



# Calm Waters Run Deep: 10 Action Items to Help Your School Face the Rising Tide of Political Discourse

Insights

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Yes, we are still talking about this. Despite facing what feels like a rising tide of political discourse in our communities for years, we continue to hear concerns about how schools can balance fostering academic freedom, general fulfillment, and community understanding at the same time. You are likely seeing a lot of political discourse on campus and in your school community wherever you are located, from how certain concepts can be taught to what pronouns can be used in schools – and this will no doubt continue in 2024. This Insight will cover some common themes and legal implications to keep in mind, followed by 10 action items to proactively reduce tensions, avoid problems, and respond if (when) they arise.

## **“I Have Free Speech Rights under the First Amendment!”**

Many employees, parents, and students believe they have “free speech rights” to speak their minds – including at school. But that does not manifest the way most people think. The First Amendment protects *citizens* against *government* action limiting speech. For private employees and students, very little speech is protected because private schools are not state actors.

Private schools may generally regulate political expression as they would other forms of disruptive communication in the school community. One potential exception is to the extent the speech at issue is protected by Section 7 of the National Labor Relations Act, which applies to all employees in the private sector, regardless of their union or union-free status.

Section 7 gives all employees the right to act together for purposes of collective bargaining or other mutual aid or protection. The NLRA recognizes that employers have a right to regulate speech during work time so long as that regulation does not encroach on employees’ Section 7 rights. For example, employees are generally free to discuss political positions on wages and to attend rallies or marches in support of work-related issues like the living wage movement, even if not directly applicable to the employee’s own workplace.

## **“A Vote for this Candidate Will Most Positively Impact Our School.”**

“Get out the vote” campaigns are increasingly common. While simple encouragement to vote is typically low-risk, the level of risk increases greatly if the message could be perceived as suggesting how someone should vote or if the conversation strays into other political issues. You

suggesting how someone should vote or if the conversation strays into other political issues. You should ask your staff to seek the school's approval before sharing even a neutral "vote" message and urge faculty to collaborate if teaching about voting.

Both state and federal laws impact (or outright prohibit) making voting recommendations depending on the context. Even in a state where an employer can make recommendations, it is always illegal to coerce an employee to vote a certain way.

Because the line between a recommendation and coercion is a thin one (when someone is dependent on your school for their livelihood), you should err on the side of caution. Think twice before firing or taking any adverse action against an employee in connection with voting, and actively avoid the appearance of coercion.

While New York and California are particularly employee-friendly when it comes to political activity, you should be careful in every state and consider local laws, too. Also, remember that most states guarantee an employee time off to vote if needed – sometimes even with pay. Be sure you know the voting laws in your states of operation as they impact both employees and students.

## **10 Action Items**

So, how do we find common ground and avoid the negative impacts of a divided community? Everyone – administration, faculty, staff, parents, and students – need to be reminded of the school's rules, the necessity of respect in the school community, and the importance of productively advancing education. Just because you can point to your social media policy, anti-bullying policy, etc. does not mean your community will think about how political conversations can also run afoul of those policies.

As usual, your policies apply when an employee is working or interacting with co-workers, students, or parents regardless of where and how the work is being performed. The same is true for parents and students interacting with each other even when not on campus.

At a minimum, be sure these 10 action items are considered:

1. Remind all employees, parents, and students about applicable policies (such as your anti-discrimination and anti-harassment policies). Consider offering extra training to reinforce your message and adding specific examples of inappropriate conduct to your policies. You may find conversations with employees, parents, or students about these topics easier if you have policy language specific to political speech.
2. Train your administration, or even faculty, on how to interrupt conversations that may be problematic and put the focus back on the school's mission. They should emphasize productivity and educational concerns rather than the nature of the speech, unless it is serious.
3. Teach your administration about the relationship between political activity and protected activity under the NLRA.

4. Evaluate your existing policies. Do they inadvertently infringe on NLRA rights, especially in light of recent changes in the law? In particular, review your social media policy to determine if it is lawful.
5. Encourage employees and students who feel uncomfortable to speak up. Clearly describe multiple avenues for complaints to ensure that individuals feel comfortable reporting any issues.
6. Remind everyone of the consequences of disrespectful behavior and follow through with consistent counseling and discipline.
7. Check your state and local laws for rules about politics in the workplace or as it relates to students. Not all states treat these issues equally.
8. Remind everyone that while they are entitled to their political opinions, those opinions should generally not be expressed at school, whether at an extracurricular event, during the school day, or online where the school community can see it.
9. Remind your administration about exposure risks if they commit a misstep, both from a legal perspective and in terms of public relations damage.
10. Get a legal opinion about messaging on difficult topics. For some situations, you may want to discuss with impacted individuals one on one and others may merit a larger announcement. Given how common issues that relate to politics and the law are misunderstood, it does not hurt to have more than one person thinking about the implications – and fact checking what you have heard.

### **What If You Want to Facilitate a Larger Discussion?**

Some schools may find that their culture supports an environment of open dialogue and respectful exchange of ideas on potentially divisive subjects. While this can certainly be a slippery slope, you can support employees (or students) sharing their stance on contentious issues – in the right environment and with the right guardrails, of course.

While it is legal for you to bar political speech at school, what is legal may still be bad for education or morale. Restrictive rules on politics and social discourse could turn off potential new families or lead to an outcry for more political speech at school. In our highly political and digital age where many people expect to have a public dialogue on political, social, and moral issues, you may need to collaborate with your administration at all levels to determine what's right for your school.

### **If (When) Someone Complains...**

When you receive a complaint about politics, political issues, or voting, be ready to respond appropriately. Track, document, and investigate complaints. Make sure the employee or student who made the complaint receives general status updates on your investigation. This is not the time to think “this will be over soon and everything will go back to normal.” Consider whether your policies

have been violated and determine the appropriate response. Remember: no response is never the right response.

You should plan in advance how to address political activity such as apparel buttons (or stickers) that champion causes or support candidates, get-out-the-vote campaigns, inviting others to partisan events or inviting politicians to school, members of your community who are political candidates, hallway discussions about the latest sound bite or debate, bumper stickers, sharing of political memes, jokes, or banter, social media posts, charitable campaigns with inadvertent ties to political issues, and a whole host of similar activity.

Be sure your faculty is trained and equipped to manage such issues or trained to escalate these matters to a designated response team. And come election day or other days with heavy political activity, be prepared for reduced productivity. Plan now to allow employees any needed time off to vote without actual or implicit barriers and be sure to comply with state and local laws on voting time – and sometimes even voting pay.

## **Resolving Conflict In The Workplace: Interactive Training Session**

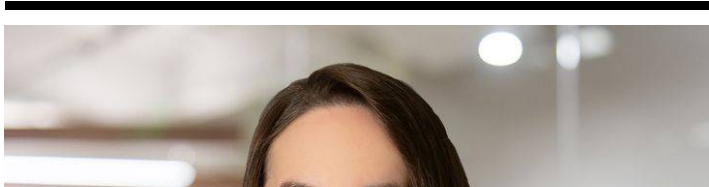
Is your school prepared to handle the tensions in the workplace related to freedom of speech? Do your supervisors know how to handle these difficult conversations that may be caused by the pandemic, social justice issues, and the upcoming election? Do your teachers know how to respond to student discourse on these topics? Do you have appropriate policies in place to foster an environment of dignity and respect in your community? If not, your school could pay the price in terms of potential litigation, low morale, lost productivity – even violence. So what can you do?

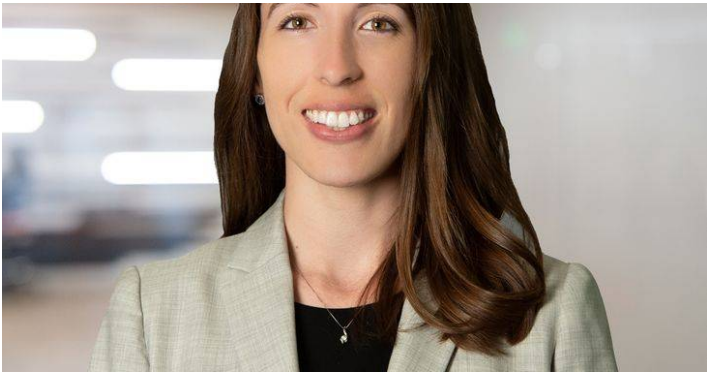
Train. We can help. We can collaborate with you to design a customized, interactive training session that will help your administrators successfully handle tough societal issues that are impacting both staff and students. These issues are likely causing tensions now and will almost certainly increase through the rest of the school year. Don't get caught unprepared.

If you are interested, please contact your Fisher Phillips attorney, the author, or any member of our Education team for more information.

Fisher Phillips will continue to monitor any further developments in this area as they occur, so make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information.

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