



Questions asked during Student Rights Regarding Walkouts and Other Protests Webinar

Can you remind us where we can find this presentation?

This will be available on the PACE website, pace.osba.org. Search for “Walkout” and you should be able to find these materials. Access will require a PACE login.

Do the restrictions on campaigning apply to school board members?

Yes, but not in the same way as school employees. School board members are not allowed to use district resources or time for political activities, but they may use personal time and resources for political activities. The Oregon Secretary of State’s *Restrictions on Political Campaigning by Public Employees – ORS 260.432* provides the following (p. 5):

Appointed Board Members and Commissioners

ORS 260.432 applies to appointed board and commission members when they are acting in their official capacity. Appointed board or commission members are acting in their official capacity when they are at a meeting of the board or commission, working on a duty assigned by the board or commission, working on official publications (including website materials) for the board or commission, or when appearing at an event in an official capacity.

Appointed board or commission members may use their titles to engage in political advocacy (including endorsing candidates, measures, etc.) as long as they are not acting in an official capacity when authorizing use of their title.

Do you have prepared talking points?

We hadn’t, but the communications points that we talked about would make good talking points:

1. The district will remain neutral on the political issues at hand. This means that the district will not sponsor, encourage, discourage, support, endorse or approve the protests or the messages being shared. This does not mean that the district can prohibit the speech, and the district needs to be careful to avoid viewpoint discrimination.
2. What is the process or procedure when a student walks out of a class?
3. What must a student do to avoid being disciplined for participating in a walkout?
4. How can the absence be excused? Does this impact participation in extra-curriculars? What is the consequence of an unexcused absence?
5. Will students who choose to participate be supervised?



6. What is expected of staff during a walkout and what are the limitations on political activity?

What about administrators wanting to participate in a Saturday, March 24th event?

The same rules apply to administrators as other public employees when it comes to political activity: public employees cannot use district time or resources for political purposes. The challenge is that some administrators seem to always be on work time. The Oregon Secretary of State's *Restrictions on Political Campaigning by Public Employees – ORS 260.432* briefly addresses the issue:

Salaried and Hourly Employees: What is "On the Job"?

Salaried employees' work time is not as easily measured as hourly workers. If the work performed falls generally within the job duties of the public employee, the work is performed in an official capacity regardless of the time of day or location.

If a salaried employee applies for expense reimbursement for a function, they are considered on the job.

A regular workday may not be definable for a position, or may not have a specific time period. It is based on the activities and whether the person is acting, or appears to be acting, in an official capacity.

Personal note-keeping by salaried employees to record when the employee is on or off duty is suggested. During public appearances, the employee is encouraged to specifically announce to the audience that the employee is not acting in his or her official capacity if they are engaging in political advocacy. Such an announcement would not negate a subsequent statement or action that indicates the public employee is acting in his or her official capacity (such as handing out official publications, or speaking on behalf of the jurisdiction).

ex If a salaried police officer attends a meeting about a bond measure on his own time (i.e. while not "on duty") and advocates for the measure, he should announce to the audience that he is there in his capacity as a citizen, and is not representing the police department.

However, if the police officer went on to hand out official publications from the jurisdiction, the police officer would be acting in his or her official capacity (despite their previous announcement) and would be subject to the requirements of ORS 260.432.

ex A school superintendent is acting in his or her official capacity at all school board meetings and school functions.

A few key things for administrators to consider:

- Am I wearing anything that identifies me as a district employee?
- Is this during time that I am normally performing work duties?
- Is there a way for me to convey that I am acting as an individual, and not as a representative of the district?
- Will observers perceive this as district endorsement of the message?



Is it your recommendation to send a communication to all students and parents ahead of potential walkouts on March 14th?

Yes, if you anticipate participation by students or staff, we would recommend making the district's procedures clear in order to hopefully avoid problems later on. Even if you don't have students actively participating in a walkout, you may have students considering participation or expressing political speech in other ways (kneeling during the anthem, wearing of certain apparel, clubs, etc.). Using this opportunity to communicate and teach students about their rights may help avoid problems in the future.

So, who would supervise?

If it is not on district property and is not sponsored by the district, the district does not have an obligation to supervise. What do you do when students leave campus to skip school? Does an administrator follow them? If you choose to provide supervision for this particular walkout, you may have to provide supervision for additional walkouts in the future. That said, if you see your students walking into a dangerous situation, you are going to act to protect those students. Law enforcement may be informed that students are gathering and walking in order to keep those students safe.

If the activity is happening on district property, the district should arrange supervision. Where possible, this should be handled by administration so that teaching staff can continue to provide education to those students who are not participating. Providing supervision and allowing the activity to happen on district property does set a precedent and when another protest is planned, you may have to offer the same support to avoid viewpoint discrimination.

What about the media?

Districts should review policies, procedures and past practices that they have regarding the media (check for policy JOD). You are not required to accommodate media requests to speak with or photograph students on district property. If you are allowing the media to interview students, it is a good practice to select a few students ahead of time and obtain parental permission prior to the interview. Remember, members of the media may not have gone through a background check with the district and should not have direct, unsupervised contact with students on district property. You also want to be aware of the laws around disclosure of student information (see policies JOA and JOB).

If media and students are off-campus, the media can speak with willing students and take pictures or video of the students. This could happen on the streets and sidewalks around your school, and could take place before, during or after school.



Additional Resources

[Student Protest Guidance](#), Oregon School Boards Association (February 2018).

Free Speech and the Confederate Flag, Oregon School Boards Association (February 2018).

[Coercion, Conscience and the First Amendment](#), National School Boards Association (January 2018).

[Navigating Student Walkouts and Mass Protests](#), National School Boards Association (February 2018).

[Restrictions on Political Campaigning by Public Employees – ORS 260.432](#), Oregon Secretary of State (Revised January 2016).

[ORS 260.432 Quick Reference—Restrictions on Political Campaigning for Public Employees](#), Oregon Secretary of State (December 2013).

Student-Walk-Out Guidance for Educators, Oregon Education Association (February 2018).

Relevant Cases

Corales v. Bennett, 567 F.3d 554 (9th Cir. 2009).

Dariano v. Morgan Hill Unified Sch. Dist., 767 F.3d 764 (9th Cir. 2014).

Karp v. Becken, 477 F.2d 171 (9th Cir. 1973).

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 89 S. Ct. 733 (1969).

Contact Information

Legal questions regarding walkouts, protests and other political speech, contact PACE Legal Services:

pacelegal@osba.org, 503-485-4800

For OSBA model policies, contact OSBA’s Policy Department:

1-800-578-6722

For assistance with public media comments, contact OSBA’s Communication Department:

apulaski@osba.org, 1-800-578-6722