



Privacy, Parental Notification, and Free Speech in California Public Schools

Schools must accommodate requests for access to facilities that preserve student privacy.

California students have a constitutional right to bodily privacy. As the Ninth Circuit has recognized, “[s]hielding one’s unclothed figure from the view of strangers, particularly strangers of the opposite sex, is impelled by elementary self-respect and personal dignity.” *Michenfelder v. Sumner*, 860 F.2d 328, 333 (9th Cir. 1988).

Students may, for a variety of reasons, feel that the communal showers, lockers, and restrooms at their school (and lodging on overnight trips) do not afford them sufficient privacy. In such circumstances, students and parents have the right to request that the school reasonably accommodate the student’s privacy needs. This could include ensuring the availability of single-stall restrooms and changing areas. But under no circumstances can anyone be compelled by school officials to share intimate spaces with members of the opposite biological sex.

Schools should notify parents and provide an opt-out when controversial topics will be presented by school personnel or guest speakers.

Both the U.S. Supreme Court and California courts recognize that parents possess a fundamental right to direct the upbringing and education of their children. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000); *In re Marriage of Harris*, 34 Cal. 4th 210, 223 (2004). And the California legislature has accordingly recognized that “parents and guardians have the ultimate responsibility for impacting values regarding human sexuality to their children.” Cal. Educ. Code § 51937. In furtherance of these parental rights, all California public schools are required to give at least 14 days’ notice to parents before sexual health education or HIV prevention education are taught, and must give parents the ability to opt their child out of receiving this instruction. *See* Cal. Educ. Code § 51938.

Because discussions of gender identity and sexual orientation are issues that many parents desire to introduce to their children in their own time and in a manner consistent with their values and beliefs, schools should respect the authority of parents and provide notice and opt-out prior to these issues being taught to students. Nothing in California law prohibits schools from providing notice and opt-out before these issues are raised. In fact, doing so shows a proper respect for the primary role of parents in addressing controversial topics.

Students cannot be compelled to express or support ideas or beliefs with which they disagree.

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). As a result, students cannot be compelled to engage in expression with which they disagree.

The efforts to indoctrinate children with gender identity and sexual orientation ideology in public school often conflict with these free speech principles. This is especially true when schools attempt to compel students to “celebrate” a transgender student coming out or to require them to use certain words or pronouns. As the U.S. Supreme Court warned when ruling against a school that attempted to compel students to recite the Pledge of Allegiance:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.

W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 642 (1943).

Unfortunately, school officials often trample students’ rights under the guise of attempting to prevent controversy and avoid offending other students. But this is not a permissible basis for compelling speech. A school “must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” *Tinker*, 393 U.S. at 509. Students “may not be confined to the expression of those sentiments that are officially approved.” *Id.* at 511.

School officials cannot command their students to accept or celebrate ideas, values, and beliefs regarding sexual orientation and gender identity. Parents and students alone have the right to determine what values are central to their lives. In the same manner, schools cannot command students to use words, pronouns, or engage in other expression that conflicts with their values and beliefs. To do so tramples students’ well-established rights and opens up schools to potential liability for infringing those rights.