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SAN DIEGO UNIFIED SCHOOL DISTRICT
ADMINISTRATIVE REGULATIONS and PROCEDURES

NO. 2390

LEVELS: K-12

CLASSIFICATION: STUDENTS

SUBJECT: RIGHTS AND RESPONSIBILITIES--
STUDENT FREE SPEECH

EFFECTIVE: 3-7-72

REVISED:

REFERENCE: ED. CODE 9002, 9021, 10611;
STATE BOARD OF EDUCATION GUIDELINES
FOR STUDENT EXPRESSION 10/15/71

A. PURPOSE AND SCOPE:

1. To outline the administrative regulations and procedures relating to the rights and responsibilities of students in the exercise of free speech on school grounds outside of the classroom situation.

2. This procedure includes the distribution of literature, publicity, use of bulletin boards, nonschool publications, the spoken word, symbolic speech (buttons, armbands, etc.), and petitions.

3. The distribution of literature and publicity by or through the school as an official institution (including the classroom) is covered in Procedure No. 3925.

4. General site security and safety is covered in Procedure No. 7400.

B. GENERAL:

1. Suggestions or questions concerning this procedure should be directed to the originating office (see Section G.).

2. 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 in the past two years. The two cases most directly related to this change of law in California are Tinker v. Des Moines Independent Community School District (decided by the U. S. Supreme 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--whether 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.

B. 2. In the Campbell Union High School District case, the Federal court summarized the legal status of students today by postulating six rubrics:

1. Students are "persons" within the meaning of the Constitution and are possessed of fundamental rights which are not lost in school.

2. 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.

3. Student freedom of speech includes personal intercommunication of controversial ideas.

4. School officials have the burden of showing constitutionally-valid justifications for limitations on student speech.

5. 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 which accompany them is not a constitutionally adequate justification.

6. 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 paragraphs B.4-5 below.

3. In addition to the evolving legal mandates described in this procedure, another significant dimension of the exercise by students of First Amendment "free speech" rights in the public-school setting must be considered. The responsible exercise of "free speech" rights should be recognized as a prime educational objective of the San Diego City Schools. 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 Education, the administrative, teaching, and classified staff, the students, and the citizens who are served by the public schools of San Diego. All have the common educational function of encouraging and guaranteeing the responsible exercise of "free speech" rights in the public schools.

4. General Rights and Responsibilities Applying to All Manner of Free Speech

Included in, but not limited to, the forms of free expression available to students of the district are literature, publicity, bulletin boards, nonschool publications, the spoken word, symbolic speech (armbands,

B. 4. buttons, signboards, etc.), and petitions. The exercise of the right of free speech guaranteed by the First Amendmendment 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. That it Does not Intefere 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 in the educational program without hindrance or unlawful denial by anyone. The educational program includes the supervisory and disciplinary authority of the teachers and administrators, both in the classroom and outside the classroom as prescribed by law.

Similarly, any act by students or others which substantially or materially impairs the capacity of a school official to perform his or 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 district which are defamatory or slanderous and which are calculated to cause disturbance and disruption of school activities. (After exhausting all administrative remedies, complaints may be made to the Board of Education in accordance with San Diego Unified School District Administrative Regulation and Procedure No. 3325-1.)

It is the responsibility of each student, in the exercise of his right of free speech, not to engage in any activity which interferes with the educational program.

b. That it Does not Infringe on the Rights of Others. In addition to the right of any student to an education free from disruption, hindrance or unlawful denial, the exercise of free speech by anyone must not violate other individual rights 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 his expression of his views and opinions.

c. That 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 which 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. It is the responsibility of every student in exercising his right of free speech to avoid violence or the intentional disruption or interference with the programs and activities of the schools.

B. 4. d. That it Does not Violate Existing Laws Covering Specific Matters Including, but not Limited to:

(1) Harmful Matter. This is 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."
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> (Penal Code Sec. 313, 313.1; Ginsburg v. New York, 390 U. S. 629, 1968.)

(2) Profanity. This is matter containing words which, according to standards of the San Diego Unified School District community, are deemed to be profanity. (Education Code Sec. 10602 and 13556.5; Penal Code Sec. 415; Title 5, Administrative Code, Secs. 300-301.)

(3) Prejudicial or Discriminatory Matter. This is matter advocating prejudice or discrimination on account of sex, race, ethnic origin, or religion. (Education Code Sec. 9001-9002, 9305, 10013 and 13556.5.)

(4) Injurious Matter. This is matter which encourages or advocates the use of tobacco, intoxicating liquor, narcotics or other hallucinogenic or dangerous drugs. (Education Code Secs. 9304, 10602, 10603; Title 5, Administrative Code Sec. 301.)

(5) Commercial Materials. Commercial materials for purposes of sale of products or services to students, staff, or parents are prohibited. (See Procedure No. 1010.)

(6) Materials or Instruction Concerning Human Reproduction. This matter may not be distributed because state law prohibits students from receiving such information in the schools without first having the written approval of their parents. (Education Code Sec. 8506; see Procedure No. 5455.)

(7) Secret Clubs shall not have any privileges at school. Specifically, they may not use school premises for any of their activities, have publicity at school for any activity, or sell on school premises tickets or bids to any activity of the club. (Education Code Sec. 10604; see Procedure No. 5357.)

(8) Libel or Slander. This is matter, disseminated either in writing or verbally, which defames a person or, in some cases, a private organization. (Civil Code Sec. 44 et seq.)

B. 4. e. That it Does not Violate the Time, Place, and Manner Regulations of the Individual School designed to assure compliance with the above restrictions. (See Section B.5., below.)

5. Local School Time, Place, and Manner Regulations. Each school shall establish local school time, place, and manner regulations. Such local school rules and procedures shall contain a provision requiring submission by a student to the principal or the principal's designated representative of any written materials which the student intends to distribute on school grounds under this procedure prior to the time the student distributes such materials. Such "prior submission" regulations shall provide for the following:

a. The school official(s) designated by the principal as authorized to receive and review written materials submitted pursuant to this procedure shall be specifically identified and the office to which such materials shall be submitted also shall be specifically identified.

b. The school official reviewing written materials shall give his views on such materials in consonance with the rules set forth herein within four hours following submission to him 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 views prior to noon on the following school day. Such views must be given in writing with a copy presented to student as well as one kept by principal or designated alternate in the case of prohibition. The school official shall be as prompt as possible in his review and report in order to prevent this "prior submission" requirement from operating as an invalid "prior restraint" to the exercise by students of their free speech rights.

c. A failure to prohibit written materials submitted hereunder shall not be construed to mean that the individual school or school district necessarily agrees with, or approves, the views contained in the material distributed. Students are accountable for their actions at all times. Additionally, local school regulations shall include, but not necessarily be limited to, the following:

(1) Specific Rules Governing Distribution of Printed Materials and Circulation of Petitions.

(a) The time of such activity shall be limited to periods before school begins, after dismissal, and during established lunch periods as deemed feasible by the principal.

(b) The place of the activity shall be reasonably restricted to permit the normal flow of traffic within the school, in lunch locations, and at exterior doors, and to avoid interference with school programs.

(c) The manner of conducting such activity shall be restricted to prevent coercion and undue levels of noise.

B. 5. c. (1) (d) The school shall require that all printed matter distributed or circulated on school property be identified with the name of the sponsoring organizations or individuals, both school-connected and nonschool organizations or individuals.

(e) The school may require that the individual or group distributing the materials assume responsibility for the clean-up of those materials which contribute to littering.

(2) Buttons, Badges, Armbands, Etc., bearing slogans, sayings, or symbols are permitted as another form of expression, provided the message or symbol does not violate the provisions of this procedure.

(3) Bulletin Boards and the Posting of Publicity. School authorities may restrict the use of certain bulletin boards and display areas to school announcements. Additional bulletin board and/or display space shall be provided for the use of students and student organizations, including space relating to out-of-school activities and matters of general interest to students. The following limitations on the use of such areas must be observed:

(a) Identification shall be required on any posted notice of the student or student group issuing the notice.

(b) All notices shall be officially dated prior to posting and such material shall be removed after a prescribed time to assure full access to the bulletin boards by others.

(c) Bulletin board space should be made available to all students under uniform rules approved by the principal.

(4) Public Expression on School Grounds (outside of the classroom).

The 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:

(a) An area for speaking to mass groups of students shall be set aside by the school authorities.

(b) The time of such expressions shall be limited to periods before school begins, after dismissal and during established lunch periods as deemed feasible by the principal.

(c) The 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 the school authorities.

(d) Such expression must be in compliance with Section B.4. of this procedure, above.

B. 6. Violations. Acts in violation of any of the above limitations and rules constitute defiance of district regulations and can result in suspension or other appropriate disciplinary action.

7. Related Procedures Applying to Staff and Others

a. Procedure No. 5485, "Controversial Issues, Straw Voting, and Outside Speakers in the Classroom"
b. Procedure No. 5270, "Unadopted Materials and Books, Including Paperbacks--Selection, Purchase"
c. Procedure No. 7401-1, "Site Security, Unruly Demonstrations and Disorders--Emergency Procedures"
d. Procedure No. 3925, "Literature and Publicity, Distribution of in Schools"
e. Procedure No. 5455, "Instruction Involving Human Reproduction"
f. Procedure No. 4855, "Certificated Employees, Professional Responsibilities"
g. Merit System Rules, covering classified employee conduct.

8. Others. This term is used to describe all persons who are not students enrolled in the school, staff members of the school, or other district employees with legitimate business at the school site. Such persons may not come onto the school grounds without the permission of the school principal or his designated representative. For a more detailed description of the administrative regulations and procedures imposing limitations upon such persons, see the above-referenced procedures (No. 7400 and others).

C. FORMS USED AND AUXILIARY REFERENCES: None

D. PROCEDURE:

1. To Establish Specific Written School Guidelines and Procedures

a. Principal

(1) May develop specific written school regulations and procedures consistent with this procedure. In doing so, the principal may consult with faculty, students, and other interested parties.

(2) May designate other administrator, teacher, or other groups to function as his designate in carrying out all or part of the function of reviewing materials submitted under the "prior submission" regulations.

(3) May communicate agreed-upon school guidelines and procedures, as well as district guidelines and limitations, as he deems necessary, to all students, staff, and parents. (Student Handbook, Faculty Handbook, P.-T.A. Newsletter, may be used.) Guidelines include time, place, manner, prior approval, penalties for violation, and "prior submission" review procedure.

2. Prior to Distribution

a. Student

(1) Prepares or obtains printed materials, petitions, buttons, badges, armbands, etc.

D. 2. a. (2) Identifies all written material with the name of the student or organization who sponsored and/or prepared it.

(3) Checks for compliance with the provisions of local school regulations.

(4) Submits materials to principal or his designated representative.

b. Principal or Designated Representative

(1) Reviews materials only on basis of established limitations and guidelines.

(2) Expresses his views as to applicability of such established limitations and guidelines.

(3) Notifies student(s) of his views. Provides student with written notice of prohibition if such is the case.

c. Appeal from prohibition by principal

(1) Student may appeal to the Secondary Schools Division regional director having jurisdiction over school in which student is enrolled.

(2) Regional director shall make his decision on the appeal within reasonable period of time and communicate decision to student.

(3) Nothing herein shall preclude a student from further appealing the regional director's decision to higher school district authority.

E. REPORTS REQUIRED: None

F. RECORD RETENTION AND DESTRUCTION: None

G. ORIGINATING OFFICE: Deputy Superintendent for Operations

H. APPROVED BY:

Deputy Superintendent
for Operations

Superintendent