



MEMORANDUM

TO: OEA Members and Local Leaders
FROM: Adam Arms, OEA General Counsel ^{DA}
DATE: November 23, 2016
SUBJECT: Post-election issues; legal guidance

A number of questions have been raised, post-election, regarding legal rights of educators and best practices surrounding political expression during and outside of work hours. Below, I provide some guidance.

- 1) DO be mindful of the fact that students, parents, guardians, administrators, and colleagues may have strong opinions regarding the outcome of the election. The heated nature of this election cycle has put many folks on edge when it comes to political discussions. Some may fear talking about political topics, while others may be eager to engage. Please be conscious of this.
- 2) DO NOT disparage or demean anyone for their political beliefs, voting history, or party affiliation while acting in your official capacity. Also, during off-duty time and after work hours be careful in communications with anyone connected to your employment (students, parents, staff, etc.). This includes communication on social media sites. These communications may be subject to scrutiny by your employer and TSPC, and your First Amendment rights may be limited. For example, an educator is subject to potential discipline if off-duty derogatory or demeaning comments to a student regarding the student's parents' political beliefs lead to a disruption of the educational environment at school.
- 3) DO try to avoid the perception that you are proselytizing while at work. I advise avoiding conversations aimed at (or that could be perceived as) trying to switch a student's political beliefs to reflect your own. Encouraging critical thinking is appropriate. Indoctrination is not.
- 4) DO NOT participate in or encourage student walk-outs. Educators have little if any First Amendment protection in this situation. Educators face potential discipline for taking part in a walk-out -- and potential termination for taking part in a walk-out if an educator has been specifically directed to not do so. Be mindful that even off-duty encouragement of student walk-outs should be avoided.
- 5) Post-election, some educators have chosen to wear buttons or shirts with slogans such as, "Don't Mourn, Organize," "Make America Great Again," or other sayings that are politically tinged. While such expression may be allowed by law, educators should be aware that it might trigger situations that disrupt the educational environment. For example, a button may ignite a group conversation about politics or the election that quickly turns heated and results in a student feeling disrespected or humiliated. I advise educators to be prepared for difficult

questions and conversations, and to either deflect them or handle them professionally taking into account the maturity level of the members of the conversation and any other relevant factors.

6) Educators have asked whether they are allowed to reveal who they voted for when a student asks. Educators are allowed to answer the question. However, again, the educator should follow the guidance outlined above and be ready to respond to questions, criticism, and potentially difficult conversations. Other appropriate responses are, "I keep my vote private," "I'd rather not share," "that is a personal question that I'd like to keep to myself," or other non-answers that deflect the question.

The Oregon Education Association stands ready to defend members' free speech rights. Please contact your Local Association or your UniServ Consultant if you have any questions or concerns regarding the limits of free expression in - or related to - the workplace.