



Mark W. McLaughlin, Ed.D.
Superintendent

MEMORANDUM

TO: All CVUSD Employees

FROM: Mark McLaughlin, Superintendent

DATE: November 13, 2017

RE: **AUTHORIZED POLITICAL ACTIVITIES FOR DISTRICT EMPLOYEES**

Public elections generate several questions concerning what types of campaign activities a District employee can participate in during working hours on District property and a need for guidelines of District participation in statewide election issues.

SB 82 (Ch. 879, Statutes of 1995) amended Education Code 7054, making it a misdemeanor or felony to use district funds, services, supplies or equipment to urge the support or defeat of any ballot measure or candidate, including any candidate for election to the Board. Education Code 7055 authorizes the Board to establish regulations related to (1) officers and employees engaging in political activity during working hours, and (2) political activities on district premises. Items #1-6 below expand on the provisions of Education Code 7054.

The political activity covered by the information below does not include employee conduct in connection with union activities. Pursuant to Government Code 3543.1, employee organizations have the right to use district mailboxes and other means of communication, subject to reasonable regulation.

District employees shall not use district funds or services, school time, supplies or equipment to urge the passage or defeat of any ballot measure or candidate. (Education Code 7054)

Under no circumstances shall district employees:

1. Solicit or receive any political campaign funds or contributions on school property during working hours.
2. Use school equipment for the preparation or reproduction of political campaign materials.
3. Post or distribute political campaign materials on school property.
4. Disseminate political campaign materials through the district's mail service, e-mail or staff mailboxes.
5. Use students to write, address or distribute political campaign materials.
6. Present viewpoints on particular candidates or ballot measures in the classroom without giving equal time to the presentation of opposing views.

May a District employee wear a campaign button to work that espouses support for a particular candidate; e.g., may a teacher wear the campaign button in the classroom that supports a particular candidate?

No. The Court of Appeals has concluded that employees shall not wear campaign buttons during instructional time. This authority does not extend to non-instructional time. This interpretation applies to both elementary and secondary teachers.

May an employee organization utilize the school mail, including individual teachers' mailboxes to support a position or candidate(s)?

The CVUSD has agreed to allow employee bargaining units the use of the District's mail service as long as the material was clearly identified as having been prepared and distributed by the bargaining unit. However, there is a change. In the past mailboxes were allowed to be used by an employee bargaining unit to notify employees it represents of the bargaining unit's position supporting candidates for elective office. A recent PERB decision related to Education Code 7054 (a) indicates that districts may not allow bargaining units the use of their mail services "for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district." Although this decision was overruled by the Superior Court recently in a case between CTA and San Leandro Unified School District, the Court's ruling only applies to San Leandro and does not apply to any other district, although future court challenges could change that in the future. Therefore, at this time the CVUSD must comply with current law not allowing the use of district mail service for the purposes mentioned above.

May a candidate solicit votes or distribute handbills on school property during the work day or at school related activities?

No. District property and/or District activities are not accessible for campaign purposes unless the school or a related organization (e.g., PTA) is sponsoring a forum to which all candidates are invited; thus assuring equal access.

May the District urge voters to vote "yes" or "no"?

No, Education Code Section 7054 prohibits the use of District funds, services, supplies, or equipment for the purpose of urging the passage or defeat of any school measure.

May the Board of Education endorse or oppose a statewide school ballot measure?

Yes, provided no public funds are expended in connection with the Board's action and the motion or resolution states the Board's position without urging a "yes" or "no" vote. As with any other matter on the Board's agenda, members of the public should be afforded the opportunity to address the Board prior to action being taken.

May the Board of Education's position on a statewide school ballot measure be reported in all District publications?

Only as part of a regular summary of actions taken at a Board of Education meeting; specially printed and distributed materials go beyond what may be done with public funds.

May Board of Education members make public appearances at which they urge a "yes" or "no" vote?

Yes.

Are administrators permitted to appear before civil, community, and fraternal organizations and present the Board of Education's views on a statewide school ballot measure?

Not during the workday. The authority contained in Education Code Section 7054.1(a) for an administrator to appear before a citizens' group to explain the Board's position on a ballot proposition applies only to local finance measures placed on the ballot by the District.

Can the District disseminate information concerning the effect of a statewide ballot measure on the District?

Yes, Education Code Section 35172 authorizes the dissemination of factual information.

What is the difference between informational literature and campaign materials?

The Supreme Court recognizes that frequently "the line between unauthorized campaign expenditures and authorized informational activities is not...clear." Examples are discussed below.

What kinds of materials may not be prepared with public funds?

Posters, bumper stickers, radio and television ads, newspaper ads, campaign buttons, potholders, pencils, and similar materials are all prohibited.

What kinds of informational materials are permitted?

In order to pass muster, the information prepared with public funds must be a "fair presentation of the facts [which] will necessarily include all consequences, good and bad, of the proposal, not only the anticipated improvement in educational opportunities, but also the increased tax rate and such other less desirable consequences as may be foreseen."

As long as the materials are factual and do not urge a "yes" vote, may they be prepared and disseminated at public expense?

Not necessarily; even materials that are factually correct and do not tell the voters how to vote can be improper campaign literature. Careful consideration of such factors as style, tenor, and timing is

required. If that analysis leads to the conclusion that the publication was designed primarily to influence voters, it becomes improper campaign literature rather than permissible information.

May the District disseminate campaign materials prepared by a citizens' committee or other nondistrict organization?

No.

Does the prohibition against mass mailings containing the names or pictures of elected officials apply to materials distributed as part of the District's information effort?

Yes. Proposition 73 generally prohibits the mailing of over 200 substantially similar pieces of mail which contain the name or picture of an elected official. Limited exceptions apply, including one for mail sent in response to an unsolicited inquiry.

Can District employees engage in activities in connection with a statewide ballot measure on their own time?

Yes. Education Code Section 7052 precludes placing restrictions on the outside political activities of District employees.

May school facilities be made available under the Civic Center Act for meetings related to a statewide ballot measure?

Yes. The facilities must be equally available to the proponents and opponents of the measure. Proponents, as well as opponents, should be required to complete the customary agreement for the use of the facilities.

Is a District official who authorizes an improper campaign expenditure personally liable?

A public official must use due care in authorizing the expenditure of public funds. In the absence of due care, the official may be personally liable. Whether due care was exercised depends on such factors as the nature of the expenditure, whether the official had reason to believe the expenditure was inappropriate, and whether the official consulted with legal counsel.

Please note that the line between permissible informational activities and prohibited campaign activities and expenditures in connection with a statewide ballot measure affecting public education is frequently obscure. The questions and answers shown above are general guidelines and are not intended to serve as legal advice in a specific factual context. If in doubt about whether a particular activity or expenditure is permitted, please contact me.