

# CLIENT NEWS BRIEF

## When Politics and Walkouts Come to the Workplace: Considerations for Teachers, Superintendents, and Governing Boards

The February 14 mass shooting at Marjory Stoneman Douglas High School has inspired a groundswell of political activism at K-12 schools across the country. Lozano Smith previously reported on considerations and implications of student activism surrounding this issue. ([See 2018 Client News Brief No. 7.](#)) School districts must also consider if and how to regulate and respond to employee speech surrounding the gun control debate and other controversial topics. Additionally, governing boards should consider the legal and political implications of engaging in speech on these types of hot-button issues.

Public schools face a difficult balancing act: how to preserve government neutrality and an employee's First Amendment rights while fulfilling their core mission of education. Similarly, a public employer's response to employee speech and activism is highly dependent on specific facts, and may take various forms.

### Governing Board Speech Rights

School boards may take political positions, as long as they do not support a candidate or ballot measure. Individual board members may also make political statements, as long as they identify their expression as reflecting a personal viewpoint, and not the viewpoint of the governing board. Aside from any legal issues, taking a position on a controversial topic could result in both positive and negative reactions from the local community. Alternatively or in addition to taking a position on a topic of concern, governing boards can facilitate discussions about local solutions to serious problems like school safety in order to engage the staff, students, parents, and stakeholders without alienating the community.

### Superintendent Speech Rights

Like board members, superintendents also should identify when they are speaking on a political issue in their personal capacity or in their capacity as a representative of the district. Boards may also direct the superintendent to make public statements on an issue on their behalf. However, a superintendent should be wary of taking a position on any controversial matter without clear direction from the board.

### Teachers' Speech Rights

Any analysis of restrictions on teachers' political activities and speech depends on several considerations. As a general rule, schools cannot discipline or penalize teachers based on political speech or activities outside of work. However, there are exceptions when a teacher is speaking as a public school employee rather than as a private citizen. Analyzing political statements or activities in the workplace is more complex.

Limited First Amendment free speech protections apply to political statements in the workplace. The U.S. Supreme Court held in *Garcetti v. Ceballos* that

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public employees do not have First Amendment protections when making statements pursuant to their official duties. In a case before the Seventh Circuit Court of Appeals, *Mayer v. Monroe County Community School Corp.*, the court held that a public school teacher was not entitled to share personal political viewpoints during a classroom session on current events, as the teacher's viewpoint departed from the curriculum adopted by the school system. Many school districts have board policies regarding controversial issues.

Teachers also may not walk out of the classroom during on-duty time. Public employees have no right to abandon their work for political purposes. However, during off-duty periods like lunch breaks, public employees generally can engage in political expression subject to certain exceptions based on the location and manner of the speech.

Another potential form of speech is a "sick-out" among employees. This occurs when more employees than usual take sick leave to make a political statement. Sick-outs implicate a number of employment-related First Amendment and collective bargaining issues. Like student walkouts, districts must respond to the conduct, rather than the statement, at issue. Public employers generally cannot discipline employees for engaging in speech or conduct protected by the Constitution. In a case concerning a sick-out to protest school funding concerns, a Michigan court held that speech promoting or encouraging a sick-out was protected by the First Amendment, and not a call to strike.

Districts should prepare contingency plans for days when a large number of teachers is expected to be absent to ensure proper staffing levels. Schools can also work with their labor partners, student protest leaders, and other parties to anticipate concerns and staffing impacts of walkouts or sick-outs. Moreover, districts can refer to their collective bargaining agreements for information about how to verify sick leave absences for their employees.

With the exception for board or board-authorized speech noted above, public agencies themselves should generally refrain from adopting political stances. Public resources, including services, supplies or equipment, cannot be used to support or condemn a particular ballot measure or candidate, and students and employees must be treated equally no matter their political opinion. This holds true in the classroom, where discussion of current events (and associated opinions) is inevitable. Teachers can facilitate a discussion, but insertion of a teacher's personal opinions is inappropriate. For example, offering extra credit or encouraging attendance at a pro-gun control rally would also be official support for a particular viewpoint, and improper. However, encouraging students to attend political rallies or events irrespective of the subject matter or viewpoint is viewpoint-neutral, and may be consistent with some curricula.

Lozano Smith is prepared to help school districts navigate options and responses tailored to the specific needs and concerns of their particular school community.

If you have any questions about student walkouts, or student free speech rights in general, please contact an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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