

Legal Guidance: Student Protests and Walkouts

In the aftermath of the tragic mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, we have seen high school students emerge as leading voices against gun violence. A 17-minute “national school walkout” has been planned for March 14, 2018 to demand Congress pass legislation to curb gun violence, and schools may see increases in student activism and protests on campus. Schools are tasked with providing a safe learning environment for students and with preparing students to be engaged, civic-minded participants in our democracy. With all this in mind, what should schools do when faced with student protests or walkouts? What California laws and school board policies do districts need to consider?

Student Free Speech Laws

The U.S. Supreme Court ruled in 1969 in *Tinker v. Des Moines Independent Community School District* that the First Amendment applied to public schools, and schools could not censor student speech that did not disrupt the educational process. The Court found that the students’ black armbands protesting the Vietnam War were not disruptive, and famously wrote that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” These constitutional protections are embedded in California’s Education Code section 48907, which gives public school students in California broad free speech rights, including “the use of bulletin boards, the distribution of printed materials or petitions, the wearing of buttons, badges, and other insignia, and the right of expression in official publications.”

A walkout is considered symbolic speech and protected under the First Amendment, but student speech can be limited if it disrupts the educational process, and generally students leaving class would be considered disruptive to the education environment and schools can regulate this activity. Courts have previously ruled that student absences for a political demonstration walkout should be treated

in the same way as any other unexcused absence. Districts should rely on their existing policies addressing student absences for guidance. Schools may give students an unexcused absence for missing class, and may limit disruptive actions by students, but schools should not discipline students simply for engaging in political speech.

Board Policy 5145.2 provides additional information on student free speech rights in schools.

Staff and School Safety

School districts can expect their teachers and staff to continue to perform their scheduled work duties regardless of a protest or walkout. Schools must supervise students on school grounds and enforce rules necessary to protect students. School districts should keep in mind that they may be held liable for injuries caused by the failure to exercise care in supervising students, and schools should determine beforehand whether any staff will accompany students walking out of class and, if so, make sure that the teachers and staff are properly prepared for any expected duties during a walkout. School districts should not help organize off-campus demonstrations.

School Districts Should Communicate Clearly with Students and the Community

School districts should meet with student groups and leaders, as well as staff, parents, and other community members to discuss potential student protests or walkouts. We recommend schools work with students and staff prior to any political demonstration to prepare for supervision and safety needs, and to discuss other effective ways for students to express their political views with potentially less academic disruption.

Schools should communicate clearly with students any consequences for leaving class, consistent with district policy (including Board Policy 5131.4 regarding student disturbances), and different consequences should not be applied based on political viewpoint. School districts should enforce school rules and policies in a viewpoint neutral manner. School districts can review Board Policy 6144 for additional guidance on addressing controversial issues on school campus.

CSBA's guidance does not constitute legal advice. Please consult with your school board's legal counsel for legal advice on student walkouts.