



As we all know too well, we live in a time of hyperpolarization where many of our elected leaders see their job as fanning the flames of divisiveness rather than leading. The latest tragic assassination of a public figure has unleashed a widespread campaign to oust educators and others from their jobs based on social media postings and other public comments that express anything other than grief. To date, scores of educators have been placed under investigation for private, off-duty comments they have made. NEA and its affiliates will continue to represent individuals and defend their First Amendment rights.

Members should understand that, as educators, they are held to higher standards than others and may be subject to discipline for off duty speech that school officials reasonably expect may cause disruption in school. Such speech includes racist, antisemitic, sexist social media posts as well as posts that appear to applaud or condone violence. Members should consider reviewing their social media posts and deleting older posts or others that could be read to express such views. And before posting on social media members should consider whether the post may be taken out of context to express views other than what the member intends and be aware of who their post may be shared with. If your social media settings allow your friends to share your posts, your posts are effectively public postings and you should take the same care before posting as you would if writing a letter to the editor of a newspaper or speaking into a microphone on a public street.

For a more detailed reminder of your rights to engage in off duty speech, see the [NEA Educator Advocacy Guide](#). Below too are the key points to keep in mind in deciding what, and how, to share on social media and whether what you share would ultimately be found to be protected by the First Amendment.

- The First Amendment protects your off-duty speech on matters of public concern. Posts that you make at work or using your work computer are unlikely to be protected.
- Even vile and reprehensible speech has been held to be protected speech – at least in some contexts – by the Supreme Court. There is no category of “hate speech” that is unprotected by the First Amendment.
- But public employees do not have absolute First Amendment rights to say anything they wish off duty. To decide whether off duty speech is protected by the First Amendment, courts weigh the value of the employee’s speech against the employer’s interest in preventing actual or reasonably anticipated disruption of school.
- Social media posts that condone or applaud violence will be given little weight in that balancing and will likely be found to be unprotected by the First Amendment.
- Social media posts that engage in political debate on matters of public concern will likely be given great weight in that balancing, but may nevertheless lose protection if the

speech targets individuals or groups with obscenities or slurs whether explicit or implied, or if the speech addresses the educator's individual grievances.

- Given the current environment, members should review their social media postings, including reposting of others' potentially unprotected comments, and update them as necessary to avoid being targeted over a statement that could be taken out of context.
- Remember to reach out to your state and local union for support on these issues if needed.