

Recommended

WASHINGTON CENTRAL UNIFIED
UNION SCHOOL DISTRICT

Board of Directors' Policy

POLICY: C27

WARNED: 1.10.2020

ADOPTED: 2.5.2020

EFFECTIVE: 2.15.2020

STUDENT SELF-EXPRESSION AND STUDENT DISTRIBUTION OF LITERATURE

It is the policy of the Washington Central Unified Union School District to allow limited distribution of non-school sponsored literature on school grounds or at school events by students. Accordingly, the Superintendent/Principal may allow students to distribute these materials so long as they are in compliance with this policy.

Non-school sponsored literature means any printed, written, or electronic materials prepared by non-school organizations or individuals that are not made as a part of the curricular or approved extracurricular programs of the district. They include such things as fliers, invitations, announcements, pamphlets, posters, photographs, pictures, audio recordings, digital recordings, and electronic messages. Materials prepared under the supervision of school staff as part of classroom instruction or classroom activities are not restricted by this policy.

Distribution means circulating non-school sponsored literature in ways that include: handing to others on school property or during school-sponsored events; posting on school property such as walls, bulletin boards, and district web-sites; placing upon desks, tables, on or in lockers; or making available in principal's office.

This policy prohibits the distribution of literature that:

- A. Is obscene, vulgar, or profane, or harms the reputation of others;ⁱ
- B. Violates federal, state or local laws;
- C. Advocates the use or availability of tobacco, alcohol or illegal drugsⁱⁱ;
- D. Incites violence;
- E. Interferes with or advocates interference with the orderly operation of the schools;ⁱⁱⁱ
- F. Primarily seeks to advertise for sale products or services;^{iv} or
- G. Has fundraising as its primary purpose.^v

When a student wishes to distribute copies of non-school sponsored literature, the materials must include the name of the person or organization sponsoring the literature, and shall be submitted to the superintendent/principal to review ahead of time in order to confirm that the literature does not fall in one of the prohibited categories listed above.

The superintendent/principal does not need to review the literature ahead of time when the materials will be distributed by a student to other attendees of a student group meeting at school during non-instructional time. However, even in these cases, students must ensure that the materials do not fall into one of the prohibited categories.

The superintendent/principal may place reasonable time, place,^{vi} and manner^{vii} restrictions on the distribution of non-school sponsored literature. However, the administrator cannot use these restrictions or others to discriminate as to the point of view reflected in the materials.^{viii}

Student Self-Expression

Students have a right to express themselves on school property and at school functions through speech or expressive actions, provided they do not materially and substantially interfere with the orderly operation of the school and the rights of others.

This policy prohibits student self-expression that:

- A. Is obscene, vulgar, or profane, or harms the reputation of others;
- B. Violates federal, state or local laws;
- C. Advocates the use or availability of tobacco, alcohol or illegal drugs;
- D. Incites violence; or
- E. Interferes with or advocates interference with the orderly operation of the schools.

It is the sense of the WCUUSD Board of School Directors that symbols, lettering, or insignia associated with organizations that promote hatred or violence or that support white supremacy, such as Confederate symbolism, and the swastika, interfere with the orderly operation of our schools.

The situation in which students express themselves may affect the amount of freedom they are given in their speech. If the speech is part of a school-sponsored publication, when a reasonable person would think that the speech is endorsed by the school district, the school district may exercise more control. School district representatives may have editorial control over the style and content of student speech in school-sponsored activities, such as class work or a school newspaper, so long as their edits are reasonably related to legitimate school-related concerns.^{ix}

ⁱ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) (student may be disciplined for giving speech at school assembly that contained sexual innuendos and vulgar language). T-shirt that impugned character of sitting U.S. president was not vulgar or offensive within meaning of *Fraser* according to Second Circuit Court of Appeals. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).

ⁱⁱ *Morse v. Frederick*, 551 U.S. 393 (2007) (school officials may prohibit speech that they reasonably believe advocates illegal drug use, so long as the speech cannot be interpreted as commenting on any political or social issue). Student had First Amendment right to wear T-shirt that criticized President Bush by depicting him as a drug and alcohol user and a “chicken-hawk” because it did not advocate use of drugs. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).

ⁱⁱⁱ The standard for evaluating the reasonableness of controls on student self-expression and student speech is whether or not the speech substantially or materially disrupts school activity, or could reasonably be forecast to cause such disruption. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1979) (students protesting Vietnam War entitled to wear black armbands).

^{iv} As indicated here, a district could choose to prohibit all distribution of literature that promotes the sale of products or services. As with all viewpoint neutral prohibitions, care must be taken that the prohibition is evenly enforced without exceptions. If a district wishes to allow distribution of materials supporting some commercial activity but not others, it must make the distinction based on criteria that are objective and viewpoint neutral.

^v A common question may be whether students selling items to raise money for parent-teacher organizations is permitted. If such organizations are clearly delineated (either in this policy or elsewhere) as school-sponsored groups and their literature is delineated as school-sponsored literature, then distribution of their fundraising materials would not be restricted by this policy.

^{vi} Examples of a “place” restriction might be that literature be posted only on bulletin boards and not on windows, or that it be made available on a specified table in the principal’s office. The district must bear in mind that the restrictions must be aimed at preventing disruption to student learning.

^{vii} A “manner” restriction might specify whether or not persons distributing the material may stand at the main entrance to the building, or might limit the number of copies of a pamphlet that may be distributed.

⁷ The basic principle in evaluating the constitutionality of restrictions on distribution of materials in a limited public form is that the restrictions may not be based on the viewpoint of the materials or the one distributing them. *Lamb’s Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Rosenberger v. Univ. of Virginia*, 515 U.S. 819 (1995); *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001).

^{ix} *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) (school officials may exercise editorial control over school newspaper); *Peck v. Baldwinville Central Sch. Dist.*, 426 F.3d 617 (2d Cir. 2005) (teacher may censor elementary school student’s poster expressing religious views when it did not meet pedagogical requirements of class assignment).