



CALIFORNIA TEACHERS ASSOCIATION

DEPARTMENT OF LEGAL SERVICES

LEGAL ADVICE MEMORANDUM

September 29, 2008

FROM:

Alice O'Brien 
Chief Counsel

SUBJECT: **2008 CAMPAIGN ACTIVITIES**

As we begin campaign activities, members will have questions about permissible campaign activities during the school day and on school district premises. Following is a summary of applicable law.

On Campus Political Activity In General

School employees have the right, under the employee participation and organization access provisions of the Educational Employment Relations Act (EERA), to engage in protected union activity (discussions and meetings) on the employer's premises, including discussing union endorsement of candidates and initiatives in partisan and non-partisan political campaigns, distributing union literature containing such information, posting related information on union bulletin boards, and soliciting union members to participate in political activities. Such meetings and activities on school grounds should only occur during non-working time, meaning, before or after school, during lunch or other non-duty break time during the work day. These activities should be limited to bargaining unit members and cannot involve students or parents.

In addition to these organization rights, school employees may fully exercise constitutional speech and association rights while on the premises of a public school, subject only to narrow time, place, and manner restrictions. Such restrictions may not be based on the content of the speech and may not prohibit speech which does not disrupt the educational or other activities of the employer.

School employees (who are not union officers or representatives) may solicit and receive financial contributions to promote or defeat ballot measures that would affect wages, hours, retirement or other working conditions as employees of that district. Such solicitations must be conducted during non-duty time. Union officers and representatives may solicit and receive funds from members to promote the support or defeat of *any* ballot measure (but not candidates) on school property during non-duty time.

Special Rules for Federal Elections

Because federal law prohibits using dues money to make contributions or expenditures in connection with federal elections (with the exception of communications directed solely to ones own members), local chapters should *not* communicate with the general public regarding any endorsements for federal election campaigns, including the presidential election, on their websites or elsewhere. Thus, do *not* place endorsements of candidates for federal office on association websites. Also do not use local association resources, such as telephones, (including cell phones), staff time, copy or fax machines, etc., in any federal campaign, unless directed to do so by CTA.

In addition, federal law requires unions to report on a FEC Form 7 (available at www.fec.gov) any expenditures in excess of \$2,000 spent on communications with members about a particular federal candidate. If your chapter chooses to provide such communications to your members, you will need to track the expenditures directly attributable to such communications and report them to the FEC.

Wearing Political Buttons On Campus

School employees may wear political buttons even while they are teaching if the district has no policy prohibiting wearing buttons. However, even if a district has a policy, school employees may wear partisan campaign buttons while they are on duty so long as they are not providing classroom instruction. School employees may also discuss political issues on campus when they are not engaged in instructional activity. Districts may not prohibit wearing political buttons at other locations and times on the campus, even if students are present. Teachers may, for example, wear political buttons at Back-to-School Nights.

Using Faculty Mailboxes

The question of whether unions have a constitutional right to place information regarding their endorsed candidates or views on ballot initiatives in school mailboxes is currently before the California Supreme Court. The court of appeals decision in *San Leandro Teachers Assn. v. San Leandro USD* holding that unions could not use the mailboxes to distribute political literature is therefore not in effect until the Supreme Court rules. PERB, however, has twice ruled unions do not have a right under EERA to use school mailboxes to distribute political literature, including endorsement information included in a newsletter. *San Diego CCD* (2001) PERB Dec. No. 1467; *San Leandro USD* (2005) PERB Dec. No. 1772.

In the meantime, recognizing that many school districts permit the use of mailboxes without restrictions on political communications, we urge local associations to continue to use teacher mailboxes within the following parameters:

- 1) campaign flyers must be produced by a local association, CTA or NEA;
- 2) campaign flyers must address only bargaining unit members; and
- 3) campaign flyers must refer to the association's endorsement of a candidate or ballot measure.

We believe the most defensible political mailbox communication is one that reports future or past actions of the association endorsing or opposing a candidate or ballot measure, soliciting unit member participation in association campaign activities, or that contains other campaign messages that are embedded in a chapter newsletter. All materials should include the association, CTA or NEA logo.

If a school district prohibits the use of school mailboxes for distribution of campaign literature, there are several other options that bypass the mailboxes. You can leave the literature on tables in the faculty lunch area. You may pass leaflets to unit members during non-duty hours, or distribute them at faculty meetings, provided there is time reserved at those meetings for union business.

Union Meetings on Campus

Unions may conduct meetings for bargaining unit members on campus to discuss political issues. PERB has recently affirmed this right in *Desert CCD* (2007) PERB Dec. No. 1921, at least with respect to local school board elections. See also *City of Torrance* (2008) PERB Dec. No. 1971-M which affirmed that union campaigning for candidates for the governing board of the public employer is protected activity under EERA. Such meetings should be held only during off-duty time. Unions are not required to use Civic Center Act procedures to schedule space for such meetings, since the union's right of access to district property for union meetings is guaranteed by EERA. However, associations should follow the district's procedures for scheduling meeting rooms. Education Code § 7058 also guarantees the use of a forum under the control of the district if the forum is made available to all sides on an equitable basis.

Occasionally, a district may object that a union meeting constitutes improper use of district supplies or equipment for political purposes. We disagree. The union and its bargaining unit employees have a right to meet on campus and the subject matter of the union's meeting (like the content of the message on union buttons) is beyond the district's authority to regulate. However, if a district questions the union's incidental use of district equipment for a union meeting, here are some options: offer to reimburse the district for the reasonable rental value of the equipment (a nominal amount for a brief meeting), bring equipment from home, rent equipment, or as a last resort hold the meeting off campus.

School districts *may* regulate political activities of school officers and employees on campus, subject to certain Education Code sections (7050 through 7054) that prohibit expenditure of public funds or the use of district services, supplies, or equipment to promote or oppose candidates or ballot propositions in an election campaign. However, the state and federal constitutions mandate that: 1) regulation of political speech must be narrowly tailored to further a compelling interest of the state, e.g., avoiding substantial disruption of students; and 2) the regulation must be the least restrictive alternative.

Challenging District Regulations

If a school district imposes regulations that are unreasonable as written, or as interpreted and applied, teachers face a difficult decision. If the regulations are unconstitutional, they are unenforceable and violation of them may not be punished. However, the decision concerning the lawfulness of any regulation is a complex legal matter. Therefore, it is advisable in the face of such a dilemma to obey the regulations and challenge them, either through the contractual grievance procedure, if applicable, or court action. Questions regarding school district policies and practices concerning campaign activities should be directed first to CTA regional political consultants and then to Assistant Chief Counsel Priscilla Winslow in Burlingame or Staff Attorney Rosalind Wolf in Santa Fe Springs.