Students Have a Right to Protest During National Anthem, Pledge of Allegiance

By Evie Blad on September 24, 2017 3:30 PM | **No comments**

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If the past is any indicator, public schools are about to have a big teachable moment about the First Amendment, sparked by a burst of tension between President Donald Trump and professional athletes.

When former San Francisco 49ers quarterback Colin Kaepernick started kneeling on the sidelines during the national anthem in 2016, high school athletes around the country were inspired to join him. And, as his protest spreads in a highly visible way, it's likely that more young people will want to take part.

NFL players, professional athletes in other sports, and even Stevie Wonder joined in Kaepernick's protest over the weekend, motivated in part by President Donald Trump's call for team owners to fire and otherwise silence players who committed the act of protest.

The actions of so many people who are major influences on young people will almost certainly spread once again to high school sports and classrooms. So here's an important reminder: Courts have held that schools cannot compel students to participate in patriotic rituals like standing for the national anthem or saying the Pledge of Allegiance.

And, as I wrote when Kaepernick's protest—motivated by a concern about police treatment of black Americans—first spread into classrooms, First Amendment advocates and education groups say punishing students for such peaceful acts of protests is not only a violation of their rights; it's also a wasted learning opportunity.

"Courts have affirmed and reaffirmed that students do not check **their First Amendment rights** at the schoolhouse gate, and speech cannot be curtailed unless it creates a material disruption to the educational process," National Association of Secondary School Principals Executive Director JoAnn Bartoletti said in a statement. "Yet in this debate, something greater is at stake than individual student rights. Prohibiting student protest challenges the very purpose of school as a place of learning."

Renewed attention to athletes' protests

The call for NFL players to kneel spread quickly over the weekend following a Friday night Trump speech.

"Wouldn't you love to see one of these NFL owners, when somebody disrespects our flag, to say, 'Get that son of a b**** off the field right now. Out! He's fired. He's fired!'" the president said while campaigning for Republican Senator Luther Strange in Alabama.

After Golden State Warriors player Steph Curry said Friday he would rather not accept an invitation to go to the White House, a tradition for NBA championship teams, Trump uninvited him on Twitter Saturday. Curry cited Trump's rhetoric and policies, which he said had failed to unite the country at a divisive time in its history.

Donald J. Trump Follow

Some—including many in conservative media—agree with Trump, saying that it's inappropriate for players to make political statements and that it's disrespectful to military members to kneel during the anthem.

Players and their supporters said they felt it was necessary to use their voices to draw attention to an issue that concerns them. Their protests were a call to uphold the values the anthem represents, they said, and not intended as an act of disrespect.

And some athletes who hadn't participated in the initial protests said they felt compelled to join because of the pressure the president's words have put on black athletes to silence their voices. On Saturday night, Oakland A's catcher Bruce Maxwell became the first Major League Baseball player to kneel during the anthem. The protests trended on Twitter all weekend under the hashtag **#TakeTheKnee.**

Can high school athletes kneel during the national anthem?

Whatever educators' personal views on current protests, courts have ruled in the past that schools can't force students into acts of patriotism.

In the 1943 case of *West Virginia State Board of Education* v. *Barnette,* the U.S. Supreme Court ruled that a school would violate the free speech rights of its student, a Jehovah's Witness, if it forced him to say the Pledge of Allegiance.

"To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds," Justice Robert Jackson wrote in his majority opinion.

Schools can't require students to observe patriotic rituals in the classroom, and their authority to discipline them for such acts diminishes even more at an athletic event, where behavior like shirtless cheering is "a regular occurrence," Frank LoMonte, the former executive director of the Student Press Law Center, told me last year.

And school's authority to discipline students for silent anthem protests isn't heightened if those students are taking part in a privilege, like being members of a football team, he said. Courts have held that public institutions can't withhold privileges, like employment at a public agency, if employees exercise free-speech rights, like refusing to recite an anti-communist pledge, he said, arguing that the precedent applies to student athletes.

"You can't condition a privilege on forsaking your constitutional right any more than you can condition a right or a benefit," LoMonte said.

This issue isn't always clear to educators. Kaepernick's initial protests were met with forceful public statements by some educational administrators last year. A Native American high school student in California said recently a teacher had docked her class participation grade after she **sat for the pledge.** In September, a black student in Illinois said his teacher **attempted to force him to stand for the pledge.**

What can students learn from #TakeTheKnee?

Here are some classroom conversations that could be sparked by this weekend's events.

The motivation for the protests could be a jumping off point for **writing assignments and discussions about race and policing in America.** Students could read statements by the athletes themselves about why they choose to kneel. Do they agree or disagree? Would they take such a step if they were in such a high profile position? Why or why not?

There's also an abundance of writing about race and policing, including materials assembled under the hashtag **#CharlottesvilleCurriculum** this summer. To personalize the issue, students may want to examine the role of police in schools and policy debates over the disproportionate discipline of black students, which Education Week detailed in our **Policing America's Schools series** earlier this year.

The protests would also be a great jumping off point for **lessons about the First Amendment.** As Stephen Sawchuk wrote recently on the findings of a poll by the Annenberg Public Policy Center: "Not even half of Americans could **name a specific right articulated in the First Amendment.** 'Freedom of speech' clocked in at 48 percent, but the right to peaceably assemble came in at just 10 percent, freedom of religion at 15 percent, freedom of the press at 14 percent, and the right to petition the government at 3 percent." The Newseum has a whole page of **classroom resources on free speech issues.**

More specifically the players' protests are a great lens for discussions about **the nature of protest and public influence.** Protests are, by their nature, a disruption of norms that are meant to provoke attention. What is the value of that? Why is it effective?

As the Washington Post noted last year, many of the past protests that we now laud as landmark events in our history were **not popular at the time.** Worth pondering for students: Is lunch counter sit-in of the civil rights era the same or different from the actions athletes are taking

today? Why or why not? How are the athletes' the same or different from other recent protests related to causes all along the ideological spectrum?

Have any ideas for resources or discussions? What have you seen about how schools are addressing student protests? Please share in the comments.

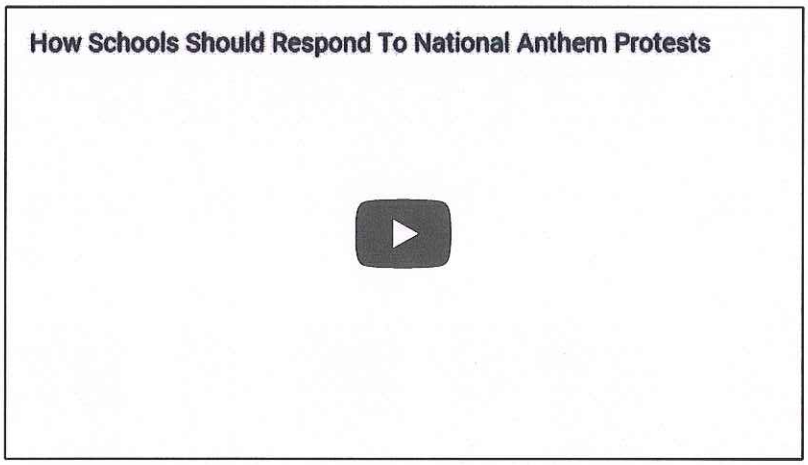

Photo: Several New England Patriots players kneel during the national anthem before an NFL football game against the Houston Texans on Sept. 24 in Foxborough, Mass.--Michael Dwyer AP

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Here's the other end of the spectrum:
5 and 6 year olds, who have no clue as to the nature of protests, sitting during the pledge because they don't want to stand up. At this age, most issues are about fairness. If a student doesn't stand, others follow just because. It opens a whole can of worms because this becomes a parent discussion, not simply a youngster protesting.

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