

SCHOOL LAW GROUP

WALKING THE LINE ON
STUDENT WALK-OUTS

In the wake of the recent school shooting at Marjory Stoneman Douglas High School in Parkland Florida, students across the U.S. are planning to stage walk-outs in protest of gun violence on March 14, 2018. School districts should be aware of the potential legal issues when it comes to restricting or regulating student walk-outs and other non-violent demonstrations. Students' First Amendment rights to expression have to be balanced against the school's right to operate efficiently, effectively and safely.

The seminal case addressing First Amendment speech of students in school is *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* The U.S. Supreme Court held that districts can limit student speech if the "students' activities would materially and substantially disrupt the work and discipline of the school." 399 U.S. 503, 511 (1969). Districts should keep this legal standard in mind when determining whether to attempt to restrict or limit student speech or expression when it comes to walk-outs or student protests.

Some things that you should consider if a walk-out or other demonstration is planned at your school include:

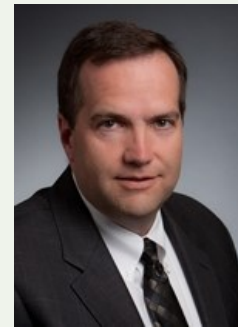
- Find out the time, date, length and location of the event if possible.
- Determine whether students actually intend to walk-out or whether they plan to have a sit-in. The nature of the activity impacts the response, because if the activity does not materially and substantially disrupt the school's operations (such as wearing armbands which was the case in *Tinker*) then the activity should be allowed.
- Meet with interested parties such as students, staff, parents, law enforcement officers and community members. Engage all stakeholders to the greatest extent possible.

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- Inform all interested parties as to the district's planned response with regard to participating students.
- Determine whether any consequences will be imposed on participating students. Make sure any consequences comply with the District's policies, past practices and legal requirements. Make sure that consequences are related to the act of missing class or disrupting class, or bad behavior during the demonstration, rather than the act of participating in the protest. Make sure that any such consequences are applied consistently and not in any way influenced by the student's viewpoint.
- Determine whether participating students will be marked with an unexcused absence.
- Determine whether students will have a chance to make up any work that is missed.
- Determine what role staff or administrators will have in supervising students engaged in the walk-out.
- Decide how to address safety concerns with younger students leaving the premises during the school day.
- Inform all school staff of the district's plans as to the demonstration and what is expected of school staff during the demonstration.
- Consider whether to use the walk-out as teaching opportunity in the classroom or school-wide.
- Determine whether the staff will report the absence of the participating students to parents.
- Communicate with law enforcement to ensure that the safety of the school community is maintained.
- Determine whether to allow and how to address members of the public who come to the school campus in hopes of participating in the walk-out.

The district must determine whether the demonstration is substantially disrupting the work and discipline of the school and, if so, what steps can be taken to regulate the walk-out. Schools should be very careful not to threaten suspension or expulsion of students solely due to their participation in a non-disruptive walk-out or protest. Additionally, it is important to remember that the way you treat one walk-out will create a precedent for future walk-outs or protests. We recommend that you contact your school attorney to assess the legality of any limitations or consequences placed on students' walk-out participation.