

**Policy Committee Meeting**  
Duluth Public Schools, ISD 709  
Agenda  
Wednesday, August 9, 2023  
District Services Center  
709 Portia Johnson Dr.  
Duluth, MN 55811  
3:30 PM

- 1. AGENDA ITEMS**
- 2. POLICIES FOR FIRST READING**
  - A. 904 Distribution of Materials on School District Property by Non-School Persons 2
- 3. POLICIES FOR SECOND READING**
- 4. POLICIES FOR REVIEW**
  - A. 103 - Complaints - Students, Employees, Parents, Other Persons 6
  - B. 505 Distribution of Non-School Sponsored Materials on School Premises by Students & Employees (to replace 5165 with the same name) 11
- 5. REGULATIONS - Informational**
- 6. OTHER**

Adopted: \_\_\_\_\_

MSBA/MASA Model Policy 904

Orig. 1995

Revised: \_\_\_\_\_

Rev. 2002

**904 DISTRIBUTION OF MATERIALS ON SCHOOL DISTRICT PROPERTY BY NONSCHOOL PERSONS**

**I. PURPOSE**

The purpose of this policy is to provide for distribution of materials appropriate to the school setting by nonstaff and nonstudents on school district property in a reasonable time, place, and manner which does not disrupt the educational program nor interfere with the educational objectives of the school district.

**II. GENERAL STATEMENT OF POLICY**

- A. The school district intends to provide a method for nonschool persons and organizations to distribute materials appropriate to the school setting within the limitations and provisions of this policy.
- B. To provide for orderly and nondisruptive distribution of materials, the school board adopts the following regulations and procedures.

**III. DEFINITIONS**

- A. "Distribution" means circulation or dissemination of materials by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, posting or displaying materials, or placing materials in internal staff or student mailboxes.
- B. "Materials" includes all materials and objects intended by nonschool persons or nonschool organizations for distribution. Examples of nonschool-sponsored materials include, but are not limited to, leaflets, brochures, buttons, badges, flyers, petitions, posters, underground newspapers whether written by students, employees or others, and tangible objects.
- C. "Nonschool person" means any person who is not currently enrolled as a student in or employed by the school district.
- D. "Obscene to minors" means:
  - 1. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested;
  - 2. The material depicts or describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and
  - 3. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

- E. "Minor" means any person under the age of eighteen (18).
- F. "Material and substantial disruption" of a normal school activity means:
  1. Where the normal school activity is an educational program of the school district for which student attendance is compulsory, "material and substantial disruption" is defined as any disruption which interferes with or impedes the implementation of that program.
  2. Where the normal school activity is voluntary in nature (including school athletic events, school plays and concerts, and lunch periods) "material and substantial disruption" is defined as student rioting, unlawful seizures of property, conduct inappropriate to the event, participation in a school boycott, demonstration, sit-in, stand-in, walk-out, or other related forms of activity.

In order for expression to be considered disruptive, specific facts must exist upon which the likelihood of disruption can be forecast including past experience in the school, current events influencing student activities and behavior, and instances of actual or threatened disruption relating to the written material in question.

- G. "School activities" means any activity sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, other theatrical productions, and in-school lunch periods.
- H. "Libelous" is a false and unprivileged statement about a specific individual that tends to harm the individual's reputation or to lower him or her in the esteem of the community.

#### **IV. GUIDELINES**

- A. Nonschool persons and organizations may, within the provisions of this policy, be granted permission to distribute, at reasonable times and places as set forth in this policy, and in a reasonable manner, materials and objects which are appropriate to the school setting.
- B. Requests for distribution of materials will be reviewed by the administration on a case-by-case basis. However, distribution of the following materials is always prohibited. Material is prohibited that:
  1. is obscene to minors;
  2. is libelous;
  3. is pervasively indecent or vulgar or contains any indecent or vulgar language or representations, with a determination made as to the appropriateness of the material for the age level of students to which it is intended;
  4. advertises any product or service not permitted to minors by law;
  5. advocates violence or other illegal conduct;
  6. constitutes insulting or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religion, or ethnic origin);

7. presents a clear and present likelihood that, either because of its content or the manner of distribution, it will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, will cause the commission of unlawful acts or the violation of lawful school regulations.
- C. Permission for nonschool persons to distribute materials on school district property is a privilege and not a right. In making decisions regarding permission for such distribution, the administration will consider factors including, but not limited to, the following:
1. whether the material is educationally related;
  2. the extent to which distribution is likely to cause disruption of or interference with the school district's educational objectives, discipline, or school activities;
  3. whether the materials can be distributed from the office or other isolated location so as to minimize disruption of traffic flow in hallways;
  4. the quantity or size of materials to be distributed;
  5. whether distribution would require assignment of school district staff, use of school district equipment, or other resources;
  6. whether distribution would require that nonschool persons be present on the school grounds;
  7. whether the materials are a solicitation for goods or services not requested by the recipients.

**V. TIME, PLACE, AND MANNER OF DISTRIBUTION**

If permission is granted pursuant to this policy for the distribution of any materials, the time, place, and manner of distribution will be solely within the discretion of the administration, consistent with the provisions of this policy.

**VI. PROCEDURES**

- A. Any nonschool person wishing to distribute materials must first submit for approval a copy of the materials to the administration at least five days in advance of desired distribution time, together with the following information:
1. Name and phone number of the person submitting the request.
  2. Date(s) and time(s) of day of requested distribution.
  3. If material is intended for students, the grade(s) of students to whom the distribution is intended.
  4. The proposed method of distribution.
- B. The administration will review the request and render a decision. The administration will assign a location and method of distribution and will inform the persons submitting the request whether nonschool persons may be present to distribute the materials. In

the event that permission to distribute the materials is denied or limited, the person submitting the request should be informed in writing of the reasons for the denial or limitation.

- C. Permission or denial of permission to distribute material does not imply approval or disapproval of its contents by either the school, the administration of the school, the school board, or the individual reviewing the material submitted.
- D. In the event that permission to distribute materials is denied, the nonschool person or organization may request reconsideration of the decision by the superintendent. The request for reconsideration must be in writing and must set forth the reasons why distribution is desirable and in the interest of the school community.

## **VII. VIOLATION OF POLICY**

Any party violating this policy or distributing materials without permission will be directed to leave the school property immediately and, if necessary, the police will be called.

## **VIII. IMPLEMENTATION**

The school district administration may develop any additional guidelines and procedures necessary to implement this policy for submission to the school board for approval. Upon approval by the school board, such guidelines and procedures shall be an addendum to this policy.

***[Note: School districts are encouraged to consider additional guidelines which reflect varied local practices relating to this subject matter including addressing the subject of consistency and uniformity for approving or disapproving practices under this policy.]***

**Legal References:** U. S. Const., amend. I  
*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988)  
*Doe v. South Iron R-1 School District*, 498 F.3d 878 (8<sup>th</sup> Cir. 2007)  
*Bystrom v. Fridley High School*, 822 F.2d 747 (8<sup>th</sup> Cir. 1987)  
*Cornelius v. NAACP Legal Defense and Educational Fund, Inc.*, 473 U.S. 788, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985)  
*Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)  
*Roark v. South Iron R-1 School Dist.*, 573 F.3d 556 (8<sup>th</sup> Cir. 2009)  
*Victory Through Jesus Sports Ministry Foundation v. Lee's Summit R-7 School Dist.*, 640 F.3d 329 (8<sup>th</sup> Cir. 2011), cert. denied 565 U.S. 1036, 132 S.Ct. 592 (2011)

**Cross References:** MSBA/MASA Model Policy 505 (Distribution of Nonschool-Sponsored Materials on School Premises by Students and Employees)  
MSBA/MASA Model Policy 512 (School-Sponsored Student Publications)

## **103 COMPLAINTS – STUDENTS, EMPLOYEES, PARENTS, OTHER PERSONS**

### **I. PURPOSE**

The school district takes seriously all concerns or complaints by students, employees, parents or other persons. If a specific complaint procedure is provided within any other policy of the school district, the specific procedure shall be followed in reference to such a complaint. If a specific complaint procedure is not provided, the purpose of this policy is to provide a procedure that may be used.

### **II. GENERAL STATEMENT OF POLICY**

- A. Students, parents, employees or other persons, may report concerns or complaints to the school district. While written reports are encouraged, a complaint may be made orally. Any employee receiving a complaint shall advise the principal or immediate supervisor of the receipt of the complaint. The supervisor shall make an initial determination as to the seriousness of the complaint and whether the matter should be referred to the superintendent. A person may file a complaint at any level of the school district; i.e., principal, superintendent or school board. However, persons are encouraged to file a complaint at the building level when appropriate.
- B. Depending upon the nature and seriousness of the complaint, the supervisor or other administrator receiving the complaint shall determine the nature and scope of the investigation or follow-up procedures. If the complaint involves serious allegations, the matter shall promptly be referred to the superintendent who shall determine whether an internal or external investigation should be conducted. In either case, the superintendent shall determine the nature and scope of the investigation and designate the person responsible for the investigation or follow up relating to the complaint. The designated investigator shall ascertain details concerning the complaint and respond promptly to the appropriate administrator concerning the status or outcome of the matter.
- C. The appropriate administrator shall respond in the same communication method as the complaint was received to the complaining party concerning the outcome of the investigation or follow-up, including any appropriate action or corrective measure that was taken. The superintendent shall be copied on the correspondence and consulted in advance of the written response when appropriate. The response to the complaining party shall be consistent with the rights of others pursuant to the applicable provisions of Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act) or other law.

### **III. GRIEVANCE PROCEDURE FOR COMPLAINTS OF DISCRIMINATION**

The following grievance procedure applies to claims of sex, disability, and racial discrimination:

- A. Any person who believes he or she has been the victim of unlawful discrimination or any person with knowledge or belief of conduct that may constitute unlawful discrimination shall report the alleged acts immediately to an appropriate school district official designated by this policy. The complaint must be filed within 90 calendar days of the alleged violation.
- B. The Human Rights Officer is responsible for receiving oral or written complaints of unlawful discrimination toward an employee or student. However, nothing in this policy shall prevent any person from reporting unlawful discrimination toward an employee or student directly with the Human Rights Officer, the school board or

other school district official.

- C. The school board hereby designates Theresa Severance, ~~4316 Rice Lake Rd., Suite 108,~~ 709 Portia Johnson Dr., Duluth, MN 55811, (218) 336-8700 ext. 1062, theresa.severance@isd709.org, as the school district Human Rights Officer(s) to receive reports, complaints, or grievances of unlawful discrimination. If the complaint involves a Human Rights Officer, the complaint shall be filed directly with the Superintendent of Schools.
- D. Upon receipt of a complaint, the Human Rights Officer shall immediately notify the superintendent. If the superintendent is the subject of the complaint, the Human Rights Officer shall immediately notify the school board.
- E. The Human Rights Officer may request but not insist upon a written complaint. Alternative means of filing a complaint, such as through a personal interview or by tape recording, shall be made available upon request for qualified persons with a disability. If the complaint is oral, it shall be reduced to writing within 2 business days and forwarded to the superintendent. Failure to do so may result in disciplinary action. The school district encourages the reporting party to complete the complaint form for written complaints. It is available from the principal of each building or the school district office.
- F. The school district shall respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses, consistent with the school district's legal obligations to investigate, take appropriate action, and comply with any discovery or disclosure obligations.

#### **IV. INVESTIGATION**

- A. The Human Rights Officer, upon receipt of a complaint alleging unlawful discrimination shall promptly undertake an investigation if deemed appropriate. The investigation may be conducted by the Title IX coordinator for complaints of sex discrimination or the Section 504 Coordinator for complaints of disability discrimination, or a school district official or neutral third party designated by the Title IX coordinator, Section 504 coordinator or Human Rights Officer. The investigation shall be completed within 30 days of the complaint, unless impracticable.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of other methods deemed pertinent by the investigator.
- C. In determining whether the alleged conduct constitutes a violation of this policy, the school district shall consider the facts and the surrounding circumstances such as the nature of the behavior, past incidents or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.
- D. The school district may take immediate steps to protect the parties involved in the complaint process, pending completion of an investigation of alleged unlawful discrimination.
- E. Upon completion of the investigation, the school district investigator shall make a written report to the Human Rights Officer. If the complaint involves the Human Rights Officer, the report may be filed directly with the superintendent or school

board. The report shall include the facts, a determination of whether the allegations have been substantiated, whether a violation of this policy has occurred as well as a description of any proposed resolution which may include alternative dispute resolution.

- F. The district shall comply with federal and state law pertaining to retention of records.

**V. APPEAL**

If the grievance has not been resolved to the satisfaction of the complainant, s/he may appeal to the Human Rights Officer within ten (10) school days of receipt of the findings of the school district investigation. The school district investigator shall conduct a review of the appeal and within ten (10) school days of receipt of the appeal, shall affirm, reverse, or modify the findings of the report. The decision of the school district investigator is final but does not preclude pursuit of alternative complaint procedures noted in the section entitled "Right to Alternative Complaint Procedures."

**VI. SCHOOL DISTRICT ACTION**

- A. Upon conclusion of the investigation and receipt of the findings, the school district shall take appropriate action. If it is determined that a violation has occurred, such action may include, but is not limited to, warning, suspension, expulsion, transfer, remediation or termination.

School district action taken for violation of this policy shall be consistent with the requirements of applicable collective bargaining agreements, Minnesota and federal law and school district policies.

- B. The result of the school district's investigation of each complaint filed under these procedures shall be reported in writing to the complainant by the school district in accordance with state and federal law regarding data or records privacy.

**VII. RETALIATION**

The school district shall take appropriate action against any student, teacher, administrator or other school personnel who retaliates against any person who reports alleged unlawful discrimination toward an employee or student or any person who testifies, assists or participates in an investigation or hearing relating to such unlawful discrimination. Retaliation includes, but is not limited to, any form of intimidation or harassment.

**VII. CONFLICT OF INTEREST**

If there is a conflict of interest with respect to any party affected by this policy, appropriate action shall be taken such as, but not limited to, appointing or contracting with a neutral third-party investigator to conduct the investigation or recusal from the process by the person for whom a conflict or potential conflict of interest exists.

**VIII. DISSEMINATION OF POLICY**

The school district shall adopt and publish these procedures.

TITLE IX COORDINATOR  
Anthony Bonds, Assistant Superintendent  
Duluth Public Schools



~~4316 Rice Lake Rd., Suite 108~~  
709 Portia Johnson Dr.  
Duluth, MN 55811  
(218) 336-8739  
anthony.bonds@isd709.org

SECTION 504 COORDINATOR  
Anthony Bonds, Assistant Superintendent  
Duluth Public Schools  
~~4316 Rice Lake Rd., Suite 108~~  
709 Portia Johnson Dr.  
Duluth, MN 55811  
(218) 336-8739  
anthony.bonds@isd709.org

## **IX. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES**

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include filing charges with the agencies listed below or initiating action in state or federal court.

Claims of discrimination may also be pursued through the following agencies where appropriate:

U.S. Department of Education  
Office for Civil Rights, Region V  
500 W. Madison Street – Suite 1475  
Chicago, IL 60661  
Tel: (312) 730-1560  
TDD: (312) 730-1609

MN Department of Human Rights  
540 Fairview Ave N, Ste. 201  
St. Paul, MN 55104  
(800)657.3704  
(651) 296.5663  
TDD (651) 296.1283

For complaints of employment discrimination:  
Equal Employment Opportunity Commission  
330 S. 2<sup>nd</sup> Avenue  
Suite 430  
Minneapolis, MN 55401  
(800) 669.4000  
(612) 335.4040  
TDD (612) 335.4045

This document provides general information and is not to be a substitute for legal advice. Changes in the law, including timelines for filing a complaint, may affect your rights.

Resources:  
U.S. Department of Education  
Office for Civil Rights, Region V  
500 W. Madison Street – Suite 1475  
Chicago, IL 60661  
Tel: (312) 730-1560

TDD: (312) 730-1609

Reading Room, U.S. Department of Education, Office for Civil Rights:  
<http://www2.ed.gov/about/offices/list/ocr/publications.html>

**Legal References:** Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)  
34 C.F.R. Section 104.7(b) (Section 504 of the Rehabilitation Act)  
34 C.F.R. Section 106.8(b) (Title IX of the Education Amendments of 1972)

**Cross References:** MSBA/MASA Model Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)  
MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 413 (Harassment and Violence)  
MSBA/MASA Model Policy 514 (Bullying Prohibition)  
MSBA School Law Bulletin "I" (School Records – Privacy – Access to Data)

Replacing: Policy 1090  
Adopted: 06-19-2018  
Revised: 07-17-2018  
07-16-2019  
08-20-2019  
**08-17-2021 ISD 709**  
10-18-2022

**5165 505 DISTRIBUTION OF NONSCHOOL-SPONSORED MATERIALS ON SCHOOL PREMISES BY STUDENTS AND EMPLOYEES**

**I. PURPOSE**

The purpose of this policy is to protect the exercise of students' and employees' free speech rights, taking into consideration the educational objectives and responsibilities of the school district.

**II. GENERAL STATEMENT OF POLICY**

- A. The school district recognizes that students and employees have the right to express themselves on school property. This protection includes the right to distribute, at a reasonable time and place and in a reasonable manner, nonschool-sponsored material.
- B. To protect First Amendment rights, while at the same time preserving the integrity of the educational objectives and responsibilities of the school district, the school board adopts the following regulations and procedures regarding distribution of nonschool-sponsored material on school property and at school activities.

**III. DEFINITIONS**

- A. "Distribute" or "Distribution" means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, or posting or displaying material, or placing material in internal staff or student mailboxes.
- B. "Nonschool-sponsored material" or "unofficial material" includes all materials or objects intended for distribution, except school newspapers, employee newsletters, literary magazines, yearbooks and other publications funded and/or sponsored or authorized by the school. Examples of nonschool-sponsored materials include but are not limited to leaflets, brochures, buttons, badges, fliers, petitions, posters, and underground newspapers whether written by students or employees or others, and tangible objects.
- C. "Obscene to minors" means:
  - 1. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested;
  - 2. The material depicts or describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and
  - 3. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- D. "Minor" means any person under the age of eighteen (18).
- E. "Material and substantial disruption" of a normal school activity means:
  - 1. Where the normal school activity is an educational program of the district for which student attendance is compulsory, "material and substantial disruption"

is defined as any disruption which interferes with or impedes the implementation of that program.

2. Where the normal school activity is voluntary in nature (including, **without limitation**, school athletic events, school plays and concerts, and lunch periods) "material and substantial disruption" is defined as student rioting, unlawful seizures of property, conduct inappropriate to the event, participation in a school boycott, demonstration, sit-in, stand-in, walk-out, or other related forms of activity.

In order for expression to be considered disruptive, ~~there must exist~~ specific facts **must exist** upon which the likelihood of disruption can be forecast, including past experience in the school, current events influencing student activities and behavior, and instances of actual or threatened disruption relating to the written material in question.

- F. "School activities" means any activity sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, and in-school lunch periods.
- G. "Libelous" is a false and unprivileged statement about a specific individual that tends to harm the individual's reputation or to lower that individual in the esteem of the community.

#### **IV. GUIDELINES**

- A. Students and employees of the school district have the right to distribute, at reasonable times and places as set forth in this policy, and in a reasonable manner, nonschool-sponsored material.
- B. Requests for distribution of nonschool-sponsored material, **other than union materials distributed by the Duluth Federation of Teachers**, will be reviewed by the administration on a case-by-case basis. However, distribution of the materials listed below is always prohibited. Material is prohibited that:
  1. is obscene to minors;
  2. is libelous or slanderous;
  3. is pervasively indecent or vulgar or contains any indecent or vulgar language or representations, with a determination made as to the appropriateness of the material for the age level of students to which it is intended.
  4. advertises or promotes any product or service not permitted to minors by law;
  5. advocates violence or other illegal conduct;
  6. constitutes insulting or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religious or ethnic origin);
  7. presents a clear and present likelihood that, either because of its content or the manner of distribution, it will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, will cause the commission of unlawful acts or the violation of lawful school regulations.

C. To the extent that the Duluth Federation of Teachers' Union distributes any political materials, the materials will be prepared in such a way that no political material is visible from the outside page(s) of any publication. The Union shall either seal, fold, or staple the materials so political information may not be seen or include any political material on an internal page so that it will not be visible. Political material shall be defined consistent with the provisions of Minnesota Statute 211B.01, subd. 2, which defines campaign material as "any literature, publication, or material tending to influence voting at a primary or other election..."

C. Distribution by students and employees of nonschool-sponsored materials on school district property are subject to reasonable time, place, and manner restrictions set forth below. In making decisions regarding the time, place, and manner of distribution, the administration will consider factors including, but not limited to, the following:

1. whether the material is educationally related;
2. the extent to which distribution is likely to cause disruption of or interference with the school district's educational objectives, discipline, or school activities;
3. whether the materials can be distributed from the office or other isolated location so as to minimize disruption of traffic flow in hallways;
4. the quantity or size of materials to be distributed;
5. whether distribution would require assignment of school district staff, use of school district equipment, or other resources;
6. whether distribution would require that nonschool persons be present on the school grounds;
7. whether the materials are a solicitation for goods or services not requested by the recipients.

## V. TIME, PLACE, AND MANNER OF DISTRIBUTION

A. No nonschool-sponsored material shall be distributed during and at the place of a normal school activity if it is reasonably likely to cause a material and substantial disruption of that activity.

B. Distribution of nonschool-sponsored material is prohibited when it blocks the safe flow of traffic within corridors and entrance ways of the school, and school parking lots. Distribution shall not impede entrance to or exit from school premises in any way.

C. No one shall coerce a student or staff member to accept any publication.

D. All employees and students shall comply with the provisions of Minnesota Law regarding distribution of political materials in a polling place on Election Day.

D. The time, place, and manner of distribution will be solely within the discretion of the administration, consistent with the provisions of this policy.

E. The District will allow the Duluth Federation of Teacher's Union access to teacher mailboxes as a mechanism to communicate with its members. All distribution of material through the mailboxes will be done by Union members.

- F. For all employees including non-teacher members of the Duluth Federation of Teachers, any distribution of materials will be done outside of the normal paid workday. For teacher members, distribution may be done during non-assigned work time (e.g., lunch or preparation time) so long as any time spent is minimal. If the District has any concerns about the abuse of time by teacher members of the Duluth Federation of Teachers, it will notify the Union.

## VI. PROCEDURES

- A. Any student or employee wishing to distribute (as defined in this policy) nonschool-sponsored material, other than union materials distributed by the Duluth Federation of Teachers, must first submit for approval a copy of the material to the principal at least 24 hours in advance of desired distribution time, together with the following information:
1. Name and phone number of the person submitting the request and, if a student, the room number of his or her first-period class.
  2. Date(s) and time(s) of day intended display or distribution.
  3. Location where material will be displayed or distributed;
  4. If intended for students, the grade(s) of students to whom the display or distribution is intended.
- B. Within one school day, the principal will review the request and render a decision. In the event that permission to distribute the material is denied or limited, the person submitting the request should be informed in writing of the reasons for the denial or limitation.
- C. If the person submitting the request does not receive a response within one school day, the person shall contact the office to verify that the lack of response was not due to an inability to locate the person.
- D. If the person is dissatisfied with the decision of the principal, the person may submit a written request for appeal to the superintendent. If the person does not receive a response within three (3) school days (not counting Saturdays, Sundays and holidays) of submitting the appeal, the person shall contact the office of the superintendent to verify that the lack of response is not due to an inability to locate the person.
- E. Permission or denial of permission to distribute material does not imply approval or disapproval of its contents by either the school, the administration of the school, the school board, or the individual reviewing the material submitted.

## VII. DISCIPLINARY ACTION

- A. Distribution by any student of nonschool-sponsored material prohibited herein or in violation of the provisions of time, place and manner of distribution as described above will be halted and disciplinary action will be taken in accordance with the School District's Student Discipline Policy—policy #5085.
- B. Distribution by any employee of nonschool-sponsored material prohibited herein or in violation of the provisions of time, place, and manner of distribution as described above will be halted and appropriate disciplinary action will be taken, in accordance with any individual contract, collective bargaining agreement, school district policies

and procedures, and/or governing statute.

- C. Any other party violating this policy will be requested to leave the school property immediately and, if necessary, the police will be called.

### **VIII. NOTICE OF POLICY TO STUDENTS AND EMPLOYEES**

A copy of this policy will be published in student handbooks **in the fall of each school year** and posted in school buildings.

### **IX. IMPLEMENTATION**

The School District administration may develop any additional guidelines and procedures necessary to implement this policy for submission to the School Board for approval. Upon approval by the School Board, such guidelines and procedures shall be an addendum to this policy.

***[Note: School districts are encouraged to consider additional guidelines which reflect varied local practices relating to this subject matter including addressing the subject of consistency and uniformity for approving or disapproving practices under this policy.]***

~~References: MSBA/MASA Model Policy 505—Distribution of Non school Sponsored Materials on School Premises By Students and Employees Settlement Agreement dated December 8, 1999 between ISD 709 and the Duluth Federation of Teachers, Local 692~~

**Legal References:** U. S. Const., amend. I  
*Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988)  
*Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986)  
*Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969)  
*Bystrom v. Fridley High School*, 822 F.2d 747 (8<sup>th</sup> Cir. 1987)  
*Roark v. South Iron R-1 School Dist.*, 573 F.3d 556 (8<sup>th</sup> Cir. 2009)  
*Victory Through Jesus Sports Ministry Foundation v. Lee’s Summit R-7 School Dist.*, 640 F.3d 329 (8<sup>th</sup> Cir. 2011), cert. denied 565 U.S. 1036 (2011)

**Cross References:** MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)  
MSBA/MASA Model Policy 506 (Student Discipline)  
MSBA/MASA Model Policy 512 (School-Sponsored Student Publications)  
MSBA/MASA Model Policy 904 (Distribution of Materials on School District Property by Nonschool Persons)

Adopted: 02-15-2000  
First Reading:

## **~~5165 DISTRIBUTION OF NON-SCHOOL SPONSORED MATERIALS ON SCHOOL PREMISES BY STUDENTS AND EMPLOYEES~~**

### **~~I. PURPOSE~~**

~~The purpose of this policy is to protect the exercise of students' and employees' free speech rights, taking into consideration the educational objectives and responsibilities of the School District.~~

### **~~II. GENERAL STATEMENT OF POLICY~~**

~~A. The School District recognizes that students and employees have the right to express themselves on school property. This protection includes the right to distribute, at a reasonable time and place and in a reasonable manner, non school sponsored material.~~

~~B. To protect First Amendment rights, while at the same time preserving the integrity of the educational objectives and responsibilities of the School District, the School Board adopts the following regulations and procedures regarding distribution of non school sponsored material on school property and at school activities.~~

### **~~III. DEFINITIONS~~**

~~A. "Distribution" means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, or posting or displaying material.~~

~~B. "Non school sponsored material" or "unofficial material" includes all materials or objects intended for distribution, except school newspapers, employee newsletters, literary magazines, yearbooks and other publications funded and/or sponsored or authorized by the school. Examples of non school sponsored materials include but are not limited to leaflets, brochures, buttons, badges, fliers, petitions, posters, and underground newspapers whether written by students or employees or others, and tangible objects.~~

~~C. "Obscene to minors" means:~~

- ~~1. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested;~~
- ~~2. The material depicts or describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, and lewd exhibition of the genitals; and~~
- ~~3. material, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.~~

~~D. "Minor" means any person under the age of eighteen (18).~~

~~E. "Material and substantial disruption" of a normal school activity means:~~

- ~~1. Where the normal school activity is an educational program of the district for which student attendance is compulsory, "material and substantial disruption" is defined as any disruption which interferes with or impedes the implementation of that program.~~
- ~~2. Where the normal school activity is voluntary in nature (including, without limitation, school athletic events, school plays and concerts, and lunch periods) "material and~~



~~substantial disruption" is defined as student rioting, unlawful seizures of property, conduct inappropriate to the event, participation in a school boycott, demonstration, sit-in, stand-in, walk-out, or other related forms of activity.~~

~~In order for expression to be considered disruptive, there must exist specific facts upon which the likelihood of disruption can be forecast, including past experience in the school, current events influencing student activities and behavior, and instances of actual or threatened disruption relating to the written material in question.~~

~~F. "School activities" means any activity sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays, and in-school lunch periods.~~

~~G. "Libelous" is a false and unprivileged statement about a specific individual that tends to harm the individual's reputation or to lower that individual in the esteem of the community.~~

#### **IV. GUIDELINES**

~~A. Students and employees of the School District have the right to distribute, at reasonable times and places as set forth in this policy, and in a reasonable manner, non-school sponsored material.~~

~~B. Requests for distribution of non-school sponsored material, other than union materials distributed by the Duluth Federation of Teachers, will be reviewed by the administration on a case-by-case basis. However, distribution of the materials listed below is always prohibited. Material is prohibited that:~~

- ~~1. Is obscene to minors;~~
- ~~2. Is libelous or slanderous;~~
- ~~3. Is pervasively indecent or vulgar or contains any indecent or vulgar language or representations, with a determination made as to the appropriateness of the material for the age level of students to which it is intended.~~
- ~~4. Advertises or promotes any product or service not permitted to minors by law;~~
- ~~5. Advocates violence or other illegal conduct;~~
- ~~6. Constitutes insulting or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religious or ethnic origin);~~
- ~~7. Presents a clear and present likelihood that, either because of its content or the manner of distribution, it will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, will cause the commission of unlawful acts or the violation of lawful school regulations.~~

~~C. To the extent that the Duluth Federation of Teachers' Union distributes any political materials, the materials will be prepared in such a way that no political material is visible from the outside page(s) of any publication. The Union shall either seal, fold, or staple the materials so political information may not be seen or include any political material on an internal page so that it will not be visible. Political material shall be defined consistent with~~

~~the provisions of Minnesota Statute 211B.01, subd. 2, which defines campaign material as "any literature, publication, or material tending to influence voting at a primary or other election..."~~

## **~~V. TIME, PLACE, AND MANNER OF DISTRIBUTION~~**

~~A. No non-school sponsored material shall be distributed during and at the place of a normal school activity if it is reasonably likely to cause a material and substantial disruption of that activity.~~

~~B. Distribution of non-school sponsored material is prohibited when it blocks the safe flow of traffic within corridors and entrance ways of the school, and school parking lots. Distribution shall not impede entrance to or exit from school premises in any way.~~

~~C. No one shall coerce a student or staff member to accept any publication.~~

~~D. All employees and students shall comply with the provisions of Minnesota Law regarding distribution of political materials in a polling place on Election Day.~~

~~E. The District will allow the Duluth Federation of Teacher's Union access to teacher mailboxes as a mechanism to communicate with its members. All distribution of material through the mailboxes will be done by Union members.~~

~~F. For all employees including non-teacher members of the Duluth Federation of Teachers, any distribution of materials will be done outside of the normal paid workday. For teacher members, distribution may be done during non-assigned work time (e.g., lunch or preparation time) so long as any time spent is minimal. If the District has any concerns about the abuse of time by teacher members of the Duluth Federation of Teachers, it will notify the Union.~~

## **~~VI. PROCEDURES~~**

~~A. Any student or employee wishing to distribute non-school sponsored material, other than union materials distributed by the Duluth Federation of Teachers, must first submit for approval a copy of the material to the principal at least 24 hours in advance of desired distribution time, together with the following information:~~

- ~~1. Name and phone number of the person submitting the request and, if a student, the room number of his or her first-period class.~~
- ~~2. Date(s) and time(s) of day intended display or distribution.~~
- ~~3. Location where material will be displayed or distributed;~~
- ~~4. If intended for students, the grade(s) of students to whom the display or distribution is intended.~~

~~B. Within one school day, the principal will review the request and render a decision. In the event that permission to distribute the material is denied or limited, the person submitting the request should be informed in writing of the reasons for the denial or limitation.~~

~~C. If the person submitting the request does not receive a response within one school day, the person shall contact the office to verify that the lack of response was not due to an~~

~~inability to locate the person.~~

~~D. If the person is dissatisfied with the decision of the principal, the person may submit a written request for appeal to the superintendent. If the person does not receive a response within three (3) school days (not counting Saturdays, Sundays and holidays) of submitting the appeal, the person shall contact the office of the Superintendent to verify that the lack of response is not due to an inability to locate the person.~~

~~E. Permission or denial of permission to distribute material does not imply approval or disapproval of its contents by either the school, the administration of the school, the School Board, or the individual reviewing the material submitted.~~

### ~~**VII. DISCIPLINARY ACTION**~~

~~A. Distribution by any student of non school-sponsored material prohibited herein or in violation of the provisions of time, place and manner of distribution as described above will be halted and disciplinary action will be taken in accordance with the School District's Student Discipline Policy, policy #5085.~~

~~B. Distribution by any employee of non school-sponsored material prohibited herein or in violation of the provisions of time, place and manner of distribution as described above will be halted and appropriate disciplinary action will be taken, in accordance with any individual contract, collective bargaining agreement, School District policies and procedures, and/or governing statute.~~

~~C. Any other party violating this policy will be requested to leave the school property immediately and, if necessary, the police will be called.~~

### ~~**VIII. NOTICE OF POLICY TO STUDENTS AND EMPLOYEES**~~

~~A copy of this policy will be published in student handbooks in the fall of each school year and posted in school buildings.~~

### ~~**IX. IMPLEMENTATION**~~

~~The School District administration may develop any additional guidelines and procedures necessary to implement this policy for submission to the School Board for approval. Upon approval by the School Board, such guidelines and procedures shall be an addendum to this policy.~~

~~References : MSBA/MASA Model Policy 505—Distribution of Non school Sponsored Materials on School Premises By Students and Employees Settlement Agreement dated December 8, 1999 between ISD 709 and the Duluth Federation of Teachers, Local 692~~

~~Adopted: 0 2 15 2000 ISD 709~~