



A Day Off To Protest?

Insights

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Thanks to a landmark move by their school board, students in Fairfax County public schools in Northern Virginia will now be allowed one day off per school year to engage in “civic engagement activities.” This move, which essentially permits an excused absence for protest activities, has been both praised and criticized. But should your school consider following suit?

The Details

Fairfax County represents one of the largest school districts in the country with approximately 188,000 students. Its school board members said they instituted the change, which provides each student in 7th through 12th grades with one excused absence a year for protest activities, as a response to a wave of student activism. While “civic engagement activities” are not precisely defined, School Board member Ryan McElveen suggests that the activities could include things such as attending marches, sit-ins, or trips to lobby lawmakers. The policy just went into effect on January 27, 2020, so the contours are still being worked out. Students wishing to take advantage of the policy must fill out a form at least two days ahead of their planned absence providing the reason for absence. They must also obtain permission from a parent or guardian.

Some have criticized this move as being too liberal, or inappropriate in general for students who might be better served by being present at school. However, while Fairfax County is the first school system to put such a policy into place, others have at least considered it as an option in recent years.

Further, a multitude of colleges have openly released statements saying if students receive disciplinary action from their high schools because they participated in peaceful protests, it will not hurt admission to their institution. In other words, there has been a growing trend towards acceptance of student protests.

Student Activism: The New Normal?

This is perhaps not surprising considering the level of attention student activism has received both in the mainstream media and in social media. In particular, youth protests in regard to subjects such as gun control soared following the shooting at Marjorie Stoneman Douglas High School in Parkland, Florida in 2018. Students began engaging in activities such as school walk-outs and “die-ins” which spread rapidly through social media including the use of hashtag #NeverAgain. Likewise, young activists like Greta Thunberg have actively encouraged students to engage in civic displays such as participating in school strikes to protest climate change.

These high-profile protests have led schools and school districts across the country to consider how best to respond. While some, like Fairfax County, appear to be embracing this age of student protests, other schools may want to be aware of their ability to limit protests.

How Should Schools Respond To Student Protests?

While most schools across the country do not have a policy which affirmatively grants an excused absence for protesting students, public schools in general should be aware that the First Amendment will control the extent to which schools can attempt to curb such protests. In the 1969 case *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court *considered students who had been suspended for a week after they wore black arm bands to school 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” and that they do have the right to protest while at school. However, schools continue to have the ability to restrict speech that is likely to cause a substantial disruption of or material interference with school activities (such as a walkout during classroom hours as opposed to simply wearing a black armed band), or where the student speech is being viewed as school-sponsored.*

Private schools have more flexibility when it comes to dealing with student protests because the U.S. Constitution does not apply to a private entity’s activities or policies. Instead, when deciding whether and to what extent student protests will be tolerated or result in discipline, private schools should look towards their own policies.

Further, schools have also found that whether they are deemed too harsh on protests or (like Fairfax County) unusually accepting of them, any policy they follow can very quickly attract substantial negative attention. Accordingly, the fact that any 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 this reason, handling issues involving student protests on a case-by case basis will certainly be less likely to attract outside scrutiny than an overreaching policy announcement.

Conclusion

In today’s age of social media and student activism, schools should consider what their stance on student protests is or will be. It is possible that more school districts will begin to follow Fairfax County’s lead to create a path towards acceptance, and even encouragement, of student protests. In the absence of any controlling policy in your area, school administrators in public schools should assess how to handle situations of student protests that could lead to serious school disruptions. Private schools have more flexibility in deciding their response to school protests.

However, all institutions should be aware that decisions become public quickly and can attract unwanted outside attention, especially when the protest at issue is deals with a “hot topic” such as gun control or climate change. If you have any questions about how to respond to student activism at or affecting your institution or wish to discuss an appropriate response or policy regarding protests or other civic engagement activities, please contact your Fisher Phillips attorney or any member of our Education Practice Group.

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