

MODEL POLICY

on

STUDENT PUBLICATIONS CODE

INTRODUCTION

In 1989, the Iowa legislature passed Senate File 224 entitled "An Act Relating To Student Exercise of Free Expression In The Public Schools." That law created a new Code section, Iowa Code section 280.22, which defines and regulates student exercise of free expression in "official school publications." The State Department of Education was also directed to develop a model written publication code which includes reasonable provisions for the regulation of the time, place, and manner of student expression.

A committee of faculty advisers, principals, superintendents, attorneys, and Department of Education staff members met several times to formulate a statement of policy and a model student publication code. School districts are advised that they are not required to sponsor "official school publications." However, if schools do sponsor "official school publications," any regulation of the content of those publications by school officials is governed by Iowa Code section 280.22.

Although the term "official school publications" was defined in the legislation as material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body, the model publication code also includes as "official school publications" television, radio, or cable television programs produced in curricular or co-curricular journalism or journalism-related classes or clubs under the sponsorship of the school district.

Iowa Code section 280.22 does provide that each board of directors must adopt rules in the form of a written publications code which includes reasonable provisions for the time, place, and manner of conducting the activities of official school publications. Once adopted, this code is to be made available to students and their parents. The statement of policy and student publication code herein is a model to which schools can refer in drafting their own publication code.

Iowa Code section 280.22 reads as follows:

280.22 STUDENT EXERCISE OF FREE EXPRESSION.

1. Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications.

2. Students shall not express, publish, or distribute any of the following:

a. Materials which are obscene.

b. Materials which are libelous or slanderous under chapter 659.

c. Materials which encourage students to do any of the following:

(1) Commit unlawful acts.

(2) Violate lawful school regulations.

(3) Cause the material and substantial disruption of the orderly operation of the school.

3. There shall be no prior restraint of material prepared for official school publications except when the material violates this section.

4. Each board of directors of a public school shall adopt rules 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 jurisdiction. The board shall make the code available to the students and their parents.

5. Student editors of official school publications shall assign and edit the news, editorial, and feature content of their publications subject to the limitations of this section. Journalism advisers of students producing official school publications shall supervise the production of the student staff, to maintain professional standards of English and journalism, and to comply with this section.

6. Any expression made by students in the exercise of free speech, including student expression in official school publications, shall not be deemed to be an expression of school policy, and the public school district and school employees or officials shall not be liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student speech or expression, and then only to the extent of the interference or alteration of the speech or expression.

7. "Official school publications" means material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

8. This section does not prohibit a board of directors of a public school from adopting otherwise valid rules relating to oral communications by students upon the premises of each school.

MODEL POLICY STATEMENT

Students of the _____ Community School District are protected in their exercise of freedom of expression by the First Amendment to the Constitution of the United States and the Constitution of the State of Iowa. Understanding the meaning of the First Amendment's protection of free speech is an important part of the learning process, and school is an appropriate place for inquiry and learning through the expression and exchange of ideas. Student expression in official school publications is specifically defined and protected under Iowa law.

It is the policy of the _____ Community School District that all official school publications shall be free from prior restraint by school officials except as provided by law. An editorial board comprising participating students under the supervision of publication advisers shall be responsible for the content of official student publications. The editorial board shall be guided by the Iowa Code and by ethical standards adopted by professional associations or societies of journalism. All publications shall provide students a full opportunity for the exchange of ideas and robust debate about topics of student interest, including those that may be controversial.

Student expression in official school publications is not an expression of school policy. Public school districts and employees or officials are not liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student's speech or expression, and then only to the extent of the interference or alteration of that speech or expression.

Schools possess a substantial educational interest in teaching student writers journalistic skills. Journalism advisers shall supervise student writers to maintain professional standards of English and journalism and to comply with Iowa law including the restrictions against unlawful speech in Iowa Code section 280.22.

It is the policy of the _____ Community School District to encourage the resolution of complaints arising from the application of this policy through an appeal process.

Comment: The Model Policy Advisory Committee recommends two avenues of appeal: one for students involved in writing or creating the official school publication and one for persons who feel aggrieved by student expression in an official school publication. With regard to the former appeal situation, the Committee recommends the creation of an appeal panel to include student(s), faculty, and administrator(s). See Section IV of the Model Code. With regard to the latter, the Committee recommends that the complaining person be directed to follow the existing "chain of command" from the student writer to the teacher or adviser, through administrators and ultimately to the board. It is the Committee's belief that a fair appeals process may deter the filing of lawsuits to resolve the perceived problem.

Whether the district uses the appeal process in the following Model Student Publications Code or one of its own, the appeal deadlines should be timely to ensure prompt resolution of issues related to student expressions in publications.

The administration is directed to develop a Code of reasonable rules including time, place, and manner restrictions respecting official student publications in accordance with the Constitution and laws of the United States and the State of Iowa. This policy and its accompanying Code of rules shall be made available to all students.

Comment: The board may wish to direct administration to adopt rules regarding unofficial publications as well. See Section X of the Model Code.

Date of Adoption _____ Legal Reference: Iowa Code §280.22 (1991)

MODEL STUDENT PUBLICATIONS CODE**I. Definitions**

The following definitions are provided to assist in the interpretation of this Code.

1. An "official school publication" is any curricular or co-curricular student publication or broadcast, including but not limited to newspapers, yearbooks, literary magazines, television, radio or cable television programs produced in curricular or co-curricular journalism or journalism-related activities under the sponsorship of the school district and distributed or disseminated to the student body either free or for a fee.

2. "Obscene material" means that which the average person, applying community standards, finds as a whole to appeal to a minor's prurient interest in sex, and depicts or describes in an offensive way sexual conduct or sexual acts, and which lacks serious literary, artistic, political or scientific value.

For purposes of an audience of students, forms of expression that are vulgar, indecent, lewd, or sexually explicit may be considered obscene.

3. "Libelous" statements are false, unprivileged statements the average reader would interpret as statements of fact and which damage the reputation of an individual or business.

4. "Encourage" means to spur on, stimulate, or foster. NOTE:
Mere factual reporting of controversial issues shall not be
considered encouragement.

5. "Material and substantial disruption of the orderly operation of the school" means student actions or behaviors that can reasonably be believed or feared to significantly interrupt school activities or intrude unreasonably in school affairs. The phrase also includes interference with the rights of others. Examples that might reasonably lead to the forecast of material and substantial disruption include, but are not limited to, student violence or rioting; unlawful seizures of property; vandalism to or destruction of property; boycotts, sit-ins, walk-outs or related activities at school.

The undifferentiated fear or apprehension of a potential disturbance is not adequate justification for suppressing student expression; the ability to show substantial facts that reasonably support a forecast of likely disruption is required. Past experience under similar circumstances, current events influencing student activities and behavior, and instances of actual or threatened disruption relating to the material in question may be considered.

II. **Rule: Prior Restraint of Material Prepared for an Official School Publication**

No student shall publish in an official school publication material which is obscene, libelous, or encourages students to

commit unlawful acts, violate school rules, cause the material and substantial disruption of the orderly operation of the school, or infringe on the rights of others.

III. Fair Comment Rule

Student journalists are entitled to the protection of the "fair comment rule," which provides that all persons are free to express opinions on matters of common interest. Students are free to comment responsibly on school policies or the performance of school administrators, teachers, or employees, so long as the comments or criticisms are statements of opinion and are not libelous. However, student journalists are not entitled to a wholesale defamation exemption under the fair comment rule merely by including the disclaimer "In my opinion" or a similar phrase in conjunction with a false and damaging statement.

Public officials or "public figures" who claim to be libeled must prove the student journalist made false statements with actual malice, i.e., that the journalist knew the statement was false or acted recklessly in failing to verify the statement. School officials are generally deemed public figures in student publications concerning school-related activities. School employees may or may not be public figures; the determination often depends on the involvement of the employee in issues of public importance.

Private persons, those not in the public eye, must show that a statement was made negligently, i.e., that the journalist failed to exercise reasonable care in preparing the article, to prove libel.

IV. Advice

If, in the opinion of the student editor, student editorial staff, faculty adviser, or school official, material proposed for publication may fall within the prohibitions of Section II of this Code, the legal opinion of the school's attorney or other practicing attorney should be sought. Permission is granted to contact an attorney only to those persons and under the circumstances described in Board Policy ____.

Comment: This Model Rule assumes that only specified persons in the school or district have the authority to contact a lawyer on behalf of the school district, and it assumes that a Board Policy already exists identifying those persons who can make the call and circumstances when a call could be made.

Appendix A includes resources for advice leading to resolution of a legal question. All listed resources will provide assistance free of charge to schools.

V. Appeal Procedure

Students who believe they have been unreasonably restricted in the exercise of their freedom of expression in official student publications have the right to appeal the decision, in writing, as follows:

- a. From a decision of a faculty adviser or principal, an appeal may be made to the Student-Faculty Appeal Panel.
- b. From a decision of the Student-Faculty Appeal panel, an appeal may be made to the Superintendent of the School District.

- c. From the Superintendent's decision an appeal may be made to the Board of Directors. The Board may convene in a special meeting or may schedule the hearing for the next regular board meeting.

- d. A student dissatisfied with the decision of the Board of Directors may appeal the Board's decision within 30 days to the State Board of Education or may file suit in district court.

The decision maker shall convene an informal hearing, where the parties may present facts and argument for resolution, within three school days following the submission of a written notice of appeal (or at a time mutually agreeable) except in the case of an appeal to the Board of Directors.

The person, panel, or Board to whom an appeal is made shall make a decision in accordance with the law, school board policy, and these rules. A decision and the reasons for it shall be in writing and issued within three school days following the informal hearing.

At any point during the appeal procedure, the party appealing may discontinue the appeal. Parties may also resolve the dispute by mutual written agreement at any time during the appeal process, and once agreement is reached, the appeal is resolved and no further action is necessary. The appeals process shall be free from intimidation or reprisal.

Comment: The Committee members were at odds internally over the inclusion of the last sentence above. We do not mean to imply that coercion would be used to deter appeals, but we were also reluctant to ignore verified incidents where students were "strongly discouraged" from raising questions or appealing an adviser's or administrator's decision under not-so-veiled threats such as withdrawing letters of recommendation for awards and scholarships. Thus, we decided to include the premise in our Model Code; it should go without saying, but

VI. Complaint Procedure

Any person aggrieved by the content of official student publications is directed to use the complaint procedure of Board Policy No. ____.

VII. Responsibilities of Student Journalists

Student journalists who participate in official school publications are responsible for the content of those publications. Student journalists should at all times strive to achieve professional standards of accuracy, fairness, objectivity and thoroughness in each and every aspect of the publication. Student journalists should also strive to achieve professional standards of grammar, usage, punctuation and spelling, which are important to the clarity and accuracy of the publication.

VIII. Responsibilities of Faculty Advisers

Schools possess a substantial educational interest in teaching student writers journalistic skills. Journalism advisers shall supervise student writers to maintain professional standards of English and journalism and to comply with Iowa law, including the restrictions against unlawful speech in Iowa Code section 280.22.

IX. Liability

Student expression in official school publications shall not be deemed to be an expression of school policy. The public school district and school employees or officials shall not be liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student's speech or expression, and then only to the extent of the interference or alteration of the speech or expression. Student journalists must recognize that with editorial control comes responsibility for the content of the publication.

NOTE: The following model rules are not required by Iowa Code section 280.22. They are only offered by the Department of Education for guidance and consideration as related constitutional issues.

X. Advertising/Commercial Speech in Official Student Publications -- Model Policy Statement

ADVERTISING/COMMERCIAL SPEECH

Model Policy Statement

The publicly-funded activities of the _____ School District include the publication/broadcasting of student expression.

The _____ School District board of directors believes it has a compelling interest in promoting the ideals of citizenship and personal and civic responsibility. This includes discouragement of illegal activities and the purchase or use of products which are illegal to minors. Therefore, advertisements, whether purely commercial, quasi-commercial, or political in nature, that encourage illegal activity or activity that is in violation of properly adopted school regulations, or encourage or promote the purchase or use of products or services that are illegal for minors will not be accepted for publication or broadcast. The editorial board of the publication is responsible for enforcement of this policy.

XI. Time, Place and Manner Restrictions on Unofficial Student Publications

A publication by students not created under the supervision of school personnel and not a part of the curricular or extracurricular programs or activities of _____ School is considered an unofficial student publication. However, it may be disseminated on school grounds subject to the following conditions:

1. The publication is distributed before or after school or within the cafeteria/commons area during the lunch periods.
2. The publication does not identify itself as affiliated with or under the sponsorship of the school.
3. The publication is not pervasively vulgar, indecent, or obscene to an audience of minors.
4. The publication does not contain libelous expression, or expression that invades the privacy of another.

5. The publication does not include insulting or "fighting words," the very expression of which injures or harasses others (e.g., threats of violence, defamation of a person's character, race, religion, or ethnic origin).
6. The publication does not contain expression that presents a likelihood that, because of its content or the manner of distribution, it will cause a material and substantial disruption of the orderly operation of the school, cause the commission of unlawful acts, or the violation of school regulations.

Dissemination of unofficial student publications in violation of this rule shall result in disciplinary action taken against the student(s) responsible for disseminating the material.

Comment: Items 1 and 2 above are traditional "time, place, and manner" restrictions on non-school sponsored student speech. Items 3-6 are "content-based" restrictions. However, they were approved by the Eighth Circuit Court of Appeals in Bystrom v. Fridley over a challenge by students and, therefore, have been included as permissible criteria in this model.