

Student Walkouts

April 16, 2018

Introduction: Points to Consider for April 20

According to a group organized as National School Walkout, there are more than 80 walkouts planned for April 20, 2018, throughout the state. A map showing events that are registered on National School Walkout website can be found at <https://act.indivisible.org/event/national-school-walkout/>

The [National School Walkout](#) group issued the following guidance for students organizing a walkout:

- *[The event is being organized to occur on] April 20th (the anniversary of the Columbine massacre) at 10:00 a.m., your local time zone. It will end at the end of your school day.*
- *Starting at 10 a.m. students will gather outside, where they will take 13 seconds of silence to honor the 13 killed at Columbine High School. After that an open mic will commence where students can have their voices heard. This is a time for listening. After that the schedule is up to you and your school.*
- *Parents can help by supporting kids in their effort to self organize. They may be present during the walk out but are encouraged to let the youth lead. Again, things will be different depending on what your school and its students decide to do but we encourage the day to be student led with parental and community and school administration support.*

– Source: National School Walkout

As you are aware, student walkouts and protests are a very complicated issue. Each situation is different. Always consider your school's policies, codes of conduct, local community needs, and your local climate as you address each instance. You may wish to contact your school district's legal counsel for advice. Review your experience and procedures from the March 14 student walkout activity or other student-led events to help ensure a safe environment for all. When you learn of a planned event, you may also wish to contact your local law enforcement agency.

[NOTE: This document has been prepared in cooperation with the Michigan Association of School Administrators, Michigan Association of Intermediate School Administrators, Michigan Association of School Boards, Michigan Association of Secondary School Principals, Michigan Department of Education, Michigan School Business Officials, Michigan Elementary and Middle School Principals Association, and the Michigan School Public Relations Association. It is informational only and intended to highlight some of the approaches to addressing this issue.]

Talking Points/Key Messages

Frame the issue as student/school safety in your messaging.

- We're working with students, staff, and local authorities to ensure students are safe and are able to have their voices heard.
- We respect the rights of all students, whether they choose to participate or not.
- The role of our staff during this time will be to help keep our students safe.

- During planned activities on our campus, our staff will be with our students.
- This can be a learning opportunity that helps our students apply the citizenship lessons that they are learning in school.
- We encourage our students to be actively engaged citizens who are knowledgeable about multiple viewpoints surrounding current events. We teach them how to participate in our democracy in a variety of ways that might include addressing lawmakers through letters, creative works that help express how they feel about an issue, and discussions. Through these kinds of experiences, our students learn the skills they need to form, support and express their own personal positions on issues.

Legal Precedence

- No court cases have dealt with this issue recently.
- We are operating with a Supreme Court ruling that is nearly 50 years old: *Tinker v. Des Moines*. In [Tinker v. Des Moines](#)--students wearing black armbands protesting the Vietnam War--was deemed protected speech by the First Amendment. (On February 24, 1969 the Supreme Court ruled 7-2 that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The Court ruled that the First Amendment applied to public schools, and school officials could not censor student speech unless it disrupted the educational process.) **The standard: Schools must prove a material and substantial disruption to the learning environment.**

Overall Points to Remember

- **If you have any concerns, contact your district's legal counsel.**
- **Do not restrict protected student speech.**
- Schools are allowed to set **reasonable time, place and manner restrictions** on the activity.
- This is similar to the National Anthem issue but on a larger scale. (Remember the schools that objected were the ones in the media.)
- **Schools must remain neutral** – not seen as being in support or non-support – while being prepared for the walkouts, since advance notice (a set time and date) has been given. (For example: A school could offer an indoor place for walkout students to assemble with time for a student leader to speak and an alternate indoor, supervised location with a planned, meaningful activity for non-participating students to gather. Another school could provide supervision in the hall or gym where students could gather, while learning continues in the classroom. At other schools, students could leave the building and could be directed to a designated area on campus.)
- The district must consider all students and staff, those engaging in the stated activity as well as those who may not participate. In particular, administrators should have a plan for how they will support students/staff for whom participation (or not) reveals secondary trauma or distress. (From AASA)
- *If you have questions about the free speech rights of students, you can contact Brad Banasik (bbanasik@masb.org), Legal Counsel for the Michigan Association of School Boards.*

Communicating With Your Audiences

Board/Administration

- Review your board policy on free speech.
- Review your Student Code of Conduct for rules and regulations.

- Review [Tinker v. Des Moines](#).
- Know that responses and activities may vary by school district, but must allow for protected speech.
- Rely on your superintendent and administrators for your district's course of action.

School Staff

- Meet with principals and staff--get input for reasonable time, place, and manner restrictions. (For example, young children wanting to walkout may be directed to stand in the hallway, go to the playground, or go to another area where they can be supervised.)
- Remind staff that school districts don't engage in protests. However, students have a free speech right and may express their political viewpoint, if it doesn't present a material or substantial disruption to the learning environment.
- Work with your union leadership--remind them this has to be a student-led process. School staff must remain content and viewpoint neutral while they are working at school. Teachers/staff have other avenues/channels through which to express their political views and lobby.
- Decide, together, how staff will ensure a structured environment for those students choosing to walkout, and those students choosing not to participate. In both instances, remember to be careful about viewpoint discrimination.
- Provide talking points to staff to share with community members who ask questions.

Students

- Find out which student(s) are leading a planned protest.
- Meet with student(s) and find out what they are planning to do and when.
- Review the Student Code of Conduct as part of your conversation(s) with students.
- Help students committed to taking action to think about how to make it a positive/productive learning experience (e.g. letters to legislators; finding their voice) and how to respect the rights of those students choosing not to protest. This is an opportunity to apply the citizenship lessons they are learning in school.

Parents

- Repeat your key message about keeping students safe.
- Explain that school districts don't engage in protests. However, students have a free speech right and may express their political viewpoint, if it doesn't present a material or substantial disruption to the learning environment.
- Remind parents, if they are on school property during the school day, they are subject to the school's rules and regulations.
- Stay away from discussions about weapons in schools or other political issues that might distract and create additional issues.

Media

- Designate a spokesperson.
- Use your key messages.
- Understand that you don't have to allow the media into your buildings, parking lots, or campus.
- Know that there is nothing to prevent them from setting up outside, across the street.

Community Members

- Remember the school is not required to allow community members to come on the property during the school day.
- During the school day, administrators can regulate who is on school property.

Further Legal Guidance

Source: *Thrun Law Firm*

If a district declines to allow an event, should the district document that decision and the reasoning to protect against a student suing the district?

Yes. We believe that providing a cogent explanation for a school's decision to prohibit a student demonstration will help defend against liability so long as the school's explanation is consistent with sound legal principles (as discussed below).

In our opinion, school officials should explain to students and parents what the expectations are for a planned student protest. If a school chooses to prohibit students from participating in a demonstration, we recommend that school officials proactively explain, in writing, why the demonstration will be prohibited and what will happen if a student participates without authorization (e.g., disciplinary consequences, attendance consequences). We also recommend that school officials notify parents that if a student chooses to participate in an unsanctioned event, the student will do so at his or her own risk, without supervision from district staff.

In explaining to students and parents why a school has decided not to allow students to participate in a planned demonstration, we recommend that school officials highlight the disruptive character of the protest. For example, school officials should emphasize that a student walkout is inherently disruptive because it takes students away from their classes and creates unique safety risks. We also recommend that school officials remind students and parents that other avenues for expressive activity exist (e.g., getting involved in community organizations, attending board meetings, writing letters to representatives).

Finally, in deciding whether to allow students to participate in a planned student protest, school officials should be cautious that they do not engage in impermissible viewpoint discrimination – that is allowing speech with which they agree but censoring speech with which they do not. *Rosenberger v Rector & Visitors of the Univ of Va*, 515 US 819, 828 (1995), citing *Police Dep't of Chicago v Mosley*, 408 US 92, 96 (1972).

In our view, because the expressive activity planned for April 20, 2018 is essentially the same expressive activity that occurred during the March 14th demonstrations, prohibiting the April 20th event, regardless of whether a school actively or passively allowed the March 14th demonstration, is unlikely to be considered viewpoint discrimination. A request from students to participate in a planned protest intended to promote a different message (e.g., a pro-Second Amendment protest) would require a more fact-specific review.

Do districts need to be consistent with what they did on March 14?

In our opinion, a school that actively or tacitly permitted the March 14th demonstration likely did not establish a legally binding precedent requiring it to permit all subsequent student demonstrations. This conclusion is based on the following:

(1) Most student demonstrations, like walkouts, are inherently disruptive and can therefore be prohibited. See *Tinker v Des Moines Indep Cmty Sch Dist*, 393 US 503, 506 (1969).

(2) Public schools are not, by their nature, public forums open for indiscriminate discourse. *Hazelwood Sch Dist v Kuhlmeier*, 484 US 260, 267 (1988); *M.A.L. v Kinsland*, 543 F3d 841, 846-47 (CA 6, 2008). To create a public forum, schools must typically engage in some affirmative act or practice to open their facilities – on either a limited or total basis – to public discourse. *United Food & Commercial Workers Union, Local 1099 v Southwest Ohio Reg'l Transit Auth*, 163 F3d 341, 350 (CA 6, 1998).

Even if a district created a limited or designated public forum by allowing the March 14th demonstration, the scope of that forum may have been limited to the events occurring on March 14th. Such a conclusion, however, requires a fact-specific analysis and is based on how an individual school approached the March 14th event. If a school made clear to its students that the March 14th demonstration was a one-time event or otherwise placed limits on the demonstration's scope, the forum may have closed following the March 14th event. In that case, school officials could consider whether to allow students to participate in subsequent demonstrations without regard to the March 14th event.

On the other hand, if school officials did not take steps to limit the scope of the March 14th forum and the forum remains open, school officials must remain cautious, as explained above, to avoid impermissible viewpoint discrimination.

(3) Finally, a school may always close a previously open limited or designated public forum, particularly if other avenues for communication exist. See, e.g., *Perry Ed Ass'n v Perry Local Educators' Ass'n*, 460 US 37, 46 (1983). (“[A] State is not required to indefinitely retain the open character of the facility. . . .”). Accordingly, even if a school created a limited or designated forum by permitting the March 14th demonstration, it can take steps through policy or otherwise to close the forum. If school officials believe it is in their school's best interest to close the forum so that subsequent demonstrations are prohibited, they should do so clearly and in writing, preferably through board policy, and that decision should be communicated clearly to the student and parent community.

While a definitive legal analysis on whether a school must allow the April 20, 2018 (or any subsequent) student protest requires a case-by-case analysis of the unique facts, we believe the above information should provide general guidance to school officials as they decide how to address future student protests.

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