

# Board Policy

**Students**

**BP 5145.2**

## **Freedom of Speech/Expression**

\*\*\*Note: The First Amendment of the U.S. Constitution and Article 1, Section 2 of the California Constitution guarantee freedom of speech and of the press. Court cases and California law have addressed the application of these principles in a school setting and have established parameters for student expression. The following policy addresses rights and limitations related to student expression in a variety of forms, and includes off-campus as well as on-campus student expression. \*\*\*

\*\*\*Note: Education Code 48907 mandates district to establish a written "publications code" related to students' rights to freedom of speech and of the press; these written rules and regulations must include reasonable provisions for the time, place and manner in which free expression may take place within the district's jurisdiction. See AR 5145.2 for further language implementing this mandate. It is recommended that districts consult legal counsel when adopting and implementing policy related to freedom of speech/expression. \*\*\*

The Governing Board believes that free inquiry and exchange of ideas are essential parts of a democratic education. The Board respects students' rights to express ideas and opinions, take stands on issues, and support causes, even when such speech is controversial or unpopular.  
(cf. 6144 - Controversial Issues)

### **On-Campus Expression**

Students shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards; the distribution of printed materials or petitions; the wearing of buttons, badges and other insignia; and the right of expression in official publications. (Education Code 48907)

Student expression on district or school Internet web sites and on-line media shall generally be afforded the same protections as print media.  
(cf. 1113 - District and School Web Sites)

\*\*\*Note: Numerous court cases have found that the First Amendment rights of public school students are not necessarily the same as the rights of adults in other settings and must be applied in light of the special circumstances of the school environment. In the landmark Hazelwood School District v. Kuhlmeier case, the U.S. Supreme Court ruled that when a school has not, by policy or practice, opened a school-sponsored activity for unrestricted use by students, a school may limit student expression as long as its decision is reasonably related to "legitimate pedagogical concerns." In California, Education Code 48907 grants students broad rights of freedom of press and provides that student content can be restrained only when it is obscene, libelous or slanderous or incites students to commit unlawful acts, violate school rules or substantially disrupt school operations. \*\*\*

\*\*\*Note: When determining what type of content might be restrained, the courts have found age to be a critical factor (Hazelwood, Bethel v. Fraser). Although the courts have not specifically addressed the speech rights of elementary students, it appears that schools have greater authority to limit speech that could harm elementary students' emotional, moral, social, and intellectual development (Muller v. Jefferson Lighthouse School). \*\*\*

Students' freedom of expression shall be limited only as allowed by law in order to maintain an orderly school environment and to protect the rights, health and safety of all members of the school community.

Students are prohibited from making any expressions or distributing or posting any materials that are obscene, libelous or slanderous. Students also are prohibited from making any expressions that so incite students as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of school rules, or substantial disruption of the school's orderly operation. (Education Code 48907) (cf. 5145.7 - Sexual Harassment) (cf. 5145.9 - Hate-Motivated Behavior)

The use of "fighting words" or epithets is prohibited if the speech is abusive and insulting rather than a communication of ideas, and the speech is used in an abusive manner in a situation that presents an actual danger that it will cause a breach of the peace.

\*\*\*Note: The right of school administrators to exercise "prior restraint" (e.g., censorship) of materials is generally limited to those instances in which administrators believe that the material violates the law, such as defamatory material or material that might subject the district to liability (Leeb v. DeLong). \*\*\*

School officials shall not engage in prior restraint of material prepared for official school publications except insofar as the content of the material violates the law. (Education Code 48907)

The Superintendent or designee shall not discipline any high school student solely on the basis of speech or other communication that would be constitutionally protected when engaged in outside of school, but may impose discipline for harassment, threats or intimidation unless constitutionally protected. (Education Code 48950) (cf. 5137 - Positive School Climate) (cf. 5144 - Discipline) (cf. 5144.1 - Suspension and Expulsion/Due Process) (cf. 5144.2 - Suspension and Expulsion/Due Process: Students with Disabilities)

### **Off-Campus Expression**

\*\*\*Note: Courts have generally found that schools may impose discipline for conduct that occurs outside the school only when the off-campus conduct poses a direct threat to the safety, welfare or discipline of other students or staff. In *Lavine v. Blaine School District*, the Ninth Circuit U.S. Court of Appeals applied *Tinker v. Des Moines School District* to conclude that a school district in Washington was justified in expelling a student whose off-campus poetry, when considered in the totality of other relevant factors, indicated he might pose a danger to himself or others. Similar standards have been applied with regard to students' off-campus Internet web sites. A Pennsylvania state court in *J.S. v. Bethlehem Area School District* upheld the right of a school district to discipline a student for making threatening comments on a personal web site against a particular teacher. The federal courts in *Beussink v. Woodland R-IV School District* and *Emmett v. Kirkland School District No. 415* confirmed that student off-campus Internet speech merits First Amendment protection and that disliking the content of a student's speech critical of the schools and staff is not an acceptable justification for limiting student speech. \*\*\*

\*\*\*Note: Since this area of law is unclear and constantly evolving, it is strongly recommended that districts consult with legal counsel when developing policy and prior to applying discipline for off-campus Internet speech. \*\*\*

Off-campus student expression, including but not limited to student expression on off-campus Internet web sites, is generally constitutionally protected but shall be subject to discipline when such expression poses a direct threat to the safety of students or school personnel.

Conduct by a student outside of class which for any reason materially disrupts classwork or involves substantial disorder or invasion of the rights of others is not protected by the constitutional guarantee of free speech.

Legal Reference:

EDUCATION CODE

48907 Exercise of free expression; rules and regulations

48950 Speech and other communication

51520 Prohibited solicitations on school premises

CALIFORNIA CONSTITUTION

Article 1, Section 2 Freedom of speech and expression

U.S. CONSTITUTION

Amendment 1 Freedom of speech and expression

COURT CASES

Lavine v. Blaine School District, (2001) 257 F.3d 981

Emmett v. Kirkland School District No. 415, (2000) 92 F.Supp. 2d 1088

J.S. v. Bethlehem Area School District, (2000) 757 A.2d 412 (Pa. Commw. 2000)

Beussink v. Woodland R-IV School District, (1998) 30 F. Supp. 2d 1175 (E.D. Mo. 1998)

Muller v. Jefferson Lighthouse School, (1996) 98 F.3d 1530

Hazelwood School District v. Kuhlmeier, (1988) 108 S. Ct. 562

Leeb v. DeLong, (1988) 198 Cal.App.3d 47

Perumal et al. v. Saddleback Valley Unified School District, (1988) 198 Cal.App.3d 64

Bethel School District No. 403 v. Fraser, (1986) 478 U.S. 675

Collin v. Smith, (1978) 447 F.Supp.676, affd. (1978) 578 F.2d 1197, cert. den. (1978) 439 U.S. 916

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

Tinker v. Des Moines Independent Community School District, (1969) 393 U.S. 503

Management Resources:

CDE LEGAL ADVISORIES

Limitations on Student Expression in School-Sponsored Publications, March 4, 1988

NSBA PUBLICATIONS

Digital Discipline: Off-Campus Student Conduct, the First Amendment and Web Sites, School Law in Review 2001

(9/89 3/93) 11/01

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GRAVENSTEIN UNION SCHOOL DISTRICT  
Sebastopol, California