

## **POLICY: STUDENT SELF-EXPRESSION AND STUDENT DISTRIBUTION OF LITERATURE**

The Constitution of the United States and the Constitution of Vermont guarantee the right of public school students to freedom of speech. The school board of the \_\_\_\_\_ School District respects the right of students to express themselves in word or symbol and to distribute and post materials in areas designated for posting as a part of that expression. The school board also recognizes that exercise of that right must be limited by the district's responsibility to provide a safe and orderly environment in which to accomplish its central goal of educating its students.

### **Student Distribution of Non-School Sponsored Literature**

It is the policy of the \_\_\_\_\_ School District to allow limited distribution of non-school sponsored literature on school grounds or at school events by students. Accordingly, the superintendent/principal may permit the distribution of non-school sponsored literature without discrimination as to the viewpoint of the literature in accordance with this policy.<sup>1</sup>

Non-school sponsored literature means any printed, written, or electronic materials prepared by non-school organizations, groups, or individuals for posting or general distribution that are not prepared as a part of the curricular or approved extracurricular programs of the district. Non-school sponsored materials includes such things as fliers, invitations, announcements, pamphlets, posters, photographs, pictures, films, audio recordings, digital media recordings, and electronic messages. Literature prepared as under the supervision of instructional personnel as part of instruction or authorized classroom activities is not restricted by this policy.<sup>2</sup>

Distribution means circulating copies of non-school sponsored literature in the following ways: handing to others on school property or during school-sponsored events; posting on school property such as walls, bulletin boards, and district web-sites; placing upon desks, tables, on or in lockers; making available in principal's office; or engaging in any other manner of delivery of non-school sponsored literature to others while on school property or during school functions.

This policy prohibits the distribution of literature that:

- A. Is libelous, defamatory, obscene, lewd, vulgar, or profane;<sup>3</sup>
- B. Violates federal, state or local laws;
- C. Advocates the use or availability of any substance or material that may reasonably be believed to constitute a direct and substantial danger to the health or welfare of students, such as tobacco, alcohol or illegal drugs;
- D. Incites violence;
- E. Interferes with or advocates interference with the rights of any individual or the orderly operation of the schools and their programs;<sup>4</sup>
- F. Is primarily of a commercial nature, including but not limited to all material that primarily seeks to advertise for sale products or services;<sup>5</sup> or
- G. Whose primary purpose is fundraising.<sup>6</sup>

When a student wishes to distribute more than \_\_\_<sup>7</sup> copies of non-school sponsored literature, the literature shall be submitted to the Superintendent/Principal for prior review as to the following:<sup>8</sup>

- to confirm that the literature includes the name of the person or organization sponsoring the distribution, and that there is no implication that the literature is endorsed by the school district, and
- to confirm that the literature does not fall in one of the prohibited categories listed above.

Prior review of literature is not required when the non-school sponsored literature is distributed by a student to other attendees at a meeting of a non-curriculum related student group authorized to meet at school during non-instructional time.<sup>9</sup>

Even when prior review is not required, students must comply with all other provisions of this policy regarding the distribution of literature.

The Superintendent/Principal may place reasonable time,<sup>10</sup> place,<sup>11</sup> and manner<sup>12</sup> restrictions on the distribution of non-school sponsored literature.

### **Student Self-Expression**

Students have a right to express themselves on school property and at school functions,<sup>13</sup> through speech or expressive actions, provided they do not materially and substantially interfere with the orderly operation of the school and the rights of others.<sup>14</sup>

This policy prohibits student self-expression that:

- A. Is libelous, defamatory, obscene, lewd, vulgar, or profane;<sup>15</sup>
- B. Violates federal, state or local laws;
- C. Advocates the use or availability of any substance or material that may reasonably be believed to constitute a direct and substantial danger to the health or welfare of students, such as tobacco, alcohol or illegal drugs;<sup>16</sup>
- D. Incites violence; or
- E. Interferes with or advocates interference with the rights of any individual or the orderly operation of the schools and their programs.<sup>17</sup>

The context in which students express themselves may affect the amount of latitude they are afforded in their speech. In the context of school-sponsored publications, when a reasonable listener would perceive that the speech is endorsed by the school district, more control may be exercised. School district representatives may exercise editorial control over the style and content of student speech in school-sponsored expressive activities, such as class work or a school newspaper, so long as their actions are reasonably related to legitimate pedagogical concerns.<sup>18</sup>

*Date Warned:*

*Date Adopted:*

*Legal Reference(s):* *Morse v. Frederick*, 551 U.S. \_\_\_, 127 S. Ct. 2618 (2007)  
*Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001)  
*Rosenberger v. Univ. of Virginia*, 515 U.S. 819 (1995)  
*Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993)  
*Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988)  
*Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986)  
*Perry Educ. Ass'n v. Perry Local Educ. Ass'n*, 460 U.S. 37 (1983)  
*Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1979)

*Legal Reference(s):* *Wisniewski v. Board of Educ. of the Weedsport Central Sch. Dist.*, No. 06-3394-cv (2d Cir. July 5, 2007)  
*Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006)  
*Peck v. Baldwinsville Central Sch. Dist.*, 426 F.3d 617 (2d Cir. 2005)  
*Walz v. Egg Harbor Twnp. Bd. of Educ.*, 342 F.3d 271 (3d Cir. 2003)  
*Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5<sup>th</sup> Cir. 2003)  
*Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7<sup>th</sup> Cir. 1993)

*Raker v. Frederick Cty. Pub. Sch.*, 470 F. Supp. 2d 634 (W.D. Va. 2007)  
*M.A.L. v. Kinsland*, No. 07-10391 (E.D. Mich. Jan. 30, 2007)

*Cross Reference:*

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- <sup>1</sup> The basic principle in evaluating the constitutionality of restrictions on distribution of materials in a limited public form is that the restrictions may not be based on the viewpoint of the materials or the one distributing them. *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Rosenberger v. Univ. of Virginia*, 515 U.S. 819 (1995); *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001). The situation that tends to cause the most controversy is the distribution of religious materials. The law is currently evolving and changing in this area. In the cases cited here, the Supreme Court specifically held that religious groups' use of school facilities must be permitted when other groups seeking to teach morals have been permitted to use facilities; the same approach applies to distribution of materials.
  - <sup>2</sup> Examples of literature that is not restricted by this policy include handouts from a student as part of a presentation of a research project or distribution of Valentines to classmates at a holiday party in the classroom.
  - <sup>3</sup> *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) (student may be disciplined for giving speech at school assembly that contained sexual innuendos and vulgar language).
  - <sup>4</sup> Prohibitions that maintain discipline or prevent school disruption are always allowed. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5<sup>th</sup> Cir. 2003). The standard for evaluating the reasonableness of controls on student self-expression and student speech is whether or not the speech substantially or materially disrupts school activity, or could reasonably be forecast to cause such disruption. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1979).
  - <sup>5</sup> As indicated here, a district could choose to prohibit all distribution of literature that promotes the sale of products or services. As with all viewpoint neutral prohibitions, care must be taken that the prohibition is evenly enforced without exceptions. If a district wishes to allow distribution of materials supporting some commercial activity but not others, it must make the distinction based on criteria that are objective and viewpoint neutral.
  - <sup>6</sup> A common question may be whether students selling items to raise money for parent-teacher organizations is permitted. If such organizations are clearly delineated (either in this policy or elsewhere) as school-sponsored groups and their literature is delineated as school-sponsored literature, then distribution of their fundraising materials would not be restricted by this policy.
  - <sup>7</sup> This policy is not meant to require prior review of personal notes to other students or limited numbers of invitations to a birthday party or a similar gathering. The district should set a reasonable figure for the number of copies of literature that will trigger the need for prior review.
  - <sup>8</sup> Prior review of literature by a school official is allowed when the policy sets forth narrow and clear standards for that review. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5<sup>th</sup> Cir. 2003).
  - <sup>9</sup> Prior review of literature is allowed by the law primarily for the purpose of preventing disruption of the school's educational activities. Those concerns are not present when literature is distributed after school hours, so prior review can be viewed as an unconstitutional prior restraint in that instance. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5<sup>th</sup> Cir. 2003).
  - <sup>10</sup> Although the Superintendent or Principal may establish a "time" restriction that specifies when students may distribute literature, the restriction cannot require that distribution take place outside the school day unless the district can demonstrate that such a restriction is necessary to prevent disruption of school operations. *Raker v. Frederick Cty. Pub. Sch.*, 470 F. Supp. 2d 634 (W.D. Va. 2007). However, restrictions may take into account the age of the students and the nature of the classroom activities. Thus, for example, it may be permissible to prohibit the distribution of candy and pencils with a religious message in an elementary school classroom if it interferes with a pedagogically based classroom activity. *Walz v. Egg Harbor Twnp. Bd. of Educ.*, 342 F.3d 271 (3d Cir.

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- 2003); see also *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988) (“Educators are entitled to exercise greater control over [school-sponsored expressive activities] to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school.”).
- <sup>11</sup> Examples of a “place” restriction might be that literature be posted only on bulletin boards and not on windows, or that it be made available on a specified table in the principal’s office. The district must bear in mind that the restrictions must be aimed at preventing disruption to student learning. Any broader restriction could be held unconstitutional. See *M.A.L. v. Kinsland*, No. 07-10391 (E.D. Mich. Jan. 30, 2007) (student distribution of literature in hallways must be allowed because there was no finding that it would disrupt school operations).
- <sup>12</sup> A “manner” restriction might specify whether or not persons distributing the material may stand at the main entrance to the building, or might limit the number of copies of a pamphlet that may be distributed. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7<sup>th</sup> Cir. 1993). Such restrictions must be applied without discrimination as to viewpoint of the individual who wishes to distribute non-school sponsored literature. Note that the courts have held a school district’s internal mail distribution system is not a public forum, and thus school districts are not required to allow the mail system to be used for distribution of non-school sponsored materials. *Perry Educ. Ass’n v. Perry Local Educ. Ass’n*, 460 U.S. 37 (1983).
- <sup>13</sup> When students are excused from class and go outside under school supervision to watch the Olympic Torch relay on the street near the school, they are at a school function. *Morse v. Frederick*, 551 U.S. \_\_\_, 127 S. Ct. 2618 (2007).
- <sup>14</sup> The standard for evaluating the reasonableness of controls on student self-expression and student speech is whether or not the speech substantially or materially disrupts school activity, or could reasonably be forecast to cause such disruption. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1979) (students protesting Vietnam War entitled to wear black armbands).
- <sup>15</sup> *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) (student may be disciplined for giving speech at school assembly that contained sexual innuendos and vulgar language). T-shirt that impugned character of sitting U.S. president was not vulgar or offensive within meaning of *Fraser* according to Second Circuit Court of Appeals. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).
- <sup>16</sup> *Morse v. Frederick*, 551 U.S. \_\_\_, 127 S. Ct. 2618 (2007) (school officials may prohibit speech that they reasonably believe advocates illegal drug use, so long as the speech cannot be interpreted as commenting on any political or social issue). Student had First Amendment right to wear T-shirt that criticized President Bush by depicting him as a drug and alcohol user and a “chicken-hawk” because it did not advocate use of drugs. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).
- <sup>17</sup> In evaluating whether an activity is reasonably forecast to cause disruption, it is enough that there be a reasonably foreseeable risk or disruption, even if there is no “true threat” to someone at school. *Wisniewski v. Board of Educ. of the Weedsport Central Sch. Dist.*, No. 06-3394-cv (2d Cir. July 5, 2007). Furthermore, in some circumstances, a student’s speech outside of school may be reasonably viewed as materially disrupting school activity; therefore this policy does not prevent the imposition of discipline on a student whose disruptive speech occurs off campus. See *Wisniewski v. Board of Educ.* (potentially threatening instant message icon depicting teacher being shot that was sent by student to other people from home computer properly resulted in suspension of student; no First Amendment protection.)
- <sup>18</sup> *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (school officials may exercise editorial control over school newspaper); *Peck v. Baldwinville Central Sch. Dist.*, 426 F.3d 617 (2d Cir. 2005) (teacher may censor elementary school student’s poster expressing religious views when it did not meet pedagogical requirements of class assignment).