



MEMORANDUM

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TO School District Clients and Friends

FROM Joel Buckman
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SUBJECT **Student activism after Parkland—Some First Amendment considerations for school district leaders**

After the tragic February 14 shooting at Marjory Stoneman Douglas High School in Parkland, Florida, students across the country have taken to the streets. Students have met with lawmakers, engaged in protests, and staged school walkouts. Student activists have organized a [March for Our Lives](#) scheduled for March 24 and have planned similar demonstrations, including National School Walkouts on [March 14](#) and [April 20](#). The school walkout dates mark one month since Parkland and 19 years since Columbine, respectively. As school leaders across the country consider whether, under what circumstances, and how to address student activism, it is important that they remember the First Amendment. Below, we briefly outline five key points to consider.

- 1. *Students have First Amendment rights at school.*** The law is clear that students do not shed their First Amendment rights at the “schoolhouse gate.” Although students do not have the same rights at school as they have on a public street corner, school districts do not have free reign to punish student speech.
- 2. *Students do not have a First Amendment right to cause a substantial disruption at school.*** In the famous *Tinker* case, the U.S. Supreme Court ruled that school districts may regulate speech that results in actual or reasonable forecasts of “substantial disruption of or material interference with school activities” or the rights of others. In that case, the Court ruled that the district violated the Constitution by punishing students who wore black armbands at school to protest the Vietnam War. Although the protest generated some squabbling among students, the Court described it as a “few students” who made “hostile remarks to the children wearing armbands, but there were no threats

or acts of violence on school premises” or disruptions of class. Caselaw defines what counts as a “material disruption,” and the answer may vary by jurisdiction.

- 3. *Students do not have a First Amendment right to cut school or class, but schools generally may not punish students for purely off-campus speech.*** Some courts have held that students do not have a First Amendment right to engage in walk-out protests in violation of school truancy rules. They have reasoned that neutral applications of truancy rules are valid content-neutral restrictions on speech and/or that truancy creates a substantial disruption under *Tinker*. For example, a walk-out would seem to disrupt all missed classes and a school may need to close or divert resources to protect student safety.

At the same time, school districts generally may not punish students for off-campus speech. So, if students are at a Saturday protest unaffiliated with the school district, the district ordinarily cannot punish students for their conduct at the protest. It is also important to consider social media, which often blurs the lines between off- and on-campus speech. A number of courts have wrestled with whether and under what circumstances districts may regulate online speech. However, multiple courts have held under the *Tinker* framework that districts can in certain circumstances punish students for social media posts threatening violence at school.

Given the above principles, some school leaders are seeking to engage with students to remind them about any applicable place, time, and manner restrictions on activism and/or to engage with them about safe, productive ways to make their voices heard. School leaders should always be attentive to student safety and security.

- 4. *School districts may not compel students to engage in purely political protests.*** The U.S. Supreme Court has long held that school districts may not force students to stand and salute the flag during the Pledge of Allegiance. To force students to engage in such pure political speech is a violation of the First Amendment’s compelled speech doctrine—the First Amendment protects not only the right to speak, but also the right to remain silent. The Court has explained that the government may not “force[] an individual . . . to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.” Of course, school districts routinely force students to speak in connection with the academic enterprise. A student may not assert a First Amendment right to refuse to give a book report, for example. So, while a district might require students to prepare a research paper on guns in America, it would seem inadvisable for a district to require students to engage in a political protest advocating one side of an issue. School districts—which have their own free speech rights—are free to stake out their own position and to invite community stakeholders to help spread that message.

- 5. *School districts must avoid unconstitutional viewpoint discrimination.*** Some districts may be considering whether to take disciplinary action against students who choose to protest school violence by participating in a walkout or otherwise. Districts should understand, however, that if they choose to grant leniency to students who support certain solutions to school violence, they may not engage in viewpoint discrimination by throwing the book at students who support other solutions to school violence merely because school leaders do not favor that option. Selective enforcement could amount to unconstitutional viewpoint discrimination where the government singles out one side of an issue for censure.

Although the First Amendment is a crucial consideration for school leaders, it is not the only one. Groups such as [AASA](#) and [NSBA](#) have provided guidance about how to address school-related violence and to respond to student activism. Also, because First Amendment law is often nuanced and fact-dependent, school leaders should consult with their legal counsel as they formulate and implement policy in this area.

If you have any questions, please contact Joel Buckman (202-637-6408 or joel.buckman@hoganlovells.com) or Maree Sneed (202-637-6416 or maree.sneed@hoganlovells.com).