



Regulating political activities of school employees

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This fact sheet is designed to address the most frequently asked questions about a school board's ability to regulate the political activities of its employees. Readers should also review the Ohio Auditor of State's FAQs related to Section 9.03 of the Ohio Revised Code, which provides information about the ability of employees to engage in certain activities relative to the district's levy or bond issue campaign. The information in this fact sheet is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

May the school board prohibit employees from engaging in political activities on their personal time?

The U.S. Supreme Court has ruled that public school teachers, like other public employees, do not forfeit their constitutional protections when they take a government job (*Tinker v. Des Moines Independent Sch. Dist.* (1969), 393 U.S. 503). Among the constitutional protections provided are those established under the First Amendment, including the freedom of speech.

Acting in their individual capacities on their personal time, school employees may engage in political activities, including such things as attending a political rally, participating on a campaign committee or phone bank, posting campaign signs, signing petitions, registering voters and advocating for a particular political position.

However, school boards may prevent employees from exercising these rights in a manner that suggests the district's endorsement of a cause, candidate or issue. For example, the district may adopt a policy that prohibits an employee from using the district's name or resources in connection with the employee's personal or unofficial activities and may require employees to make it clear that their affiliation with the district does not imply the district's approval or disapproval of an expressed view.

May the school board prevent employees from engaging in political activities at the workplace?

State law prohibits school boards from compensating employees for time spent on certain political activities, such as supporting or opposing the nomination or election of a candidate for public office; the investigation, prosecution or recall of a public official; or the passage of a levy or bond issue. School boards may prevent employees from engaging in these political activities while they are being compensated by the district or otherwise using district funds.

Other activities, such as distributing leaflets or making speeches, may cause disruption to the workplace, violate board policy or cause intimidation or harassment to other employees. The board as an employer has an interest in avoiding disruption to the workplace and preventing the intimidation or harassment of its employees. Also, if the employee is engaging in political activities during their working hours instead of performing work, the school district could take disciplinary action.

Can the school board prohibit a teacher from sharing their personal political viewpoints with students during instructional time?

Yes. The U.S. Supreme Court has stated that when public employees make statements pursuant to their official duties, they are not speaking as public citizens for First Amendment purposes, and their comments are not isolated

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from regulation by the employer (*Garcetti v. Ceballos*, (2006) 547 U.S. 410). Since teachers making statements during instructional time are speaking pursuant to their official duties, the First Amendment does not protect their comments. As a result, boards may adopt policies that prohibit employees from discussing their personal political views with students during instructional time.

May a teacher teach about political or controversial topics in class?

Teachers face particular challenges when they are teaching about political or controversial topics in class. Those discussions require them to navigate the difficult line between providing information and advocating for a particular view. Teachers must ensure that they are delivering the curriculum without indoctrinating students with their own political beliefs.

May a teacher wear a political button, pin or T-shirt in the classroom?

The U.S. Supreme Court has stated that a school may refuse to sponsor speech that might reasonably be perceived to “associate the school with any position other than neutrality on matters of political controversy” (*Hazelwood Sch. Dist. v. Kuhlmeier* (1988), 484 U.S. 260). On this basis, a school board may adopt a viewpoint-neutral dress code policy that prevents its employees from wearing political buttons, pins or T-shirts at work during work hours. Enforcement of the policy would avoid creating an impression that the district endorses a particular party or political view.

School districts must take special care when addressing employees’ rights to display pro-union messages in the workplace. Public employees generally have the right to wear union insignia and display pro-union messages on shirts, badges or buttons at work. Attempts by the board to impede this right could constitute an unfair labor practice. Boards of education are encouraged to contact their board counsel for additional guidance in this area.

May an employee send home political communications drafted by a third party or use the district’s email system for political purposes?

Generally, no. Employees should not use public resources or engage, while they are being compensated by the district, in activities that support or oppose the nomination or election of a candidate for public office; the investigation, prosecution or recall of a public official; or the passage of a levy or bond issue. The auditor of state has stated that using or directing district staff to send home these types of communications would be considered an impermissible use of school resources.

If the communication does not support or oppose the nomination or election of a candidate for public office; the investigation, prosecution or recall of a public official; or the passage of a levy or bond issue, an employee’s ability to send home the communication is likely governed by board policy. These policies may regulate the manner and mode of distribution or place other limitations on the distribution of such communications. District employees should review these policies prior to distributing any materials.

May an employee be disciplined for their off-campus speech (for example, posts on social media or criticizing the district in a letter to the editor)?

It depends. Whether an employee’s speech is entitled to constitutional protection is examined on a case-by-case basis. If the speech was not made by the employee in the course of performing their official duties, the analysis typically starts with a determination of whether the statement constitutes speech on a matter of “public concern.” If it does, the facts of the case should be reviewed to determine whether the employee’s interest in commenting upon the matters of public concern outweigh the interests of the employer in promoting the efficiency of the public services it provides. In making this determination, some of the key considerations are whether the employee’s statement:

- impairs discipline by superiors or harmony among co-workers;
- has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary;
- impedes the performance of the speaker’s duties or interferes with the regular operation of the enterprise;
- undermines the mission of the employer.

Because these cases are so fact-specific, boards of education are encouraged to contact their board counsel prior to disciplining employees for their off-campus speech.

May an employee run for school board in the district where they are employed or hold another political office?

State law specifically prohibits school board members from being employed by the districts they serve. Although a district employee may run for school board, they would need to step down from the district employment position if elected.

Whether an employee may hold another political office depends on the compatibility of the two positions. The Ohio attorney general’s office has issued many opinions that address the compatibility of various public offices and positions. Those

opinions are available online at
www.ohioattorneygeneral.gov.

The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.