



**ADMINISTRATIVE PROCEDURE**

CATEGORY: **Students, Rights and Responsibilities**

SUBJECT: **Student Free Speech**

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**A. PURPOSE AND SCOPE**

1. To outline administrative procedures relating to *individual* rights and responsibilities of students in the exercise of free speech on school grounds outside the classroom situation. Laws, policies, and procedures governing organized *groups* are covered in Procedure 6240.
2. To serve as a starting point for discussion of student rights and responsibilities in the study of the Bill of Rights in American government courses, moving to personal level aspects of government formerly treated more impersonally.
3. This procedure includes distribution of literature, publicity, use of bulletin boards, nonschool publications, spoken work, symbolic speech (e.g., buttons, armbands, flags), and petitions.
4. **Related Procedures:**

Controversial issues in school.....	4910
Display of commercial materials/advertising; distribution of literature and/or sales by nonstudents and community organizations .....	9350
Disturbances and demonstrations .....	EP 08
Family life education, human reproduction and STD/HIV education .....	4188
Materials for instructional use in schools, general .....	4500
Professional responsibilities of certificated employees .....	7046
School clubs, general .....	6240
Security, general .....	5000

**B. LEGAL AND POLICY BASIS**

1. **Reference:** Board policy: F-3700, H-5000, H-5100, H-5150, H-5400, K-6500; First Amendment and Article 1 § 2 of California Constitution, Education Code Sections 48907, 48950, 51501, 51520; State Board of Education Guidelines for Student Expression (10-15-71); Employment Regulations for the Classified Service of the San Diego Unified School District.

**C. GENERAL**

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Legal Services Office.

## 2. **Definitions**

- a. **Official school publications:** refers to material produced by pupils in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.
  - b. **Nonschool-sponsored materials:** refers to any material produced by pupils other than official school publications. Materials developed and printed *off campus by students* for distribution by students on campus.
  - c. **Nonschool materials:** Materials developed and printed by community organizations and/or individuals.
3. **Free Speech and Public School-Age Students.** Students retain fundamental rights to freedom of speech when attending school. The First Amendment to the United States Constitution and Article 1, section 2 of the California Constitution protect student speech. California statutes guarantee freedom of speech for students beyond the constitutional minimum. California Education Code § 48907 states:
- (a) Pupils of the public schools, including charter schools, 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, whether or not the publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.
  - (b) The governing board or body of each school district or charter school and each county board of education shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.
  - (c) Pupil editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section. However, it shall be the responsibility of a journalism adviser or advisers of pupil publications within each school to supervise the production of the pupil staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

- (d) There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay prior to a limitation of pupil expression under this section.
- (e) “Official school publications” refers to material produced by pupils in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.
- (f) This section does not prohibit or prevent the governing board or body of a school district or charter school from adopting otherwise valid rules and regulations relating to oral communication by pupils upon the premises of each school.
- (g) An employee shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against solely for acting to protect a pupil engaged in the conduct authorized under this section, or refusing to infringe upon conduct that is protected by this section, the First Amendment to the United States Constitution, or Section 2 of Article I of the California Constitution. (Education Code § 48907)

A school district operating one or more high schools, a charter school, or a private secondary school shall not make or enforce a rule subjecting a high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article I of the California Constitution.... This section does not prohibit the imposition of discipline for harassment, threats, or intimidation, unless constitutionally protected.... This section does not supersede, or otherwise limit or modify, the provisions of Section 48907.... The Legislature finds and declares that free speech rights are subject to reasonable time, place, and manner regulations. (Education Code § 48950)

Judicial decisions establish the following fundamental principles restricting the district’s power to regulate student speech:

- A school may not prohibit student speech simply because it presents controversial ideas in a provocative manner and opponents of the speech are likely to cause disruption. *Smith v. Novato Unified Sch. Dist.*, 150 Cal.App.4th 1439, 1456-57 (2007).
- To be prohibited on the basis of incitement, student speech must actually incite disruption, either because it specifically calls for a disturbance or because the

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manner of expression as opposed to the content of the ideas is so inflammatory that the speech itself provokes the disturbance. *Id.* at 1457.

- Student speech may not be restricted on the belief it would tarnish the reputation of the school and the district. The mere reputations of government entities may never be defended by censorship. *Leeb v. Delong*, 198 Cal.App.3d 47, 61 n.11 (1988). To justify restriction of student speech as libelous or slanderous, District officials must make a good faith and objectively rational determination that the potential plaintiff would prevail in a tort action against the District, and the restriction must be narrowly limited to the offending material itself. *Id.* at 62-63.
  - School officials may impose a prior restraint, *e.g.*, advance permission to speak or publish, only on “official school publications” as defined in Section 48907. Educ. Code § 48907; *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal.App.4th 1302, 1322 (1995).
  - A time, place or manner restriction may not be based on the content, subject matter or viewpoint of speech. *Pacific Gas and Elec. Co. v. Public Utilities Comm.*, 85 Cal.App.4th 86, 94 (2000).
4. **In addition to the evolving legal mandates** described in this procedure, another significant dimension of First Amendment free speech rights in the public school must be considered. Responsible exercise of free speech rights should be recognized as a prime educational objective. This goal, which is indispensable to the successful continuation and improvement of our democracy, cannot be achieved without the close cooperation of the Board of Education; the administrative, teaching, and classified staff; the students; and the citizens who are served by the public schools of San Diego.
5. **General Rights and Responsibilities Applying to All Manner of Free Speech.** The forms of speech available to students include but are not limited to official school publications, nonschool-sponsored materials, literature, publicity, bulletin boards, nonschool publications, the spoken word, symbolic speech (*e.g.*, armbands, buttons, signboards, flags) and petitions. The rights of free speech guaranteed to students by Education Code §§ 48907, 48950; the First Amendment; and/or Article I, § 2 shall not be restricted nor shall disciplinary action be taken because of the exercise thereof.
- a. Obscene speech includes material that taken as a whole the predominant appeal of which to the average person, applying contemporary standards, is to prurient interest; *i.e.*, a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors. (Penal Code §§ 313, 313.1; *Ginsburg v. New York*, 390 U.S. 629 (1968)).

- b. This procedure does not limit otherwise valid authority to discipline, suspend or expel students for conduct covered by Education Code § 48900 or other relevant statutes.
6. **Local school time, place, and manner regulations** shall be established by each school and shall address:
    - a. **Official school publications.** Material to be published in an official school publication should be submitted to the principal or principal's designee for review prior to time of printing and/or distribution of such materials. Student editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications. It shall be the responsibility of a journalism adviser or advisers of official school publications within each school to supervise the production of the student staff, to maintain professional standards of English and journalism, and to promote compliance with this procedure.
      - (1) School official(s) designated by the principal as authorized to receive and review written materials submitted pursuant to this procedure shall be specifically identified. The office to which such materials shall be submitted also shall be specifically identified.
      - (2) In order to prevent the "prior review" provision from operating as an invalid "prior restraint," the school official reviewing written materials shall give his/her views with regard to violations of this procedure and forward a response within four hours following submission of such materials, unless the material is submitted after 10:30 a.m. on any school day, in which case the school official shall give his/her views before noon on the following school day. Such views must be given in writing to the student, with a copy kept by the principal or designee in the case of noncompliance. The decision of the principal or designee may be appealed to the appropriate instructional leader who shall render a decision within four (4) work hours and communicate that decision to the student. The decision and appeal process should not cause the student to miss the publishing deadline for the item.
      - (3) A review of written materials submitted hereunder shall not be construed to mean that the individual school or school district necessarily agrees with or approves of the views contained in material distributed.
    - b. When materials printed by students off campus and distributed on campus are in violation of prohibitions listed in C.5 or the "time, place, and manner" regulations of this procedure, the principal may stop distribution and discipline

those responsible. (Distribution of materials which are not in violation of C.5 may not be prevented through censorship or actions which might constitute prior restraint.) The student assumes sole responsibility for any materials distributed that are in violation of statutes and/or provisions of this procedure. (Nonschool-sponsored materials printed off campus by nonstudents are governed by Procedure 9350.)

- c. **Specific rules governing distribution of printed materials and circulation of petitions**
- (1) **Time** of such activity shall be limited to periods before school, after dismissal, and during established lunch periods as deemed feasible by the principal.
  - (2) **Place** of the activity shall be reasonably restricted to permit normal flow of traffic within the school, in lunch locations, and at exterior doors, and to avoid interference with school programs.
  - (3) **Manner** of conducting such activity shall be restricted to prevent coercion and undue levels of noise.
- d. **Bulletin boards and the posting of publicity.** School authorities may restrict use of certain bulletin boards and display areas to school announcements. Additional bulletin board and/or display space shall be provided for use of students and student organizations. The following limitations on use of such areas must be observed:
- (1) All notices shall be officially dated *prior* to posting and such material shall be removed after a prescribed time to ensure full access to bulletin boards by others.
  - (2) Bulletin board space should be made available to all students under uniform rules approved by the principal.
- e. **Privileges accorded students who, as individuals, are members of community organization youth programs.** Students who, as individuals, are members of community youth organizations *not* qualifying under Procedure 6240 governing school clubs, may disseminate information regarding youth organizations activities as provided in C.6.d.
- f. **Public expression on school grounds (outside the classroom).** Students have the right to engage in speech or other communication that, when engaged in off campus, is protected under the First Amendment (Education Code Section 48950). A student shall have the right, either publicly or privately, to express

opinions, to take stands, and to support causes. There shall be no limitations to this right except as specified below:

- (1) An **area** for speaking to mass groups of students shall be set aside by school authorities.
  - (2) **Time** of speaking to mass groups of students shall be limited to periods before school begins, after dismissal, and during established lunch periods as deemed feasible by the principal.
  - (3) **Manner** of such expression shall be such as to prevent undue noise or substantial disorder. Therefore, electronic sound-amplification systems or devices of any kind are prohibited for this purpose unless allowed by school authorities.
  - (4) **Such expression** must be in compliance with C.5.
7. **Violations.** Acts in violation of any of the above limitations and rules constitute defiance of district regulations and can result in suspension or other appropriate disciplinary action.
8. **Others.** This term is used to describe all persons who are *not* students enrolled in the school, staff members of the school, or other district employees with legitimate business at the school site. Such persons may not come onto school grounds without permission of the principal or designee. For a more detailed description of administrative regulations and procedures imposing limitations upon such persons, see Procedure 9375 and the *Emergency Procedures Manual*.

## D. IMPLEMENTATION

1. **To establish specific written school guidelines and procedures, the principal:**
  - a. May develop specific written school regulations and guidelines consistent with this procedure. In doing so, principal may consult with faculty, students, and other interested parties.
  - b. May designate other administrator, teacher, or group(s) to function as his/her designee in carrying out all or part of function of reviewing materials submitted for compliance with district policy and procedure.
  - c. May communicate accepted school guidelines and procedures, as well as district guidelines and limitations, as deemed necessary, to all students, staff, and parents. (Student handbook, faculty handbook, and PTA newsletter may be

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used.) Guidelines include time, place, manner, penalties for violation, and “prior submission” review procedure for school-sponsored materials.

**2. Prior to printing and/or distribution**

**a. Student**

- (1) Prepares or obtains printed materials, petitions, buttons, badges, armbands, and flags.
- (2) Checks for compliance with provisions of local school regulations.
- (3) Submits, at his/her option, school-sponsored materials to principal or designee for review as provided in C.6.a.
- (4) Includes principal’s office in distribution of nonschool-sponsored materials.

**b. Principal or designee**

- (1) Reviews materials only on basis of established limitations and guidelines.
- (2) Expresses his/her views as to applicability of such established limitations and guidelines to school-sponsored materials. Consults with district General Counsel as appropriate.
- (3) Notifies student(s) of his/her views on school-sponsored materials. Provides student with written notice of noncompliance with this procedure if such is the case.

**c. Appeal from declaration of noncompliance by principal or designee**

- (1) Student may appeal to appropriate area superintendent having jurisdiction over school in which student is enrolled.
- (2) Area superintendent shall make his/her decision on the appeal within a reasonable period of time and communicate decision to student.
- (3) Nothing herein shall preclude a student from further appealing area superintendent’s decision to higher school district authority.

**E. FORMS AND AUXILIARY REFERENCES**

**F. REPORTS AND RECORDS**

SUBJECT: **Student Free Speech**

NO: **6210**

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EFFECTIVE: **3-07-72**

REVISED: **3-08-12**

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**G. APPROVED BY**



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General Counsel, Legal Services  
As to form and legality

**H. ISSUED BY**



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Chief of Staff