CVUSD
Administrative Regulation AR 5145.2

Students

Freedom Of Speech/Expression

Note: The following administrative regulation should be revised to reflect district practice. It is recommended that districts consult legal counsel when establishing restrictions, including "time, place, and manner" provisions, related to students' rights to free speech/expression.

School-Sponsored Publications

***Note: Education Code 48907 mandates districts to establish a written "publications code" related to students' rights to freedom of speech and of the press in official school publications. These written rules and regulations must include reasonable provisions for the time, place, and manner in which free expression may take place within the district's jurisdiction. ***

***Note: Education Code 48907 provides greater protection to students' free speech rights than provided by U.S. Supreme Court and other federal court decisions and authorizes school officials to limit student speech only in the specific circumstances listed below, including when the speech is likely to cause a disruption. In Smith v. Novato Unified School District, the court held that a district could not prohibit speech just because the speech "presents controversial ideas and opponents of the speech are likely to cause disruption." In order for the speech to be prohibited, the speech must incite a disruption. Thus, the court looked for evidence that the student intended to cause substantial disruption, such as direct provocation or racial epithets, rather than evidence that the anticipated or perceived reaction of the audience would cause a disruption. ***

Students shall have the right to exercise freedom of speech and of the press in official school publications, except for expression that is obscene, libelous, slanderous, or so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school. (Education Code 48907)

Official school publications includes material produced by students in journalism, newspaper, yearbook, or writing classes and distributed to the student body either for a fee or free. (Education Code 48907)

Each principal shall develop a school publications code outlining the responsibility of student journalists, editors, and publication advisors.

All student submissions shall be held to professional standards of English and journalism. (Education Code 48907)

***Note: When analyzing whether student speech should be permitted, the principal should determine if specific evidence exists that shows how the speech violates Education Code 48907

(obscene, libelous, incites a disturbance). This specific evidence should be provided to the student and documented in case the student decides to appeal the principal's decision to the Superintendent or designee. Education Code 48907 provides that school officials have the burden of showing justification, without undue delay, prior to any limitation of student expression.***

If the principal considers material submitted for publication to violate Education Code 48907, he/she shall notify the student, without undue delay, and give specific reasons why the submitted material may not be published. Absent extraordinary circumstances, such notice should be given in sufficient time to allow the student time to either modify the material or to seek review of the principal's determination from the Superintendent or designee. Prior to any restriction of student speech, school officials shall consider any feasible alternative options to restricting the speech.

***Note: The following optional paragraph authorizes the principal to include a disclaimer disassociating the district from the publication. Such disclaimers should be used with caution and only after careful analysis. ***

To the extent that the principal or designee believes that the school and district should be disassociated from a particular idea or opinion, the principal may require student articles to include disclaimers.

Distribution of Printed Materials and Petitions by Students

Note: Pursuant to the federal Equal Access Act (20 USC 4071-4074), if a secondary district with a limited open forum allows student groups to use school media to publicize meetings, it must provide equal access to all student groups. See BP/AR 6145.5 - Student Organizations and Equal Access for language implementing this requirement.

The principal or designee may provide bulletin boards on which students and student organizations may post materials of general interest. Students also may post or distribute handbills, leaflets, and other printed material, whether produced within or outside of the school. Students may collect signatures on petitions concerning school or nonschool issues.

(cf. 1325 - Advertising and Promotion)
(cf. 6145.5 - Student Organizations and Equal Access)

Note: Districts might consider requiring students to include a disclaimer on all materials to be distributed. For example, a disclaimer might state that "this event is not school-sponsored or approved" or that "opinions are not necessarily those of the school district or school personnel." Districts wishing to include disclaimer language should consult legal counsel as appropriate.

Note: Education Code 48907 allows districts to regulate the "time, place, and manner" of student speech. The following paragraph provides "time, place, and manner" restrictions and should be modified to reflect district practice.

Printed materials or petitions may be distributed only:

1. Before or after school or during lunch time

2. In locations that do not obstruct the normal flow of traffic within the school or at entrances

No student shall use coercion to induce any other student or person to accept printed matter or to sign a petition. No funds shall be collected for any material distributed.

(cf. 5131 - Conduct)

Clothing, Buttons, and Badges

***Note: A school district's ability to regulate "hate speech," such as clothing with derogatory or demeaning messages, is unclear. While the 9th Circuit court held in Harper v. Poway Unified School District that a school could prohibit a student from wearing a T-shirt with an anti-homosexual message, the U.S. Supreme Court vacated that decision and thus its analysis cannot be relied upon and is not included in the section below. Because the status of the law is unclear, districts should consult with legal counsel as appropriate. ***

Buttons, badges, armbands, and clothing bearing slogans or sayings may be worn unless their message falls into the categories prohibited by law and Board policy. No employee shall interfere with this practice on the grounds that the message may be controversial or unpopular with students or faculty.

(cf. 5131.4 - Student Disturbances)
(cf. 5132 - Dress and Grooming)
(cf. 5136 - Gangs)
(cf. 5144 - Discipline)

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