

Board Policy

Advertising And Promotion

BP 1325

Community Relations

***Note: The following optional policy addresses the distribution of commercial and noncommercial materials by the district as well as advertising in school-sponsored publications and on school property. The personal distribution of materials by students is addressed in BP/AR 5145.2 - Freedom of Speech/Expression. ***

***Note: Boards should carefully consider whether they wish to establish a "closed forum" or a "limited open forum" regarding the distribution of materials at district schools. In a "closed forum," advertising would not be accepted in school-sponsored publications and materials from non-school-sponsored groups would not be distributed on school grounds. For example, the school could not distribute flyers from the local Girl Scout troop or Little League, nor could ads be accepted from businesses in the school yearbook. ***

***Note: A "limited open forum" is a type of nonpublic forum intentionally opened to certain groups or certain topics. In a "limited open forum," school officials may impose reasonable restrictions on the distribution of materials or advertising and may selectively approve or disapprove materials or advertising as long as the decision is not arbitrary or capricious; restrictions must be viewpoint-neutral and reasonable in light of the purpose served by the forum (Lehman v. Shaker Heights, DiLoreto v. Downey Unified School District). In addition, districts may establish a "limited open forum" relative to student clubs, but a "closed forum" for advertising. See BP/AR 6145.5 - Student Organizations and Equal Access for language related to student clubs and the federal Equal Access Act. ***

***Note: Option 1 is for use by districts that have established a "closed forum." Option 2 and the remainder of the policy are for use by districts that have established a "limited open forum." Districts may establish different forums for different schools within the district (e.g., an elementary school may have a "closed forum"; a high school a "limited open forum") and the following policy should be modified accordingly. It's important to note that, when determining whether a district has established a "closed forum" or "limited open forum," courts would look beyond the district's intent as stated in its policy and also look to the actual practice of school officials (Board of Education of the Westside Community Schools v. Mergens) Therefore, this policy should be applied in a consistent manner at each school. Because this is a complex and evolving area of law, it is strongly recommended that legal counsel be consulted prior to the adoption of policy in this area. ***

***Note: Districts that have created a "closed forum" must delete the remainder of this policy in order to ensure that their "closed forum" status is maintained. ***

OPTION 2: Limited Open Forum

The Governing Board desires to promote positive relationships between schools and the community in order to enhance community support and involvement in district schools. The Superintendent or designee may approve:

***Note: The district may select any or all of optional items #1-5 below to reflect the types of materials and/or advertising that it will allow. ***

1. Distribution of noncommercial materials that publicize services, special events, public meetings or other items of interest to students or parents/guardians

(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)

(cf. 5145.2 - Freedom of Speech/Expression)

(cf. 6145.5 - Student Organizations and Equal Access)

(cf. 6162.8 - Research)

2. Paid advertisements in school-sponsored publications, yearbooks, announcements and other school communications

(cf. 1113 - District and School Web Sites)

3. Products and materials donated by commercial enterprises for use in the classroom, as long as they serve an educational purpose and do not unduly promote any commercial activity or products. Such materials may bear the name and/or logo of the donor.

(cf. 3290 - Gifts, Grants and Bequests)

(cf. 6161.11 - Supplementary Instructional Materials)

Prior to distribution or publication, the Superintendent, principal or designee shall review and approve all advertising copy and promotional materials to ensure compliance with Board policy.

***Note: Generally, courts have upheld procedures that place reasonable "time, place and manner" restrictions on materials to be distributed, as long as the same restrictions were placed on all materials (Hemry v. School Board of Colorado Springs). Districts might want to consider developing procedures that limit the "time, place and manner" of distributions, such as limiting distribution to before or after school hours or creating a central location for the distribution of all materials. Legal counsel should be consulted as appropriate. ***

The Superintendent, principal or designee may selectively approve or disapprove

distribution of materials or publishing of copy based on the criteria listed below, but may not disapprove materials or copy in an arbitrary or capricious manner or in a way that discriminates against a particular viewpoint on a subject that would otherwise be allowed.

All materials to be distributed shall bear the name and contact information of the sponsoring entity.

***Note: Districts might also consider requiring sponsoring entities to include a disclaimer on all materials to be distributed. For example, a disclaimer might state that "this event is not school-sponsored or approved" or that "opinions are not necessarily those of the school district or school personnel." Districts wishing to include disclaimer language should consult legal counsel as appropriate. ***

The use of promotional materials or advertisements does not imply district endorsement of any identified products or services. Schools are encouraged to include a disclaimer in school publications and yearbooks stating that the school does not endorse any advertised products or services.

Criteria for Approval

The Superintendent shall not accept for distribution any materials or advertisements that:

1. Are obscene, libelous or slanderous (Education Code 48907)
2. Incite students to commit unlawful acts, violate school rules or disrupt the orderly operation of the schools (Education Code 48907)

***Note: Optional item #3 below prohibits the distribution of political materials or political advertising except under certain circumstances. Pursuant to Education Code 7058, the Board may conduct a political forum if it is made available to all sides on an equitable basis. ***

3. Promote any particular political interest, candidate, party or ballot measure, unless such materials are being distributed at a forum in which candidates or advocates from all sides are presenting their views to the students during school hours or during events scheduled pursuant to the Civic Center Act

(cf. 1160 - Political Processes)

(cf. 1330 - Use of School Facilities)

(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

***Note: The law is unclear as to whether districts can prohibit the distribution of

materials or advertising of a religious nature when materials of a non-religious nature are also distributed during school. Both the Ninth Circuit and Second District Court of Appeals, addressing different claims in *DiLoreto v. Downey Unified School District*, held that a California district's refusal to post a paid religious advertisement featuring the Ten Commandments on an athletic field fence where commercial advertising was permitted did not violate the free speech rights of the proposed advertiser when it was clear that the district did not open the forum (the fence) to all expressive activity. Both courts concluded that, regardless of whether or not the advertisement violated the Establishment Clause of the U.S. or California Constitutions, the district had the right to regulate content as a nonpublic forum. Districts wishing to establish policy dealing with the distribution of religious materials should consult legal counsel. ***

4. Discriminate against, attack or denigrate any group on account of any unlawful consideration

(cf. 0410 - Nondiscrimination in District Programs and Activities)

5. Promote the use or sale of materials or services that are illegal or inconsistent with school objectives, including but not limited to materials or advertisements for tobacco, intoxicants, and movies or products unsuitable for children

6. Solicit funds or services for an organization, with the exception of solicitations authorized in Board policy

(cf. 1321 - Solicitation of Funds from and by Students)

7. Distribute unsolicited merchandise for which an ensuing payment is requested

The Superintendent or designee also may consider the educational value of the materials or advertisements, the age or maturity of students in the intended audience, and whether the materials or advertisements support the basic educational mission of the district, directly benefit the students or are of intrinsic value to the students or their parents/guardians.

(cf. 0000 - Vision)

Schools may establish additional criteria pertaining to the content of advertisements in school publications and yearbooks. Such criteria may limit advertisements to those that contain congratulatory or commemorative messages, curriculum-related content, advertisements for products or services of interest to students, noncontroversial content, and/or other content deemed appropriate by the school publication staff and adviser in accordance with law and Board policy.

Legal Reference:

EDUCATION CODE

7050-7058 Political activities of school officers and employees

35160 Authority of governing boards

35160.1 Broad authority of school districts

35172 Promotional activities

38130-38138 Civic Center Act

48907 Student exercise of free expression

BUSINESS AND PROFESSIONS CODE

25664 Advertisements encouraging minors to drink

U.S. CONSTITUTION

Amendment 1, Freedom of speech and expression

COURT CASES

DiLoreto v. Downey Unified School District, (1999) 196 F.3d 958

Yeo v. Town of Lexington, (1997) U.S. First Circuit Court of Appeals, No. 96-1623

Henry v. School Board of Colorado Springs, (D.Col. 1991) 760 F.Supp. 856

Bright v. Los Angeles Unified School District, (1976) 134 Cal. Rptr. 639, 556 P.2d 1090,
18 Cal. 3d 350

Lehman v. Shaker Heights, (1974) 418 U.S. 298

(6/92 6/96) 11/01

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**Gravenstein Union School District
Sebastopol, California**