Free Speech and Forum Analysis Checklist

I. Which speech right—expression, receipt or compulsion—is involved?

II. Who—an individual or the institution—is the speaker?
   a. If an individual, is it a faculty member, thereby implicating the special concerns of academic freedom?

III. What class of speech is at issue?
   a. Generally protected: Political, religious, commercial and/or corporate
   b. Generally not protected: De minimus personal expression of promotion of unlawful ends

IV. Is the speech pure or symbolic?

V. What are the speech’s content, viewpoint and effect?
   a. Does the content or viewpoint relate to the curriculum, thereby implicated the special concerns of academic freedom?

VI. Where—i.e., in what forum—does the speech occur?
   a. Is the forum a classroom, thereby implicating the special concerns of academic freedom?

VII. Is the forum public or non-public?
   a. If public, is it traditional or designated?
      1. If designated, is it limited or non-limited?
   b. Distinguished public from non-public:
      1. purpose of the forum;
      2. nature of the forum;
      3. compatibility of the forum with the public expression; and
      4. availability of an alternative speech forum

VIII. What are the restrictions on the speech?
   a. Is the person or entity restricting the speech a state actor?
   b. Does the restriction restrain the speaker before s/he acts or punish him/her afterwards?
   c. Which class of speech is being restricted?
      1. Political and religious speech: Most protection
      2. Commercial and corporate speech: Less protection
   d. What are the institutional interests advanced by the restriction?
   e. Is the restriction content/viewpoint-neutral or content/viewpoint-based?
School Buildings as Public Forums

Not a Traditional Public Forum

School Policy Determines the Forum.

1. Not open to any outside speakers—Closed or Nonpublic Forum.
2. Open to all types of expressive activity: Designated Public Forum.

Legal Framework.

I. Identify the forum.

   a. The school has not been opened to outside groups.
   b. The school has been opened to outside uses.
      • Are all groups allowed to speak?
      • Does school distinguish among speakers, subject matter?

II. Is the usage consistent with the guidelines for a limited public forum?

   a. Are the groups requesting access similar to those that have been granted access in the past?
   b. Are the proposed topics similar to those that have been permitted? Cannot discriminate based on point of view.

III. Do any exceptions apply?

   • Restrictions/Prohibitions.
   • Proof of disruption of the educational process.