



Student Free Speech Policy

A. PURPOSE AND SCOPE

1. To outline administrative procedures relating to individual rights and responsibilities of students in the exercise of free speech on school grounds outside the classroom situation.
2. To serve as a starting point for discussion of student rights and responsibilities in the study of the Bill of Rights in American government courses, moving to personal level aspects of government formerly treated more impersonally.
3. This procedure includes distribution of literature, publicity, use of bulletin boards, non-school publications, spoken work, symbolic speech (e.g., buttons, armbands, flags), and petitions.

B. LEGAL AND POLICY BASIS

1. Reference: Education Code Sections 48907, 48950, 51501, 51520; State Board of Education Guidelines for Student Expression (10–15–71).

C. GENERAL

1. Suggestions or questions concerning this procedure should be directed to the Executive Director.
2. **Definitions**
 - a. **School-sponsored materials (or official school publications):** Materials developed, printed, or produced and distributed, in whole or in part, at school expense. “At school expense” includes use of school staff time, facilities, equipment, or supplies.
 - b. **Non-school-sponsored student materials:** Materials developed and printed off campus by students for distribution by students on campus.
 - c. **Non-school materials:** Materials developed and printed by community organizations and/or individuals.



3. Free Speech and Public School-Age Students. Federal judicial decree has profoundly changed the law governing First Amendment “free speech” rights of students on public school grounds. The two cases most directly related to this change of law in California are *Tinker v. Des Moines Independent Community School* (decided by a three-judge Federal Court in February 1969) and *Rowe v. Campbell Union High School District* (decided by a three-judge Federal Court convened in the U.S. District Court for the Northern District of California in September 1970). In the *Tinker* case, the U.S. Supreme Court set up a three-pronged test to judge the constitutional validity of any school regulation attempting to circumscribe the exercise of First Amendment “free speech” rights by students. The court said that “. . . conduct by the student, in class or out of it, which for any reason—it stems from time, place, or type of behavior—(1) materially disrupts classwork, or (2) involves substantial disorder, or (3) (involves) invasion of the rights of others . . .” may properly be proscribed by school authorities.

In the *Campbell Union High School District* case, the federal court summarized the legal status of students today:

- a. Students are “persons” within the meaning of the Constitution and are possessed of fundamental rights that are not lost in school.
- b. Students are not the “closed circuit” recipients of only that which the state wishes to communicate; they may not be confined to officially approved sentiments.
- c. Student freedom of speech includes personal communication of controversial ideas.
- d. School officials have the burden of showing constitutionally valid justifications for limitations on student speech.
- e. A generalized fear or apprehension of a disturbance is not a constitutionally adequate justification. A desire to avoid the expression of controversial or unpopular ideas or the discomfort and unpleasantness that accompany them is not a constitutionally adequate justification.
- f. School officials must demonstrate that the prohibited speech would have actually caused substantial and material disruption of, or interference with,



classwork, or with the requirements of discipline appropriate to the operation of the school. Reasonable time, place, and manner regulations regarding expression of ideas orally or in writing are permissible, as they are in any other public institution or facility. The new criteria, discussed generally above, have been framed in terms of practical guidelines pertinent to the public school setting in California. These practical guidelines appear in C.5. and C.6.

4. In addition to the evolving legal mandates described in this procedure, another significant dimension of First Amendment “free speech” rights in the public school must be considered. Responsible exercise of “free speech” rights should be recognized as a prime educational objective. This goal, which is indispensable to the successful continuation and improvement of our democracy, cannot be achieved without the close cooperation of the Board of Trustees; the administrative, teaching, and classified staff; the students; and the citizens who are served by the public schools of San Diego.
5. General Rights and Responsibilities Applying to All Manner of Free Speech. Included in, but not limited to, forms of free expression available to students are school-sponsored materials, literature, publicity, bulletin boards, non-school publications, the spoken word, symbolic speech (e.g., armbands, buttons, signboards, flags), and petitions. The right of free speech guaranteed by the First Amendment to the United States Constitution shall not be restricted nor shall disciplinary action be taken because of the exercise thereof, if the exercise of such right is in accord with the following:
 - a. It is not likely to substantially disrupt or materially interfere with the educational program. The fundamental purpose of the public school is to provide an educational program; it includes classwork, school activity programs, or any other element of programs conducted by the school. Every student enrolled therein has a right to participate without hindrance or unlawful denial by anyone. The educational program includes supervisory and disciplinary authority of teachers and administrators, both inside and outside the classroom as prescribed by law.

Similarly, any act by students or others that substantially or materially impairs the capacity of a school official to perform his/her professional work in the school shall not be permitted. This includes complaints relating to the personal or professional capacity of a school official to render service to the



school that are defamatory or slanderous and that are calculated to cause disturbance and disruption of school activities. (After exhausting all administrative remedies, complaints may be made to the Empower Charter School Board of Trustees.)

- b. It does not infringe on rights of others. In addition to the right of any student to an education free from disruption, hindrance or unlawful denial, other individual rights must not be violated, including:
 - (1) The right to be secure in person and in property—free from threats to health and safety.
 - (2) The right to be free from coercion—to be left alone.
 - (3) The right to respect for the dignity of the individual and the expression of his/her views and opinions.
- c. It does not involve substantial disorder. Any act through which, in the judgment of school officials, physical injury and/or property damage is anticipated or does occur, shall not be permitted. Similarly, any act that so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school shall be prohibited.
- d. It does not violate existing laws covering specific matters including, but not limited to:
 - (1) Harmful matter: Matter that, taken as a whole,

. . . [T]he predominant appeal of which to the average person, applying contemporary standards, is to prurient interest; i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of candor in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance for minors. (Penal Code Sec. 313, 313.1; Ginsburg v. New York, 390 U. S. 629, 1968.)
 - (2) Profanity: Matter containing words that, according to standards of the Empower Charter School community, are deemed to be profanity



(Education Code Sections 48900 and 44806; Penal Code Section 415; California Code of Regulations, Title 5, Section 300).

- (3) Prejudicial or discriminatory matter: Matter advocating prejudice or discrimination on account of sex, race, ethnic origin, or religion (Education Code Sections 51500–51501 and 44806.)
 - (4) Injurious matter: Matter that encourages or advocates the use of tobacco, intoxicating liquor, narcotics, or other hallucinogenic or dangerous drugs (Education Code Section 48900).
 - (5) Materials or instruction concerning human reproduction and venereal disease. This matter may not be distributed because state law prohibits students from receiving such information in the schools without first having written approval of their parents/guardians. (Education Code Sections 51550, 51551, 51820; Procedure 4188.)
 - (6) Libel or slander: Matter, disseminated either in writing or verbally, that defames a person or, in some cases, a private organization. (Civil Code Sections 44 et seq.)
- e. It does not advocate breaking the law. Any material that advocates breaking the law or school regulations is prohibited. This includes any material that would incite students so as to create a clear and present danger of the committing of unlawful acts on school premises or of causing substantial and material disruption of, or interference with, classwork or with requirements of discipline appropriate to operation of the school.
 - f. It does not endorse political candidates or ballot measures. Endorsements of political candidates or ballot measures are prohibited (applicable to school-sponsored materials only). Newspapers however, may publish stories on the issues as long as both sides are discussed.
 - g. It does not violate the time, place, and manner regulations of the individual school designed to ensure compliance with the above restrictions (C.6.).
6. Local school time, place, and manner regulations shall be established by each school and should address:



- a. School-sponsored materials. School-sponsored materials should be submitted by a student to the Executive Director or designee for review prior to time of printing and/or distribution of such materials. (A student editor who fails to submit a publication for review and publishes materials which are obscene, discriminatory, libelous, or otherwise in violation of c.5. and c.6. of this procedure, shall be held personally responsible and shall be subject to disciplinary action. Note: Failure to submit a publication for review, in itself, is not cause for disciplinary action.) It is the responsibility of the designated officials (journalism advisor or advisors of student publications) in each school to supervise publication activities, to maintain professional standards of English and journalism, and to comply with provisions of this procedure (Education Code Section 48907). Student editors shall be fully responsible for assigning and editing the news and feature content of their publications (Education Code Section 48907).
- (1) School official(s) designated by the Executive Director as authorized to receive and review written materials submitted pursuant to this procedure shall be specifically identified. The office to which such materials shall be submitted also shall be specifically identified.
 - (2) In order to prevent the “prior review” provision from operating as an invalid “prior restraint,” the school official reviewing written materials shall give his/her views with regard to violations of this procedure and forward a response within four hours following submission of such materials, unless the material is submitted after 10:30 a.m. on any school day, in which case the school official shall give his/her views before noon on the following school day. Such views must be given in writing to the student, with a copy kept by the Executive Director or designee in the case of noncompliance. The decision of the Executive Director or designee may be appealed to the appropriate instructional leader who shall render a decision within four (4) work hours and communicate that decision to the student. The decision and appeal process should not cause the student to miss the publishing deadline for the item.
 - (3) A review of written materials submitted hereunder shall not be construed to mean that the school necessarily agrees with or approves of the views contained in material distributed.
- b. Non-school-sponsored student materials. Materials printed by students off campus and intended for distribution on campus shall include the



Executive Director's office in the distribution. When such materials are in violation of prohibitions listed in c.5. or the "time, place, and manner" regulations of this procedure, the Executive Director may stop distribution and discipline those responsible.

(Distribution of materials which are not in violation of c.5. may not be prevented through censorship or actions which might constitute prior restraint.) The student assumes sole responsibility for any materials distributed that are in violation of statutes and/or provisions of this procedure.

- c. Specific rules governing distribution of printed materials and circulation of petitions
 - (1) Time of such activity shall be limited to periods before school, after dismissal, and during established lunch periods as deemed feasible by the Executive Director.
 - (2) Place of the activity shall be reasonably restricted to permit normal flow of traffic within the school, in lunch locations, and at exterior doors, and to avoid interference with school programs.
 - (3) Manner of conducting such activity shall be restricted to prevent coercion and undue levels of noise.
 - (4) School shall require that all printed matter distributed or circulated on school property be identified with the name of sponsoring organizations or individuals, both school-connected and non-school-connected.
 - (5) School may require that the individual(s) or group(s) distributing materials assume responsibility for cleanup of those materials that contribute to littering.
- d. Buttons, badges, armbands, flags, and other items of symbolic speech bearing slogans, sayings, or symbols are permitted as another form of expression, provided the message or symbol does not violate provisions of this procedure. Only American and California State flags may be flown from the main (school) flag pole. A flag other than American or California State flags may be flown from a portable stand at a time, place, and manner specified by the Executive Director in accordance with c.6.f. Permanent



structures may not be installed without permission of the Executive Director.

- e. Bulletin boards and the posting of publicity. School authorities may restrict use of certain bulletin boards and display areas to school announcements. Additional bulletin board and/or display space shall be provided for use of students and student organizations.

The following limitations on use of such areas must be observed:

- (1) Identification of the student or student group issuing a notice shall be required on any posted notice.
 - (2) All notices shall be officially dated prior to posting and such material shall be removed after a prescribed time to ensure full access to bulletin boards by others.
 - (3) Bulletin board space should be made available to all students under uniform rules approved by the Executive Director.
- f. Privileges accorded students who, as individuals, are members of community organization youth programs. Students who, as individuals, are members of community youth organizations not considered school clubs, may disseminate information regarding youth organizations activities as provided in c.6.e.
 - g. Public expression on school grounds (outside the classroom). Students have the right to engage in speech or other communication that, when engaged in off campus, is protected under the First Amendment (Education Code Section 48950). A student shall have the right, either publicly or privately, to express opinions, to take stands, and to support causes. There shall be no limitations to this right except as specified below:
 - (1) An area for speaking to mass groups of students shall be set aside by the Executive Director.
 - (2) Time of such expressions shall be limited to periods before school begins, after dismissal, and during established lunch periods as deemed feasible by the Executive Director.
 - (3) Manner of such expression shall be such as to prevent undue noise,



substantial disorder, or infringement upon the rights of others not to listen. Therefore, electronic sound-amplification systems or devices of any kind are prohibited for this purpose unless allowed by school the Executive Director.

- (4) Such expression must be in compliance with c.5.
- (5) Violations. Acts in violation of any of the above limitations and rules constitute defiance of school regulations and can result in suspension or other appropriate disciplinary action.
- (6) Others. This term is used to describe all persons who are not students enrolled in the school, staff members of the school, or other school employees with legitimate business at the school site. Such persons may not come onto school grounds without permission of the Executive Director or designee.

D. IMPLEMENTATION

1. To establish specific written school guidelines and procedures, the Executive Director:
 - a. May develop specific written school regulations and guidelines consistent with this procedure. In doing so, Executive Director may consult with faculty, students, and other interested parties.
 - b. May designate other administrator, teacher, or group(s) to function as his/her designee in carrying out all or part of function of reviewing materials submitted for compliance with school policy and procedure.
 - c. May communicate accepted school guidelines and procedures, as well as school guidelines and limitations, as deemed necessary, to all students, staff, and parents. (Student handbook, faculty handbook, and parent newsletter may be used.) Guidelines include time, place, manner, penalties for violation, and “prior submission” review procedure for school-sponsored materials.
2. Prior to printing and/or distribution
 - a. Student
 - (1) Prepares or obtains printed materials, petitions, buttons,



badges, armbands, and flags.

- (2) Identifies all written material with name of student or organization that sponsored/prepared it.
- (3) Checks for compliance with provisions of local school regulations.
- (4) Submits, at his/her option, school-sponsored materials to Executive Director or designee for review as provided in c.6.a.
- (5) Includes Executive Director's office in distribution of non-school-sponsored materials.

b. Executive Director or designee

- (1) Reviews materials only on basis of established limitations and guidelines.
- (2) Expresses his/her views as to applicability of such established limitations and guidelines to school-sponsored materials. Consults with Legal Counsel as appropriate.
- (3) Notifies student(s) of his/her views on school-sponsored materials. Provides student with written notice of noncompliance with this procedure if such is the case.

c. Appeal from declaration of noncompliance by Executive Director or designee

- (1) Student may appeal to appropriate instructional leader having jurisdiction over school in which student is enrolled.
- (2) Instructional leader shall make his/her decision on the appeal within a reasonable period of time and communicate decision to student.
- (3) Nothing herein shall preclude a student from further appealing instructional leader's decision to the Empower Charter School Board of Trustees.