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ATTORNEY GENERAL

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To Indiana Superintendents and Public University Administrators:

The political assassination of Charlie Kirk has sparked strong, widespread, and diverse reactions in the public discourse. Disturbingly, by certain segments of the public, the assassination was greeted with callousness and celebration. Some of the individuals who expressed pleasure at the violent murder of a public figure are employed in Indiana's schools and universities.

Parents and other Hoosiers have understandably and appropriately responded with concern and outrage that such individuals would have access to and positions of influence over schoolchildren and college students. The Office of the Attorney General has received hundreds upon hundreds of complaints from parents and others about Indiana educators who have expressed poisonous, divisive, and troubling views about the Kirk assassination.

In many cases, Hoosiers have demanded action from their local schools to hold these educators accountable. Some schools have responded to those calls for action with excuses and equivocation, claiming that the First Amendment prevents them from terminating or disciplining educators for celebrating or expressing controversial views about the killing of Charlie Kirk.

In many if not most cases, those schools are wrong. As a legal matter, schools have substantial authority consistent with the First Amendment to terminate or discipline teachers or other educators for divisive or controversial speech. As a matter of good government and sound public policy, schools would be wise to remove from the classroom teachers who express support for or attempt to excuse political violence. And as a matter of morality, this moment demands decisive action from public officials to address noxious speech from government employees that undermines public confidence in our schools and corrodes public discourse.

To assist school administrators as they respond to concerned parents and other Hoosiers, I am providing the guidance herein, which explains what authority schools have to terminate or discipline teachers for speech related to the assassination of Charlie Kirk and any similar situations.

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The First Amendment and Public Employee Speech

“[T]he government’s interest in regulating speech is far greater when it is acting as an employer than as a sovereign.” *Kilborn v. Amiridis*, 131 F.4th 550, 557 (7th Cir. 2025). Consequently, when a

government entity, like a public school, acts in its capacity as an employer, it possesses significantly more latitude to take adverse action in response to a government employee's speech than it has when regulating the speech of a private citizen. See *Waters v. Churchill*, 511 U.S. 661, 671 (1994) (plurality opinion) (“[T]he government as employer indeed has far broader powers than does the government as sovereign.”). Put another way, “[w]hen a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.” *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

This is because “[g]overnment employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public services.” *Id.* at 418. “Public employees . . . often occupy trusted positions in society. When they speak out, they can express views that contravene governmental policies or impair the proper performance of governmental functions.” *Id.* at 419.

Thus, although public employees do not “relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest,” the First Amendment makes allowance for “the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cnty., Illinois*, 391 U.S. 563, 568 (1968). Where doing so will ensure effective and efficient government operations, a public employer may discipline an employee, up to and including termination, for speech in which the employee engages.

A government entity’s decision to terminate or discipline an employee violates the First Amendment only where the employee “(1) engaged in constitutionally protected speech, (2) th[e] [employee] suffered a deprivation likely to deter such speech, and (3) . . . the speech was a motivating factor in [the employee’s] termination.” *Hedgepeth v. Britton*, 2025 WL 2447077, at *3 (7th Cir. Aug. 26, 2025). In many cases, where it is evident that a government employer took adverse action because of one of its employee’s speech, the key inquiry is therefore whether the speech in question is constitutionally protected.

Whether a government employee’s speech is constitutionally protected turns on the answers to two questions. “The first requires determining whether the employee spoke as a citizen on a matter of public concern.” *Garcetti*, 547 U.S. at 418. If employees’ speech is not made in their capacity as citizens speaking on matters of public concern, but is instead made pursuant “to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Id.* at 421.

If the employee is speaking as a citizen on a matter of public concern, the inquiry turns to whether the speech disrupts or “hinders efficient operation” of government functions. *Connick v. Myers*, 461 U.S. 138, 151 (1983). Public employee speech—even speech in which an employee engages in his private capacity outside of work hours—“may lose constitutional protection if the government’s interest in workplace efficiency outweighs the employee’s interest in speaking freely.” *Hedgepeth*, 2025 WL 2447077, at *3.

Various factors are relevant for determining whether the government’s interest in the integrity and efficiency of its operations outweighs an employee’s speech interests. Those factors include, but are

not limited to, “whether the statement would create problems in maintaining discipline by immediate supervisors or harmony among co-workers;” “whether the employment relationship is one in which personal loyalty and confidence are necessary;” “whether the speech impeded the employee’s ability to perform her daily responsibilities;” and “the time, place, and manner of the speech.” *Caruso v. De Luca*, 81 F.3d 666, 670 (7th Cir. 1996)

Public Employee Speech in the Education Context

Teachers and other educators occupy positions that “by [their] very nature require[] a degree of public trust not found in many other positions of public employment.” *Melzer v. Bd. of Educ. of City Sch. Dist. of City of New York*, 336 F.3d 185, 198 (2d Cir. 2003). “A teacher works in a sensitive area in a schoolroom. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools.” *Shelton v. Tucker*, 364 U.S. 479, 485 (1960) (quoting *Adler v. Bd. of Educ. of City of New York*, 342 U.S. 485, 493 (1952)). Moreover, “[f]itness for teaching depends on a broad range of factors,” and an educator’s conduct at work or in the classroom is not necessarily the “the sole basis for determining his fitness.” *Beilan v. Bd. of Pub. Ed., Sch. Dist. of Philadelphia*, 357 U.S. 399, 406 (1958). Even beyond the classroom, a teacher’s behavior matters to the mission of the school and the community he serves.

As a result, when it is permissible for the government to discipline a public employee in the education context—and a teacher, in particular—for engaging in disruptive speech activity is governed by a number of unique considerations. Most importantly, because “teachers and guidance counselors occupy roles that entail an inordinate amount of trust and authority . . . the government’s interests” in regulating educators’ speech is “particularly compelling,” and therefore more likely to outweigh a teacher’s speech interests. *Darlingh v. Maddaleni*, 142 F.4th 558, 567 (7th Cir. 2025).

Relatedly, “[e]xpression is a teacher’s stock in trade, the commodity she sells to her employer in exchange for a salary,” meaning that a teacher’s speech activity, more so than many other government employees’ speech, is of special interest to the teacher’s employer. *Mayer v. Monroe Cnty. Cmty. Sch. Corp.*, 474 F.3d 477, 479 (7th Cir. 2007). Likewise, because “[e]ducation is compulsory,” a teacher’s students “are a captive audience,” which adds further weight to the government’s interest in regulating teachers’ speech. *Id.* The fact that teachers serve as “role model[s] for others in the . . . community” also reinforces the government’s interests in regulating teachers’ speech, both in and outside the classroom. *Hedgepeth*, 2025 WL 2447077, at *6. Similarly, a government employer will generally “have more leeway in restricting the speech of an employee whose position requires contact with the public,” and for many members of the public teachers are unquestionably one of the most important and frequent points of contact they have with the government. *Craig v. Rich Twp. High Sch. Dist.* 227, 736 F.3d 1110, 1119 (7th Cir. 2013).

Recent Social Media Posts by School Employees Concerning Charlie Kirk

The First Amendment test for balancing the government’s interests as an employer and public employees’ speech rights is context-dependent and must be “applied on a case-by-case basis.” *Khuans v. Sch. Dist. 110*, 123 F.3d 1010, 1014 (7th Cir. 1997). “Because of the enormous variety of fact situations in which . . . statements by teachers and other public employees may be thought by their superiors . . . to furnish grounds for dismissal,” it is difficult to say categorically that controversial statements made by public school employees concerning Charlie Kirk’s murder will in all cases provide reasons for dismissal consistent with the First Amendment. *Pickering*, 391 U.S. at 569.

However, a case study may nonetheless be illuminating. Applying the First Amendment principles described above to a particular example of a recent social media post made by a public school teacher in Indiana about Charlie Kirk may help school administrators understand the breadth of their authority to discipline school employees for controversial speech. And as explained below, although the analysis provided here concerns a specific post made by one teacher, the analysis is likely applicable to many of the incidents involving teachers about which schools are receiving complaints. That analysis shows that, because of the disruption that controversial or divisive speech about Charlie Kirk is likely to inflict on school operations, discipline or termination of the offending teacher or educator will in many cases be a lawful and appropriate response.

On September 12, 2025, the Office of the Attorney General received a complaint about a series of social media posts concerning the assassination of Charlie Kirk made by a U.S. history teacher at a high school in north central Indiana. In one post, the teacher wrote, “with all due disrespect Charlie Kirk can suck it. He became exactly what he said was ok and acceptable in order to have gun rights. I call that manifestation. I’m not saying it’s right, but I’m saying it’s only fitting.” In another post, the teacher reposted content that described Kirk’s assassination as “ironic” because of his support for Second Amendment rights. In a third post, the teacher reposted content that said that the “same people calling for sympathy because ‘he had children’ don’t care when the victims ARE children.” Since receiving the initial complaint, my office has received a total of 25 complaints about these posts.

Because the posts were made on the teacher’s personal social media page and concern a political figure and political topics, it is likely that a court would conclude that the teacher was “sp[ea]king as a citizen on a matter of public concern.” *Garcetti*, 547 U.S. at 418. Accordingly, whether the high school can discipline or terminate this teacher will depend on a balancing of the school’s interests as an employer and the teacher’s speech interest. An assessment of the posts and the context in which they were made shows clearly that this high school could legally terminate this teacher.¹

To begin, the posts—like many of the posts about which my office has received complaints—are crass and vulgar. That is relevant under the First Amendment for a couple reasons. For one thing, the speech’s vulgarity “weakens [the teacher’s] speech interests since [the teacher’s] role of public trust counsels instead for a calm, reasoned presentation of [the teacher’s] views on [a] sensitive subject in

¹ If the teacher’s controversial speech concerning Charlie Kirk had occurred in the classroom or while the teacher was performing his work duties, the speech would have little to no First Amendment protection and the school’s authority to terminate the teacher would be even stronger. *See Mayer*, 474 F.3d at 479.

order to be effective in the classroom and respected in the . . . community.” *Hedgepeth*, 2025 WL 2447077, at *6 (quotation omitted). “Speech done in a vulgar, insulting, and defiant manner is entitled to less weight in the [First Amendment] balance.” *Curran v. Cousins*, 509 F.3d 36, 49 (1st Cir. 2007). In addition, the vulgarity of the speech makes it more likely to provoke an adverse and therefore disruptive reaction from parents, students, the teacher’s coworkers, and other members of the public. That strengthens the government’s interest in disciplining the teacher for the speech.

Relatedly, the teacher’s posts included insults about and attacks on people with whom the teacher disagrees. That also weakens the teacher’s speech interests. Speech that “gratuitously attack[s] people, not just ideas” and “vilifie[s] people who disagree with [the teacher] using particularly crude terms . . . contributes little to any debate.” *Darlingh*, 142 F.4th at 566. Because of the teacher’s reduced speech interests, the school would not be required to make as strong of a showing that its interests as an employer are negatively affected by the speech as it might otherwise if the teacher’s speech was more measured and contributed in a constructive way to public debate.

The fact that the speech activity occurred on social media also, to a large degree, cuts in favor of the school’s authority to terminate the teacher. The teacher’s decision to “post inflammatory comments to an audience” on social media—many members of which were likely residents of the community in which the teacher works—“carried a clear risk of amplification.” *Hedgepeth*, 2025 WL 2447077, at *6. In other words, because social media allows for the dissemination of speech to a wide audience, the teacher’s decision to speak through social media heightened the risk that the posts would provoke adverse reactions and be disruptive to school operations.

And there are very clear indications that the teacher’s posts and others like it have sparked severe backlash in Indiana communities that threaten to disrupt school operations. As noted above, my office has received 25 complaints about this teacher’s post alone. The backlash has evidently been so severe that the high school in this case felt impelled to release a public statement justifying its decision not to discipline the teacher, which it justified on the incorrect grounds that it could not terminate the teacher because of the First Amendment. The reaction to the teacher’s posts thus demonstrate that the posts “threatened ‘community trust’ in the [school], which is vitally important to its function.” *Grutzmacher v. Howard Cnty.*, 851 F.3d 332, 346 (4th Cir. 2017). It is very reasonable for parents to question whether a teacher who makes such divisive and cruel comments about the assassination of a public figure loved and respected by many—including, no doubt, many students and parents with whom the teacher interacts—can be trusted with teaching and influencing schoolchildren. That loss of trust by the school, if left unaddressed, could have serious negative implications for the school for years to come and is reason enough to take action against the teacher.

Moreover, a school need not wait for actual, substantial disruption to occur before acting to terminate a teacher for controversial or divisive speech. “School officials can also act to nip reasonable predictions of looming disruption in the bud” so long as those “predictions [are reasonable.” *Hedgepeth*, 2025 WL 2447077, at *4. “Where employee speech carries the potential to be disruptive, the public employer must have the ability to move quickly” because “[p]rolonged retention of a disruptive or otherwise unsatisfactory employee can adversely affect discipline and morale in the work

place, foster disharmony, and ultimately impair the efficiency of an office or agency.” *Khuans v. Sch. Dist. 110*, 123 F.3d 1010, 1013–14 (7th Cir. 1997).

The public outcry over callous, insensitive, and disturbing speech about Charlie Kirk’s death is significant and undeniable. Parents and other Hoosiers have contacted my office in substantial numbers over the past week. News reports are filled with stories about controversies at companies, nonprofits, and other institutions related to divisive speech concerning Charlie Kirk. In these circumstances, it would be “entirely reasonable for the [school] to believe that many parents and students [will have] a strong negative reaction to [the teacher’s speech], and that such a reaction [will] cause[] the school to suffer severe . . . disruption.” *Melzer*, 336 F.3d at 198.

In short, “[o]ne of the school district’s most basic obligations is to ensure a safe and supportive educational environment for all students.” *Darlingh*, 142 F.4th at 567. The speech on social media of a U.S. history teacher attacking people with whom he disagrees and callously criticizing a recently assassinated public figure—and even going so far as to suggest the assassination may have been a “fitting” end for Charlie Kirk—in crude and vulgar terms is “fundamentally at odds with this foundational duty.” *Id.* The speech plainly caused disruption to school operations and is likely to cause further disruption in the days and weeks ahead. The school would thus be well within its authority to terminate the teacher, as would many schools if they chose to terminate teachers who have similarly contributed to the divisive and, for many, painful eruption of controversial discourse on social media and elsewhere concerning Charlie Kirk.

If you have questions about this guidance or about a specific incident that has occurred in your school district or at your university, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, reading "Todd Rokita". The signature is written in a cursive, flowing style with a large, prominent loop at the beginning.

Todd Rokita

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