

OFFICE OF THE SUPERINTENDENT

Millburn Public Schools

INFORMATION ITEM

May 3, 2010

To: Board of Education Members

From: Ellen E. Mauer, PhD

Subject: First Reading-Restrictions on Publications and Written or Electronic Material-7:310

This policy has been updated to change the name from "Publications" to "Restrictions on Publications and Written or Electronic Material". The only substantive change is the addition of blogs.

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.

## Students

### Restrictions on Publications and Written or Electronic Material <sup>1</sup>

#### School-Sponsored Publications and Web Sites

School-sponsored publications, productions, and web sites are part of the curriculum and are not a public forum for general student use. <sup>2</sup> School authorities may edit or delete material that is inconsistent with the District's educational mission.

All school-sponsored communications shall comply with the ethics and rules of responsible journalism. Text that is libelous, obscene, vulgar, lewd, invades the privacy of others, conflicts with the basic educational mission of the school, is socially inappropriate, is inappropriate due to the maturity of the students, or is materially disruptive to the educational process will not be tolerated.

The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published/produced will be provided within the same media.

#### Non-School Sponsored Publications and Web Sites Accessed or Distributed At School <sup>3</sup>

Students are prohibited from accessing and/or distributing at school any written or electronic material, including material from the Internet that:

1. Will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities; <sup>4</sup>
2. Violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright;

---

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. This policy concerns an area in which the law is unsettled.

<sup>2</sup> School authorities may reasonably regulate student expression in school-sponsored publications for education-related reasons. Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988). This policy allows such control by clearly stating that school-sponsored publications are not a "public forum" open for general student use but are, instead, part of the curriculum.

A school board that does not retain control of student publications can anticipate at least two problems: (1) how to keep content consistent with the district's mission, and (2) how to ensure that the Constitutional rights of third parties are not violated by student journalists. Concerning the second problem, a third party may seek to hold the district responsible for the student journalists' acts. See Yeo v. Town of Lexington, 131 F.3d 821 (1st Cir. 1998).

<sup>3</sup> Non-school-sponsored publications, like underground newspapers, cannot be subject to the same degree of regulation by school authorities as school-sponsored publications. Absent a showing of material and substantial interference with the requirements of good discipline, students retain their First Amendment free speech rights. The federal circuits disagree on whether school authorities may require prior approval before a student is allowed to distribute non-school-sponsored publications. The Seventh Circuit, which covers Illinois, refused to approve prior approval regulations. Fujishima v. Board of Education, 460 F.2d 1355 (7th Cir., 1972), but see Baughman v. Freienmuth, 478 F.2d 1345 (4th Cir., 1973). Non-school sponsored web sites should be regulated in the same manner as non-school sponsored publications.

A school policy prohibiting junior high students from distributing written material at school that is prepared by non-students was upheld in Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).

<sup>4</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school's computer. School authorities could reasonably believe the article would be disruptive. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821 (7th Cir., 1998).

3. Is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, or contains indecent and vulgar language;
4. Is primarily intended for the immediate solicitation of funds; or
5. Is distributed in kindergarten through eighth grade and is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the inclusion of material from outside sources or the citation to such sources as long as the material to be distributed or accessed is primarily prepared by students. <sup>5</sup>

The distribution of non-school-sponsored written material shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the material is endorsed by the School District.

Accessing or distributing “at school” includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for: (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school. <sup>6</sup>

#### Student-Created or Distributed Written or Electronic Material Including Blogs <sup>7</sup>

A student engages in gross disobedience and misconduct and may be disciplined for creating and/or distributing written or electronic material, including Internet material and blogs, that causes substantial disruption to school operations or interferes with the rights of other students or staff members.

---

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

<sup>5</sup> Optional. The rationale for this section is that prior to high school, students have not developed sufficient experience and education in critical review of external resource materials. Accordingly, in order to accomplish the district’s educational mission, yet allow students the opportunity to communicate with their fellow students, widespread student distribution of written material in elementary and middle school may be limited to material primarily prepared by the students themselves. Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3rd 1295 (7th Cir. 1993).

<sup>6</sup> For example, a school district may discipline a student for writing an underground newspaper, and distributing it at school, that contained an article on how to hack into the school’s computer. School authorities could reasonably believe the article would be disruptive. Boucher v. School Board of the School District of Greenfield, 134 F.3d 821 (7th Cir., 1998).

<sup>7</sup> Optional. School officials must proceed carefully before disciplining a student for out-of-school conduct. A school’s authority over off-campus expression is much more limited than expression on school grounds. However, school officials may generally: (1) remove a student from extracurricular activities when the conduct code for participation requires students to conduct themselves at all times as good citizens and exemplars of the school (see 7:240, *Conduct Code for Participants in Extracurricular Activities*); and (2) suspend or expel a student from school attendance when the student’s expression causes substantial disruption to school operations, as provided in this policy (see also 7:190, *Student Discipline*).

For example, school officials suspended a student for creating during non-school hours a blog containing a parody of the building principal. The student sought to enjoin the school’s action charging a violation of his First Amendment rights. The court refused to enjoin school officials finding that school officials may regulate any student speech if it constitutes a substantial disruption to school operations or an interference with the rights of others. Layshock v. Hermitage School Dist., 412 F.Supp.2d 502 (W.D.Pa., 2006), applying the test articulated in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 89 S.Ct. 733 (1969).

LEGAL REF.: Hazelwood v. Kuhlmeier, 108 S.Ct. 562 (1988).  
Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3d 1295 (7th Cir.  
1993).  
Tinker v. Des Moines Indep. Cmty. Sch. Dist., 89 S.Ct. 733 (1969).

CROSS REF.: 6:235 (Access to Electronic Networks), 8:25 (Advertising and Distributing  
Materials in School Provided by Non-School Related Entities)

## Students

### Publications

#### School-Sponsored Publications and Web Sites

School-sponsored publications, productions, and web sites are part of the curriculum and are not a public forum for general student use. School authorities may edit or delete material that is inconsistent with the District's educational mission.

All school-sponsored communications shall comply with the ethics and rules of responsible journalism. Text that is libelous, obscene, vulgar, lewd, invades the privacy of others, conflicts with the basic educational mission of the school, is socially inappropriate, is inappropriate due to the maturity of the students, or is materially disruptive to the educational process will not be tolerated.

The author's name will accompany personal opinions and editorial statements. An opportunity for the expression of differing opinions from those published/produced will be provided within the same media.

#### Non-School-Sponsored Publications and Web Sites

Students are prohibited from accessing and/or distributing at school any written or electronic material, including material from the Internet:

1. that will cause substantial disruption of the proper and orderly operation and discipline of the school or school activities;
2. that violates the rights of others, including but not limited to material that is libelous, invades the privacy of others, or infringes on a copyright;
3. that is socially inappropriate or inappropriate due to maturity level of the students, including but not limited to material that is obscene, pornographic, or pervasively lewd and vulgar, or contains indecent and vulgar language;
4. that is primarily intended for the immediate solicitation of funds; or
5. that, in kindergarten through eighth grade, is primarily prepared by non-students, unless it is being used for school purposes. Nothing herein shall be interpreted to prevent the inclusion of material from outside sources or the citation to such outside source as long as the material to be distributed or accessed is primarily prepared by students.

The distribution of non-school-sponsored written material shall occur at a time and place and in a manner that will not cause disruption, be coercive, or result in the perception that the distribution or the material is endorsed by the School District.

Accessing or distributing "at school" includes accessing or distributing on school property or at school-related activities. A student engages in gross disobedience and misconduct and may be disciplined for (1) accessing or distributing forbidden material, or (2) for writing, creating, or publishing such material intending for it to be accessed or distributed at school.

LEGAL REF.: Hazelwood v. Kuhlmeier, 108 S.Ct. 562 (1988).  
Hedges v. Wauconda Community Unit School Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993).

CROSS REF.: 6:235 (Access to Electronic Networks)

ADOPTED: May 20, 2002