

TITLE: Distribution of Non-School Sponsored Literature in the Schools

Code: H4
Recommended

It is the policy of the Windham Southeast Supervisory Union to allow limited distribution of non-school sponsored literature on school grounds or at school events by community members or district employees acting in their own behalf or on behalf of a community group. Accordingly, the Principal may permit the distribution of non-school sponsored literature without discrimination as to the viewpoint of the literature in accordance with this policy.^[1]

Non-school sponsored literature means any printed, written, or electronic materials prepared by non-school organizations, groups or individuals for posting or general distribution that are not prepared as a part of the curricular or approved extracurricular programs of the district. It also includes materials prepared by school district employees acting in their own behalf or on behalf of a community group. Non-school sponsored materials includes such things as fliers, invitations, announcements, pamphlets, posters, photographs, pictures, films, audio recordings, digital media recordings, and electronic messages.

Distribution means handing non-school literature to others on school property or during school-sponsored events; posting on school property such as walls, bulletin boards, and district web-sites; placing upon desks, tables, on or in lockers; making available in principal's office; or engaging in any other manner of delivery of non-school sponsored literature to others while on school property or during school functions.

This policy prohibits the distribution of literature that:

- is libelous, defamatory, obscene, lewd, vulgar, or profane;
- violates federal, state or local laws;
- advocates the use or availability of any substance or material that may reasonably be believed to constitute a direct and substantial danger to the health or welfare of students, such as tobacco, alcohol or illegal drugs;
- incites violence;
- interferes with or advocates interference with the rights of any individual or the orderly operation of the schools and their programs;^[2]
- is primarily of a commercial nature, including but not limited to all material that primarily seeks to advertise for sale products or services;^[3] or
- whose primary purpose is fundraising.^[4]

All non-school sponsored literature intended for distribution on school property or at school-sponsored events shall be submitted to the principal for prior review as to the following:^[5]

- to confirm that the literature includes the name of the person or organization sponsoring the distribution, and that there is no implication that the literature is endorsed by the school district, and
- to confirm that the literature does not fall in one of the prohibited categories listed above.

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Prior review of literature is not required when the non-school sponsored literature is distributed by an attendee to other attendees at a meeting intended for adults held after school hours.^[6]

The principal may place reasonable time, place, and manner restrictions on the distribution of non-school sponsored literature.^[7]

Non-school sponsored literature may not be used during instructional time or school-sponsored activities unless it is of educational value to the school program, benefits district students or the school community, and is factually accurate.

Notwithstanding anything in this policy, the school district may adopt more restrictive rules for signs or messages on school property that bears the school imprimatur due to their location. For example, the school district may restrict the content of messages on advertising displayed on baseball field fences or brick pavers in walkways if advertising space is sold in those locations to raise money for the school district. Selling advertising in that way does not create a public forum in those locations.^[8]

Date Warned: January 11, 2016

Date Adopted: January 25, 2016

Legal Reference(s): Good News Club v. Milford Central Schools, 533 U.S. 98 (2001)
Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384, 390 (1993)
Cornelius v. NAACP Legal Defense and Ed. Fund, Inc., 473 U.S. 788 (1985)
Perry Educ. Ass'n v. Perry Local Educ. Ass'n, 460 U.S. 37 (1983)
Travis v. Owego-Apalachin School Dist., 927 F.2d 688 (2d Cir. 1991)
Chiu v. Plano Indep. Sch. Dist., 339 F.3d 273 (5th Cir. 2003)
DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ., 196 F.3d 958 (9th Cir. 1999), cert. denied 529 U.S. 1067 (2000)
Hedges v. Wauconda Community Unit Sch. Dist. No. 118, 9 F.3d 1295 (7th Cir. 1993)
Kiesinger v. Mexico Academy and Cent. Sch., 427 F. Supp. 2d 182 (N.D.N.Y. 2006)

Cross Reference: F32 Student Self-Expression Policy
H3 Community Use of Facilities

BRATTLEBORO UNION HIGH SCHOOL
DISTRICT #6
Brattleboro, Vermont

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[1] A totally public forum is one where all materials may be distributed; the classic example is a public park. A limited public forum is one where certain categories of material may be distributed. *See Cornelius v. NAACP Legal Defense and Ed. Fund, Inc.*, 473 U.S. 788 (1985) and *Travis v. Owego-Apalachin School Dist.*, 927 F.2d 688 (2d Cir. 1991) (good overview of differences among types of public forums). School districts may create a limited public forum by allowing outside groups to distribute literature on a limited basis as long as the criteria for allowing or prohibiting distribution are reasonable and viewpoint neutral.

In a limited public forum, once the district allows a community group to distribute materials for one purpose, then it must allow all other community groups wishing to distribute materials dealing with the same topic, even if their view of the topic is different. The basic principle is that restrictions on distribution of materials may not be based on a group's viewpoint. *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford Central Schools*, 533 U.S. 989 (2001). In these cases, the Supreme Court specifically held that religious groups' use of school facilities must be permitted when other groups seeking to teach morals have been permitted to use facilities; the same approach applies to distribution of materials.

[2] Prohibitions that maintain discipline or prevent school disruption are always allowed. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5th Cir. 2003).

[3] As indicted here, a district could choose to prohibit all distribution of literature that promotes the sale of products or services. As with all viewpoint neutral prohibitions, care must be taken that the prohibition is evenly enforced without exceptions. If a district wishes to allow distribution of materials supporting some commercial activity (such as literature related to the sale of college testing preparation services) but not others, it must make the distinction based on criteria that are objective and viewpoint neutral.

[4] A common question may be whether fundraising by parent-teacher organizations is permitted. If such organizations are clearly delineated (either in this policy or elsewhere) as school-sponsored groups, then they are not restricted by this policy.

[5] Prior review of literature by a school official is allowed when the policy sets forth narrow and clear standards for that review. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5th Cir. 2003).

[6] Prior review of literature is allowed by the law primarily for the purpose of preventing disruption of the school's educational activities. Those concerns are not present when literature is distributed after school hours to adults, so prior review can be viewed as an unconstitutional prior restraint. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5th Cir. 2003).

[7] Examples of a "time" restriction are that literature be distributed before or after school hours. A "place" restriction might be that literature be posted only on bulletin boards and not on windows, or that it be made available on a specified table in the principal's office. A "manner" restriction might specify whether or not persons distributing the material may stand at the main entrance to the building, or might limit the number of copies of a pamphlet that may be distributed. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993). Such restrictions must be applied without discrimination as to viewpoint of group or individual who wishes to distribute non-school sponsored literature. Note that the courts have held a school district's internal mail distribution system is not a public forum, and thus school districts are not required to allow the mail system to be used for distribution of non-school sponsored materials. *Perry Educ. Ass'n v. Perry Local Educ. Ass'n*, 460 U.S. 37 (1983).

[8] *Kiesinger v. Mexico Academy and Cent. Sch.*, 427 F. Supp. 2d 182 (N.D.N.Y.2006) (holding that school district may constitutionally exclude bricks in walkway containing religious or political messages, but may not restrict references to God by certain names and not others based on the particular religious viewpoint of those references); *DiLoreto v. Downey Unified Sch. Dist. Bd. Of Educ.*, 196 F.3d 958 (9th Cir. 1999), cert. denied 529 U.S. 1067 (2000) (holding that school district may restrict advertising on baseball fence to messages that contain no political or religious content).