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Iowa

TO: ALL IOWA PUBLIC SCHOOLS

Delivered by email to all Superintendents

March 12, 2018

Re: The First Amendment and Student Walkouts

Dear Superintendent:

We know that as students around the country plan walk-outs and other expressive activities to protest gun violence on March 14, April 20, or at other times, you and your colleagues at public schools across the state of Iowa are faced with options in deciding how to respond.

This is a formative time for many students, as they learn that in our democratic system of government, their voices matter, and when they come together to engage in civic dialogue, they can impact public policy. For them, this a moment when this fundamental lesson in American civic responsibility that you've been teaching them in the classroom can come to life.

Here in Iowa, home to the famous *Tinker* case, this lesson is all the more meaningful.

In *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, the United States Supreme Court defined how the pure speech of students in public schools is protected by the First Amendment. 393 U.S. 503 (1969). In *Tinker*, Des Moines, Iowa students protested the Vietnam War by wearing black arm bands to school. *Id.* They were suspended for their actions and sued the school district. *Id.* With the help of the ACLU of Iowa, they took their case all the way to the Supreme Court, which held that “[i]n the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.” *Id.* at 511.

The Court in *Tinker* articulated the fundamental and enduring principle that students do not simply “shed their constitutional rights to

freedom of speech or expression at the schoolhouse gate.” *Id.* at 506; *see also Morse v. Frederick*, 551 U.S. 393, 406 (2007); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681 (1986). Rather, “students in school as well as out of school are ‘persons’ under our Constitution . . . possessed of fundamental rights which the State must respect.” *Tinker*, 393 U.S. at 511.

We hope you will see this as an opportunity to support students in becoming active and engaged members of their community, whether you or other adults agree with them or not.

Of course, you must respond to the student protests within the law, by not punishing them more harshly because of their speech than you would the same absence that was not part of a protest. To help you in this effort, I’ve attached three key guidelines for appropriate responses within the First Amendment.

We are also asking that you go further and seize this moment to teach students about the power their voices have, and to encourage them to peacefully assemble and use their voices for change rather than discourage them. By doing so, you help to ensure the health and vitality of our democracy for a generation.

Here are our 4 recommendations:

(1) Interpret absentee policies liberally to allow students to attend demonstrations.

Our laws and policies implicitly recognize that missing a day or two of class will not destroy a student’s education. Students are typically allowed to skip school for religious holidays, doctor’s appointments, and family events. Attending a demonstration should be viewed as an equally valid reason to miss school occasionally.

(2) Ensure that policies regarding on-campus speech provide ample chance for public discussion.

Students may wish to express their views while on school grounds in a variety of ways – from rallying at the flagpole before school, to distributing literature, to wearing t-shirts. While schools may regulate this speech to prevent disruption of education, they should remember that this sort of discussion is also educational, and tread lightly on student’s political expression.

(3) Foster discussion among students with differing views.

Students are highly motivated to find ways to prevent school shootings. But they will inevitably have different opinions about how best to do that. Teach students the skills to argue persuasively for their viewpoint, to listen respectfully to other views, and to be open to changing their minds. Demonstrate equal respect for students who choose to attend demonstrations and students who choose not to do so.

(4) Teach students about the history of student protest and activism to shape our country.

The current wave of student activism is part of a rich American tradition. Teaching students about the movements for the abolition of slavery, women's suffrage, civil rights, and other causes will enhance students' experiences and help to inform their decisions about how best to effect change in the world.

I thank you for your public service to your schools and communities, and urge you treat students' views and activism with respect and care.

Sincerely,



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Encl: Protecting Students' Free Speech at School



PROTECTING STUDENTS' FREE SPEECH IN SCHOOL

Students' free speech rights must be "scrupulously" protected if we are to have any hope of "educating the young for citizenship" not to "discount important principles of our government as mere platitudes."

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943)

To the extent that students are contemplating walking out during class to protest, both educators and students should keep in mind the following **THREE Constitutional principles**:

1. **PUBLIC SCHOOL STUDENTS HAVE RIGHTS to FREEDOM of SPEECH and EXPRESSION.**

Both students and teachers have First Amendment rights, applied in light of the special characteristics of the school environment. The United States Supreme Court has long held that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969)

2. **The U.S. CONSTITUTION PROHIBITS VIEWPOINT DISCRIMINATION.**

The First Amendment to the U.S. Constitution prohibits school officials from engaging in viewpoint discrimination or punishing students because of their expression. That means that to the extent that being absent from school to join a nationwide protest is considered an unexcused absence, such unexcused absences must be treated just like other unexcused absences. The consequences for a student who engages in civil disobedience by missing class to attend a protest must be the same as a student who misses class to go to the mall.

3. **"MATERIAL" or "SUBSTANTIAL" DISRUPTION MAY BE PUNISHED.**

Schools may only punish speech or expression at school if it has a "material" and "substantial" disruption on school activities or interferes with other students' rights. Decades ago, courts held that it was wrong for a school to categorically punish any student who wore "Freedom Buttons" to school during the civil rights movement without evidence that it would actually materially or substantially disrupt school activities.

See *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966); *Tinker*, 393 U.S. at 505 n.1
(citing *Burnside* with approval)

Not all classroom walkouts will have a "material" or "substantial" disruption on school activities. We encourage teachers to plan for any silent classroom walkout so that it does not materially or substantially disrupt their classes.

In other words, while a school may punish students for missing class on equal terms as it might punish students for any other unexcused absence, it would be constitutionally questionable to preemptively and categorically impose additional punishments for the mere act of walking out of class without evidence of material and substantial disruption.

To learn more about the ACLU of Iowa, go to www.aclu-ia.org.

To learn all about the rights of public school students, including free speech rights, go to <https://www.aclu-ia.org/en/student-handbook>.