



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

October 11, 2021

5350 Skylane Boulevard
Santa Rosa, CA 95403

Tel: (707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org
www.sclscal.org

General Counsel
Carl D. Corbin

Attorneys
Jennifer Henry
Nancy L. Klein
Damara L. Moore
Jennifer E. Nix
Steven P. Reiner
Kaitlyn A. Schwendeman
Leah M. Smith
Loren W. Soukup
Erin E. Stagg

Of Counsel
Robert J. Henry
Frank Zotter, Jr.

To: Superintendents, Member School Districts (K-12)
From: Carl D. Corbin ^{CDC}
General Counsel
Subject: Parent/Student Protests Associated with Governor Vaccination
Mandate
Memo No. 32-2021

Our understanding is there is a statewide protest planned **for Monday October 18, 2021**, which is being organized by parents opposed to the Governor’s proposed vaccination mandate for students. Our further understanding is this protest may result in parents precluding their children from attending school and potential protesting of parents at school sites on this date.

The purpose of this Legal Update is to summarize the free speech rights of students, free speech rights of employees, address student walkouts, and address campus safety issues.

Student Freedom of Speech

Students have free speech rights under the First Amendment. Students in California have additional free speech rights in accordance with Education Code section 48907:

(a) Pupils of the public schools, including charter schools, shall have the right to exercise freedom of speech and of the press including, but not limited to, 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, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities...

However, student free speech is subject to limitations:

...expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school



regulations, or the substantial disruption of the orderly operation of the school.

Therefore, students can discuss during non-instructional time (lunch, passing period, recess, before and after school, etc.), in a non-disruptive manner, their concerns related to, for example, the Governor’s proposed vaccination mandate for students. The students can publish articles on the topic in school newspapers, can advocate for changes in the mandate, can advocate for political change with elected representatives, can post appropriate flyers on a school bulletin board authorized for student postings, can wear non-disruptive clothing that advocates political action, etc.

However, students’ free speech in the classroom can be limited if the speech is disruptive. For example, a student could be disciplined if in math class a student wants to discuss a current political issue and refuses to direct the conversation to the current math lesson. A student could also be disciplined if the student wore a shirt that showed graphic/disturbing images. Students can also be disciplined for advocating the violation of school rules (such as encouraging all students to walkout of class during class time or leave campus during the instructional day or to plan to not attend an instructional day for an impermissible reason).

Employee Freedom of Speech

While employees also enjoy free speech protections, employees’ speech is limited when the employee is carrying out his or her official duties. So, for example, a teacher could discuss during a government or history class the importance of a “grass roots” campaign to cause political change. However, a teacher could be disciplined for advocating that students violate school rules by a walkout of class during class time, leaving campus during the instructional day, or planning to have students “skip” school during on an instructional day. A teacher could also be disciplined for leaving campus to accompany students on a walkout unless specifically authorized by an administrator.

We encourage administrators to work with employees and employee associations to address any employee questions and to enlist their support in working with the students to develop alternatives to avoid student disruptions such as a walkout or a planned day of non-attendance.

Student Walkouts

Our understanding is the planned protest will involve some parents precluding their child from attending school on October 18, 2021, and; therefore, there are not anticipated to be a significant number of student “walkouts” during the instructional day. That said, as a reminder, we encourage schools to engage in a pre-meeting open dialogue with students, parents, employees, local law enforcement, and other relevant stake holders regarding appropriate free speech within the school environment and appropriate student protests. This could occur in an after-school meeting where school administrators and law enforcement representatives share their safety concerns, which would then provide student and community members with guidance in organizing safe and appropriate protests.



Students should be encouraged not to leave class during class time or campus during the instructional day or to otherwise engage in disruptive activities or miss an instructional day. Rather, site administrators could discuss adjusting the school schedule to allow for a recess or a school assembly to allow students to engage in free speech without disrupting instruction. This preplanning for alternative activities could occur with student leaders on campus.

Students that violate school rules can be disciplined such as through detention, assignment to Saturday school, assignment of a writing project, and other means of correction. Students in high school can also be suspended for disrupting school activities or willfully defying the directives of school employees (administrators, teachers, campus supervisors, etc.) under Education Code section 48900(k); however, suspension should only be imposed when other means of correction fail to bring about appropriate conduct in accordance with Education Code section 48900.5.

School employees should not advocate, direct, or encourage students to walk out of class during instructional time or to leave campus or miss an instructional day. If students leave campus during the instructional day to demonstrate, then school staff should strongly consider not accompanying students off campus as this may result in the assumption of liability for actions that occur with the students off campus. Rather, students should be encouraged not to leave campus and directed to alternative activities on campus (such as a student assembly). The parents of students who leave campus during instructional time should be contacted and informed their child has left school and the need for them to retrieve their child. In some situations, it may be appropriate to contact law enforcement for assistance if there appears to be the risk of danger to the students leaving campus during the instructional day. We do not recommend physically intervening to prevent a student from leaving campus.

Even in the case of a mass student walkout or planned day of missing school, administrators should ensure that instructional activities are in place for those students that attend school on Monday October 18, 2021, and do not engage in the walkout/plan to miss school.

Very likely, any losses in Average Daily Attendance (“ADA”) due to student walkouts or parents precluding their children from attending school will not be recovered. Please see the helpful article from School Services of California on this issue.¹

In summary, current events allow for an opportunity to teach students how to engage in free speech activities that are safe and in compliance with school rules. Where possible, we encourage school districts to engage in preplanning in an open discussion with relevant stakeholders to develop appropriate alternative activities to a walkout, planned non-attendance, while at the same time enforcing school rules to keep students safe and secure during the instructional day.

¹ “Ask SSC... Is There Any Relief From the Loss of ADA Due to Student Protest” For Publication: March 9, 2018, Volume 38, No. 5.



Campus Safety

Non-Parent “Outsiders”

Penal Code sections 627 et seq. were adopted by the California Legislature in 1982 to regulate access to school campus. The Penal Code provides that no outsider shall enter or remain on school grounds² during school hours³ without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering. We advise that schools prominently post signs requiring outsiders to register at the school site office. Please be aware, that parents of students are not considered “outsiders” under these Penal Code sections.

Penal Code section 627.4(a) provides that “the principal or his or her designee may refuse to register an outsider if he or she has a reasonable basis for concluding that the **outsider’s presence or acts would disrupt the school**, its students, its teachers, or its other employees; would result in damage to property; or would result in the distribution or use of unlawful or controlled substances.” [Emphasis added].

Penal Code section 627.4(b) provides that “the principal, his or her designee, or school security officer may revoke an outsider’s registration if he or she has a reasonable basis for concluding that the outsider’s presence on school grounds would interfere or is interfering with the peaceful conduct of the activities of the school, or would disrupt or is disrupting the school, its students, its teachers, or its other employees.”

Failure to comply with the directives of the principal is a misdemeanor punishable by imprisonment in the county jail not to exceed six months, or by a fine not to exceed five hundred dollars (\$500), or by both.⁴

Parents

Parents of students enrolled at the school are not outsiders under Penal Code sections 627 et seq., but they can still be excluded from the school campus for disruptive behavior.

Education Code section 44810(a) provides an: “...adult..., **including** but not limited to any... **adult who is the parent or guardian of a pupil of the school**, who comes upon any school ground or into any schoolhouse and there willfully interferes with the discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury upon any person, is guilty of a misdemeanor.” [Emphasis added]. The penalty for a first conviction is “a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.”⁵

² Penal Code § 627.1(b) defines “school grounds” are defined as the buildings and grounds of the public school.

³ Penal Code § 627.1(c) defines “school hours” from one hour before classes begin until one hour after classes end.

⁴ Penal Code § 627.7.

⁵ Education Code § 44810(a).



Similarly, Education Code section 44811(a) provides “any parent, guardian, or other person whose conduct in a place where a school employee is required to be in the course of his or her duties materially disrupts classwork or extracurricular activities or involves substantial disorder is guilty of a misdemeanor.” The punishment for this offense is the same as under Education Code section 44810.

In conclusion, students, staff, and parents have the right to engage in their free speech rights under the First Amendment, but they are not allowed to disrupt school activities.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

© 2021 School and College Legal Services of California

All rights reserved. However, SCLS grants permission to any current SCLS client to use, reproduce, and distribute this Legal Update in its entirety for the client’s own non-commercial purposes.