

April 17, 2018

Re: Constitutional Rights of Students in Walkouts

Dear Superintendent,

In the days preceding and following March 14, 2018, a day designated by student leaders for walkouts in support of school and gun safety, the ACLU Foundation of Florida received several troubling reports of Florida schools violating the Constitutional rights of students. I write today to encourage you, and all educational professionals in your school system, to support students' rights in the instance of Constitutionally protected behavior.

The majority of complaints by students related to three areas of concern. There were reports of the restriction of free speech rights. Other students reported that discriminatory punishments were meted out to those students participating in walkouts. Finally, reports came to the ACLU by students who found their free movement and association rights curtailed. As these categories formed the bulk of reports received by our legal team, I write today to give guidance to you in avoiding these violations in walkouts to come, and especially the walkout that's been called for this Friday, April 20, the nineteenth anniversary of the mass shooting at Columbine High School in Colorado.

### 1. Free Speech

It's become accepted conventional wisdom that students don't lose their Constitutional rights at the schoolhouse gate. This is due to a 1969 decision of the Supreme Court of the United States which held that Mary Beth Tinker, a high school student, was permitted to wear an armband to school in protest of the war in Vietnam. Subsequent to that landmark decision, courts have found that students have the right to speak out, hand out flyers and petitions, and wear expressive clothing in school, so long as they do not disrupt the functioning of the school or violate a school's content-neutral policies.

What counts as "disruptive" will vary by context, but a school disagreeing with a student's position or thinking their speech is controversial or in "bad taste" is not enough to qualify. Courts have upheld students' rights to wear things like an anti-war armband, an armband opposing the right to get an abortion, and a shirt supporting the LGBT community. And "content-neutral policies" means rules that have nothing to do with the message being expressed, like dress codes. So, for example, a school can prohibit students from wearing hats — because that rule is not based on what the hats say — but it cannot prohibit them from wearing only pink pussycat hats or pro-NRA hats.

## 2. Discriminatory Punishments

Discriminatory punishments against students who choose to participate in the walkouts are unconstitutional. Since the law in virtually all jurisdictions requires students to go to school, schools can typically discipline students for missing class, even if they're doing so to participate in a protest or otherwise express themselves. But what the school can't do is discipline students more harshly because they are walking out to express a political view or because school administrators don't support the views behind the protest. In other words, any disciplinary action for walking out cannot be a response to the content of the protest.

The ACLU of Florida has suggested that it's proper to allow students to participate in walkouts without punishment. School absentee policies in Florida allow for occasional absences and excused absences for religious education, doctors' appointments, and even educational family events. Attending a demonstration for part of a school day should be treated equally. Absence policies should not be used to punish students who are engaged in the educational experience of participatory democracy -- especially when the engagement is all about the need to ensure that they can pursue their education in a safe environment.

## 3. Freedom of Movement and Association

Some schools in Florida locked doors and otherwise took steps to physically block students from leaving their school grounds during the walkout. While it's understandable that school leaders want to ensure that students are safe, it's dangerous to block means of egress in the event of an emergency. This is to say nothing of the harm done to students' constitutional rights to freely move about and to assemble and associate with those they choose.

I hope you will receive this letter in the spirit in which it's sent: the issues of school safety and gun safety are of great public concern and students should be, and are, free to participate in the national dialogue taking place. The walkout planned for April 20, 2018 has been called by students and students should be free to participate without fear of punishment or unconstitutional interference by school workers.

The violations of students' constitutional rights on or about March 14 should not be repeated; I encourage you to support the students in your charge as they participate in the peaceful expression of their constitutional rights of free speech, freedom from discriminatory punishment, and freedom to move about and associate with their peers. Our country will be better for it.

Sincerely,

Howard L. Simon  
Executive Director of the American Civil Liberties Union (ACLU) of Florida