

Comments and Questions

Concerning the free speech rights of public educators, in *Pickering* the Court ruled that teachers have a First Amendment right to comment on legitimate matters of public concern and “absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.”

Generally, public employees have the same free speech rights as all citizens. If public school officials wish to sanction speech by school employees, including dismissal or other employment sanctions, school officials must be prepared to show that the speech negatively impacted the employment relationship, and that the speech was unprotected in the context. The *Pickering* test is used to distinguish between protected and unprotected speech by public employees:

The *Pickering* Test: To determine whether speech is protected, courts generally balance the employee’s speech rights against the employer’s legitimate interests in efficient operation of the public institution. Questions considered in this balance include:

1) *Was the speech related to a legitimate matter of public concern?* Speech regarding legitimate public concerns generally receives First Amendment protection.

2) *Was the speech true?* True statements receive more protection than false statements.

Note: Even if the speech is true, courts will also consider public officials’ legitimate needs for: 1) Regular close contact and a working relationship of loyalty and trust with the speaker; 2) Appropriate office discipline; and 3) Harmony among co-workers.

3) *If false, was the false statement merely negligently made by the public employee?* False statements made only negligently may still receive First Amendment protection.

PURPOSELY
KNOWINGLY
RECKLESSLY
-----*Pickering Line*-----
NEGLIGENTLY

Note: Courts will also consider whether the false statements interfere with the performance of duties or the regular operations of the institution.

In *Pickering* the Court drew the constitutional line for protection of false statements as free speech at mere negligence. False statements made recklessly, knowingly, or purposely by public employees are not protected. The Court determined that culpability greater than negligence was generally required before public officials could lawfully sanction false statements by employees on matters of legitimate public concern. To be subject to sanctions, the false statement must be made, in increasing order of culpability: Recklessly; Knowingly; or Purposely.