



Illinois Education Association-NEA

Legal Services Department – Resource File Memorandum

**PRIVILEGED AND CONFIDENTIAL
FOR STAFF USE ONLY**

TO: All Professional Staff
FROM: IEA Legal Department
DATE: October 21, 2008 (Rev. September 10, 2014)
RE: **School Employees and Political Apparel, Buttons and Activities**

Keywords: political apparel, buttons, First Amendment rights, Ethics Act, campaign

In this year of heightened political interest, a number of questions have arisen recently about what limits educational employers can place on employees' abilities to wear political apparel and campaign buttons, and engage in other political activity at school/college. Unfortunately, the case and statutory law are not 100% clear. However, the conservative bottom-line view is that a public educational employer **can have** a policy or practice that:

- **Campaign Buttons:** Prohibits the wearing of campaign buttons in K-12 classrooms, other student instructional settings and most likely in the school hallways, under the principle that a school has the right to refuse to sponsor speech that might reasonably be perceived as associating the school with any position other than neutrality on matters of political controversy. However, any practice or policy which allows or has allowed the wearing of buttons for certain political candidates, causes or viewpoints but not for others, is most likely illegal. While the foregoing view probably also applies in the post-secondary arena, there is likely more room for debate.
- **Campaign Apparel:** The same principle applies to campaign apparel such as tee shirts. Again, such a policy or practice must not improperly discriminate on the basis of candidate identity, political cause or viewpoint.

Although public educational employees do not shed their First Amendment and other constitutional rights when they walk through the school house doors, their rights are not unlimited, especially when they are employees who are in front of impressionable students who are required to be in attendance during the school day. As such, K-12 public schools can constitutionally establish and implement restrictions on when, where and how employees may engage in political activity while at work or on

duty, so long as the regulation is reasonable and content neutral.¹¹ The ability of post-secondary institutions to constitutionally establish such restrictions is more open to debate, due to the history of academic freedom in higher education institutions and the age of the students who are voluntarily in attendance. This topic made the news in August 2014 following the University of Illinois at Urbana-Champaign's decision to block the appointment of a candidate who had been offered a tenured, associate professor position after that candidate posted a series of highly controversial tweets regarding the Israeli/Palestinian dispute.²

Restrictions are also authorized under several state laws. The Local Governmental Employees Political Rights Act, 50 ILCS 135 states that: "[N]o unit of local government [including a community college] or school district may make or enforce any rule or ordinance that in any way inhibits or prohibits any of its employees from exercising the employee's political rights." However, it also states that: "[N]o employee of a unit of local government or school district may...(ii) engage in political activities while at work or on duty." 50 ILCS 135/10 Political activities include campaigning for or against political candidates. 50 ILCS 135/5.

The State Ethics Act (covering state entities such as universities) prohibits defined political activity during any compensated time or through use of any state property. **5 ILCS 430/5**. Local governmental bodies (including school districts and community colleges, as of August 22, 2008) are required to adopt ordinances or resolutions adopting these restrictions. It is our opinion that this Act does not itself prohibit wearing political buttons or apparel, if it is done voluntarily. In turn, the Act does not prohibit a public employer from having such a policy or practice, assuming it is reasonable and content neutral. However, there is no case law or other guidance which clearly defines the scope of this new law, so we are not sure of its parameters.

In conclusion, a public educational employer's policy or practice is key in determining what limitations it can impose. When faced with a button or apparel wearing or other political activity question, always check what the policy or practice says and how it has been implemented. If one of our members is directed to remove any political buttons or apparel by her employer, she should comply with that directive and then contact her UniServ Director for an assessment on any possible legal action.³

If you have any questions, please do not hesitate to contact the Deputy/Associate General Counsel assigned to your area.

OTHER RESOURCES:

- [Do's and Don't chart](#) – Public Employee Political Activity, updated 9/2014
- [Distribution of Campaign Information at School/College/University](#), updated 9/2014
- [Public Employees and Political Activity](#), LRF May 2011, with updated links 9/2014

¹ On January 22, 2010, the federal district court in New York City held that the school board's policy prohibiting teachers from wearing campaign buttons in the schools was not unconstitutional. The court found that the Board's policy arose from its concern that the teachers' buttons might improperly influence the students and its desire to remain neutral on controversial issues and that these were legitimate pedagogical concerns. As such, the court went on to find that the prohibition did not violate teachers' free speech rights. The union did not appeal the ruling

² See, <http://chronicle.com/article/Denial-of-Job-to-Harsh-Critic/148211/>

³ It should be noted that the Illinois Principals Association has publicly opined that teachers cannot be prohibited from wearing buttons supportive of political candidates in the classroom. While we don't fundamentally disagree with this opinion, we have presented the more conservative view, in part due to the lack of any official guidance defining the scope of the State Ethics Act, the 2006 U.S. Supreme Court decision in *Garcetti*, which significantly limited public employees' speech in the course of their employment duties, the 7th Circuit federal appeals court decision in *Mayer*, which upheld the firing of a teacher who expressed her opinion of the Iraq War in class, and the 2010 NYC decision. Since these decisions were issued, the specific matter of teacher political button wearing in school has not been explicitly litigated in state or federal courts covering Illinois.