

## Students

### Restrictions on Publications: Elementary Schools <sup>1</sup>

*[For elementary or unit districts only]*

#### 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. <sup>2</sup> 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 <sup>3</sup>

For purposes of this section and the following section, a *publication* includes, without limitation: (1) written or electronic print material, (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 online (e.g., any website, social networking site, database for information retrieval, etc.), or (3) information or material on electronic devices (e.g., data or voice messages delivered by cell phones, tablets, and other hand-held devices). <sup>4</sup>

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

<sup>1</sup> State or federal law controls this policy's content. This policy concerns an area in which the law is unsettled. [It applies to elementary and unit districts with both elementary and high school students only. Unit districts should have this policy and policy 7:315, Restrictions on Publications: High Schools. The Speech Rights of Student Journalists Act, 105 ILCS 80/5, added by P.A. 99-678 applies to high school and unit districts.](#)

<sup>2</sup> 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 241 (1st Cir. 1997), *cert. denied* (1998).

<sup>3</sup> 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).

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

**Comment [KAS1]: RENAMED.** This policy is RENAMED to restrict it to elementary students in response to the Speech Rights of Student Journalists Act, 105 ILCS 80/1, added by P.A. 99-678, which applies to high school students only. We added a footnote to discuss that **this policy applies to only elementary and unit districts with both elementary and high school students.**

Elementary districts subscribing to **PRESS** will have a title change only to this policy.

Unit districts subscribing to **PRESS** will now have two policies to address this topic:

1. This policy, which will apply to elementary students in the district, and
2. Policy 7:315, *Restrictions on Publications; High Schools.*

This split is necessary because the Speech Rights of Student Journalists Act, 105 ILCS 80/5, added by P.A. 99-678 applies to only high school and unit districts (because unit districts include high school students). Because the new Act does not apply to elementary students, splitting the policies into two provides the least amount of disruption to elementary and unit districts. For more discussion, see policy 7:315, *Restrictions on Publications; High Schools.*

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. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities; <sup>5</sup>
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; <sup>6</sup>
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; <sup>7</sup>
4. Is reasonably viewed as promoting illegal drug use; <sup>8</sup> 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. <sup>9</sup>

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

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<sup>5</sup> 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).

<sup>6</sup> 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, 480 F.3d 460 (7th Cir., 2007), *cert. denied* (2007) (school did not violate students' First Amendment rights when it disciplined students for wearing T-shirts with a "talentless infantile drawing" that school officials reasonably found to undermine the educational atmosphere).

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) (discussed the "rights of others to be secure and let alone" argument from Tinker, but found that the school district violated a student's First Amendment rights for disciplining her when she posted a video clip on a website).

B.H. v. Easton Area School District, 725 F.3d 293 (3rd Cir 2013), *cert. denied* (2014) (school violated students' free speech rights by banning the wearing of cancer awareness bracelets containing the caption **I♥boobies**).

<sup>7</sup> Be sure that the board's definitions for *sexting* in this policy aligned with other definitions used throughout 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. 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.

<sup>8</sup> Morse v. Frederick, 551 U.S. 393 (2007).

<sup>9</sup> 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); Leal v. Everett Public Schools, 2015 WL 728651 (W.D.Wash. 2015).

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**

#### 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.

#### Bullying and Cyberbullying **12**

The Superintendent or designee shall treat behavior that is *bullying* and/or *cyberbullying* according to Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, in addition to any response required by this policy.

LEGAL REF.: 105 ILCS 5/27-23.7  
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 (Prevention of and Response to Bullying, Intimidation, and Harassment), 8:25 (Advertising and Distributing Materials in School Provided by Non-School Related Entities)

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**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. Many decisions address the tension between public schools' authority to discipline students for off-campus speech and students' right to free speech. 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 Behavior*). For example, see:

J.S. v. Blue Mountain Sch. Dist., combined with Layshock v. Hermitage Sch. Dist., 650 F.3d 205 (3d Cir. 2011), cert. denied (2012) (schools may not punish students for their off-campus indecent and offensive parodies of their principals, absent a showing that the parodies caused, or could cause, substantial disruption in the schools).

Kowalski v. Berkeley Cnty. Sch., 652 F.3d 565 (4th Cir. 2011), cert. denied (2012) (upheld a student's suspension for off-campus posts to a social network site that defamed a classmate because it was foreseeable that the expression would reach the school and the student's conduct involved substantial disruption and interference with the work and discipline of the school).

The statutory definition of *bullying* includes *cyberbullying* (105 ILCS 5/27-23.7); these terms are defined in 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment* (see also f/n 6 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.

**12** 105 ILCS 5/27-23.7.