



## **CTA LEGAL ADVISORY REGARDING DEMONSTRATIONS AGAINST SCHOOL GUN VIOLENCE**

Since the recent massacre at Marjory Stoneman Douglas High School in Parkland, Florida, students and teachers have raised their voices as never before to demand an end to gun violence in our nation's schools. CTA's Legal Department has prepared this advisory to provide members with general guidance on how they can exercise their right to free speech around this issue, and to provide more specific guidance relating to three days of action that are currently being planned.

As a rule of thumb, school employees may engage with the issue of school gun violence before and after their workday and during duty-free times during the day. But members should be aware that they do not have the right to be absent from their duties without leave from their employer, and they may face discipline for unauthorized walkouts or work stoppages. Members should also refrain from encouraging students to participate in demonstrations or other activities that take them away from any part of their instructional day unless the school district authorizes those activities.

### **What actions can school employees take to protest gun violence in schools?**

As a general matter, school employees have a right to express themselves at their workplace on political issues and other matters of public concern during non-duty time, so long as their activities do not disrupt the workplace. This right is guaranteed by the California Constitution, section 7052 of the Education Code, and court cases. In addition, the First Amendment to the federal Constitution protects the right of educators to speak as private citizens on matters of public concern such as school safety.

During non-duty time, school employees therefore may discuss with each other and with the public their concerns about gun violence in schools and their proposals to make our schools safer; may distribute written material to their fellow employees and members of the public; may participate in marches and other types of demonstrations; may write, call, and otherwise lobby their legislators; may sign petitions; and may post statements of support on social media. School employees should engage in such actions as private citizens, and they should avoid any suggestion that they are speaking in their official employment capacity or on behalf of the school employer.

### **What can school employees say to students about gun violence in schools?**

On campus, students have at least as much, if not more, free speech rights as educators, which means they have a right to receive information on matters of public concern. During non-work and non-instructional time, school employees are free to communicate with students about planned actions and may encourage them to

participate, provided that the actions do not involve anything illegal and do not take place during instructional time. If the district agrees, members may offer students literature to take home to their parents concerning planned actions against gun violence in schools.

In addition to encouraging students to organize and participate in demonstrations themselves, members may also wish to discuss substantive school safety and gun violence issues with their students. How best to prevent school gun violence is a controversial issue, however, and thus discussions with students can raise conflicting points of view. Members should take care to respect the viewpoints of all students and should avoid the perception that they are subjecting unwilling students to their personal points of view, particularly if students attempt to engage members in discussions during class time. CTA encourages school districts to issue guidelines to help members understand their employer's expectations when it comes to engaging students in difficult conversations about gun violence in schools. In the absence of clear guidance from districts, members are more likely to be protected when such discussions are both age appropriate and instructionally relevant. Also, a collective bargaining agreement might contain relevant academic freedom protections.

### **Can school employees help students organize walkouts or participate in student-organized walkouts?**

Members may *not* encourage students to walk out of school during instructional time unless the school administration has authorized the walkout. Nor may members be absent from their duties to participate in a walkout or any other kind of demonstration, unless the absence is authorized. Leading or assisting unauthorized student walkouts can lead to the same sort of discipline and legal liabilities as participating in unauthorized walkouts.

As discussed below, CTA is encouraging school districts across the State to develop plans to support students and educators who wish to participate in the national days of action that are currently being planned in March and April. CTA also encourages districts to adopt plans about how to respond to any other potential student walkout relating to gun violence in schools. These plans should address educators' duties during student walkouts. The plans can also facilitate student protest activity in a safe and educational manner by, for example, providing time and safe spaces for student demonstrations, and guaranteeing that neither students nor educators will be penalized for participating in a walkout.

Members should also note that unauthorized *educator* walkouts or other work stoppages aimed at protesting a lack of governmental response to gun violence in our schools are not protected activities under either the First Amendment or state law. Such action could subject educators to discipline and even termination. Local chapters should be particularly careful not to endorse or support unauthorized educator walkouts. Such actions could subject the chapters themselves to legal liability.

## **Can members accompany students to demonstrations during non-working time?**

Some members have suggested accompanying students to out-of-town demonstrations on non-school days. Members should be aware that they may subject themselves to personal liability if they take responsibility for a student's well-being on such a trip and something goes wrong. For similar reasons, chapters should also be cautious about arranging transportation for members or students to attend demonstrations. Chapters must ensure that they are covered by adequate liability insurance any time they are considering facilitating an out-of-town trip.

### **Guidance relating to specific actions:**

#### **March 14 National School Walkout**

The Women's March has called for a nationwide school walkout on March 14, 2018. The vision is for school communities to walk out of their schools for 17 minutes to honor the 17 lives lost in the Parkland, Florida school shooting. CTA joins with NEA and AFT in encouraging educators throughout the country to wear orange on this day.

CTA encourages school districts across the State to develop a plan to enable students, teachers, administrators, and other members of the school community to safely and orderly participate in the March 14 action if they so choose. To that end, we are working with the Association of California School Administrators to encourage a proactive and supportive approach to observations of this call to action. Please note, however, that if a district does not agree to support the March 14 walkout, members employed by that district should follow the guidance above concerning unauthorized walkouts.

#### **March 24 Protest in Washington**

Led by the survivors of the Parkland school shooting, students from around the country plan to converge on Washington, DC on Saturday, March 24, 2018 to call for an end to gun violence in schools. CTA will be working with NEA to make sure students are heard and to help bring teams of educators and students to Washington from campuses that have experienced gun violence.

If members or their students wish to participate in the March 24 march in Washington or a sister march in another city, please review the guidance above. Because the marches will fall on a Saturday, school employees will be able to exercise their rights as private citizens to speak out against gun violence on that day. Also, most teachers will not need to obtain leave to attend these marches unless they are traveling the day before. CTA encourages administrators to be flexible about granting leave requests for the purpose of traveling to Washington, DC to attend the March 24 protest. Please note, however, that if districts refuse to grant leave for this purpose, members may face discipline if they are absent from their duties.

## **April 20 National Day of Action**

The April 20, 2018 National Day of Action against Gun Violence in Schools seeks to enlist communities across the nation in demanding that policymakers make the changes necessary to end gun violence in our schools. April 20<sup>th</sup> is the anniversary of the Columbine mass shooting tragedy. NEA, AFT, the National Public Education Network, Moms Demand Action, Everytown for Gun Safety, Giffords: Courage to Fight Gun Violence, and other organizations are urging communities to send a strong message to policymakers and the public on April 20 that “enough is enough.”

This day of action might include a day of community service, a town hall meeting with students and elected officials, or even meetings with members of Congress or state legislators. Within the parameters of the legal guidance above, CTA encourages its chapters and members to organize and participate in events that are tailored to their specific school and local communities. The most effective events will include local administrators and school board members who share an interest with educators and students in ending gun violence in schools.

April 20 is a Friday and thus a work day for most school employees. Accordingly, employees should bear in mind that if a district does not join in a proposed activity during work time, then an employee may not withhold her or his services from the employer during the work day without leave. Nor should an employee use instructional time to persuade students to take action unless the district has authorized the activity. And as discussed above, employees are free to engage in political and community action to protest gun violence during *non-work* time.

CTA and NEA will be providing additional resources to help chapters organize meaningful demonstrations on April 20. Members should keep in mind the general guidance above when developing their plans.