

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

August 2, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Community Relations-Distribution and Display of  
Community Flyers and Posters-8:25

This policy is now divided into specific sections, one for Community, Educational, Charitable, or Recreational Organizations and one for Commercial Companies and Political Candidates or Parties. Specific BOE action is required when advertisements are going to be posted that are not for graduation, class pictures, or class rings. There is a requirement for the superintendent to set up procedures for distribution of flyers. All legal references are updated.

We ask that you use this as your first reading period and then put this on the next BOE meeting agenda for a second reading and approval.

## Community Relations

### Advertising and Distributing Materials in Schools Provided by Non-School Related Entities <sup>1</sup>

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.

#### 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. <sup>2</sup> This may include displaying posters in areas reserved for community posters, having flyers distributed to students, or being included in the school's or District's website where appropriate. All material and literature must be student-oriented and have the sponsoring organization's name prominently displayed. <sup>3</sup>

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

<sup>1</sup> 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 School Dist., 113 S.Ct. 2141 (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 School District No. 18, 9 F.3d 1295 (7th Cir. 1993); Muller v. Jefferson Lighthouse School, 98 F.3d 1530 (7th Cir. 1996). 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.

<sup>2</sup> 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 analysis 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 (i.e., commercial ads) and the school's content restrictions were reasonable. DiLoreto v. Downey Unified School Dist., 196 F.3d 958 (9th Cir. 1999).

<sup>3</sup> 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. Community Consolidated School Dist. 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 School District, 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 New Jersey v. Stafford Township School 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 County 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 fails to protect against viewpoint discrimination, i.e., it gave school officials "unfettered discretion" to engage in viewpoint discrimination).

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

#### Commercial Companies and Political Candidates or Parties <sup>4</sup>

Commercial companies may purchase space for their advertisements in or on: (1) athletic field fences; (2) athletic, theater, or music programs; (3) scoreboards; or (4) other appropriate location. The advertisements must be consistent with this policy and its implementing procedures and must be approved by the School Board. <sup>5</sup> No Board approval is needed for commercial material related to graduation, class pictures, or class rings. <sup>6</sup>

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.

LEGAL REF.: Berger v. Rensselaer Central School Corp., 982 F.2d 1160 (7th Cir. 1993), *cert. denied*, 113 S.Ct. 2344 (1993).  
DiLoreto v. Downey Unified School Dist., 196 F.3d 958 (9th Cir. 1999).  
Hedges v. Wauconda Community Unit School Dist., No. 118, 9 F.3d 5 (7th Cir. 1993).  
Lamb's Chapel v. Center Moriches Union Free School Dist., 113 S.Ct. 2141 (1993).  
Sherman v. Community Consolidated School Dist. 21, 8 F.3d 1160 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 2109 (1994).

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

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<sup>4</sup> 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.

<sup>5</sup> Commercial advertising may be accepted without making the school a forum for all types of expressive activity. See footnote 3 above. The list of places where commercial companies may purchase space for their advertisements must be tailored to meet local needs and circumstances.

<sup>6</sup> Other exemptions from board approval may be added.

## **Community Relations**

### **Distribution and Display of Community Flyers and Posters**

Non-school related organizations may ask the Building Principal for permission: (1) to display posters in the area reserved for community posters, or (2) to have flyers distributed to students. The posters and/or flyers subject to a request must be student-oriented and have the sponsoring organization's name prominently displayed. Permission will be denied to post or distribute any material that would: disrupt the educational process; violate the rights of others, including material that is defamatory; invade the privacy of others; infringe on a copyright; or be obscene, vulgar, or indecent.

No commercial publications shall be posted or distributed unless their purpose is to further a school activity, such as graduation, class pictures, or class rings. No information from candidates for non-students' elective office shall be posted in the school, except on election day, or distributed to students.

Once permission is granted, the organization must arrange to have copies delivered to the school. Distribution of material under this policy will be done by the classroom teacher without discussion.

LEGAL REF.: Berger v. Rensselaer Central School Corp., 982 F.2d 1160 (7th Cir. 1993), *cert. denied*, 113 S.Ct. 2344 (1993).

Hedges v. Wauconda Community Unit School Dist., No. 18, 9 F.3d 5 (7th Cir. 1993).

Lamb's Chapel v. Center Moriches Union Free School Dist., 113 S.Ct. 2141 (1993).

Sherman v. Community Consolidated School Dist. 21, 8 F.3d 1160 (7th Cir. 1993), *cert. denied*, 114 S.Ct. 2109 (1994).

CROSS REF.: 7:325 (Student Fund-Raising Activities)

ADOPTED: May 20, 2002