

**FREEDOM OF SPEECH/EXPRESSION**

Note: The First Amendment of the U.S. Constitution and Article 1, Section 2 of the California Constitution guarantee freedom of speech and of the press. Court cases and California law have addressed the application of these principles in a school setting and have established parameters for student expression. The following policy addresses rights and limitations related to student expression in a variety of forms, including off-campus as well as on-campus student expression.

The County Board believes that free inquiry and exchange of ideas are essential parts of a democratic education. The Board respects students' rights to express ideas and opinions, take stands on issues, and support causes, even when such speech is controversial or unpopular.

*(cf. 6142.3 - Civic Education)*

*(cf. 6144 - Controversial Issues)*

**On-Campus Expression**

Note: Education Code 48907 **mandates** districts to establish a written "publications code" related to students' rights to freedom of speech and of the press. These written rules and regulations must include reasonable provisions for the time, place, and manner in which free expression may take place within the district's jurisdiction. See the accompanying administrative regulation for further language implementing this mandate. It is recommended that districts consult legal counsel when adopting and implementing policy related to freedom of speech/expression.

Students shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards; the distribution of printed materials or petitions; the wearing of buttons, badges, and other insignia; and the right of expression in official publications. (Education Code 48907)

Student expression on LACOE or school Internet websites and online media shall generally be afforded the same protections as in print media.

*(cf. 1113 - District and School Web Sites)*

*(cf. 6163.4 - Student Use of Technology)*

Note: Numerous court decisions have found that the First Amendment rights of public school students are not necessarily the same as the rights of adults in other settings and must be applied in light of the special circumstances of the school environment. In Hazelwood School District v. Kuhlmeier, the U.S. Supreme Court ruled that when a school has not, by policy or practice, opened up a school-sponsored activity for unrestricted use by students, the school may limit student expression as long as its decision is reasonably related to "legitimate pedagogical concerns." In California, Education Code 48907 grants students broader rights of freedom of press and provides that student content can be restrained only when it is obscene, libelous or slanderous, or incites students to commit unlawful acts, violate school rules, or substantially disrupt school operations. When determining what type of content might be restrained, the courts have found age to be a critical factor (Hazelwood and Bethel v. Fraser). Although the courts have not specifically addressed the speech rights of elementary students, it appears that schools have greater authority to limit speech that could harm elementary students' emotional, moral, social, and intellectual development. (Muller v. Jefferson Lighthouse School)

**FREEDOM OF SPEECH/EXPRESSION** (continued)

Students' freedom of expression shall be limited only as allowed by Education Code 48907, 48950, and other applicable state and federal laws.

Students are prohibited from making any expressions or distributing or posting any materials that are obscene, libelous, or slanderous. Students also are prohibited from making any expressions that so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of school rules, or substantial disruption of the school's orderly operation. (Education Code 48907)

*(cf. 5145.7 - Sexual Harassment)*

*(cf. 5145.9 - Hate-Motivated Behavior)*

Note: The U.S. Supreme Court has held that "fighting words," which by their very utterance can cause an immediate breach of the peace, are not constitutionally protected.

The use of "fighting words" or epithets is prohibited in those instances where the speech is abusive and insulting, rather than a communication of ideas, and the speech is used in an abusive manner in a situation that presents an actual danger that it will cause a breach of the peace.

Note: SB 1370 (Ch. 525, Statutes of 2008) amended Education Code 48907 and 48950 to specify that an employee may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated solely for action to protect a student's free speech and press rights. See AR 4118 - Suspension/Disciplinary Action.

School officials shall not engage in prior restraint of material prepared for official school publications except insofar as the content of the material violates the law. (Education Code 48907)

Note: The following paragraph is for use by districts that maintain one or more high schools. Education Code 48950 provides that no district maintaining high schools shall make or enforce any rule subjecting a high school student to disciplinary sanctions solely on the basis of speech or other communication that would be constitutionally protected if engaged in outside of campus. Students enrolled in a school that makes or enforces such a rule may take civil action for injunctive and declaratory relief.

The County Superintendent or designee shall not discipline any high school student solely on the basis of speech or other communication that would be constitutionally protected when engaged in outside of school, but may impose discipline for harassment, threats, or intimidation unless constitutionally protected. (Education Code 48950)

*(cf. 5137 - Positive School Climate)*

*(cf. 5144 - Discipline)*

*(cf. 5144.1 - Suspension and Expulsion/Due Process)*

*(cf. 5144.2 - Suspension and Expulsion/Due Process: Students with Disabilities)*

**FREEDOM OF SPEECH/EXPRESSION** (continued)**Off-Campus Expression**

Note: Courts have generally found that schools may impose discipline for off-campus conduct that poses a threat to the safety of other students, staff, or school property or disrupts the educational program, provided that the district is able to document the impact or disruption that the conduct had, or could be expected to have, on campus. In addition, courts have analyzed the reasonableness of the district's policy and whether the disciplinary action taken by the district was in proportion to the student's misbehavior. See also BP 5131 - Conduct.

In Lavine v. Blaine School District, the Ninth Circuit U.S. Court of Appeals applied Tinker v. Des Moines School District to conclude that a school district in Washington was justified in expelling a student whose off-campus poetry, when considered in the totality of other relevant factors, indicated he might pose a danger to himself or others. Similar standards have been applied with regard to students' off-campus Internet web sites. The federal courts in Beussink v. Woodland R-IV School District and Emmett v. Kirkland School District No. 415 confirmed that student off-campus Internet speech merits First Amendment protection and that disliking the content of a student's speech critical of the schools and staff is not an acceptable justification for limiting student speech.

Since this area of law is unclear and constantly evolving, it is strongly recommended that districts consult with legal counsel when developing policy and prior to applying discipline for off-campus speech.

A student shall be subject to discipline for off-campus expression, including expression on off-campus Internet websites, when such expression poses a threat to the safety of other students, staff, or school property, or substantially disrupts the educational program. The County Superintendent or designee will document the impact the expression had or could be expected to have on the school program.

*(cf. 5131 - Conduct)*

**Freedom of Expression**

LACOE respects students' freedom of expression. While LACOE recognizes this right, a student enrolled in a LACOE program or activity is limited to expression that does not violate other participants' rights, LACOE student disciplinary policies or the educational function of the LACOE program or activity. LACOE will not tolerate expression that is not protected by the First Amendment in any LACOE program or activity.

*Legal Reference (see next page)*

**FREEDOM OF SPEECH/EXPRESSION (continued)**

*Legal Reference: U.S. CONST., 1ST AMEND.; CA CONST., Art. 1, Sect. 2-3; EC 48900 et seq., 48907, 48950; Tinker v. Des Moines School District, 393 U.S. 503 (1969); Board of Education v. Pico, 457 U.S. 853 (1982); Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986); Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988); Lopez v. Tulare Joint Union High School District (1995) 34 Cal. App. 4 1302.*

*Legal Reference:*

EDUCATION CODE

48907 *Exercise of free expression; rules and regulations*

48950 *Speech and other communication*

51520 *Prohibited solicitations on school premises*

UNITED STATES CODE, TITLE 20

4071-4074 *Equal Access Act*

CALIFORNIA CONSTITUTION

Article 1, Section 2 *Freedom of speech and expression*

U.S. CONSTITUTION

Amendment 1 *Freedom of speech and expression*

COURT DECISIONS

Smith v. Novato Unified School District, (2007) 150 Cal.App.4th 1439

Lavine v. Blaine School District, (2001) 257 F.3d 981

Emmett v. Kirkland School District No. 415, (2000) 92 F.Supp. 2d 1088

J.S. v. Bethlehem Area School District, (2000) 757 A.2d 412 (Pa. Commw. 2000)

Beussink v. Woodland R-IV School District, (1998) 30 F.Supp. 2d 1175

Muller v. Jefferson Lighthouse School, (1996) 98 F.3d 1530

Lovell v. Poway Unified School District, (1996) 90 F.3d 367

Hazelwood School District v. Kuhlmeier, (1988) 108 S. Ct. 562

Leeb v. DeLong, (1988) 198 Cal.App.3d 47

Bethel School District No. 403 v. Fraser, (1986) 478 U.S. 675

Bright v. Los Angeles Unified School District, (1976) 18 Cal. 3d 350

Tinker v. Des Moines Independent Community School District, (1969) 393 U.S. 503

*Management Resources:*

CALIFORNIA DEPARTMENT OF EDUCATION LEGAL ADVISORIES

Limitations on Student Expression in School-Sponsored Publications, March 4, 1988

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

**FREEDOM OF SPEECH/EXPRESSION**

**School-Sponsored Publications**

Students shall have the right to exercise freedom of speech and of the press in official school publications, except for expression that is obscene, libelous, slanderous, or so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school. (Education Code 48907)

*Official school publications* includes material produced by students in journalism, newspaper, yearbook, or writing classes and distributed to the student body either for a fee or free. (Education Code 48907)

Each principal shall develop a school publications code outlining the responsibility of student journalists, editors, and publication advisors.

All student submissions shall be held to professional standards of English and journalism. (Education Code 48907)

If the principal considers material submitted for publication to violate Education Code 48907, he/she shall notify the student, without undue delay, and give specific reasons why the submitted material may not be published. Absent extraordinary circumstances, such notice should be given in sufficient time to allow the student time to either modify the material or to seek review of the principal's determination from the County Superintendent or designee. Prior to any restriction of student speech, school officials shall consider any feasible alternative options to restricting the speech.

To the extent that the principal or designee believes that the school and LACOE should be disassociated from a particular idea or opinion, the principal may require student articles to include disclaimers.

**Distribution of Printed Materials and Petitions by Students**

The principal or designee may provide bulletin boards on which students and student organizations may post materials of general interest. Students also may post or distribute handbills, leaflets, and other printed material, whether produced within or outside of the school. Students may collect signatures on petitions concerning school or nonschool issues.

*(cf. 1325 - Advertising and Promotion)*  
*(cf. 6145.5 - Student Organizations and Equal Access)*

**FREEDOM OF SPEECH/EXPRESSION** (continued)

Printed materials or petitions may be distributed only:

1. Before or after school or during lunch time
2. In locations that do not obstruct the normal flow of traffic within the school or at entrances

No student shall use coercion to induce any other student or person to accept printed matter or to sign a petition. No funds shall be collected for any material distributed.

*(cf. 5131 - Conduct)*

**Clothing, Buttons, and Badges**

Buttons, badges, armbands, and clothing bearing slogans or sayings may be worn unless their message falls into the categories prohibited by law and Board policy. No employee shall interfere with this practice on the grounds that the message may be controversial or unpopular with students or faculty.

*(cf. 5131.4 - Student Disturbances)*

*(cf. 5132 - Dress and Grooming)*

*(cf. 5136 - Gangs)*

*(cf. 5144 - Discipline)*

**Definitions**

1. Student Viewpoints: oral, written or visual expressions of a student's ideas or opinions.
2. LACOE-Sponsored Activity: any activity sponsored by a LACOE program or activity, including events, organizations and publications.
3. Educational Function: LACOE's day-to-day operations that allow LACOE to provide programs and activities.
4. Disruption: an intentional act to stop, prevent, interfere with or hinder LACOE's legitimate operations to provide programs and activities.
5. Unprotected Expression: categories and basic examples; examples not intended to be exhaustive.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

- a. Obscenity: for example, pornography or sexually explicit materials.
  - (1) Test for Obscenity:
    - (a) Average person applying current community standards finds the work as a whole appeals to the prurient interest
    - (b) The work is patently offensive
    - (c) The work lacks serious literary, artistic, political or scientific value
  - (2) LACOE sites are encouraged to establish school community committees to review works for obscenity. These committees should include, where possible: a teacher, an administrator, a student, a parent and a community member.
- b. Harassment, including sexual harassment: repeated teasing of a student until the student is afraid to attend school or unable to function effectively in school as a result of the teasing.
- c. Threats, intimidation: retaliation for a student testifying as a witness in a disciplinary proceeding; stating that a student will suffer physically if the student does not hand over money or goods.
- d. Vulgarity or profanity: for example, in individual expression, the continual use of curse words by a student, even after warnings; in student publications, use of language which would not be used by the L.A. Times or other large mainstream publication, including curse words.
- e. Discriminatory material: material that demeans a person or group because of the person/group's ethnicity, gender, religion, disability or other individual characteristic that is or has the purpose or effect of humiliating, offending or provoking the person/group; often linked to threats or intimidation.
- f. Defamation: inaccurately attributing a statement to another, either on purpose for public officials (which includes LACOE staff) or by mistake for private individuals (which includes other LACOE participants), that mischaracterizes the statement.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

Defamation includes libel (oral defamation) and slander (written defamation).

- (1) Examples: a student publication prints a story misquoting the site administrator when the student journalist knew the quote was incorrect and wanted to misquote the administrator. A student publication misquotes a student out of carelessness and the misquote completely mischaracterizes the student's statement.
- (2) The "fair comment rule" allows for free expression of opinions on matters of public interest. For example, school policies may be critiqued under the fair may not.
- g. Invasion of privacy: publicizing or distributing confidential or private information without permission.
- h. Fighting words: words likely to cause (1) the average person to fight or (2) the creation of a clear and present danger of violence, unlawful acts or the substantial disruption of school.
- i. Substantial disruption of school: defying a LACOE staff member's authority; causing a disturbance on campus with the goal of stopping classes or LACOE events.
- j. Marketing: any written, oral or visual expression at a LACOE program or activity that advertises or promotes goods and/or services for LACOE staff and students.

**Methods of Expression**

- 1. Student Viewpoints: oral, written or visual expressions of a student's opinions or ideas.
  - a. Students may express their viewpoints as long as their expression does not (1) violate another individual's rights, (2) violate laws, policies or regulations, or (3) disrupt the educational function of the site.
    - (1) Students may use bulletin boards, printed materials or petitions, or official school publications to express their views.
  - b. Students may also wear buttons, badges or other insignia to express their views.



**FREEDOM OF SPEECH/EXPRESSION** (continued)

- c. Other forms of expression that do not violate others' rights or disrupt the LACOE program or activity are valid.
- d. Gang-related clothing or accessories are not permitted.
- e. Political expressions that threaten to disrupt or disrupt a LACOE program or activity, threaten or cause violence or insubordination, or harass other individuals may be stopped.
- f. LACOE reserves the right not to display visual, oral or written expressions that are obscene in a LACOE program, activity or facility. (See above, Part I Definitions, for Test for Obscenity.)
- g. Individual religious expression may be limited if that expression harasses other individuals or disrupts the educational function of the site. No LACOE-sponsored program or activity will require religious expression by any participants.
- h. Students participating in LACOE programs or activities shall not use LACOE facilities, including access to the Internet, to take part in unprotected expression. Any student who violates this rule will be subject to revocation of privileges, a parent-administrator conference to discuss the misconduct and ways to address it, and/or disciplinary action, including involuntary release, suspension or expulsion where the grounds for such action are met.
- i. LACOE-Sponsored Activities: all activities officially recognized by LACOE or so associated with LACOE that a member of the public would believe the activity is LACOE-sponsored.

(1) Types

(a) Student Organizations

- (i) Sites are authorized to recognize and sponsor student organizations.
- (ii) LACOE-sponsored student organizations shall have a LACOE staff member as an advisor.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

(iii) LACOE-sponsored student organizations will only include members who are current students of the LACOE program or activity.

(iv) The activities of the student organization will not conflict with the authority and responsibilities of LACOE officials.

(v) No hazing is permitted for membership in any student organization using LACOE facilities or involving a LACOE program or activity.

(b) Student Publications; Publications Code

(i) LACOE respects participants' exercise of freedom of expression under the law. Students in California public schools are guaranteed the right to exercise free speech and free press under the law. LACOE encourages free and open discussion of issues in official, school sponsored publications.

(ii) Official school publications include expressive materials produced by students advised by LACOE staff and distributed to the student body.

(a) Official school publications shall have a LACOE staff member as an advisor.

(b) The advisor will supervise the publication process.

(c) The advisor will ensure that professional standards of English and journalism are followed.

(d) The advisor will ensure that the students' free expression is protected.

(e) The advisor will be knowledgeable about the rights and responsibilities of student publications and advise students according to professional standards.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

(f) The advisor shall review, with no prior restraint, all student publications, and may request site administrator review. Students retain responsibility for content, and LACOE and LACOE staff assume no liability for the contents of any student publication.

(iii) Prior restraint of materials prepared for official school publications is prohibited.

(a) Unprotected speech may be removed (see above, Part I).

(b) The burden is on LACOE staff to show justification without undue delay before pulling any materials prepared for an official school publication.

(c) When in doubt about content, students shall discuss their concerns with the faculty advisor. If the advisor is in doubt, the advisor shall discuss his/her concerns with the student(s) and site administrator. LACOE reserves the right to consult with legal counsel in this determination.

(d) If the student author wishes to appeal the decision to remove an article, the student author may appeal to the site administrator/designee, who will hear the student's version of events and provide a written response within three (3) school days. The student may further appeal, in writing, to the superintendent/designee, who shall respond in writing within ten (10) school days of receipt of the student's request.

(iv) Individual LACOE sites may establish a Publications Code, in compliance with this policy, to serve as a guideline for the orderly and appropriate operation of its publications

(v) LACOE events: any events sponsored or held by a LACOE program or activity

**FREEDOM OF SPEECH/EXPRESSION** (continued)

(a) Students may express themselves freely at any LACOE event provided it does not substantially disrupt the educational function of the program or activity or violate another individual's rights.

(b) Students are encouraged to "fight speech with more speech" if they disagree with a person's expression, and request assistance from LACOE staff in providing a forum for Comment

(c) Unprotected speech may be stopped at a LACOE event.

- j. Off-Campus Groups: all groups that do not qualify as LACOE sponsored activities but hold meetings, distribute publications and/or plan and hold events

(1) Types

(a) Organizations

(i) Off-campus organizations may use LACOE facilities for meetings or programs if the Board authorizes the use as allowed by the Civic Center Act.

(ii) Religious organizations may also use LACOE facilities for meetings provided they meet the conditions of the Equal Access Act and Civic Center Act.

(iii) Organizations which advocate communism or the violent overthrow of government or government officials may not use LACOE facilities.

(b) Publications

(i) Publications distributed on campus or at a LACOE activity must be age-appropriate.

(ii) Publications distributed on campus or at a LACOE activity must not cause or incite a disruption to the LACOE program or activity, including distribution practices which prevent students from entering or exiting facilities.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

(iii) Publications distributed on campus or at a LACOE activity must not advocate communism or the violent overthrow of government or government officials.

(c) Events

(i) Off-campus group-sponsored events may make use of LACOE facilities if the Board authorizes the use as allowed by the Civic Center Act.

(ii) Religious organizations may hold events at LACOE facilities provided they meet the conditions of the Equal Access Act and the Civic Center Act.

(iii) Organizations which advocate communism or the violent overthrow of government or officials may not use LACOE facilities.

(d) Commercial Speech

(i) Marketing directed at students by off-campus groups is generally not permitted on campus.

(ii) Marketing on campus by LACOE-sponsored activities must meet the requirements of student organizations for fundraising.

(iii) The promotion, sale, provision or distribution of any tobacco product, alcohol, narcotics or other nonprescription controlled substance, gambling or other vices in conjunction with any LACOE program, activity or facility is prohibited.

*Legal Reference: U.S. CONST., 1ST AMEND.; CA CONST., Art. 1, Sect. 2-3; EC 48900 et seq., 48907, 48950; Tinker v. Des Moines School District, 393 U.S. 503 (1969); Board of Education v. Pico, 457 U.S. 853 (1982); Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986); Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988); Chaplinsky v. New Hampshire (1942); Wisconsin v. Mitchell (1993); Miller v. California (1973); New York Times v. Sullivan (1964); Central Hudson Gas v. Public Service Commission (1980); 20 USC 226 (Equal Access Act); EC 32050, 32052, 32435, 38130 et seq. (Civic Center Act), 48907, 48930, 48950 et seq.; Heath & Safety Code 118950 et seq.; Lopez v. Tulare Joint Union High School District (1995) 34 Cal. App. 4 1302.*

**Complaints**

1. Grounds: A student who feels his/her freedom of expression was unconstitutionally limited and/or limited on the basis of discrimination may file a complaint.

**FREEDOM OF SPEECH/EXPRESSION** (continued)

2. Process: Students who believe their freedom of expression has been violated may file a complaint following LACOE's Complaint Policy and/or Procedure.

*(cf. LACOE 7380 - Student Complaint Policy)*

*(cf. LACOE 7390 - Uniform Complaint Procedure)*

*Legal Reference: U.S. CONST., 1ST AMEND.; CA CONST., Art. 1, Sect. 2-3; EC 48900 et seq., 48907, 48950; Tinker v. Des Moines School District, 393 U.S. 503 (1969); Board of Education v. Pico, 457 U.S. 853 (1982); Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986); Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988); Lopez v. Tulare Joint Union High School District (1995) 34 Cal. App. 4 1302. Adopted 01-19-1999*