

ADMINISTRATIVE CIRCULAR NO. 35
Office of the Executive Director of Human Resources

SAN DIEGO UNIFIED SCHOOL DISTRICT

Date: November 7, 2017

To: Principals and Area Superintendents

Subject: Understanding Union Activities and Employee Rights

**Department and/or
Persons Concerned:** Principals and Area Superintendents

Due Date: November 7, 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: Contact the Executive Directors of Human Resources or
Labor Relations for specific guidance regarding the implementation of
this guidance.

Brief Explanation:

There are certain events that bargaining units use to trigger organizing activities (e.g. layoffs and bargaining). 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 wish to exercise their rights as a union member. 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.

At your school site, 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 these 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.
Prohibit employees from using instructional time to discuss with students 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
Answer employee questions about its policies and procedures.	Question or interrogate employees about their views, activities or sympathies toward employee organizations.

The District Can:	The District Cannot:
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:



Acacia Thede
Executive Director, Human Resources

AT:nv

Attachments: None

Distribution: All Lists