

SAN DIEGO UNIFIED SCHOOL DISTRICT

Date: April 4, 2017

To: Principals and Area Superintendents

Subject: REMOVAL OF LAYOFF FLYERS, BUTTONS/ STICKERS

Department and/or Persons Concerned: Administrators and Area Superintendents

Due Date: April 10, 2017

Reference: *Garcetti v. Cellabos* 547 U.S. 410 (2006)
CTA v. Governing Board 45 Cal.App.4th1383 (1996)
Tinker v. Des Moines Independent Community School District 393 U.S. 503 (1969)

Action Requested: Please speak to any affected staff to remove the “Pink Slip” flyers and layoff buttons/stickers from school grounds.

Brief Explanation:

In connection with the upcoming layoffs and negotiations we have seen increased advocacy by representatives of our bargaining units. We know that leaders at all levels, from supervisors, site principals, department managers and division heads are seeking an understanding of the best way to work with employees who are suffering a potential loss of their position within the next few weeks. This guide is designed to assist leaders in understanding how to balance and protect union activities and certain speech while still maintaining supports for students, families and other staff members.

EXAMPLES

“Pink Slip” Flyers

The San Diego Education Association has created and distributed “Pink Slip” flyers to employees who have received the March 15th preliminary notice of layoff. Teachers are posting these flyers in their classrooms or in other locations on school district property. Unfortunately, SDEA and teachers do not have a right to post these flyers on school grounds other than in the designated union information board or in mailboxes.



“Layoffs hurt kids” Buttons/ “No layoff stickers”

Similarly, in the event staff wear buttons with statements expressing disagreement with the layoff, such as “Layoffs hurt kids,” or “No layoffs,” these items are also prohibited during work time on school grounds.

If one of your staff members has posted a flyer or is otherwise engaged in sharing the same information with students, parents or staff during their work day or on school grounds, you are asked to direct the employee to remove the flyer and to limit their discussion to duty free periods. We suggest first speaking with your AR and then speaking with the individual employees who have posted the flyers or who are wearing the buttons/stickers.

Talking Points:

- Schools and instructional time are not forums open for the expression of disagreement with the layoff; our students and families trust that we are educating students based on California standards and not policy or personnel matters.
- The “Pink Slip” flyer is speech about a personnel matter for each teacher who posts the flyer; it’s an airing of a personal grievance. Teachers do not have a right to post information about their particular personnel matters to influence or to complain to students about those personnel matters. For this reason, we are directing staff who have posted the “Pink Slip” flyer to remove them or any related materials from their classrooms.
- Buttons and stickers protesting the layoff may not be worn during instructional time for the reasons mentioned above. Such buttons and stickers may be worn during off duty time.
- Teachers retain their free speech during non-instructional time. They can post flyers on lounge bulletin boards, distribute flyers in mailboxes and discuss or distribute information during duty free periods.

In addition, you may be hearing a number of interpretations of our statutory and contractual obligations related to union and certain speech activities. In order to assist you, we provide the chart below to illustrate the types of union activity/ speech, when they are permitted and under what circumstances.

The District Can:	The District Cannot:
Establish and enforce rules prohibiting union solicitation during work hours. For instance, union representatives or organizers cannot ask employees to sign union petitions during work hours.	Encourage employees to join one union in preference of another.
Ban employees from meeting with union organizers and officers to discuss negotiations during preparation period, compensated work time, or classroom instruction time. Meetings with union organizers and officers to discuss negotiations can only be done during duty- free periods, or before and after school/work.	Prohibit employees from disseminating union literature in non-work areas on their own time. For example, employees could distribute union flyers on the public sidewalk after school hours.

The District Can:	The District Cannot:
Prohibit employees from using instructional time to discuss with student contract negotiation issues, even in civics, political science or social studies classes. The District can also prohibit employees from disseminating in classrooms any literature or propaganda advocating their positions intended to influence students and/or their parents.	Prohibit informational picketing off school grounds prior to and after the employee workday.
Forbid employees from using District supplies or materials, including copiers and fax machines,.	Prohibit employees from displaying placards inside the windows of cars parked on District property.
Prevent employees from attempting to disrupt normal parent clubs, site councils, district committees, or staff meeting to discuss negotiation issues to debate union positions on collective bargaining topics.	Ban employees from holding rallies and events with proper permits on school grounds, unless such events occur during the school day or in a manner that disrupts normal school operations.
Respond to inaccuracies or untruths in organization materials.	Prohibit employees from wearing union buttons during non-instructional time.
Answer employee questions about its policies and procedures.	Question or interrogate employees about their views, activities or sympathies toward employee organizations.
Establish reasonable restrictions regarding access to employee work areas, bulletin boards, mailboxes, and other means of communication	Prohibit employees from having representation in meetings and interviews for investigatory, disciplinary or some other types of situations, such as the informal conference level of a grievance procedure, a negative review of a performance evaluation, a meeting to discuss contractual leave entitlements, a post termination hearing before a school board and in meetings concerning salary adjustments or classification changes. It is important to note that employees are not entitled to a representative of their choice. The district may proceed so long as another representative is available for the time set for the meeting.

APPROVED:



Timothy Asfzadour
Chief Human Resources Officer

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