

What School Districts Need to Know About Student Protests

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We have received many questions over the past week in the wake of the horrific events at Marjory Stoneman Douglas High School in Parkland, Fla. As has been widely publicized, there are presently a number of protest events scheduled to occur over the course of the next few weeks in response to this latest school shooting incident. Some of the events include:

- [The Women's March's Youth EMPOWER Group National School Walkout on March 14, 2018, at 10:00 a.m.](#)
- [March For Our Lives March on Washington D.C. on March 24, 2018](#)
- [National High School Walkout on April 20, 2018](#)

Like those throughout our nation, we are deeply saddened by the events in Florida. We continue to work closely with our school district clients to process through issues ranging from appropriate communication with students and families in light of the tragedy to necessary safety protocols in the event of student initiated protest activities. We've also worked with districts on the scope of the Constitutional right to free speech and expression in the school environment and balancing the perceived competing interests between respecting student rights under the First Amendment of the U.S. Constitution and the broad discretion of school districts to determine necessary measures for safe schools and orderly educational environments conducive to learning. This alert is intended as a general overview of some of the more immediate issues schools may be presented with in connection with recent events.

In [*Tinker v. Des Moines Independent Community School District*](#), the bedrock case addressing student speech, the U.S. Supreme Court noted that, "[i]t can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker* clearly established that student protest is a recognized form of protected speech. As such, school officials are charged with balancing appropriate recognition of this fundamental right with the responsibility to maintain safety and order in our schools.

Student political speech and expression may only be restricted to the degree to which school officials can reasonably forecast that the speech or expression would result in a material and substantial disruption of the school environment. Determining whether such substantial disruption may occur is a highly fact sensitive analysis that requires evidence of more than a mild distraction or curiosity created by the speech or expression. School officials must identify an actual threat of disruption with specificity, and point to evidence that the manner of the speech or expression is incompatible with the orderly function of the school.

Having Constitutional rights does not mean that student conduct can go unregulated. However, school

districts must ensure that application of school rules implicated in connection with speech and expressive conduct are not applied more severely in connection with the exercise of First Amendment rights. For example, schools may not impose discipline related to unexcused absences resulting from student speech and expression that deviates from established policy governing truancy.

In addition, it is well established that students are permitted to distribute informational flyers, wear buttons, hand out printed materials and post notices on school property consistent with appropriate time, place and manner restrictions. Schools may prohibit speech and expression that is obscene, libelous, likely to incite violence or put the school community in danger. However, school districts may not discipline students or restrict speech or expressive activity based solely on disagreement with the viewpoint expressed.

Student responses to the Parkland school shooting over the coming weeks and months could take various forms. Students in districts across the country could commemorate the lives lost, express solidarity with all students or could advocate for legislation related to expanded mental health services and/or stricter gun laws. Many news outlets are reporting that some student groups are planning full-day walkouts. The possibility of a variety of expressive activities requires that school districts be thoughtful in their planning and develop multiple contingencies for responses. Any walk out, regardless of duration, may require coordination with local law enforcement or other agencies, impact the work day for employees and alter academic planning.

Although somewhat dated, the U.S. Department of Education issued [Responding to School Walkout Demonstrations](#) in 2008, which includes some planning, preparedness and response tips along with suggestions for working collaboratively with students to develop alternative options. Please note that the document does not represent an official position of the department regarding these issues.

If you have specific questions regarding an anticipated student walkout in your school district and the scope of your responsibility in this area, or if we can provide any assistance as you review your existing policies and procedures, please do not hesitate to contact any of the attorneys in [Barley Snyder's Education Group](#).