



# Regulating political activities of school employees

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*The ability to express political ideas and gather with other citizens and engage in political activity are among the freedoms that American citizens protect zealously. However, these rights are not boundless, particularly in a public workplace like a school. School boards and district administrators sometimes struggle to balance these basic rights and the need for a calm, safe and respectful workplace. 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. The information 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?**

Yes, if the activities (for example, distributing leaflets or making speeches) 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 his or her working hours instead of performing work, the school district could take disciplinary action.

## **Can the school board prohibit a teacher from sharing his or her 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 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

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For more information on this subject, please contact OSBA's Division of Legal Services

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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.

Under the National Labor Relations Act, employees have a “presumptive right” to wear union insignia and to display pro-union messages on shirts, badges or buttons while working. School boards may be able to overcome this presumption by demonstrating that “special circumstances” justify the prohibition. Boards of education are encouraged to contact their board counsel for additional guidance in this area.

### **May the district restrict access to school district email systems for political purposes?**

School boards may implement policies that prohibit employees from using the school’s mail system or email network for campaign or political reasons provided the policies are reasonable and viewpoint neutral. For example, a school board’s acceptable use policy could limit the use of its computers and email system to school-related purposes.

### **May a teacher send home political communications drafted by a third party?**

The distribution of materials 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 criticizing the district in a letter to the editor?**

Whether an employee’s speech is entitled to constitutional protection is examined on a case-by-case basis and typically focus on three things:

- whether the speech jeopardized the employee’s relationship with immediate supervisors or coworkers, impeded classroom performance or interfered with school operations;
- whether the speech in question was motivated by a matter of “public concern” or by a personal concern of the employee;
- whether the speech was made by the employee in the course of performing his or her official duties.

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 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, he or she would need to step down from the district employment position after winning the election.

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](http://www.ohioattorneygeneral.gov).

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