot violate the federal constitution. For this reason, where HB377 is unclear, First Amendment federal constitutional law can provide helpful guidance. If HB 377 is used or enforced in a way that you think may interfere with your First Amendment rights or the rights of students, report to the ACLU of Idaho.

### **Compelled Speech**

HB377 prohibits “directing or otherwise compelling” students. The First Amendment prohibits “compelled speech.” This means that a government actor, including a public school, cannot require a student to adopt a message that they do not agree with either in spoken or written words or in expressive actions. For example, a student cannot be required to participate in the pledge of allegiance.<sup>1</sup>

Requiring students to discuss topics that they do not agree with in class, or to demonstrate their understanding of a topic through a paper or a test, for example, is not the same thing as compelled speech. So long as the student is not required to state that they personally believe or adopt the position, these are accepted parts of education. One Supreme Court justice wrote, “It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion.”<sup>2</sup>

### **The Right to Receive Information**

The right to receive ideas is necessary for the meaningful exercise of the right to speech and political freedom. Teachers can help students exercise their First Amendment rights

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<sup>1</sup> *W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>2</sup> *Wieman v. Updegraff*, 344 U.S. 183, 196 (1952) (Frankfurter, J., concurring).

by exposing them to a wide array of ideas and viewpoints. One Ninth Circuit case decided that the state cannot remove materials that would otherwise be available in a classroom unless its actions are reasonably related to legitimate pedagogical concerns.<sup>3</sup>

## YOUR FIRST AMENDMENT RIGHT AS A K–12 PUBLIC SCHOOL TEACHER

As a public employee, your First Amendment rights depend on whether you are speaking as a private person, or as an employee.

If you are speaking as a private person (i.e., outside of school in your personal capacity) on a matter of public concern, you receive the full protections of the First Amendment. HB 377 should not affect your non-work activities.

If you are speaking as an employee (i.e., in furtherance of your official duties), then your First Amendment protections are more limited. Your school and union policies should clearly set out the rules for employee speech.

You also have a right not to be disciplined or face other negative consequences under a law or rule that is so unclear or vague that “people of ordinary intelligence” would not understand what is and is not prohibited.<sup>4</sup> State law as well as your employment contract may provide other sources of rights and protections.

You can also visit the National Education Association’s [Know Your Rights](#) materials or their [Frequently Asked Questions](#) section to find additional information about how this law may affect your teachings.

### IF YOU ARE DISCIPLINED FOR ASSIGNING OR DISCUSSING DIFFICULT TOPICS IN CLASS, OR EXPERIENCE HB 377 ENFORCEMENT (BOOKS BEING BANNED, CLASS CONTENT BEING CENSORED, ETC.)

- **Write down** everything you remember, including the names of the people involved and details surrounding the incident.
- **Preserve** any messages or other communications from the people involved.
- **Research** your school’s code of conduct and faculty policy, and any Collective Bargaining Agreements that apply to you.
- **Investigate** your university’s complaint processes and file a complaint.
- **Contact** an employment attorney to go over the facts of your case.
- **Report** to the ACLU of Idaho at <https://intake.acluidaho.org/>. We may be able to help in some cases.

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<sup>3</sup> *Arce v. Douglas*, 793 F.3d at 981 (citing *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988)).

<sup>4</sup> *Hill v. Colorado*, 530 U.S. 703, 732 (2000).