



#NeverAgain? How Schools Should Respond To Student Protests

Insights

6.01.18

After the February 14 tragedy at Marjory Stoneman Douglas High School in Parkland, Florida, students began to organize like rarely before to protest gun violence in schools. Protests such as school walk-outs and “die-ins” began popping up across the country as many students used social media to help organize these protests on a more widespread scale. This #NeverAgain movement shows no signs of slowing down, forcing schools to determine how they can, and whether they should, respond to such protests at their own schools.

Public Schools Have Unique Requirements

The potential options for responding to student protests will initially depend on whether the school is public or private. If a public school is at issue, the First Amendment will control the extent to which you can attempt to curb such protests. Specifically, students have the right to free speech just like any other American.

The U.S. Supreme Court looked at the issue of student protests in the 1969 case of *Tinker v. Des Moines Independent Community School District*. That case dealt with students who had been suspended for a week after they wore black armbands to protest the Vietnam War. The Court famously ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” In so doing, the Court upheld a student’s freedom of speech rights, which include a right to protest while at school.

However, this is not to say that public schools cannot impose some limitation on students’ free speech rights. Just as yelling “fire” in a crowded theater has been cited as unprotected speech, schools likewise can continue to restrict speech likely to cause a substantial disruption of or material interference with school activities, or where the student speech is being viewed as school-sponsored.

Student led walk-outs could cause a substantial disruption with school activities, particularly if they take place during a time when students would otherwise be in the classroom (as opposed to before or after school or during lunch breaks). Accordingly, that form of speech would not be deemed protected by the First Amendment in the same way that non-disruptive speech would be (such as wearing armbands or engaging in non-disruptive debates between classes).

However, it could still be problematic to punish students for skipping class for political reasons, but not if they skip class for other reasons. For activities that fall somewhere in the middle on the disruptive scale, public schools should proceed with caution in deciding whether to discipline a student. The legality of such discipline will be extremely fact-specific.

Private Schools Have Greater Leeway

For private schools, the options for handling student protests are much more flexible because the First Amendment issues will not control. Instead, private schools should first simply consider their own internal policies and student handbooks to determine the appropriate response and discipline, if any, depending on the situation.

Public Attention

Regardless of whether your school is public or private, any preemptive restriction on protests, or discipline handed out for engaging in protests, can very quickly attract substantial negative attention from both the mainstream media and from social media. For example, some of the student leaders from Parkland, Florida already have hundreds of thousands of followers (or more) on Twitter. A negative post by such a student regarding a school's blanket prohibition on gun-related protests can easily go viral. In fact, some school districts have already had to deal with fallout from similar situations.

Accordingly, the fact that such actions could result in unwanted attention for your school and faculty should be taken into consideration when determining a best course of action. For instance, a statement that any involvement in a school protest will automatically lead to suspension is likely overly broad to begin with, and more likely to garner widespread attention. On the other hand, handling such issues on a case-by-case basis and taking disciplinary action only when the behavior is truly disruptive will be less likely to attract outside scrutiny.

In fact, some schools have come out publicly to support students who wish to peacefully protest. If protests are carried out in ways that minimize disruption to the school day, this tactic may be something for your school to consider. Some are also choosing to use their students' interest in the current protests to discuss and encourage overall civic engagement, and are ensuring that students who wish to hold a walk-out have a safe and supervised space within which to walk.

On this same note, more than 250 colleges have already released statements stating if students receive disciplinary action because they participated in peaceful protests, it will not hurt admission to their institution. In other words, there is a fair amount of public support in favor of peaceful protests, including protests by students.

Conclusion

Where substantial disruption may result from student protests, public school officials should refer the matter to school administrators to assess appropriate handling of the situation. As noted above, private institutions may choose a different course of action given the lack of constitutional implications. While keeping in mind some practical considerations, all schools should take into

implications, while keeping in mind some practical considerations. Attorneys should take into consideration the obvious differences involved depending on whether the protest at issue is peaceful and non-disruptive, such as the armbands in the *Tinker* case, or a protest that would greatly disrupt the learning environment.

For more information, contact the author at LMcGlynn@fisherphillips.com or 813.769.7518.

Related People



Lisa A. McGlynn
Partner
813.769.7518
Email

Industry Focus

Education