

Community Relations

Advertising and Distributing Materials in Schools Provided by Non-School Related Entities¹

No material or literature shall be posted or distributed that would: (1) disrupt the educational process, (2) violate the rights or invade the privacy of others, (3) infringe on a trademark or copyright, or (4) be defamatory, obscene, vulgar, or indecent. No material, literature, or advertisement shall be posted or distributed without advance approval as described in this policy.

Community, Educational, Charitable, or Recreational Organizations

Community, educational, charitable, recreational, or similar groups may, under procedures established by the Superintendent, advertise events pertinent to students' interests or involvement.² All advertisements must (1) be student-oriented, (2) prominently display the sponsoring organization's name, and (3) be approved in advance by the Superintendent or designee. The District reserves the right to decide where and when any advertisement or flyer is distributed, displayed, or posted.³

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

¹ State or federal law controls this policy's content, but the area of law is unsettled. Schools are *nonpublic forums*, meaning they need not open their doors to private speakers but may not discriminate against disfavored viewpoints or subjects, e.g., religion. *Id.*, Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993). This policy establishes a limited public forum, i.e., non-school entities may only distribute material concerning events pertinent to students' interests or involvement. Alternatively, boards may refuse to allow the distribution or posting of any material requested by non-school related organizations. Hedges v. Wauconda Community Unit Sch. Dist. No. 18, 9 F.3d 1295 (7th Cir. 1993). The following language can be used to completely ban the distribution of material by non-school related organizations:

No material or literature shall be posted in schools or distributed to students by non-school related organizations or individuals.

² This sentence establishes a limited public forum, i.e., the school limits non-school expressive activity to "events pertinent to students' interests or involvement." Such a limitation survives First Amendment scrutiny if it is reasonable and not based on the speaker's viewpoint. A school's refusal to post an individual's sign containing the Ten Commandments on the baseball field's fence open to commercial advertising did not violate the individual's free speech rights because the fence was open for a limited purpose (commercial ads) and the school's content restrictions were reasonable. DiLoreto v. Downey Unified Sch. Dist., 196 F.3d 958 (9th Cir. 1999).

³ This section authorizes the superintendent or designee to approve non-commercial ads. Most boards do not want to approve these ads because of their frequency; however, a board may use the following alternative for #3, "be approved in advance by the Board."

The distribution of flyers from religious youth organizations will survive scrutiny under the First Amendment's Establishment Clause if the organization's religious message is sufficiently separated from the school to prevent students from confusing the two. Sherman v. CCSD 21, 8 F.3d 1160 (7th Cir. 1993); Rusk v. Crestview Local Schools, 379 F.3d 418 (6th Cir. 2004). However, a policy allowing viewpoint discrimination will be set aside. Hills v. Scottsdale Unified Sch. Dist., No. 48, 329 F.3d 1044 (9th Cir. 2003)(refusal to distribute summer camp brochures offering Bible classes because of their religious content violated the First Amendment); Child Evangelism Fellowship of NJ v. Stafford Twp. Sch. Dist., 386 F.3d 514 (3rd Cir. 2004)(struck a policy prohibiting classroom distribution of religious fliers because it discriminated on basis of viewpoint); Child Evangelism Fellowship v. Montgomery Co. Public Schools, 457 F.3d 376 (4th Cir. 2006)(policy limiting classroom distribution of materials from outside groups based on *type of group*, rather than content of the materials, violates religious group's free speech rights because of inadequate protection against viewpoint discrimination, i.e., it gave school officials *unfettered discretion* to engage in viewpoint discrimination).

Commercial Companies and Political Candidates or Parties ⁴

Commercial companies may purchase space for their advertisements in or on: (1) athletic field fences; (2) athletic, theater, or music programs; (3) student newspapers or yearbooks; (4) scoreboards; or (5) other appropriate locations.⁵ The advertisements must be consistent with this policy and its implementing procedures and be appropriate for display in a school context. Prior approval from the Board is needed for advertisements on athletic fields, scoreboards, or other building locations. Prior approval is needed from the Superintendent or designee for advertisements on athletic, theater, or music programs; student newspapers and yearbooks; and any commercial material related to graduation, class pictures, or class rings.

No individual or entity may advertise or promote its interests by using the names or pictures of the School District, any District school or facility, staff members, or students except as authorized by and consistent with administrative procedures and approved by the Board.

Material from candidates and political parties will not be accepted for posting or distribution, except when used as part of the curriculum.

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Limitations that are not based on the material's viewpoint are permissible. Victory Through Jesus Sports Ministry v. Lee's Summit R-7 Sch. Dist., 640 F.3d 329 (8th Cir. 2011), *cert. denied*, 565 U.S. 1036 (2011) (policy limiting the volume of promotional materials sent home with elementary students did not violate the First Amendment rights of a nonprofit Ministry Foundation).

Allowing Gideons to meet with students and distribute Bibles during instructional time violates the Establishment Clause. Berger v. Rensselaer Central Sch. Corp., 982 F.2d 1160 (7th Cir. 1993); Doe v. South Iron R-1 Sch. Dist., 498 F.3d 878 (8th Cir. 2007).

⁴ Commercial advertising may be accepted without making the school a forum for all types of expressive activity. See f/n 2 above. If the board does not want to sell advertising space, use the following alternative:

Commercial companies and political candidates or organizations are prohibited from advertising in schools, on the school grounds, or on school or District websites.

The list of places where commercial companies may purchase space for their advertisements must be tailored to meet local needs and circumstances.

This sample policy requires board approval only for ads that alter the look of school property. Boards that want to approve all commercial and political ads may use the following alternative for the final two sentences:

Prior approval from the Board is needed for all commercial or political advertisements.

Boards that want to authorize the superintendent or designee to approve all commercial and political ads may use the following alternative:

Prior approval from the Superintendent or designee is needed for all commercial or political advertisements.

⁵ Consult the board attorney when commercial advertising companies seek to purchase space for their advertisements within the school's available technology platforms. The Student Online Personal Protection Act (SOPPA) (105 ILCS 85/) provides safeguards to protect the privacy and security of data about students when it is collected by educational technology companies and specifies that the use of such data may only be for *beneficial purposes* such as providing personalized learning and innovative educational technologies. It specifically prohibits *targeted advertising* (presenting advertisements to students where they are selected based on information obtained or inferred from that students' online behaviors, usage of applications, or *covered information* (as defined by SOPPA)). But students may be targeted for online advertisements when they visit an online location based upon their own response to or request for information or feedback, e.g., using Google brand products, where ads are an inherent part of the search engine, or other types of search engines or Internet-based resources to do assignments.

LEGAL REF.: Lamb's Chapel v. Center Moriches Union Free Sch. Dist., 508 U.S. 384 (1993).
Berger v. Rensselaer Central Sch. Corp., 982 F.2d 1160 (7th Cir. 1993), *cert. denied*, 113 S.Ct. 2344 (1993).
Sherman v. Community Consolidated Sch. Dist. 21, 8 F.3d 1160 (7th Cir. 1993), *cert. denied*, 8 F.3d 1160 (1994).
Hedges v. Wauconda Community Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).
Victory Through Jesus Sports Ministry v. Lee's Summit R-7 Sch. Dist., 640 F.3d 329 (8th Cir. 2011), *cert. denied*, 565 U.S. 1036 (2011).
DiLoreto v. Downey Unified Sch. Dist., 196 F.3d 958 (9th Cir. 1999).

CROSS REF.: 7:325 (Student Fundraising Activities), 7:330 (Student Use of Buildings - Equal Access)