

## **Public School Teachers, Free Speech, and Hostile Environment**

**Theresa Lynn Sidebotham, Esq.  
Telios Law PLLC**

A recent Department of Education investigation focuses on the tension between student and teacher free speech rights, the Free Exercise versus Establishment clauses, and the difference between respect and approval. The facts as alleged in the articles are as follows.<sup>1</sup> Apparently a high school girl asked a teacher, First Sergeant Lynn Vanzandt, his opinion on homosexuality. He stated that he believes the Bible teaches homosexuality is a sin. It seems undisputed that the students initiated the conversation with the teacher. Less clear is whether the teacher stopped discussing the matter when requested. At least one girl ran crying from the room. The DOE investigation will explore whether lesbian students were subjected to a hostile environment on the basis of sex, or harassment based on failing to conform to gender stereotypes, and whether the school district retaliated against the student who complained.

Without all the facts, we cannot fully analyze this situation, but some general constitutional principles apply (though they may vary by jurisdiction). First, students have constitutional rights to raise and discuss religious and moral questions in school. For the student to raise the question was not a constitutional violation.

Next, teachers also have constitutional rights to religious expression. Their rights are more limited than students' rights. A school district may, though it is not required to, forbid teachers to discuss their personal religious beliefs in order to avoid Establishment Clause issues. And teachers may not offer their personal religious beliefs as the official stance of the school. But if asked a question about personal belief, for a teacher to respond to the question on a personal level is not generally a constitutional violation. Also, like anyone else, teachers may discuss personal issues on personal time outside the classroom. Under these principles, if a student asks a teacher a personal religious question, the teacher should be able to respond with a personal view even if the student will not like the teacher's point of view.

Also, general explanations of what different religions believe and how those beliefs have affected society in a historical or cultural way are permissible in the classroom. The Bible or other religious documents may be studied in such a context. So there is nothing wrong with explaining different religious positions on issues of morality. Religious views on homosexuality run a wide gamut, both historically and in the present. Persons of faith disagree over whether being homosexual is inherent, a result of psychological injury, or a matter of choice, and whether a homosexual inclination may be embraced or must be denied.

---

<sup>1</sup> <http://www.lifesitenews.com/news/obama-administration-investigating-sargeant-who-said-the-bible-condemns-hom>

Students have a right not to be subjected to a hostile environment based on sex or failing to conform to gender stereotypes. Thus, the school may not create an atmosphere of official disapproval for activity that is legal, such as homosexuality. Also, a student should not be the target of personal attacks, especially in a context of power disparity, such as teacher to student (though peer-on-peer bullying can also be an issue).

This is a hot spot in the culture--the tension between the freedom to live as one chooses and to have the freedom to express one's religious views. Most of us would agree that some speech is hostile and hateful, and should not be used in contexts where discrimination is an issue, such as by teachers and supervisors, or in the workplace or classroom. Does simple disagreement with a lifestyle become hate speech? Probably not. People may disagree on religious grounds with many behaviors--such as using alcohol, using drugs, adultery or premarital sex, telling lies, accepting blood transfusions, or homosexuality. Others, who see less or no problem with the behaviors, can rightfully demand civility, but not rightfully seek approval. Free exercise permits people to have standards and say so, whether or not their standards are embraced by the rest of society.

In this case, the teacher was asked a question and answered the question. Whose rights are being violated now? The student's right not to go to school in a hostile environment? The teacher's right to state a personal religious opinion when asked? The answer to that will likely depend partly on how much was said, the tone in which it was said, and whether the language used was that of respectful disagreement or a personal attack.