



Election Do's and Don'ts

The following is a detailed list and corresponding analysis of what school districts and district employees can and cannot do with regard to teaching civic engagement, including voting, and promoting public education.

What school districts **can** do to promote the right and responsibility of voting:

1. School district resources, including newsletters and social media, can be used to encourage students, staff, and parents to vote, as well as to share factual information about voter registration, polling sites, dates, and hours of voting.
2. Districts can plan field trips to polling locations in furtherance of teaching the required social studies TEKS. Field trips are a well-established expenditure of public funds intended to provide hands on practical experience that enhances student learning, particularly of the TEKS.
3. Districts can adopt policies to support principals in fulfilling their role and legal requirement as voter registrars.
4. Local school district funds can be used to advocate for the interests of Texas public education, as long as the advocacy does not include campaigning for a specific candidate, political party, or measure.

What educators, including superintendents, principals, teachers and board members, **can** do to promote the right and responsibility of voting:

1. Superintendents can set policies which create a culture of civic engagement, voting, and support for public education.

Such policies can include providing information:

- a. On the importance of voting,
 - b. On the logistics of voting such as registration and the time and place of polling locations,
 - c. On the importance of supporting public education through civic engagement and the legislative process;
 - d. To principals on how to discharge their duty under Texas law to serve as voter registrars at their individual campuses;
 - e. On encouraging voter participation of staff and eligible students.
2. Principals can:
 - a. Robustly discharge their duty under Texas law to serve as voter registrars by actively encouraging all eligible students and staff on their campuses to register.
 - b. Discuss with campus staff, students and parents the importance of supporting public education through civic engagement, including voting,

- c. Encourage voter participation through activities like cross campus voter participation challenges/contests and offering jeans/casual days for showing your “I voted” sticker.

Note: Federal law prohibits either giving or promising anything with monetary value in exchange for either voting or registering to vote in an election with a federal candidate on the ballot.

3. Teachers and other staff can model civic engagement for students and colleagues by openly discussing the importance of voting as part of non-partisan non-candidate specific get out the vote campaigns, holding one another accountable for voting, and proudly displaying symbols that they have voted such as an “I voted” sticker.
4. All educators, including superintendents, principals, teachers, other school personnel and board members, can on their own time, including during a duty-free lunch, speak about candidates they support or oppose. They can communicate such opinions either directly, through personal email, or personal social media accounts.

What school districts and educators **cannot** do:

1. Expend public funds to support or oppose a specific candidate, party or ballot measure. This includes a new expenditure of funds such as the purchase of an advertisement, the use of existing resources such as district paper and ink, or the use of staff time.
2. Use an internal mail system, such as ISD email or a campus routing system, to distribute a message that supports or opposes a specific candidate, party or ballot measure. These systems can be used to support general get out the vote efforts or the importance of supporting public education generally.
3. Spend public funds for the benefit of a person or group without a public/educational purpose. It is important to note that the term educational purpose is broad, school boards generally determine what does and does not have an educational purpose within their district, and that furtherance of anything in the TEKS or promoting the general importance of public education would certainly be considered educational purposes.

Why creating a culture of voting, modeling civic engagement and voting are educational

1. The SBOE approved Texas Essential Knowledge and Skills for Social Studies include civic engagement, citizenship, and voting as skills required to be taught every year from K-12.
2. Advocating for public schools is an obligation of school board service, as established by the SBOE in its Framework for School Board Development.
3. No law prohibits school districts from engaging in get out the vote efforts or advocating for the interests of public schools.

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4. One must look no further than the Texas Secretary of State for support for the act of voting as educational.
 - a. On September 12, 2017, Secretary of State Rolando Pablos wrote in a letter to Texas superintendents that said: “On behalf of the State of Texas, I would like to first thank you for your hard work and dedication to cultivating the next generation of Texans through education. In doing so, it is also crucial that we work together to cultivate the next generation of voters by empowering students to fulfill their civic duties and participate in our state’s elections.”
 - b. He continued: “In my capacity as chief elections officer for Texas, I am issuing a call to action to all residents to encourage high school principals in our state to get involved.... We owe it to our children and our communities to redouble our efforts to help increase participation among the newest generation of Texas voters.”
 - c. In a September 7, 2018 press release, SOS Pablos proclaimed the first Friday of early voting (October 26th) to be Student Voting Day.
<https://www.sos.state.tx.us/elections/projectvote/pdfs/svd-proc-option.pdf>
5. Encouraging voting and support for public education are central to the work of public schools. As the U.S. Supreme Court has observed, the objective of public education is to “inculcate fundamental values necessary to the maintenance of a democratic political system.”

Why election and education attorneys believe that the AG’s non-binding opinion regarding districts use of buses to take eligible students and staff to the polls is likely incorrect as applied to a sanctioned student field trip.

1. The Attorney General can issue opinions when requested by certain individuals with standing. However, those opinions are non-binding. As the office of Attorney General is neither legislative nor judicial, he or she has not been granted the authority to either make or adjudicate the law.
2. The AG’s non-binding opinion stated that “absent an educational purpose in providing students transportation to the polling locations, a court would likely conclude that the transportation serves no public purpose of the district and therefore would violate article III, section 52(a) of the Texas Constitution.”
3. Education and the promotion of public education are public purposes. Under Texas law, each independent school district’s board of trustees deems what is a public purpose with regard to the provision of a public education.

Note: Voter registration and get out the vote efforts are also public purposes. If they were not the Secretary of State would not be constitutionally permitted to expend public funds promoting them.

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K-12.

5. Field trips are intended to provide hands-on practical experience that enhances student learning, particularly of the TEKS. A field trip to a polling location, including an opportunity to vote for those who are eligible, cements lessons of citizenship, civic engagement, and voting, and is as educational (if not more so) than using district buses to take students to a football game, a museum, or a theatrical event.

Why superintendents, principals, teachers, and other school employees supporting or opposing candidates on their own time through personal communications including personal social media accounts is legal.

1. Citizens, including educators, generally have a first amendment protected right to support or oppose candidates through the exercise of free speech.
2. The broadest and most common restrictions on this right that applies to educators are Texas Elections Code Sec 255.003 which prohibits an officer or employee of a political subdivision from knowingly spending or authorizing the spending of public funds for political advertising and Sec 255.0031 which makes it an offense to use an internal mail system to distribute political advertising.
3. Political advertising is a communication supporting or opposing a candidate for nomination or election to either a public office or an office of a political party, an officeholder, a political party, or a ballot measure that is communicated widely. Communicating your support or opposition of a candidate on Facebook or Twitter is definitely political advertising.
4. There is no law prohibiting a school employee from engaging in political advertising, unless that communication is distributed using public funds or through use of an internal mail system (i.e. a physical routing system or ISD email system).
5. An expenditure of public funds includes direct spending, use of resources previously paid for with public funds (i.e. school toner, paper, copiers) or staff time of public employees.
6. Unlike a paid advertisement or even a flyer printed at school which expends paper and ink, Twitter and Facebook are both free platforms which, one could argue, do not themselves constitute an expenditure of public funds.
7. Therefore the analysis comes down to a question of staff time. Did the posting of a message on the free platform require paid staff time or not? If so, it's prohibited. If not, then there is likely no violation.
8. It is reasonable to think there is an expectation that an official district account would only be updated as part of an employee's paid duties, which would be a violation. But there is nothing in statute that would lead a reasonable person to believe a personal account, regardless of the user name or handle associated with it, which is updated off duty, including during a duty free lunch period, would constitute an expenditure of public funds or the use of an internal mail system, without which neither Texas Election Code 255.003 nor 255.0031 can be violated.

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