

Students

Restrictions on Publications 1

School-Sponsored Publications and Web Sites

School-sponsored publications, productions, and web sites are part of the curriculum and are not a public forum for general student use. ² School authorities may edit or delete material that is inconsistent with the District's educational mission.

All school-sponsored communications shall comply with the ethics and rules of responsible journalism. Text that is libelous, obscene, vulgar, lewd, invades the privacy of others, conflicts with the basic educational mission of the school, is socially inappropriate, is inappropriate due to the maturity of the students, or is materially disruptive to the educational process will not be tolerated.

The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published/produced will be provided within the same media.

Non-School Sponsored Publications Accessed or Distributed On-Campus 3

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, and (2) audio-visual material, on any medium including electromagnetic media (e.g. images, MP3 files, flash memory, etc.), or combinations of these whether off-line (e.g., a printed book, CD-ROM, etc.) or on-line (e.g., any website, social networking site, database for information retrieval, etc.). ⁴

Creating, distributing and/or accessing non-school sponsored publications shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the publication is endorsed by the School District.

Students are prohibited from creating, distributing and/or accessing at school any publication that:

¹ State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled.

² School authorities may reasonably regulate student expression in school-sponsored publications for education-related reasons. Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988). This policy allows such control by clearly stating that school-sponsored publications are not a "public forum" open for general student use but are, instead, part of the curriculum.

A school board that does not retain control of student publications can anticipate at least two problems: (1) how to keep content consistent with the district's mission, and (2) how to ensure that the Constitutional rights of third parties are not violated by student journalists. Concerning the second problem, a third party may seek to hold the district responsible for the student journalists' acts. See Yeo v. Town of Lexington, 131 F.3d 821 (1st Cir. 1998).

³ Non-school sponsored publications, like underground newspapers, cannot be subject to the same degree of regulation by school authorities as school-sponsored publications. Absent a showing of material and substantial interference with the requirements of good discipline, students retain their First Amendment free speech rights. The federal circuits disagree on whether school authorities may require prior approval before a student is allowed to distribute non-school-sponsored publications. The Seventh Circuit, which covers Illinois, refused to approve prior approval regulations. Fujishima v. Board of Education, 460 F.2d 1355 (7th Cir., 1972), but see Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir., 1973). Non-school sponsored web sites should be regulated in the same manner as non-school sponsored publications.

A school policy prohibiting junior high students from distributing written material at school that is prepared by non-students was upheld in Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).

⁴ The *publication* definition is optional and may be amended. This sample definition uses broad and generally understood terms to keep the policy current with rapid technology changes.

1. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities; **5**
2. Violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright; **6**
3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, contains indecent and vulgar language, or *sexting* as defined by School Board policy and Student Handbooks; **7**
4. Is reasonably viewed as promoting illegal drug use; **8** or
5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the inclusion of material from outside sources or the citation to such sources as long as the material to be distributed or accessed is primarily prepared by students. **9**

Accessing or distributing “on-campus” includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school. **10**

5 For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school’s computer. School authorities could reasonably believe the article would be disruptive. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821 (7th Cir., 1998).

6 School officials may not regulate student speech based upon their fear or apprehension of disturbance. Many decisions address the tension between students’ right to free speech and restrictions of it on campus. See, for example:

Brandt v. Board of Educ. of City of Chicago, 2006 WL 623651 (N.D.Ill., 2006), earlier decision, 326 F.Supp.2d 916 (N.D.Ill., 2004) (finding a material issue of fact existed about whether students who produced and wore T-shirts to school substantially interfered with the school’s work or impinged upon the rights of other students).

Nuxoll v. Indian Prairie School Dist. # 204, 523 F.3d 668, (7th Cir., 2008) (holding that the student was likely to succeed on merits of his claim that the school would violate his speech rights by preventing him from wearing T-shirt with slogan “Be Happy, Not Gay”).

J.C. v. Beverly Hills Unified Sch. Dist., 593 F.3d 249 (3rd Cir. 2010) discussing the “rights of others to be secure and let alone” argument from Tinker, but finding that the school district violated a student’s First Amendment rights for disciplining her when she posted a video clip on a website.

7 Be sure that the board’s definitions for *sexting* in this policy aligned with other definitions used thought the board’s policy manual. For example, see the discussion within sample administrative procedure 7:190-AP5, *Student Handbook-Electronic Devices*. There, sexting encompasses the term *indecent visual depiction* as defined by 705 ILCS405/3-40, added by P.A. 96-1087, eff. 1-1-11. It defines indecent visual depiction as a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the buttocks, or if such person is a female, a fully or partially developed breast of the person. However, a district may create or have another definition of sexting that may or may not encompass the statutory term indecent visual depiction.

8 Morse v. Frederick, 551 U.S. 393 (2007).

9 Optional. The rationale for this section is that prior to high school, students have not developed sufficient experience and education in critical review of external resource materials. Accordingly, in order to accomplish the district’s educational mission, yet allow students the opportunity to communicate with their fellow students, widespread student distribution of written material in elementary and middle school may be limited to material primarily prepared by the students themselves. Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3rd 1295 (7th Cir. 1993).

10 For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school’s computer. School authorities could reasonably believe the article would be disruptive. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821 (7th Cir., 1998).

Non-School Sponsored Publications Accessed or Distributed Off-Campus **11**

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing a publication that: (1) causes a substantial disruption or a foreseeable risk of a substantial disruption to school operations, or (2) interferes with the rights of other students or staff members.

- LEGAL REF.: Hazelwood v. Kuhlmeier, 108 S.Ct. 562 (1988).
 Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).
 Tinker v. Des Moines Indep. Cmty. Sch. Dist., 89 S.Ct. 733 (1969).
- CROSS REF.: 6:235 (Access to Electronic Networks), 7:180 (Preventing Bullying, Intimidation, and Harassment), 8:25 (Advertising and Distributing Materials in School Provided by Non-School Related Entities)

11 Optional. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school's authority over off-campus expression is much more limited than expression on school grounds. However, school officials may generally: (1) remove a student from extracurricular activities when the conduct code for participation requires students to conduct themselves at all times as good citizens and exemplars of the school (see 7:240, *Conduct Code for Participants in Extracurricular Activities*); and (2) suspend or expel a student from school attendance when the student's expression causes substantial disruption to school operations, as provided in this policy (see also 7:190, *Student Discipline*). Note also that P.A. 96-952 now defines bullying to include communications made in writing or electronically (see also f/n 5 above and 7:190-AP6, *Guidelines for Investigating Sexting Allegations*).

Consult the board attorney for guidance concerning off-campus speech. Every situation is fact specific and the issues require careful evaluation. This fact is illustrated by the contrasting decisions involving similar facts made on the same day by two different panels within the 3rd Circuit Court of Appeals when applying the test articulated in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 89 S.Ct. 733 (1969), (see, Layshock v. Hermitage School Dist., 593 F.3d 249 (3rd Cir., 2010) and J.S. ex rel. Snyder v. Blue Mountain School Dist., 593 F.3d 286 (3rd Cir., 2010), both decisions vacated for a rehearing before the entire 3rd Circuit Court of Appeals). Also important to note is that material aimed at particular on-campus audiences may not necessarily equate to on-campus speech (see Evans v. Bayer, 684 F.Supp.2d 1365 (S.D. Fla.2010) finding that suspending a student for creating a Facebook page critical of her teacher violated her First Amendment rights).