



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Southern California

Sent via Electronic Mail and U.S. Mail

Oakland USD

Attn: Supt. Dr. Kyla Johnson-Trammell
1000 Broadway
Ste. 680
Oakland, CA 94607-4099
Email: kyla.johnson@ousd.org

March 13, 2018

Dear Superintendent Johnson-Trammell,

We share an obligation to ensure that students attend schools where they can openly express themselves and that are supportive, welcoming, and safe. Last month, that promise was broken when a student killed 17 students and staff members with an assault rifle at the Marjory Stoneman Douglas High School in Parkland, Florida. In the days that followed, student activists called on their peers across the country to demand action. This call has so far resulted in widespread support for two planned events: the National School Walkout on Wednesday, March 14 and the March for Our Lives on Saturday, March 24.

Some California educators have commended students for being civically engaged and expressed support for the student-led events. For example, Dr. Lisa Cooper, Principal of Culver City High School, stated, “the future of our democracy depends on a citizenry that is well informed and has the capacity to be thoughtful, engaged critical thinkers and problem solvers” and committed to encourage, rather than stifle, student activism. Similarly, Kevin Beiser, San Diego Unified School District board president, explained, “we support student voice and agency. Our staff and principals have been reaching out to student leaders and parents in the community to coordinate and organize around March 14th’s student action.” Colleges have also followed suit, with U.C. Berkeley tweeting: “We fully support your right to peacefully protest, and would never refuse your admittance for doing so. Signed, the home of free speech.”

Still, we have received reports that other school districts and schools are considering excessively disciplining students for participating in the events. As California students plan school walkouts, there are some important points, including legal requirements, for all to bear in mind:

The Constitution prohibits school officials from punishing students more harshly for participating in walkouts or off-campus protests than for any other purpose.

Because the law requires students to attend school, the administration may take corrective action against students for tardiness or unexcused absences, including when students miss school to participate in a political protest. However, the Constitution does not permit schools to punish students more harshly for speech-related walk-outs than for missing

school for any other unexcused reason. For example, students might have to serve detention or may receive a low grade for a missed test for being away from school to attend a protest if that is how the school typically deals with unexcused absences.

Students may not be suspended for participating in walkouts or off-campus protests. California law spells out the only types of acts a school district can suspend a student for committing, and missing class is not on the list. Cal. Educ. Code § 48900. The law specifically says that “[i]t is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.” Cal. Educ. Code § 48900(w). The law is also clear that, except with certain serious offenses (which do not include unexcused absences), schools may only suspend students when they have tried other ways to correct the misbehavior such as restorative justice or other forms of discipline. Cal. Educ. Code § 48900.5.

A school may suspend students who damage property or are “disruptive” at school during a protest. For more information, check out “My School My Rights: School Discipline,” an ACLU guide on suspension, expulsion and involuntary transfer in California public schools. This publication is available at <https://www.myschoolmyrights.com/school-discipline/>.

Schools officials may choose to punish students less harshly, or not at all, for participating in walkouts or off-campus protests than for any other purpose.

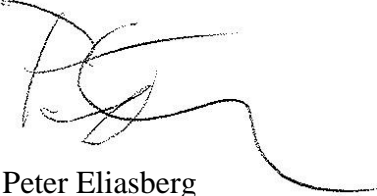
Although the school cannot punish students for missing school to participate in political protests more harshly than it punishes students for missing school for any other purpose, the school can punish students less harshly, or not at all. Schools may elect to interpret absentee policies liberally to allow students to participate in walkouts or to attend demonstrations, *so long as all political protests are treated equally regardless of their content*. Our laws and policies implicitly recognize that missing a day or two of class will not destroy a student’s education – students are typically allowed to skip school for religious holidays, doctor’s appointments, and family events. Attending a demonstration may be viewed as an equally valid reason to miss school occasionally.

To facilitate students’ ability to participate in political speech, schools can instruct students to seek permission from their teachers to make up class work and receive homework assignments in advance.


Now and always, we encourage schools to teach students about the value of civic and political engagement. If and when possible, we also encourage teachers to foster discussion among students with different views. Students will inevitably have different opinions about civic and political issues. One of the principal goals of education should be to teach students the skills to argue persuasively for their viewpoint, to listen respectfully to other views, and to be open to changing their minds. By contrast, if a school were to punish students more harshly for missing a class because they participated in a political protest than for simply “ditching,” it would not only violate the law, but it would also send a misguided message that there is something wrong with students being politically engaged.

For additional resources, please review the ACLU SoCal's Know Your Rights on student protest rights available at <https://www.myschoolmyrights.com/student-protests-political-speech/>.

Sincerely,

A handwritten signature in black ink, appearing to read 'PE', with a long horizontal flourish extending to the right.

Peter Eliasberg
Chief Counsel/
Manheim Family Attorney
For First Amendment Rights
ACLU of Southern California

A handwritten signature in blue ink, reading 'Sylvia Torres-Guillén' in a cursive style.

Sylvia Torres-Guillén
Director of Education Equity
ACLU of California