

# CLIENT NEWS BRIEF

## Student Walkouts: What Your District Needs to Know

*This Client News Brief was updated on March 6, 2018.*

### UPDATE: California Department of Education Issues Guidance

The California Department of Education (CDE) and State Superintendent of Public Instruction Tom Torlakson released [guidance](#) on March 2 regarding student walkouts. Echoing the suggestions above, the CDE calls for schools to provide outlets for student political expression through classroom or school-wide discussions, as well as for proactive discussion with students and the school community regarding the consequences of a walkout. A walkout—unless students miss the entire instructional day—is also "unlikely" to lead to loss of funding based on Average Daily Attendance (ADA). The guidance also notes that schools may not recover a loss of funds related to walkouts through the emergency ADA (J13-A) approval process.

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The mass shooting at Marjory Stoneman Douglas High School in Parkland, Fla. has intensified the nationwide debate about gun control and school safety. Inspired by the activism of the Parkland survivors, students nationwide are engaging in walkouts and protests. Some have already taken place, while other, larger-scale walkouts are planned for March 14 and April 20. Reportedly, there are even plans for a walkout that will last until Congress acts on gun control legislation. The walkouts revive the question of whether student walkouts are subject to regulation by school officials.

In short, students have free speech rights at school, but school districts are permitted to regulate student conduct in violation of school attendance policies, including students' unexcused absences for participation in student walkouts. School officials are best served to consider measures that will minimize the impact of student walkouts on student instruction and the educational environment, and may also wish to consider alternatives through which students can express their political and social views on important public issues.

### Student Free Speech Rights vs. Unexcused Absences

Schools have long been a forum for political activism, and the courts have laid down clear rules for school districts seeking to govern it. In *Tinker v. Des Moines*, the United States Supreme Court held that speech is allowed so long as it does not disrupt the educational environment. More recently, the Ninth Circuit Court of Appeals, in deciding *Corales v. Bennett*, held that school absences related to walkouts must be addressed in the same way as any other unexcused absence. (See [Lozano Smith 2009 Client News Brief No. 31](#).) *Corales* involved school officials' response to student walkouts in protest of pending immigration reform measures in California. The court ruled in *Corales*

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that a school's prohibition against student walkouts because they will result in student truancy is regulation of student conduct, not student speech. In other words, regardless of the political nature or subject matter motivating student walkouts or participation in public rallies, a school's anti-truancy policies and the regulation of those policies under applicable Education Code provisions is aimed not at the truant student's speech activities, but the student's required attendance at school absent an excused absence. As a result, the court held that students do not have a free speech right to leave school to participate in protests, and absences for this reason are not normally identified as excused.

## **Responding to and Minimizing the Impact of a Walkout**

In anticipation of planned protests and walkouts, school districts may wish to consider options to minimize disruption and ensure positive student and community relations. This could include involving cities, law enforcement, and other relevant agencies in planning meetings to address walkout or protest-related concerns. Consistent with *Corales*, school districts may mark student absences as "unexcused" when a student participates in a walkout. Regardless of the position a district or its governing board takes on the issue of guns, if a district is considering marking student absences for participation in the anticipated walkouts "excused," such districts should take caution: To account for these anticipated walkouts as excused absences, but not take the same approach (in the past or in the future) when students participate in walkouts regarding other issues, may likely raise viewpoint discrimination concerns, i.e., endorsing one political position but not another.

Those school districts intending to treat student absences for any walkouts as unexcused should consider reminding students and parents in advance that attendance at school is mandatory and is only excused for reasons set forth in the district's Board Policies and Regulations, as allowed under Education Code section 48205. This may help to ensure that students and parents have a clear picture that absences for the purpose of attending a walkout will not be excused.

## **Discussing Controversial Issues at School**

Finally, apart from the rule and guidelines expressed by the court in *Corales*, student reaction and expression to the most recent school shooting and any related discussion regarding gun control may present school officials and instructors the opportunity to remind students of the importance of free speech rights and of respecting the views of those with whom they disagree. To that end, school districts may wish to consider the California School Board Association's model Board Policy 6144, entitled "Controversial Issues," which many California school districts maintain. That model policy provides a sound framework for appropriately addressing controversial issues with students in the classroom. Districts may also wish to consider planning community or school forums to allow for such discussions by students.

If you have any questions about student walkouts, or student free speech rights in general, please contact an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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