

Memo on Staff Participation in Political Activities

Purpose

The purpose of this model policy is to ensure that classrooms in Massachusetts public schools are politically neutral spaces where students are taught how to think, not what to think, about political issues, candidates, and elections. This policy reflects the commonsense notion that it is inappropriate for public school employees to use their official positions to push personal agendas on political issues. It improves upon the “Staff Participation in Political Activities” policy that many schools already have in place. In particular, this model policy defines “political activities” and specifies that school staff should not display political messages in classrooms or use their position to influence the political opinions of students or others.

Legal Basis

Public school teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹ Like other public employees, teachers generally have a right to speak “as citizens on matters of public concern.”² However, decades of U.S. Supreme Court precedent make clear that when public employees, including teachers, speak pursuant to their official duties, their speech is not protected by the First Amendment.³ Courts have held that public schools therefore have a legal right to set standards for what their employees may and may not say while on the job.⁴ These standards may include prohibitions on political campaigning and on expressing an employee’s personal opinions on political topics.⁵

This model policy applies only to political activities of school staff while they are engaged in their official duties. With regard to advocacy on political issues, it only prohibits an employee from “using his/her position to attempt to influence students, parents or others to adopt any view on a political issue.” Additionally, the policy only regulates political displays in classrooms or on other parts of school property. These important qualifiers ensure that the policy does not regulate any expression that school staff make “as citizens on matters of public concern.” Instead, the policy only applies to expression that school staff make pursuant to their official duties. Therefore, the policy does not restrict constitutionally protected speech.

In addition, the policy is viewpoint-neutral. It prohibits expression on political issues without favoring any perspective these issues. Instead, it requires political neutrality by all school staff while on the job.

Finally, the policy avoids any vagueness issues by requiring schools to notify employees of any violation of the prohibition on political expression while on the job and to give them an opportunity to cease such a violation before any disciplinary action is taken. This provision will ensure that no employee is punished for an accidental violation.

¹ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

See *Pickering v. Board of Educ.*, 391 U.S. 563 (1969).

³ *Garcetti v. Ceballos*, 547 U.S. 410, 421-22 (2006) (“Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.”).

⁴ See, e.g., *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954 (2011) (holding that school did not violate free speech rights of teacher when it ordered him not to hang banners expressing his own views on the role of God in American history to the students in his math classroom); *Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332 (2010) (holding that public school teacher did not have a First Amendment right to select books and methods of instruction for use in the classroom without interference from her supervisor); *Mayer v. Monroe County Cmty. Sch. Corp.*, 474 F.3d 477 (2007) (holding that teacher did not have First Amendment right to express her personal opinion on the Iraq War to a “captive audience” of students).

⁵ See, e.g., *Weingarten v. Bd. of Educ. of City Sch. Dist. of City of N.Y.*, 680 F. Supp. 2d 595, 596 (S.D.N.Y. 2010) (upholding rule that prohibited teachers from wearing campaign buttons and distributing campaign materials for the upcoming presidential election while on duty or in contact with students).