

Student “Walkouts” and First Amendment Rights

In the aftermath of the recent tragic school shootings in Parkland, Florida, many New Jersey school administrators are reporting that students, parents, school staff, and local community members have expressed concerns regarding appropriate means of preventing and reducing the risk of gun violence in our schools. The Parkland tragedy has inspired some of these concerned individuals, particularly students, to become involved in political activities such as the “walkout” scheduled for March 14, 2018 as a protest in support of gun control.

The First Amendment, Discipline, and the Orderly Operation of the School

The law is clear that students do not have a First Amendment right to unilaterally disrupt the school day by walking out of the building as an act of political protest. However, an appropriate response to a planned “walkout” or any other political protest by students requires a consideration and balancing of various factors. Of course, while school bas should avoid conduct that could be viewed as a violation of Constitutional rights, they are also obligated to act to keep students and staff safe, and to impose disciplinary consequences upon students who violate the Code of Student Conduct.

Under State and Federal law, students’ First Amendment rights must give way to the orderly operation of the school. If an unauthorized walkout occurs that materially and substantially disrupts the school’s operations, then the students are not engaged in a Constitutionally-protected activity, and the school may intervene to prevent it or impose disciplinary consequences for those who engage in it.

New Jersey statute provides that school attendance is mandatory, and requires students to be present in school and submit themselves to the lawful authority of the school. Therefore, a school is authorized to discipline students, consistent with its Code of Student Conduct, for violating its policies on attendance, class cutting, and excused and unexcused absences, even if the violation occurred during a political protest such as a walkout.

Avoiding Viewpoint Discrimination and Alternatives to a Walkout

While school administrators might consider simply permitting a walkout in an effort to resolve the disciplinary implications and safety concerns raised by mass participation in an unauthorized walkout, they may not engage in viewpoint discrimination. This occurs when a public entity encourages or disallows the expression of a particular viewpoint for one person or group, but not another. Accordingly, if a school were to permit a walkout in support of gun control, it would be obligated to ensure safety and make a similar accommodation for all other students wishing to do the same regardless of their point of view.

REPLY TO

387 PARK AVENUE S
5TH FLOOR
NY, NY 10016
212 278 0058

450 MAIN STREET
METUCHEN, NJ 08840
732 243 9588
FAX: 732 243 9590

309 FELLOWSHIP RD
STE 200
MT LAUREL, NJ 08054
863 350 1030

Nevertheless, reasonable alternatives to granting permission for a walkout should be considered. In deciding First Amendment cases, the courts have ruled that *suppression* of student speech is disfavored, but school boards are permitted fairly broad discretion with respect to *regulating* speech by restricting the “time, manner, and place” for the exercise of First Amendment rights by students, using a content neutral approach.

By applying these principles, as opposed to sanctioning a walkout, a school could protect its students’ free speech rights by offering them less disruptive alternative activities. For example, as an alternative, the school could hold a content-neutral assembly where students could participate in a debate on gun control, allow representatives with different viewpoints on the issue to speak in history or civics classes, or invite competing school newspaper editorials. However, before arranging any accommodations for one group of politically minded students, it is critical to ensure that the school is prepared to do so in a similar, content-neutral fashion for any other students wishing to engage in free speech in favor of another viewpoint on the same issue, or speech relating to another political issue entirely.

Discipline Must Be Imposed Consistently Regardless of Political Motivation

The American Civil Liberties Union of New Jersey (“ACLU-NJ”) believes that our schools should support student efforts to engage in political discourse and refrain from disciplining students for political protest, regardless of the cause. In the view of the ACLU-NJ’s position, schools could use the walkouts as an opportunity for practical lesson in civic engagement, which could be accomplished through these same alternatives.

As the ACLU-NJ has noted, it would violate a student’s Constitutional rights to impose harsher discipline for a politically motivated Code of Student Conduct violation than the discipline that would ordinarily be imposed for the same conduct that is not politically motivated. Similarly, wearing a t-shirt or armband that expresses a political viewpoint should not be considered disruptive or subject to discipline simply because someone may disagree with the viewpoint, and if it constitutes a dress code violation, it should not be treated differently than any other violation of the dress code.

The actions of students in the aftermath of the Parkland tragedy remind us that students are the future leaders of our communities and while school boards may take different approaches to the “walkouts,” it is imperative that we recognize that every student has the Constitutional right to self-expression. Should you have any questions or concerns with respect to any issues regarding the exercise of students’ Constitutional rights in school, the attorneys at The Busch Law Group are available to assist you.

This communication does not create an attorney-client relationship. The information contained herein is provided for informational purposes only, and should not be construed as legal advice. No recipients of this correspondence should act or refrain from acting on the basis of any content without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a licensed attorney. The Busch Law Group expressly disclaims any and all liability with respect to actions that may or may not be taken based upon any or all of the content of this correspondence.