

LEGAL REFERENCES for BP 4219.25

EDUCATION CODE

7050-7057 Political activities of school officers and employees

38130-38138 Civic Center Act use of school property for public purposes¹

51520 Prohibited solicitations on school premises

GOVERNMENT CODE

3205 Political activities of public employees.

3543.1 Rights of employee organizations

COURT DECISIONS

San Leandro Teachers Association v. Governing Board (2009)², No. S156961, 209. Cal 3d 73

California Teachers Association v. Governing Board of San Diego Unified School District (1996)³, 45 Cal.App. 4th 1383

L.A. Teachers Union v. L.A. City Board of Education (1969)⁴, 71 Cal.2d 551

ATTORNEY GENERAL OPINIONS

84 Ops.Cal.Atty.Gen. 106 (2001)⁵

84 Ops.Cal.Atty.Gen. 52 (2001)⁶

77 Ops.Cal.Atty.Gen. 56 (1994)⁷

¹ Existing law, known as the Civic Center Act, authorizes a school district governing board to grant the use of school facilities or grounds as a civic center, for specified purposes, upon terms and conditions deemed proper by the governing board. Existing law authorizes a school district governing board to charge a fee, not to exceed the school district's direct costs, as defined, for use of the school facilities or grounds by entities that promote youth and school activities or that arrange for and supervise sports league activities for youths.

² The California Supreme Court found that a rule prohibiting the dissemination of literature that endorses a candidate in "school mailboxes is a 'reasonable regulation' within the meaning" of section 3543.1 of the EERA because such a restriction "enforces the directive of section 7054." PERB also rejected Association's argument that it was "simply 'informing' members" and found that Association was actually advocating on behalf of the candidates. PERB concluded that Association's recommendation of candidates was the same as an endorsement and was prohibited by section 7054, subdivision (a).

³ The district has the power to prevent its employees from wearing political buttons in its classrooms and when they are otherwise engaged in providing instruction to the district's students. On the other hand the district has no such power when its employees are not engaged in instructional activities.

⁴ During off-duty time, such as lunch hour, unions and teachers may engage in political activities such as circulating petitions while on campus, as teachers s are often required to stay on campus to be available in case of emergencies, and it is reasonable to allow them to engage in protected speech and activities during such time.

⁵ A school district may not prohibit teachers from wearing political buttons while attending Back-to-School Night, an annual event where teachers meet with parents to discuss the curriculum and related matters for the coming school year.

⁶ A school district or community college district is not prohibited from using district resources to implement, at the request of an employee organization, a voluntary payroll deduction program allowing employees to make monthly contributions to a political action committee established by the employee organization.

⁷ A school district may prohibit its elementary school teachers from wearing buttons expressing political opinions on statewide ballot measures during classroom periods.

PERB RULINGS

*Moberg v. Napa Valley Community College District (2018)*⁸, PERB Order #2563

*East Whittier Education Association v. East Whittier School District (2004)*⁹ PERB Order #1727

*Turlock Teachers Association v. Turlock Joint Elementary School District (2003)*¹⁰ PERB Order #1490Ea

*California Federation of Teachers, Local 1931 v. San Diego Community College District (2001)*¹¹ PERB Order #1467

Richmond Unified School District/Simi Valley Unified School District (1979) PERB Order #99¹²

MANAGEMENT RESOURCES

CSBA Legal guidelines: *Use of public resources for ballot measures and candidates (2011)*

School and Legal Services of California: *FAQ Regarding Political Activities by School Districts and District Employees*

WEB SITES

CSBA: <http://www.csba.org>

Office of the Attorney General, Dept. of Justice: <http://caag.state.ca.us/>

Public Employment Relations Board: <http://www.perb.ca.gov>

⁸ “Employees’ use of employer email outside of work time will be considered “protected” if the communication addresses an EERA-related topic. Such topics could include discussions of work hours, wages, and other terms and conditions of employment. The scope of protected communications as a result of this decision will likely be disputed in unfair-practice litigation for years to come.

PERB did *not* hold that employers must permit all non-work-related email use. For example, excessive purely personal use of an employer’s email system, or non-work email use during work hours, may still be prohibited and subject to discipline. Nor does this decision affect the prohibition in Education Code section 7054 on use of school or community college district funds or equipment to urge the passage or defeat of a ballot measure or political candidate.”

⁹ “The Board concludes that the prohibition of bargaining-related buttons violates EERA section 3543.5(a) and (b)...As it stated in Turlock, the Board does not agree that the wearing of union buttons is “political” activity within the meaning of Education Code section 7055. When examined in light of adjacent statutory provisions and the purposes of EERA, the scope of the definition of “political activities” in Section 7055 cannot reasonably be construed so broadly as to encompass the exercise of concerted activity through the wearing of a button communicating employees’ bargaining demands, expressing unity and support for the union, and building solidarity. Such a finding would fail to distinguish between the trustees’ role as the employer under EERA and their activity as candidates for elected office or as incumbents seeking preservation of their offices or reelection.”

¹⁰ “The wearing of union buttons is a protected right under EERA, absent special circumstances. [Where it is alleged that a button is distracting or disruptive, an objective examination of the button should take place.... Buttons that contain profanity, incite violence, or which disparage specific individuals will always meet the special circumstances test.”

¹¹ In this case, the Board determined whether and how the access provisions of section EERA 3541.3(b) are affected by Education Code section 7054. Specifically, whether Education Code section 7054 requires the District to refuse to actively distribute union political materials through its mail system, refuse to passively allow its mailboxes to be used to distribute union political materials, and refuse to print union political materials, even if reimbursed. PERB upheld a district’s assertion that the district’s internal mail system and employee mailboxes could not be used by an exclusive representative to distribute political and campaign materials.

¹² the Board found that EERA section 3543.1(b) grants organizations the right to use employer mail facilities, subject to reasonable regulation, and that interference with this right constitutes a violation of section 3543.5(a) and (b).

ADDITIONAL REFERENCES

NOTE: (these references would not be included in the BP – just here for BP subcommittee reference)

BUSD BP 1160 - Political Processes

The Board may establish reasonable regulations related to Board members and employees engaging in political activity during working hours and on district premises. (Education Code 7055)

The Board may discuss and study the potential effect of propose or qualified ballot measures on the district's schools at an open and agendized Board meeting. Any Board discussion of the effect of such measures shall include an opportunity for Board members, staff and members of the public to speak on all sides of the issue. Following such study, the Board may adopt positions or resolutions in support of or in opposition to ballot measures of importance to education. The Board's positions shall be publicized only through normal district procedures for reporting Board actions and in a manner that does not attempt to influence voters.

No district funds, services, supplies or equipment shall be used to urge the support or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

District resources, including email or computer systems, shall not be used to disseminate campaign literature or to purchase advertisements, bumper stickers, posters or similar promotional items that advocate an election result or urge voters to take any action in support of or in opposition to a measure.

The Superintendent or designee may use district resources to provide students, parents/guardians and community members with fair and impartial information related to ballot measures, including information about the impact of ballot measures on the district. (Education Code 7054)

In preparing or distributing such information, the Superintendent or designee shall ensure that the totality of the circumstances, including language, style, tenor and timing, does not advocate passage or defeat of a measure or candidate.

The Superintendent or designee may research, draft and prepare a bond measure or other initiative for the ballot, but shall not use district resources to influence voters, or otherwise campaign for the measure to in order to qualify the measure for the ballot. Upon request, Board members and district administrators may appear at any time before a citizens' group to explain why the Board called for an election on a bond measure and to answer questions. (Education Code 7054.1)

If the presentation occurs during working hours, the district representative shall not urge a citizens' group to vote for or against the bond measure.

Political Forums

Forums on political issues may be held in district facilities so long as the forum is made available to all sides of the issue on an equitable basis. (Education Code 7058)

ED CODE

Article 2. Political Activities of School Officers and Employees

The Legislature finds that political activities of school employees are of significant statewide concern. The provisions of this article shall supersede all provisions on this subject in any city, county, or city and county charter as well as in the general law of this state. (7050)

This article applies to all officers and employees of a local agency.

“Local agency” means a county superintendent of schools, an elementary, high, or unified school district, or a community college district.

Officers and employees of a given local agency include officers and employees of any other local agency whose principal duties consist of providing services to the given local agency. (7051)

No further restrictions may be imposed

Except as otherwise provided in this article, or as necessary to meet requirements of federal law as it pertains to a particular employee or employees, no restriction shall be placed on the political activities of any officer or employee of a local agency. (7052)

Use of office to influence political activity

No one who holds, or who is seeking election or appointment to, any office or employment in a local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any person, or to aid or obstruct any person in securing, or to prevent any person from securing, any position, nomination, confirmation, promotion, change in compensation or position, within the local agency upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. The prohibitions of this section shall apply to either urging or discouraging any political action of an employee. (7053)

Funds, services, supplies equipment; support or defeat of ballot measure or candidate

(a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met:

(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(c) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both, or imprisonment in a state prison for 16 months, or two or three years.

(Amended by Stats. 1995, Ch. 879, Sec. 2.) (7054)

Request for appearance

Nothing in this article shall be construed as prohibiting any administrative officer or board member of a school district or community college district from appearing at any time before a citizens' group that requests the appearance of the officer or board member for purposes of discussing the reasons why the governing board of the district called an election to submit to the voters of the district a proposition for the issuance of bonds and for purposes of responding to inquiries from the citizens' group. (7054.1)

Agency rules and regulations The governing body of each local agency may establish rules and regulations on the following:

(a) Officers and employees engaging in political activity during working hours.

(b) Political activities on the premises of the local agency. (7055)

Soliciting or receiving political funds

a) Nothing in this article prevents an officer or employee of a local agency from soliciting or receiving political funds or contributions to promote the support or defeat a ballot measure that would affect the rate of pay, hours of work, retirement, civil service, or other working conditions of officers or employees of the local agency. These activities are prohibited during working hours. In addition, entry into buildings and grounds under the control of a local agency for such purposes during working hours is also prohibited.

(b) Nothing in this section shall be construed to prohibit any recognized employee organization or its officers, agents, and representatives from soliciting or receiving political funds or contributions from employee members to promote the support or defeat of any ballot measure on school district property or community college district property during nonworking time. As used in this subdivision, "nonworking time" means time outside an employee's working hours, whether before or after school or during the employee's luncheon period or other scheduled work intermittency during the schoolday. (Amended by Stats. 1995, Ch. 879, Sec. 4.) (7056)

No discrimination because of political acts, opinions, or affiliations

No person who is in the classified service or who is upon any eligibility list shall be appointed, demoted, or removed, or in any way discriminated against because of his political acts, opinions, or affiliations. (7057)

Forum Nothing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to all sides on an equitable basis. (7058)

BCCE Contract Language

11.3.7 Election Leave

All full-time unit members on the day of every general, direct primary, or presidential primary election at which they may vote, are entitled to take two (2) hours off during their working day between the time of opening and the time of closing of the polls for the purpose of voting. Unit members who work less than full-time but greater than half-time are entitled to one (1) hour off for the purpose of voting. The Department Head or Supervisor may schedule such leave throughout the day to ensure essential program coverage. No penalty shall be imposed on such unit members and no deductions shall be made from their usual salary or wages on account of such absence.

Rules and Regulations of the Merit System Personnel Commission of the Berkeley Unified School District

60.1000 DISCIPLINARY ACTION AND APPEAL 60.1000.1 Causes for Suspension. Demotion, Dismissal (EC 45302)

A. Permanent employees in the classified service may be reprimanded, demoted or dismissed for any of the following causes provided that specific instances must be set forth as to any causes enumerated in the headings below....

10. Political activities engaged in by an employee during his/her assigned hours of employment.

60.1000.2 Procedure for Disciplinary Action

A. No employee in the classified service shall be reprimanded, suspended, demoted, dismissed, or in any way discriminated against because of his/her political or religious affiliations or race, color, sex, national origin or ancestry, or marital status or pregnancy, subject to the provisions of Paragraph A.3. Rule 60.1000.1

BFT Contract Language

5.3.4 The Union shall have the right to use the mailboxes for the purpose of communicating with teachers. Each school site shall provide one mailbox for substitute teachers. The Union shall have the right to the use of a separate bulletin board solely for the purpose of communicating with teachers. The mailboxes and bulletin board shall not be used for sending or posting of libelous material. Additionally, no Union material shall be distributed to students without the approval of the Superintendent.

5.3.5 Use of the Principals' staff bulletins for notification of Union meetings is granted to the Union President.

5.5 Use of District Facilities: The Board authorizes the Union to use the District's facilities and buildings at times other than normal working hours and hours of student instruction, so long as the Union submits the appropriate forms.

6.2 The Board shall not discriminate against any certificated employee with respect to assignments, transfers, wages, hours, leave or discipline on the basis of pregnancy, lifestyle, political affiliation, or membership in or affiliation with a teacher organization, or those set forth in section 6.1 above.

20.2 Teachers agree not to exploit their professional relationship with their students or knowingly permit any commercial or political exploitation of their students.