



Political activity on school property: What legal restrictions apply?

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As the election approaches, questions arise in many school districts about what political activity is permissible on school property. Can staff distribute campaign flyers on school grounds? Can the levy committee post pro-levy signs on school grounds? Can a school board member running for re-election solicit campaign contributions from employees at school? Can students wear campaign attire at school? The legal rules are complex and vary depending on whether staff, students or outside groups are involved. This article provides a brief, general overview of the law governing political activity on school property to help guide your analysis of situations that may arise.

Legal restrictions on campaign activity by school employees and officials

Public school employees have First Amendment rights to engage in campaign activity on their own time as private individuals. They do not have the same freedom to engage in campaign activity at school.

Ohio law prohibits public boards of education from compensating any employee for “time spent on any activity to influence the outcome of an election” regarding a candidate for public office or the passage of a levy or bond issue or other ballot issue. [1] It is not always easy to determine what constitutes activity to influence the outcome of an election, but that would certainly include handing out campaign flyers that advocate for or against a candidate or ballot issue, urging colleagues to vote for a candidate or issue, and preparing campaign mailings. Accordingly, public school employees cannot engage in such campaign activity on paid time, including paid time after the school day (e.g., while working as a coach or club advisor). Board policy may also restrict political activity such as distribution of campaign literature. If so, that policy must be enforced even-handedly.

It is not yet clear whether the wearing of campaign buttons during instructional time constitutes prohibited campaign activity under Ohio law, but it may be prohibited under board policy. Boards of education have the authority to ban attire containing political messages during the school day, without regard to the content of the message being conveyed. This type of viewpoint-neutral regulation has been held not to violate the First Amendment. [2]

A teacher's expression of personal views about a candidate or issue during instructional time is problematic because of the perception created that the school endorses the message, as well as the fact that the teacher is being compensated by the board during that time. Teachers may, however, discuss political issues and candidates in a viewpoint-neutral manner, if the discussion is part of an instructional activity and there is a legitimate pedagogical reason for it.

What if a board member running for re-election wants to solicit campaign contributions from employees on school grounds during the school day? Ohio law prohibits solicitations of contributions from a public employee while the public employee is performing official duties or in areas of a public building where official business is transacted or conducted. [3] In addition, even if the board member promised not to solicit campaign contributions, coming onto school grounds to campaign in any manner during the school day may violate board policies regulating visitor access to school buildings or political activity on school grounds.

Use of school premises by staff and outside groups

If a candidate's campaign committee or the school levy committee wants to hold a meeting in a school building, is that allowed? Yes, under certain conditions and in accordance with the requirements of the school board's policy regarding use of school facilities (which typically requires payment of a reasonable fee).

Boards of education are required to permit the use of premises on a viewpoint-neutral basis for purposes, including educational and civic meetings and other purposes that promote the welfare of the community, as long as the meetings are open to the general public and take place during non-school hours. [4]

What if a candidate wants to put up signs on school grounds? Many boards of education forbid the posting of signs on school grounds as a matter of policy. If your board has not addressed the issue, then you should bear in mind that any access you decide to permit must be viewpoint neutral. In other words, if you allow pro-levy signs on school grounds, then you must also allow anti-levy signs; if you allow a board member running for re-election to post signs, then you must also allow the opponent's signs.

What if a school employee wants to copy levy campaign flyers while on a break? Ohio law forbids the use of public funds and resources on campaign activity, including activity in connection with a levy or bond issue. [5] Even the minimal amount of resources involved when sending or receiving an email is prohibited. This means that school employees cannot use their district e-mail accounts for campaign activity. Likewise, school employees cannot use other school equipment, such as school copiers, for campaign activity free of charge. This prohibition applies regardless of the nature of the campaign activity – even if a school employee who serves on the levy committee is making copies of levy campaign literature or using school resources to make pro-levy signs. If board policy permits outside groups to use school equipment upon payment of a reasonable fee, however, then school employees may do the same.

Student political activity

Can students wear political buttons to school? The law governing political speech by students is more expansive than the law governing school staff, usually permitting such speech to occur.

The general rule established by the United States Supreme Court dates back to the *Tinker* case in which the Court overturned a school regulation banning the wearing of a black armband in protest of the Vietnam war. [6] The Supreme Court held that a school's regulation of any form of speech or expressive conduct violates the First Amendment unless the school reasonably believes that the speech will "substantially and materially interfere" with schoolwork or discipline. A school cannot prohibit student speech merely to avoid controversy or the expression of an unpopular viewpoint.

Notwithstanding the general rule, schools can prohibit speech that is vulgar, lewd, indecent or plainly offensive. [7] Boards of education may also adopt reasonable, viewpoint-neutral dress code regulations. For example, some boards have banned all attire containing any type of message, regardless of the message. Otherwise, however, it is generally permissible for students to come to school wearing campaign buttons or t-shirts.

Must a student be allowed to hand out campaign leaflets in hallways if it is affecting traffic flow between classes and causing disorder? No. Schools are generally permitted to enforce reasonable, content-neutral time, place and manner restrictions on speech. For example, an Ohio federal court upheld a school regulation that required a student to post his leaflets on bulletin boards and distribute them during lunch rather than handing them out in the hallways. [8] Any such regulation has to be enforced even-handedly, however, without regard to view being espoused by the student.

Can a school exercise control over students' political speech in the student newspaper? Yes, to some extent, since the views expressed in the newspaper might be perceived as having been approved by the school. The United States Supreme Court has held that schools have some authority to edit the content of student speech in school-sponsored publications, "so long as their actions are reasonably related to legitimate pedagogical concerns." [9] In other words, a school can regulate student political speech if it is deemed to be inconsistent with the school's educational mission.

[1] R.C. 9.03; R.C. 3315.07; 1991 Op. Att'y Gen. No. 1991-064.

[2] Weingarten v. Bd. of Educ., 680 F. Supp. 2d 595 (S.D.N.Y. 2010).

[3] R.C. 3517.092.

[4] R.C. 3313.76; R.C. 3313.77; R.C. 3313.78.

[5] R.C. 9.03; R.C. 3315.07; 1991 Op. Att'y Gen. No. 1991-064.

[6] Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503 (1969).

[7] Bethel Sch. Dist. v. Fraser, 478 U.S. 675 (1986).

[8] M.A.L. v. Kinsland, 543 F.3d 841 (6th Cir. 2008).

[9] Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988).

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