

With all of the recent media coverage on national anthem protests in the NFL, EdCounsel is providing this resource to aid administrators in dealing with these situations should they arise under the Friday night lights (or any other sporting event). It is important to note first though that there are different legal rights at issue for students and staff when it comes to kneeling or sitting during the national anthem.



National Anthem Protests

Students

Students have a constitutional right to free speech, and in certain circumstances cannot be compelled to participate in an action or event that can be considered speech – even if it is symbolic speech. This is similar to the prohibition under Missouri law against forcing students to stand or otherwise participate in the Pledge of Allegiance. For protests against the national anthem involving sitting or kneeling then, it is recommended that Districts treat this the same as a student not participating in the Pledge of Allegiance. That is, the District should not:

- require that students stand during the national anthem;
- allow District faculty to persuade students to refrain from exercising the right to nonparticipation;
- question students as to the reason for nonparticipation;
- characterize opting out as misconduct or otherwise wrongful; or,
- take any disciplinary or retaliatory measures of any kind toward any student for nonparticipation.

Staff

District staff members, including coaches, have less free speech rights based on their employment with the District. Unlike students, staff members can be directed to participate in the national anthem exercise and to stand while doing so. Accordingly, it is recommended that Districts issue an administrative directive to all staff members that they are to stand and participate in the national anthem exercise prior to the event at issue. Staff members should also be told not to attempt to persuade students to participate or exercise their right not to participate, and not to question students about their nonparticipation. If a staff member ignores these directives, then he or she will have failed to follow an administrative directive and can be disciplined accordingly.

Helpful Tip

The students and patrons of each District are unique. For some, national anthem protests will not be an issue. For others, such a display could cause a major disruption to the event and the academic environment. In those situations, if a District believes that students or staff may attempt to protest the national anthem by sitting or kneeling during it, then the District can have the entire team stay in the locker room or otherwise outside of the stadium during the playing of the national anthem, and then enter the playing area afterward. This will help avoid any disruptions associated with national anthem protests while not interfering with a student exercising his or her right not to participate.