

# Student Walk Outs & Protests Frequently Asked Questions

March 2, 2018



With upcoming planned events, please consult our Student Walk Outs & Protests resource, along with the following FAQ's, for practical guidance surrounding what Districts' roles are should these events occur during the school day. While these resources may answer some questions, we recommend Districts consult with their legal counsel regarding specific issues or if there are additional concerns.

## Is the District required to let students protest?

The U.S. Supreme Court first discussed students' First Amendment rights to free speech in *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503 (1969), and since then, numerous other cases have guided Districts' treatment of student speech using the Court's analysis in *Tinker*. Schools have a duty and the ability to limit student expression to maintain order, to protect the safety of the school community, and to foster students' learning environment. The bright line rule that the Court created through *Tinker* is that Districts cannot regulate student speech unless it materially or substantially disrupts the operations of the school or infringes on the rights of others. Later cases have gone on to state that Districts may also regulate student speech that they reasonably believe will materially or substantially disrupt the operations of the school or infringe on the rights of others.



In general, students leaving class to protest or walking out of school would most likely materially or substantially disrupt the classroom. As such, Districts should decide whether they will allow protests or under what parameters protests will be allowed, and plans for those protests should be clearly communicated to staff, students and the community.

## Can teachers wear attire in support of the protest, even if their attire isn't disruptive?

The U.S. Supreme Court has held that public employees have no First Amendment protections for statements they make in the course of their professional duties, because they are not speaking as citizens for First Amendment purposes. This means that Districts can require employees to carry out certain duties, or prohibit them from participating in certain activities, during times they are required to perform their professional job duties. Therefore, the District has the discretion to determine whether it wants to allow teachers or other personnel, in their capacity as employees and on District time, to participate in the student walkouts or protests, or whether the District will prohibit employees from participating in such activities—including what attire teachers are allowed to wear. Districts should ensure that treatment of political speech by teachers is consistent with the District's approach in the past, or the District could be at risk of drawing a viewpoint discrimination claim.

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## **What actions should District staff take during the protests, keeping in mind the prohibition against facilitating or promoting political viewpoints?**

School staff should be involved in the walkout just insofar as to provide supervision to students and ensure their safety. If students' actions escalate beyond a peaceful protest and violate District policy or the student discipline code, school staff will need to address those issues just as they would at any other time. Any actions beyond supervision alone could be seen as promotion or facilitation of the political speech by the District.

## **What should we do if a protest occurs during a teacher's plan time? What responsibilities do support staff have during the protest?**

The District should evaluate staff schedules and its knowledge of the protests to create a plan for supervision of all students, including both students who may protest and those who will choose not to protest. Should the number of students in the District necessitate support staff assisting in supervision of students, the expectations, responsibilities, and duties of each staff member should be clearly communicated to staff before the protests in order to assure adequate supervision and understanding of staff expectations.

## **Can the District provide space to assemble, a District public address system, or other equipment to student protestors as long as we allow any viewpoint to be expressed during that time?**

Providing space and/or equipment would set a precedent for future protests, and the District would be required to provide the same supports to all future protests and/or political viewpoints or risk drawing a discrimination claim. As such, the District should consider what space or equipment it would be willing to provide during future protests or walkouts before determining what to provide during this particular protest.

## **May Districts allow community members to join students in protesting on District property? What about on property nearby?**

If non-student participants seek entrance to school property when students are present, the District can restrict access to areas of the property that will reduce the disruption for students, or refuse to allow them to participate on school property if it is necessary to ensure that the school property is safe and orderly for students. Additionally, if community members or other non-student participants are gathering on nearby property, but not actually on District property, the District can take action to exclude them from nearby property if they are causing a significant disruption to the school environment. In this instance, the District should work with law enforcement to determine what steps are necessary, if any.

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## What can the District do if students walk out of school and leave District property?

If the District is aware in advance that students are planning to leave District property, we recommend communicating with the students' parents regarding whether releases would be required to allow students to leave District property or whether disciplinary action will be taken if students leave campus.

If the District is not aware in advance that students plan to leave property, but students do actually leave property during the protest, the District should work closely with local officials, including law enforcement, regarding safety concerns associated with students leaving property and/or congregating on nearby property. The District should also work to notify parents of their students' departure from the District.



## What can the District do if it becomes aware students are planning a walkout or protest during the school day through social media?

The District's ability to address off-campus and online speech will depend on whether the speech is likely to "materially or substantially disrupt" the school or infringe on others' rights, which will hinge on the specific facts and circumstances of the speech. The District should also take into consideration its policy regarding off-campus online speech and how such speech is has historically been treated by the District when determining the District's next steps.

## What can the District tell the media?

If the District chooses to speak with the media, the District should be careful in crafting its statement in order to ensure that the statement does not promote or otherwise give the impression that the District is promoting or facilitating its students' protests. The District should also consider what precedent its statement will set and if any part of the statement would jeopardize any security measures the District is putting in place, such as explaining where students will be allowed to protest, where law enforcement or security will be stationed, etc.

## Should we discuss the protests with law enforcement?

The District should consider discussing the protests, and specifically its knowledge of any planned protests within the District, with local law enforcement in order to better prepare District staff and students for the protests and to determine whether law enforcement should be present during the protests. This would be especially important if the District anticipates community members will attempt to join the protests either on campus or on adjacent property, or if the District believes students' behavior may escalate beyond that of a peaceful protest. Law enforcement may also be helpful in developing the District's safety plan for handling the protests, including offering suggestions for maintaining secure boundaries on campus property.