

Brian: FYI: Hot off
the press!

October 12, 2018

LEGAL ADVICE MEMORANDUM 2018 CAMPAIGN ACTIVITIES

As we begin campaign activities, chapter officers and members alike will have questions about permissible campaign activities during the school day and/or on school district premises. The following is a summary of the applicable law.

On Campus Political Activity In General

School employees have the right, under both the employee participation and organization access provisions of the Educational Employment Relations Act ("EERA") and Education Code Section 7052, to engage in political activity (discussions and meetings) on public school premises, including: discussing union endorsement of candidates and initiatives in partisan and non-partisan political campaigns; distributing union literature containing such information; posting related information on union bulletin boards; and soliciting union members to participate in political activities. Such meetings and activities on school grounds should only occur during non-working time, *i.e.*, before or after school, or during lunch or other non-duty break time during the work day. These activities should be limited to bargaining unit members and cannot involve students or parents.

Chapters are not required to use Civic Center Act procedures to schedule space for such meetings, since the right of access to district property for union meetings is guaranteed by EERA. However, chapters should follow district procedures for scheduling meeting rooms. These procedures are typically available on the district's website. Also, Education Code Section 7058 guarantees use of a forum under the school board's control if the board makes the forum available to all sides on an equitable basis.

In addition to these organization rights, school employees may fully exercise constitutional speech and association rights while on the premises of a public school, subject only to narrow time, place, and manner restrictions. Such restrictions may not be based on the content of the speech and may not prohibit speech which does not disrupt the educational or other activities of the employer.

Solicitation of Financial Contributions

School employees may solicit and receive financial contributions to promote or defeat ballot measures that would affect wages, hours, retirement, or other working conditions as employees of that district. Such solicitations must be conducted during non-working time. Officers and representatives of a chapter recognized by the district may solicit and receive funds from members to promote the support or defeat of *any* ballot measure (but not of candidates) on school property during non-working time.

Special Rules for Federal Elections

Chapters should *not* communicate with the general public regarding any endorsements for federal election campaigns. Therefore, do *not* place endorsements for candidates for federal office on chapter websites, or on union property. Pursuant to federal campaign finance laws, reporting requirements are triggered even when unions limit their communications regarding federal elections to their own members. We are therefore leaving intra-union communication regarding federal candidates to NEA.

Please do not use local chapter resources, such as telephones (including cell phones), staff time, copy or fax machines, etc., in any federal campaign, unless expressly asked to do so by CTA.

Special Rules for State Candidate Elections

California has strict limits on campaign contributions for candidates. However, a union's communications to its own members are *not* considered to be a contribution within the meaning of Proposition 34. If your chapter intends to conduct an external campaign and/or make contributions to any state candidate, it *must* do so through a state political action committee ("PAC").

Wearing Political Buttons on Campus

Unless the district has a rule expressly prohibiting it, school employees are free to wear political buttons on campus – even while they are teaching. And, even if a district has a policy prohibiting the wearing of political buttons while teaching, school employees may still wear political campaign buttons while they are on duty and not providing classroom instruction. Districts may not prohibit wearing political buttons at other locations and times on campus, even if students are present. Thus, for example, teachers may not be prohibited from wearing political buttons at a back-to-school night event.

Evergreen School District has no board policy dealing with this issue, therefore wearing political buttons and t-shirts with political messages is fine during the work day!

Using Faculty Mailboxes

In its 2009 *San Leandro Teachers Association* case, the California Supreme Court held that districts may – but are not required to – prohibit unions from using school mailboxes to convey messages that urge the support or defeat of a candidate. The decision is narrow. It does *not* apply to other types of political messages, such as urging members to write to their elected representatives concerning particular legislation. Also, the *San Leandro* case did not address the question whether the mailbox prohibition applies to communications in support of or opposition to a ballot initiative.

If your district does not have a policy prohibiting union use of school mailboxes for candidate campaign information, we urge chapters to continue to use teacher mailboxes within the following parameters: (1) campaign flyers must be produced by the chapter, CTA, or NEA; (2) campaign flyers must address only bargaining unit employees; and (3) campaign flyers must refer to the chapter's endorsement of a candidate or ballot measure.

If a school district does prohibit the use of school mailboxes for distribution of campaign literature, there are several options that bypass the mailboxes. You can post literature on union bulletin boards; leave literature on tables in the faculty lunch area; distribute literature to unit members during non-duty hours; or distribute literature at faculty meetings, provided that time is reserved there for union business.

Car Signs in District Parking Lots

As a general matter, free speech rights protect school employees' right to place signs, stickers, etc. bearing political messages on their cars, even when those cars are parked on district property, as in a faculty parking lot. Such signs, however, should not suggest in any way – either by their actual message or their placement – that the school employer has endorsed the message. A sign sponsored by the union should clearly indicate that it is a union sign. And while a district may lawfully restrict signs that interfere with district operations, this is unlikely to be the case for regular-sized signs placed, for example, on car windows or bumpers. It is recommended the large banners be placed on the street when possible.

Challenging District Regulation of Union Political Activity

Districts may regulate political activities of school employees on campus, including under the Education Code provisions prohibiting the expenditure of public funds or the use of district services, supplies, or equipment to promote or oppose candidates in an election campaign. However, the state and federal constitutions mandate that any regulation of political speech: (1) be narrowly tailored to further a compelling state interest, *e.g.*, avoiding substantial disruption of student instruction; and (2) be the least restrictive regulation available.

If a district imposes regulations that are unreasonable, either as written or as interpreted and applied, chapters and their members face a difficult decision. If the regulations are unconstitutional, violate the EERA, or otherwise unlawful, they are unenforceable and violation of such regulations may not be punished. However, deciding the enforceability of a regulation is often a complex legal matter. Therefore, in the face of such a dilemma, we advise chapters to first obey the regulation and then challenge it, either through the contractual grievance machinery, if applicable, or an administrative or court action.

Questions regarding school district policies and practices concerning political activities should be directed first to CTA political organizers and then to the Legal Department.