

# MASSACHUSETTS TEACHERS ASSOCIATION

## DIVISION OF LEGAL SERVICES

2 HERITAGE DRIVE, 8TH FLOOR  
QUINCY, MASSACHUSETTS 02171-2119

### GENERAL COUNSEL

IRA C. FADER

### DEPUTY GENERAL COUNSEL

SAURABH GUPTA

617.878.8000

1.800.392.6175

FAX: 617.248.6921

### STAFF COUNSEL

MATTHEW D. JONES  
RICHARD A. MULLANE  
LAURIE R. HOULE  
QUESIYAH S. ALI  
RYAN P. DUNN  
ASHLEY F. WALTER  
MARK A. HICKERNELL  
JONATHAN M. CONTI  
JENNIFER L. MACDOUGALL

### PARALEGAL

KATHY NAGLE  
SARAH B. KELLEY

To: MTA Board of Directors, Local Association Presidents  
FROM: Ira Fader, MTA General Counsel  
RE: **Advisory on Student Walkout**  
DATE: February 23, 2018

It is not an overstatement to call what happened to 17 students and teachers at Stoneman Douglas High School in Parkland, Florida a “massacre.” Public revulsion and anger is leading to an inspired movement that demands long-overdue action by Congress and by state legislatures. There are two issues here that are impossible to untangle: school safety and gun control. Students across the country are leading the charge. As horrific as the shootings were, it is inspiring to watch young people eloquently speak truth to power at the White House, at Town Halls, and in front of cameras.

The emerging student movement presents teachers with a unique opportunity to both guide our students in their civic engagement and to express our own horror as educators against school violence. Teachers, like students and their parents, are entitled to be angry that students were once again murdered in their schools, that teachers once again died trying to protect them, and that a sense of security in our cherished institutions – our schools – is once again shaken so deeply.

Several protest actions are emerging. On Wednesday, March 14, a National School Walkout for students is planned. On Saturday, March 24, a March for Our Lives rally will take place in Washington, D.C., and companion rallies will take place in cities and towns around the country, including Boston. And on April 20, the NEA and many other national organizations are calling on communities to take action against gun violence. The walkout on March 14 is a nationally organized response in which students will leave their classrooms and their buildings for 17 minutes, one minute for each of the victims in Parkland.

All of this public activity is leading to questions about what teachers can and cannot do, particularly concerning the possibility of student walkouts in their own schools. As local presidents, you may be in the foreground of this national debate – whether answering questions from members, talking with the school administration, or even speaking to the press.

The following Q&A is intended to answer some of your anticipated questions.

Q.1 *What position has MTA taken regarding school safety and gun-free schools?*

A.1 The MTA has long held a strong position on these issues. First introduced at the 1982 Annual Meeting, MTA's Resolution I-13 states:

The Massachusetts Teachers Association believes that all students and education employees must be allowed to learn and work in an environment free of unauthorized guns and other deadly weapons. Severe penalties should be enacted and strenuously enforced for criminal actions involving guns and other deadly weapons, especially in school settings, and for those who profit from the illegal sale, importation and distribution of these weapons. The Association also believes that individuals who bring guns or deadly weapons to school should be excluded from school and school grounds until such time as the mandated prescribed intervention under both the Individuals with Disabilities Education Act and Massachusetts law has been conducted.

The Association further believes that strict prescriptive regulations are necessary for the manufacture, importation, distribution, sale and resale of handguns and ammunition magazines. The possession by the private sector of automatic weapons and military-style semiautomatic assault weapons should be illegal, except for historical and collection purposes, which must be strictly regulated. A mandatory waiting period for a background check should occur prior to the sale of all firearms. The Association believes that minors shall not be allowed to buy, own or sell firearms.

The Association also believes that gun owners should participate in educational programs that stress responsible ownership, including safe use and storage of guns.

Q.2 *What should local associations say to individual members who wish to support students by joining them in walking out of school on March 14 as part of the National School Walkout?*

A.2 First and foremost, the message to teachers from their union should be "*we have your back.*" We do not want *any* of our members to be penalized for their expressive activities in protesting gun violence in the schools, and we believe there are steps locals may wish to take to reduce or eliminate that possibility, as discussed below. But even without precautionary measures in place, MTA Legal will provide a strong legal defense to any member who is disciplined for joining in the student protest.

Q.3 *Should local associations discuss the student walkout with the administration?*

A.3 MTA hopes that school superintendents and school committees will fully support students and not stand in the way of their inspiring engagement in civic action and non-violent protest. One school district in Texas has already publicly threatened students with an irrevocable three-day school suspension for participating in the walkout. We hope that Massachusetts school districts do not take anything resembling such a harsh and counter-

productive lead. If your district or school takes a similar position, demand bargaining immediately. Under no circumstances should teachers be put in the position of actively stopping the walkout or be compelled to threaten students with discipline. In addition, this is an opportunity to build or use existing coalitions with parent associations, local police groups, and community groups, many of whom are natural supporters of the issue raised by students.

Q.4 *Should local associations discuss or bargain over the teachers' role in the walkout or other forms of protest?*

A.4 Many of our members may want to join the student protest on March 14 (and others will not). There is a unique opportunity here for local unions, interested community groups, and school administrations to work collaboratively to allow the greatest amount of free expression by students and teachers alike while simultaneously ensuring the safety of students – and also avoiding legal entanglements between school district and unions.

The safest way for teachers to join the students is with district approval and, even better, district involvement. It is against the school district's own interests to say "teachers cannot join the students and must remain in their work locations." This is effectively allowing the students to remain unsupervised during the protest. The school has an interest in ensuring the safety of the protesting students by providing adult supervision. Moreover, allowing teachers to join their students for 17 minutes builds bridges of common concern. The teachers, in other words, can simultaneously be "teachers and supervisors of their students" and "protesters against school gun violence."

Of course, teachers who do *not* wish to join the students in protest should be permitted to remain in the building.

You will need to decide whether and at what strategic point you should talk with the employer about the March 14 walkout. However, it is possible that your superintendent will contact you first. Be prepared for this discussion.<sup>1</sup>

Q.5. *What about ESP units and ESP locals?*

A.5 On the large public policy issues of school safety and gun regulation, ESPs have the same interests as teachers. Their specific role in the schools and with the children varies from job category to job category. Many ESPs have a student-supervisory function, and they serve the same function as teachers by joining and being present with students during a walkout. Local leadership for MTA-affiliated bargaining units should work concertedly to decide the approaches and actions they want to take.

---

<sup>1</sup> NEA and AFT are encouraging educators to wear orange on March 14 in support of the National School Walkout. This is one of many forms of expressive activity that teachers can engage in. A local president should contact the MTA field representative and the Legal Division if an administrator directs staff to refrain from wearing orange on March 14.

Q. 6 *Can teachers who are outside with the students hold signs or engage in other visible expressions of support for the students or in opposition to school gun violence?*

A.6 This is an area where locals should work with the administration and, if necessary, with community and parent groups to ensure that teachers who support the walkout may do so. You will have to use local political power to achieve this right because the law does not provide the protection the individual member needs. While the shooting of students and teachers by assault weapons brought onto school premises is a matter of the greatest public concern under First Amendment analysis, the right of free speech does not extend to expressive activity in the course of one's employment.

If you choose to raise the issue of teacher support with the district, stand firmly in favor of allowing expressive speech by teachers. Teachers provide the necessary student supervision outside only if they are permitted to express their points of view. The two go hand in hand.

Q.7. *What can a teacher tell a student (or a parent) who asks whether the student can get into trouble for walking out of school?*

A.7 The neutral advice is to direct the student to applicable school policies about school attendance and the consequences for missing class. A teacher can also urge the student to research the matter and direct him or her to the ACLU website or similar advocacy sites. Here is what the ACLU has advised:

Since the law in virtually all jurisdictions requires students to go to school, schools can typically discipline students for missing class, even if they're doing so to participate in a protest or otherwise express themselves. But what the school can't do is discipline students more harshly because they are walking out to express a political view or because school administrators don't support the views behind the protest. In other words, any disciplinary action for walking out cannot be a response to the content of the protest.

Before deciding whether to join a political walkout, students might want to find out what policies govern discipline for absences in their state, school district, and their particular school so that they're aware of the potential consequences.

<https://www.aclu.org/blog/free-speech/student-speech-and-privacy/can-schools-discipline-students-protesting>

Students may want to know whether joining the protest will endanger college admission. A number of colleges have announced that discipline against applicants who join the protest will not be held against them for admissions. In Massachusetts, these include UMass Amherst, MIT, and Worcester Polytechnic Institute.

<https://www.insidehighered.com/news/2018/02/23/admissions-officers-take-stand-back-high-school-students-engaged-anti-gun-protests>

To my knowledge, DESE has not issued a statement about the student walkout, so there is no state viewpoint on the matter.

Q.8 *What if some students choose not to join? What if only half of the students in a class leave?*

A.8 Some students may choose not to protest or have personal or medical reasons to remain inside the building during the 17-minute walkout. Administrators can certainly remain behind to ensure the safety of those students. Teachers who do not support the walkout or otherwise choose not to join would remain behind to provide supervision within the building. The logistics of this arrangement is a matter for negotiation.

Q.9 *What if you negotiate with your superintendent but do not get agreement to allow teachers to join the students and engage in expressive activity?*

A.9 First of all, you will need to assess your relationship with your superintendent and school committee in deciding whether to open a dialogue in advance of March 14 or simply allow things to play out on their own. After all, unless the district has put teachers on notice (whether by existing school policy or by a new directive) that joining the students could lead to discipline, MTA Legal would challenge any discipline against a teacher who does so. Any teacher who joins the students would have a dual role – one as a citizen supporting the protest and the other as a teacher who stays with and engages students, looks for teachable moments, and ensures student safety.

If a district administrator has given a directive not to participate or support the walkout, participation would likely be seen as insubordination or conduct unbecoming a teacher. Even if multiple teachers act concertedly and join the walkout as a “work safety” protest, leaving school during the school day may be a “work stoppage” and/or a “withholding of services,” and therefore would not be protected concerted activity. Additionally, a union is prohibited from inducing, encouraging, or condoning such activities under c. 150E s. 9A. There are defenses to these claims that the MTA Legal Division would be proud to mount. Nonetheless, local associations should move forward fully aware of the dangers.

Q.10 *What about teachers who want to actively encourage students to walk out?*

A.10 In the school and while on work time, a teacher does not have a First Amendment right to encourage or organize his or her own students to participate in the student walk out. Remember, though, that the First Amendment is irrelevant if the administration is on board. If the administration is *not* on board, then the usual First Amendment limitation applies: The student walkout is unquestionably a matter of public concern about which teachers can freely speak in their capacity as citizens, as long as they do not disrupt the workplace. They can address the school committee in their own towns, they can wear



buttons of support, and they can write letters to the editor speaking on their own behalf. The NEA has asked teachers to wear orange on March 14, and this is permissible. They cannot, however, use the classroom as a forum for public speech on the walkout issue if the school district has forbidden it.

Working to support the walkout in the community where a member lives is another matter entirely. Expressing an opinion about or working to support the walk out for one's own child or in one's own community is constitutionally protected.

Q.11 *With whom should the local negotiate? Principal? Superintendent? School committee?*

A.11 To a large extent the answer depends on the labor relationship you have. Go where you are most likely to get the results you seek. The school committee is the public employer charged with negotiating over the terms and conditions of employment, but in this context, any "bargaining" will likely involve administration as a practical matter. While a principal is the chief executive in the school building, superintendents have overarching authority over the district. If students are planning a walkout in more than one building, it would be better to have a district-wide understanding. The school committee may provide a useful forum, if a meeting is scheduled soon, for both teachers and students to strongly and publicly express their views and perhaps get the committee to vote on a policy supporting the student action.

Q.12 *What "terms and conditions of employment" are implicated by the current issues?*

A.12 First and foremost, "workplace safety" is a working condition that is unquestionably a mandatory subject of bargaining. In many school districts our members have already been asked or are required to participate in "active shooter training" such as ALICE or Run-Hide-Fight Training. Schools have "mass shooting drills" and protocols for sheltering in place.<sup>2</sup> Protocols and training of this sort are matters for bargaining and are not simply matters of "school policy." Demand copies of any existing policies or training materials and begin a discussion with your membership about their adequacy and/or acceptability. Additionally, some in the national debate are calling for measures to provide a greater security presence in the schools, including hiring or adding armed school resource officers, or even arming teachers themselves. Our members have a direct workplace interest in these ideas and a right to demand bargaining before any measures are imposed.

---

<sup>2</sup> <http://www.mass.gov/edu/docs/eoe/school-safety-security/school-safety-report.pdf>