505 DISTRIBUTION OF NONSCHOOL-SPONSORED MATERIALS ON SCHOOL PREMISES BY STUDENTS AND EMPLOYEES

I. PURPOSE

The purpose of this policy is to protect the exercise of students' and employees' free speech rights, taking into consideration the educational objectives and responsibilities of the school district.

II. GENERAL STATEMENT OF POLICY

A. The school district recognizes that students and employees have the right to express themselves on school property. This protection includes the right to distribute, at a reasonable time and place and in a reasonable manner, nonschool-sponsored material.

B. To protect First Amendment rights, while at the same time preserving the integrity of the educational objectives and responsibilities of the school district, the school board adopts the following regulations and procedures regarding distribution of nonschool-sponsored material on school property and at school activities.

III. DEFINITIONS

A. "Distribute" or "Distribution" means circulation or dissemination of material by means of handing out free copies, selling or offering copies for sale, accepting donations for copies, posting or displaying material, or placing material in internal staff or student mailboxes.

B. "Nonschool-sponsored material" or "unofficial material" includes all materials or objects intended for distribution, except school newspapers, employee newsletters, literary magazines, yearbooks, and other publications funded and/or sponsored or authorized by the school. Examples of nonschool-sponsored materials include, but are not limited to, leaflets, brochures, buttons, badges, flyers, petitions, posters, and underground newspapers whether written by students or employees or others, and tangible objects.

C. "Obscene to minors" means:

1. The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest of minors of the age to whom distribution is requested;

2. The material depicts or describes, in a manner that is patently offensive to prevailing standards in the adult community concerning how such conduct should be presented to minors of the age to whom distribution is requested, sexual conduct such as intimate sexual acts (normal or perverted), masturbation, excretory functions, or lewd exhibition of the genitals; and

3. The material, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

D. "Minor" means any person under the age of eighteen (18).

E. "Material and substantial disruption" of a normal school activity means:

1. Where the normal school activity is an educational program of the district for which student attendance is compulsory, "material and substantial disruption" is defined as any disruption which interferes with or impedes the implementation of that program.

2. Where the normal school activity is voluntary in nature (including, without limitation, school athletic events, school plays and concerts, and lunch periods) "material and substantial disruption" is defined as student rioting, unlawful seizures of property, conduct inappropriate to the event, participation in a school boycott, demonstration, sit-in, stand-in, walk-out, or other related forms of activity.

In order for expression to be considered disruptive, there must exist specific facts upon which the likelihood of disruption can be forecast, including past experience in the school, current events influencing student activities and behavior, and instances of actual or threatened disruption relating to the written material in question.

F. "School activities" means any activity sponsored by the school including, but not limited to, classroom work, library activities, physical education classes, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays and other theatrical productions, and in-school lunch periods.

G. "Libelous" is a false and unprivileged statement about a specific individual that tends to harm the individual's reputation or to lower that individual in the esteem of the community.

IV. GUIDELINES

A. Students and employees of the school district have the right to distribute, at reasonable times and places as set forth in this policy, and in a reasonable manner, nonschool-sponsored material.

B. Requests for distribution of nonschool-sponsored material will be reviewed by the administration on a case-by-case basis. However, distribution of the materials listed below is always prohibited. Material is prohibited that:

1. is obscene to minors;

2. is libelous or slanderous;

3. is pervasively indecent or vulgar or contains any indecent or vulgar language or representations, with a determination made as to the appropriateness of the material for the age level of students to which it is intended;

4. advertises or promotes any product or service not permitted to minors by law;

5. advocates violence or other illegal conduct;

6. constitutes insulting or fighting words, the very expression of which injures or harasses other people (e.g., threats of violence, defamation of character or of a person's race, religious, or ethnic origin);

7. presents a clear and present likelihood that, either because of its content or the manner of distribution, it will cause a material and substantial disruption of the proper and orderly operation and discipline of the school or school activities, will cause the commission of unlawful acts or the violation of lawful school regulations.

C. Distribution by students and employees of nonschool-sponsored materials on school district property are subject to reasonable time, place, and manner restrictions set forth below. In making decisions regarding the time, place, and manner of distribution, the administration will consider factors including, but not limited to, the following:

1. whether the material is educationally related;

2. the extent to which distribution is likely to cause disruption of or interference with the school district's educational objectives, discipline, or school activities;

3. whether the materials can be distributed from the office or other isolated location so as to minimize disruption of traffic flow in hallways;

4. the quantity or size of materials to be distributed;

5. whether distribution would require assignment of school district staff, use of school district equipment, or other resources;

6. whether distribution would require that nonschool persons be present on the school grounds;

7. whether the materials are a solicitation for goods or services not requested by the recipients.

V. TIME, PLACE, AND MANNER OF DISTRIBUTION

A. No nonschool-sponsored material shall be distributed during and at the place of a normal school activity if it is reasonably likely to cause a material and substantial disruption of that activity.

B. Distribution of nonschool-sponsored material is prohibited when it blocks the safe flow of traffic within corridors and entrance ways of the school, and school parking lots. Distribution shall not impede entrance to or exit from school premises in any way.

C. No one shall coerce a student or staff member to accept any publication.

D. The time, place, and manner of distribution will be solely within the discretion of the administration, consistent with the provisions of this policy.

VI. PROCEDURES

A. Any student or employee wishing to distribute (as defined in this policy) nonschool-sponsored material must first submit for approval a copy of the material to the principal at least 24 hours in advance of desired distribution time, together with the following information:

1. Name and phone number of the person submitting the request and, if a student, the room number of his or her first-period class.

2. Date(s) and time(s) of day intended for distribution.

3. Location where material will be distributed.

4. If intended for students, the grade(s) of students to whom the distribution is intended.

B. Within one school day, the principal will review the request and render a decision. In the event that permission to distribute the material is denied or limited, the person submitting the request should be informed in writing of the reasons for the denial or limitation.

C. If the person submitting the request does not receive a response within one school day, the person shall contact the office to verify that the lack of response was not due to an inability to locate the person.

D. If the person is dissatisfied with the decision of the principal, the person may submit a written request for appeal to the superintendent. If the person does not receive a response within three (3) school days (not counting Saturdays, Sundays, and holidays) of submitting the appeal, the person shall contact the office of the Superintendent to verify that the lack of response is not due to an inability to locate the person.

E. Permission or denial of permission to distribute material does not imply approval or disapproval of its contents by either the school, the administration of the school, the school board, or the individual reviewing the material submitted.

VII. DISCIPLINARY ACTION

A. Distribution by any student of nonschool-sponsored material prohibited herein or in violation of the provisions of time, place, and manner of distribution as described above will be halted and disciplinary action will be taken in accordance with the school district's Student Discipline Policy.

B. Distribution by any employee of nonschool-sponsored material prohibited herein or in violation of the provisions of time, place, and manner of distribution as described above will be halted and appropriate disciplinary action will be taken, in accordance with any individual contract, collective bargaining agreement, school district policies and procedures, and/or governing statute.

C. Any other party violating this policy will be requested to leave the school property immediately and, if necessary, the police will be called.

VIII. NOTICE OF POLICY TO STUDENTS AND EMPLOYEES

A copy of this policy will be published in student handbooks and posted in school buildings.

IX. IMPLEMENTATION

The school district administration may develop any additional guidelines and procedures necessary to implement this policy for submission to the school board for approval. Upon approval by the school board, such guidelines and procedures shall be an addendum to this policy.

[Note: School districts are encouraged to consider additional guidelines which reflect varied local practices relating to this subject matter, including addressing the subject of consistency and uniformity for approving or disapproving practices under this policy.]

Legal References: U. S. Const., amend. I
Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 108 S.Ct. 562, 98 L.Ed.2d 592 (1988)
Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 106 S.Ct. 3159, 92

L.Ed.2d 549 (1986)
Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969)
Bystrom v. Fridley High School, 822 F.2d 747 (8th Cir. 1987)
Roark v. South Iron R-1 School Dist., 573 F.3d 556 (8th Cir. 2009)
Victory Through Jesus Sports Ministry Foundation v. Lee's Summit R-7 School Dist., 640 F.3d 329 (8th Cir. 2011), cert denied ___ U.S.____, 132 S.Ct. 592 (2011)

Cross References: MSBA/MASA Model Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
MSBA/MASA Model Policy 506 (Student Discipline)
MSBA/MASA Model Policy 512 (School-Sponsored Student Publications)
MSBA/MASA Model Policy 904 (Distribution of Materials on School District Property by Nonschool Persons)