

CAMPAIGN DOs AND DON'Ts

PRACTICAL TIPS FROM FAGEN FRIEDMAN & FULFROST
AND THE CALIFORNIA CITY SCHOOL SUPERINTENDENTS (CCSS)



EDUCATE, DON'T ADVOCATE

Generally, the governing board of a school district is empowered to provide voters relevant facts and to aid them in reaching an informed decision when voting on a political issue. A school district may not expend funds or resources to promote for one side or the other on a political position. However, the line between education and advocacy is often murky, and often the questions that arise are highly fact specific. This guide will help district employees to properly navigate political campaign issues safely and effectively.

Protecting Free Speech – Campaigning On Public School Grounds

Free speech, including the right to advocate, peacefully demonstrate and campaign, is one of our nation's core founding principles of democracy. However, public agencies like school districts must remain neutral and the free speech rights of public employees and public officials are sometimes limited by rules and regulations. The basic principle supporting these limitations is that public resources, including public facilities, may not be used to advocate for one side or the other in the political process.

Laws and policies are in place to help ensure that free speech does not:

- Compromise individual rights to peaceful working conditions. Essentially, the rules of the road are that you must avoid creating a situation where people feel threatened, bullied or coerced into agreeing with a point of view.
- Create a conflict of interest. The regulations are in place to ensure that self-interest or official position does not unduly influence the public discourse on a matter.
- Cause any expenditure of public agency resources to advocate for or against any side in an election.

Education Code sections 7050 through 7058 provide the rules of campaigning and political activity of employees.

DOs and DON'Ts

WHAT EMPLOYEES CAN DO

- Prepare studies and information regarding the needs of schools and the programs and activities provided by the school district.
- Provide a public forum for discussion that is equally available to all sides in a campaign.
- Distribute information for voters that is fact-based and does not advocate.
- Stress the importance of voting; encourage people to study the topic(s) and cast their votes, without advocating how to vote.
- Explain to district employees that employee time constitutes a public agency resource, and that school districts are prohibited from expending school district resources on political matters.

WHAT EMPLOYEES CANNOT DO

- Use school district resources, funds or equipment to create advertisements or promotional material, such as bumper stickers, signs, buttons.
- Act in their official capacity to support or oppose a political issue. (Very limited exceptions apply, as noted on next page.)
- Instruct or allow school district employees to campaign on behalf of a political issue during a paid working day.
- Distribute campaign literature using school resources, such as email lists, or other facilities.

THIS GUIDE IS A SUMMARY ONLY AND NOT LEGAL ADVICE. WE RECOMMEND THAT YOU CONSULT WITH LEGAL COUNSEL TO DETERMINE HOW THIS MAY APPLY TO YOUR SPECIFIC FACTS AND CIRCUMSTANCES.

©2023 Fagen Friedman & Fulfroft LLP. All rights reserved. No portion of this work may be copied, sold or used for any commercial advantage or private gain, nor any derivative work prepared therefrom, without the express prior written permission of Fagen Friedman & Fulfroft LLP through its Managing Partner. The Managing Partner of Fagen Friedman & Fulfroft LLP hereby grants permission to any client of Fagen Friedman & Fulfroft LLP to whom Fagen Friedman & Fulfroft LLP provides a copy, to use such a copy intact and solely for the internal purposes of such client.

FREQUENTLY ASKED QUESTIONS

Posting Signs and Promotional Materials

Q: May we post political messages to the employee bulletin board?

A: "No." Brochures and tangible material may not be posted to employee bulletin boards if it advocates for or against a ballot measure or candidate.

Q: May we wear buttons featuring political messages during the workday, at school events?

A: "Yes" but with limits. As a matter of free speech, so long as any button or apparel does not disrupt education, public employees are allowed to wear buttons featuring political messages during the school day or at school events. However, individuals are cautioned against advocating for or against a political issue during the working school day.

Practical Pointer

If you know a group will be advocating/campaigning aggressively, for example the union might be promoting a state ballot measure, consider meeting with the group's leadership team to review the laws and your organization's policies. This will help avoid the appearance that the district is stifling free speech rights.

Before and After School

Q: May we distribute materials, which were not created using any district resources, before/after school and at school events such as back-to-school night, sports?

A: Generally, "No." If a district or employee is at a school event in his or her professional capacity, he or she is likely on "district time" and therefore may not distribute political material or advocate. In that setting, only neutral, fact-based information may be provided. District administrators, including school site administrators, should be careful not to pressure school personnel into participating in any campaign effort.

Endorsement, Advertising and Public Presentations

Q: May district employees and board members endorse initiatives and/or candidates?

A: "Yes," so long as it occurs after work, not on school grounds and does not involve any school resources. Employees and board members may NOT endorse initiatives or candidates when speaking in their official capacity. However, as private citizens, each individual is entitled to advocate freely. Despite this limitation, a Board may vote, during a properly noticed board meeting, to support or oppose a ballot measure that may affect the agency. The district resources used to prepare the resolution, place it on the agenda and time to debate it, etc., are not considered an improper expenditure of district resources.

[See Choice-in-Education League et al, Plaintiffs and Respondents, v. LAUSD et al, 17 Cal. App. 4th 415 (1993)]

Q: Can the board legally direct the superintendent and staff to remain silent on a matter before the voters?

A: "No." The Board may not instruct school district employees on how they might act as private citizens when not on "work time." The Board may, however, set guidelines for conduct during the work day.

Q: May a candidate or campaign committee purchase space in a school district publication?

A: "Yes," so long as the forum is available to all sides on an equitable basis, a school district publication may be used. However, use of a publication for campaign purposes must not constitute use of district resources, and must be compensated accordingly. Further, by allowing a candidate to purchase space, the District must allow all sides of a campaign to participate, effectively opening the doors for any number of unforeseen voices. We would recommend against permitting the purchase of space in a school district publication for political reasons.

Q: May members of the public speak to an election topic/candidate during the public comments section of a general board meeting?

A: "Yes." The public is entitled to speak during the public comments section of a board meeting on an election topic/candidate. The Board should refrain from responding to any comments made during the public comments section of the meeting that would constitute advocacy for one side or the other.