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ABSTRACT

To assist journalism educators and legislators who wish to initiate passage of anti-Hazelwood laws, this paper reports on the first stage of a research project on nationwide efforts at getting state legislation passed to override the 1988 Supreme Court Hazelwood School District vs. Kuhlmeier decision. The laws of five states (Massachusetts, California, Colorado, Kansas, and Iowa) which have been successful in passing legislation to override the 1988 Hazelwood decision are compared and contrasted in the paper. The paper also offers a 1-page paradigm that summarizes the features of each law. Future research is called for that would examine data from the five states that have passed such laws to determine if they have indeed reduced the incidence of student press censorship. An appendix provides the complete text of all enacted student free speech legislation and a copy of the Student Press Law Center Model Legislation. (NH)

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A Paradigm for State High School Press Freedom Laws

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### Abstract

Successfully getting state legislation passed to override the 1988 *Hazelwood* decision, as five states have done, is a major undertaking and requires that concerned journalism educators enter “largely unfamiliar political waters.” To assist educators, this paper compares and contrasts the five laws and presents a summary paradigm to make one portion of that large task—examining existing laws—more manageable.

## A Paradigm for State High School Press Freedom Laws

When the U.S. Supreme Court handed down its decision in *Hazelwood School District vs. Kuhlmeier* in January 1988, the legal battleground for students' rights of free expression shifted from the federal courts to state legislatures. Since the Tenth Amendment to the U.S. Constitution gives states the rights to govern education, state legislatures can adopt laws or policies that override the *Hazelwood* decision. The Supreme Court, in general, has allowed state legislatures to grant more, but not fewer, freedoms than granted by the Constitution.

Efforts to reverse the adverse effects of the decision on high school press freedoms have been active in at least 26 states since the 1988 decision, according to David Adams, chair of the Scholastic Journalism Division's Professional Freedom and Responsibility Committee, in his mid-winter report in January 1993. California has had a student free expression law since 1977, and four other states have taken corrective measures: Massachusetts in 1988, Iowa in 1989, Colorado in 1990 and Kansas in 1992.

Adams' report indicated that several states had considerable activity during the 1992 legislative session, including Wisconsin, Arizona, Indiana, New Jersey, Michigan, Minnesota, Idaho, Missouri, Ohio, South Carolina and Washington. Most of the bills in these states were defeated or stalled for a variety of reasons.

This purpose of this paper is to report on the first stage of a research project to synthesize existing information and compile additional data on nationwide efforts at passing anti-*Hazelwood* laws. It is hoped that this information will be useful to advisers, scholastic press association directors, and legislators in states not only where laws have been initiated but have not passed, but also in states where legislative efforts are just getting under way, and especially in states where such efforts have not yet begun.

Based on Adams' report, it appears that in approximately 19 states no efforts have been made to initiate anti-*Hazelwood* legislation. Can it be that these states do not have advisers, scholastic press association directors, journalism professors, or legislators who are concerned enough about high school students' lack of First Amendment rights to pursue the issue?

We think not. There must be other reasons. Existing literature, however, does not include any research that attempts to explain the reason(s) why four states were successful in passing laws since *Hazelwood*, why other states have not succeeded but continue to regroup and mount strong efforts, why some states mustered a strong effort, failed and have not regrouped, and why some states have not even entered the battle.

In a telephone interview, Pat Pascoe, a former Democratic state senator who co-sponsored and was actively involved in writing Colorado's bill, said the successful bill took "an all out lobbying effort" in which she "called in a lot of chips. . . . The Colorado Student Free Expression Law is certainly one of the best bills we passed. I'm really proud of it. Colorado isn't known for doing the right thing" (March 3, 1993).

After the Colorado bill passed, Fran Henry, a high school adviser and member of the board of directors of the Colorado High School Press Association, wrote in *C:JET* that successful passage of Senate Bill 99 was due "to a broad coalition of high school newspaper advisers, students, teachers, educators' associations and concerned individuals who charted largely unfamiliar political waters" (p. 14). The legislation, she said, "was supported by a remarkable effort from a large number of organizations and individuals" (p. 15).

The experience in Colorado and other states reveals that getting a student free expression bill passed is a major undertaking that takes considerable time and effort. Perhaps one reason why some states have not initiated any attempts to do so is not

due to lack of concern, but rather due to already overcommitted, overworked advisers, press association directors, and other journalism educators who simply feel they do not have the time, not to mention the expertise and knowledge, to mount such a monumental effort.

Since 1988, a considerable amount of insightful and cogent commentary, research and analysis has been done to assess the impact of the *Hazelwood* decision. It is not the purpose of this paper to reiterate this literature, which, to some degree, adds to the dilemma because it takes considerable time and effort to stay current on the issue.

We suspect that some advisers, journalism educators and media professionals are quite concerned about students' limited First Amendment rights, but are also overwhelmed by the issue, feel unqualified to enter the political arena, and are committed to other areas that do not allow them time to pursue scholastic press law issues extensively. They don't know where to start, what to read first, or who to turn to for tips on how to get the legislative ball rolling.

Thus, a secondary purpose of this research project is to zero in on particularly useful and practical information, synthesize it, and report it concisely in an attempt to make a monumental task a bit less forboding for concerned individuals in states that have not yet initiated anti-*Hazelwood* legislation.

So, where should a concerned journalism educator start if he/she wants to get the legislative ball rolling in his/her state? The logical answer is to turn to the five states with existing legislation. What aspects of the laws are similar? How are they different? What limitations are included? What's the role of the adviser? How do the laws deal with the issue of liability?

In addition, what can be learned from individuals in those states who successfully passed through, as Henry put it, uncharted political waters? What strategies did scholastic press association directors, advisers and legislators in those

states find useful or not useful? What would they have done differently? This paper reports on the first stage of this project which was to compare and contrast the five existing laws and the Student Press Law Center's model law and compile a one-page paradigm that summarizes the features of each law.

A second stage of the project, already under way but not complete enough to report in this paper, involves a telephone survey of the state senators and representatives who successfully sponsored or co-sponsored legislation in the five states that currently have laws.

### Literature Review

As stated earlier, it is not the purpose of this paper to review the complete body of *Hazelwood* research and commentary. The most recent *Hazelwood* article, Dickson's survey of student newspaper editors in the Spring 1993 issue of *C:JET*, provides a good starting reference list of previous literature for those wishing to brush up on the topic.

Current scholastic journalism literature reveals that the adverse effects of the *Hazelwood* decision are being attacked on at least three main fronts. First, it appears that concerned scholastic press association leaders and advisers have made enough noise about the state of high school journalism, that the professional press has begun to listen and may soon enter the battle.

A cover story in the March *ASNE Bulletin* carried the subtitle: "A whole generation is learning the wrong lessons about the First Amendment." Author Diane McFarlin says high school journalism is in trouble and its framework is leaning. "Newspaper editors," she wrote, "are key members of the salvage crew that can keep it from falling" (p. 5).

McFarlin cited the four-fold increase in calls for legal advice and assistance the SPLC received in 1991 versus 1985. She also told ASNE members about the "chilling scenes" SPLC Director Mark Goodman has experienced "at student press



conventions, where students are as antagonistic to the media as the general population" (p. 6).

McFarlin concluded, "Unless something is done to strengthen the role of journalism in American schools, its instruction value will be squandered and the importance of newspapers to society will be a lesson left to be learned later in life. Or never" (p. 7).

Although it presents a bleak picture, the *ASNE Bulletin* coverage may actually be a bad news-good news scenario. Reports like this may be the push needed to cause media professionals who generally supported the *Hazelwood* decision (see Editorials support censorship decision, 1988) to come to the defense of high school journalists. In a recent survey, 88% of the nation's scholastic press association directors agreed that the professional press should help high school students when their press rights are violated and should provide more consultation to high school editors and advisers on legal and ethical issues (Van Ommeren, Olson, Rossow, 1992).

ASNE's Education for Journalism Committee, which McFarlin chairs, produced a tabloid report, "Rescuing High School Journalism," distributed during the March ASNE convention in Baltimore and mailed to all members after the convention. The report outlines effective ways newspapers can assist high school journalism programs in their communities.

The joint meeting of the Southern Newspaper Publishers Association's Journalism Education Committee and the Scholastic Journalism Division in Atlanta in January also provided an opportunity for progress on this front as scholastic press leaders pointed out a variety of concerns, including the ramifications of *Hazelwood*.

Bobby Hawthorne, director of the Interscholastic League Press Conference, University of Texas, told SNPA members that these days when he gets a call from an adviser who's having problems with his or her principal, he tells the adviser to call the local newspaper. Hawthorne said,

Principals do not want to be identified in the daily newspaper as someone who's telling a kid that he cannot write an editorial about the school's ban on wearing Bart Simpson t-shirts. It makes them look stupid because it is stupid. So, I say: "Call your local newspaper." That's a little bit risky because I've assumed that the local newspaper is going to help. (SNPA and teachers, 1993, p. 4)

In addition, Adams cited the danger of tolerating censorship in the nation's public schools, and the February 1 *SNPA Bulletin*, devoted entirely to the joint meeting, contained a story on that topic (Adams cites, p. 8).

On a second front, concerned journalism educators continue to aggressively push for passage of free expression laws in their state legislatures that would limit the prior restraint and censorship authority of school officials, as evidenced by Adams' report cited earlier. On a related, but slightly different legal front, Adler reports in the March *ASNE Bulletin* that

Students are also testing whether their state constitutions can be interpreted to alleviate the threat of *Hazelwood*. In May 1991 a state court in New Jersey held that the free expression clause of the state's constitution provides greater protection for school-sponsored publications than does the U.S. Constitution. In a closely watched case that is currently on appeal, high school journalists are pursuing a similar strategy in Oregon. (p. 8)

On a third front, the grassroots level, many of the foot soldiers in this battle, high school journalists, are attacking *Hazelwood* with quality, responsible journalism. Attorney Adler, an associate of ASNE's legal counsel, reported, "With a ferocity that should put some of their mainstream professional elders to shame, high school journalists are fighting a variety of battles in defense of student press freedom" (p. 8).

Dickson's study, which surveyed more than 300 student newspaper editors, suggested that "editors and other student journalists are not avoiding controversial topics. However, they may be approaching them more carefully." The study shows that the "*Hazelwood* decision has not had the drastic effects feared and that the student press can still thrive despite the ruling" (p. 15).

### **The paradigm**

This paper reports on research that attempts to improve the weapons used on the second front—state legislative action.

A few articles and papers discuss the efforts of individual states to pass legislation (i.e., Henry, 1990; Overbeck<sup>1</sup>, 1977), but none has compared and contrasted the five existing laws. In addition, although the SPLC and Scholastic Journalism Division's PF&R committee maintain up-to-date records of state efforts, no individual or organization has surveyed state legislators who sponsored the legislation, a strategy the authors have begun but have not completed.

The methodology for this paper was simple—obtain copies of the existing five laws, examine them, and create a model to characterize their similarities and differences. The Student Press Law Center provided copies of the five existing laws and its own model law (see Appendix). (A revised version of SPLC's model law is now available, but was not obtained in time to incorporate into this paper.)

The paradigm in Figure 1 presents the results of the analysis. It summarizes the similarities and differences between the five existing laws and the SPLC model law in the following areas:

1. Media specifically covered
2. Prior restraint forbidden
3. Specified limitations
4. Requires action of another governing board
5. Specific student responsibilities and freedoms

FIGURE 1—PARADIGM FOR STATE HIGH SCHOOL PRESS FREEDOM LAWS

Characteristics of laws	California (1977)	Colorado (1990)	Iowa (1989)	Kansas (1992)	Massachusetts (1988)	SPLC Model (1991)
Media specifically covered:	Including but not limited to bulletin boards, printed materials, buttons, badges, official publications	Student publications, whether or not school-sponsored	Speech, including right of expression in school publications	Student publications prepared and published by students, which are made available to student body	Speech, symbols, writing, publications, peaceable assembly	Including, but not limited to, bulletin boards, buttons, badges, theater-music events, school publications
Prior restraint forbidden:	Forbids prior restraint of material prepared for official school publications except for specified limitations	No prior restraint except for specified limitations	No prior restraint except for specified limitations	Forbids suppression of material solely because it involves political or controversial matter; limitations specified	Freedom of expression shall not be abridged; no specifics on prior restraint listed	No student publication will be subject to prior restraint
Specified limitations:	Expression which is obscene, libelous, slanderous, incitement to unlawful acts or disruption of school	Obscenity, libel, slander; falsehood about non-public figure; encourage unlawful acts; disrupts school; violates privacy	Obscenity, libel, slander; encourage unlawful acts, violation of school regulations, disrupt school	Libel, slander, obscenity or promotes illegal conduct; disrupt school	Disruption, disorder	Obscenity, libel, slander; incite unlawful acts; disrupt school
Requires action of another governing board:	School district and county board must adopt code	School district board must adopt code	Each public school board must adopt code	No action by any board required	No action by any board required	Action by school district board required
Specific student responsibilities and freedoms:	Student editors of official school publications shall assign and edit content	Student editors of school-sponsored publications shall determine content	Student editors of official school publications shall assign and edit news	Students editors determine content	Nothing specified	Responsible for content subject to stated limitations
Specific role of adviser:	Supervise students; maintain standards and provisions of this law	Supervise production and teach and encourage free and responsible expression and professional standards	Supervise production and maintain professional standards	Teach and encourage free and responsible expression and high standards	Nothing specified	Supervise production and teach professional standards
Specific role of and restraints on school officials:	Have burden of showing justification to any limitation of student expression	Distribute publications code at beginning of school years	May adopt valid rules relating to oral communications by students	Regulate number, length, frequency, distribution and format of student publications	Nothing specified	Becomes responsible only if school official has interfered with content
Closely follows model law:	Passed before model law; contains many provisions of model law	Yes	Yes	Notable differences	Totally different	Patterned after laws in California and other states
Addresses liability	Liability not noted	No school district, employee, parent, guardian, or school official is liable	No school district, employee, official shall be liable unless content interfered with or altered	No school district, official or employee shall be held responsible	No school official shall be held responsible for civil or criminal action	No school official shall be held responsible provided they have not interfered or altered content

6. Specific role of the adviser
7. Specific role of and restraints on school officials
8. Closely follows SPLC model law
9. Addresses liability

The paradigm concisely summarizes the five states' existing laws. The following discussion highlights some areas of interest within the nine areas.

A key portion of each law involves defining the media specifically covered. The Colorado law protects student publications even if they are not school-sponsored. The California law also states that publications or other means of expression do not have to be "supported financially by the school or by use of school facilities."

The Colorado, Iowa and Kansas laws are limited to publications. Iowa's law says, "Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications," with the remainder of the law dealing with publications. Colorado's law refers to "freedom of speech and the press," again with the remainder of the law zeroing in on publications. The Kansas law says, "The liberty of the press in student publications shall be protected," with no reference to freedom of speech.

Both the Iowa and California laws use the term "official school publications" and define them as "material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee." The Kansas law uses the term "school publication," defined as "any matter which is prepared, substantially written, or published by students, which is distributed or generally made available, either free of charge or for a fee, to members of the student body, and which is prepared under the direction of a certified employee."

The California law lists, but is not limited to, bulletin boards, printed materials or petitions, buttons, badges and official publications. The SPLC model law

also suggests including theater and music events. (The revised version has removed these two items, as well as those in the California law, and zeroed in on publications.)

The broad Massachusetts law, which is worded considerably different than any of the other laws, allows students “(a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions.”

A statement on prior restraint is the meat of a student free expression law. All five state laws forbid prior restraint, and all list a fairly standard set of specified limitations, except the shorter, more general Massachusetts law, which cites two broad limitations: expression that causes disruption or disorder.

The specified limitations in the California, Colorado, Iowa and Kansas laws include obscenity, libel, slander, incitement of unlawful acts (including violation of lawful school regulations) and disruption of school. The Colorado law adds falsehood about non-public figures and violation of privacy, and, because gangs were a concern, according to sponsor Pascoe, a statement that “nothing in this section shall be construed to limit the promulgation or enforcement of lawful school regulations designed to control gangs.” The Kansas law also includes this statement: “Material shall not be suppressed solely because it involves political or controversial matter.”

The SPLC model law suggests that each local school district board should be required to adopt rules in the form of a written publications code that is made available to all students. In the California, Colorado and Iowa bills, school districts are required to adopt a written publications code. Colorado’s law specifies that these local codes must be consistent with the terms of the state law; however, the California and Iowa bills do not include that qualification.

The California, Colorado and Iowa laws all specify that the code “shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district’s jurisdiction” (wording from the Colorado bill; the other

two states use very similar words). The Iowa law specifies that the code must be made available to students and their parents, while the Colorado law says it “shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of each school.”

In Kansas and Massachusetts, local governing boards are not required to adopt a written publications code or take any action on the state law.

Although the wording is slightly different, four of the states say virtually the same thing about student responsibilities. The California and Iowa laws say that “student editors of official student publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section” (wording from the California bill; Iowa’s bill leaves out “be responsible” and changes the wording to “assign and edit.”)

The Colorado and Kansas laws are only slightly different, using the wording, student editors are “responsible for determining the news, opinion, and advertising content of their publications.” The phrase “subject to the limitations of this section” is included in the Colorado law, but not the Kansas law.

The Massachusetts law does not refer to student responsibilities.

The role of the adviser is an especially important element in a student free expression law. That role is spelled out in four of the states, with Massachusetts again being the exception.

California and Iowa’s bills contain the same guidelines for the adviser, which are “to supervise the production of the student staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section” (wording from California bill; Iowa’s bill words the last part a bit differently).

Colorado’s guidelines specify the adviser’s role as a supervisor and “to teach and encourage free and responsible expression and professional standards for English and journalism.” The bill also includes, according to sponsor Pascoe, an amendment

in Section 6 by a legislator who opposed the bill. It gives advisers of school publications that are part of a class or activity the freedom to assign stories and “to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experience that the publication is intended to provide.” Pascoe said this amendment assuaged principals and allowed some legislators to withdraw their opposition. Student editors, however, remain in charge of content.

Similarly, the Kansas bill includes a statement that “review of material prepared for student publications and encouragement of the expression of such material in a manner that is consistent with high standards” shall not be deemed as restraint or an abridgment of rights to freedom of expression.

Along with the statement that advisers are responsible for teaching and encouraging high standards of English and journalism, the Kansas bill specifies that “no such adviser or employee shall be terminated from employment, transferred, or relieved of duties imposed under this subsection for refusal to abridge or infringe upon the right to freedom of expression conferred by this act.”

In the seventh area of comparison, specific role of and restraints on school officials, there was little commonality among the laws. California included a statement that “school officials shall have the burden of showing justification without undue delay prior to any limitation of student expression under this section.”

Colorado requires school officials to distribute the publications code at the beginning of each school year, while the Kansas law says that “school employees may regulate the number, length, frequency, distribution and format of student publications.” Both California and Iowa’s laws allow school officials to adopt “otherwise valid rules relating to oral communication by students upon the premises of each school” (wording from Iowa law).



Four of the laws put the liability squarely upon the shoulders of students, with specific wording to remove liability from school districts, officials and employees, and in addition, parents or guardians in Colorado's law. The Iowa law specifies that school districts, officials, or employees could be liable if they "have interfered with or altered the content of the student speech or expression, and then only to the extent of the interference or alteration of the speech or expression." The Kansas law specifies that student editors and other students must have "attained the age of majority" to be held liable.

The California law does not address the issue of liability.

The paradigm also identifies to what extent each state's law conforms to the SPLC model produced in 1991 and patterned after all but the Kansas law, which was passed in February 1992. The California law contains many provisions of the model law, and the Colorado and Iowa laws follow the model law closely.

The Kansas law contains notable differences and the Massachusetts law is totally different. One key area in which these two laws differ from the other three is in regard to the need for action by local school boards. The California, Colorado and Iowa laws require local boards to adopt written publications codes, whereas the Kansas and Massachusetts laws do not. In a phone interview, Representative Gary Blumenthal, the original sponsor of the Kansas bill, said he did not want local government boards to carry any further responsibility to reapprove the state law (Feb. 1993).

In addition, the Kansas law is the only one that includes a statement protecting advisers from being terminated, transferred or relieved of duties for refusing to abridge students' right to free expression. It is also the only one with a statement that prohibits suppression of material solely because it involves controversial or political matter.

## Discussion

This paradigm of student free expression laws is a useful first step in helping concerned journalism educators who wish to initiate the passage of such laws in their states. By pulling together the key characteristics of the existing five states' laws, the paradigm makes one portion of the monumental task of instigating state legislation—examining what already exists—easier.

This first step, however, is just that. To help concerned journalism educators negotiate the uncharted waters in the political arena, additional data and analysis are needed in several areas.

The next step, already under way, is to contact the sponsors and co-sponsors of each of the five states' bills (as well as scholastic journalism leaders who were actively involved) to obtain more specific information about the political strategies that worked, those that didn't work, what each would do differently, etc. This information might shed some light on the reasons why California, Colorado, Iowa, Kansas and Massachusetts have been successful and over 20 states have not.

Examining how effective the existing five laws have been is another key area that seems to be unresearched. Is it more effective to take a broad approach like the Massachusetts law, or a more narrowly defined approach, like the Colorado, Iowa and Kansas laws which limit coverage to publications?

In the *ASNE Bulletin* article, McFarlin quoted Mark Goodman, who said, "It's a myth the passage of student free expression laws is going to end student censorship. The chances of a student being courageous enough to contest prior restraint are low" (p. 7). Future research needs to examine the five states that have laws to see if they indeed reduce the incidences of censorship. If they don't, is it worth all the effort necessary to get a bill passed, or should that effort be put into other areas that might be more fruitful, such as adviser training and certification requirements?

If would also be useful to examine whether or not local school governing boards in California, Colorado and Iowa are actually adopting the written publication codes their state laws require of them and if these local codes simply rubber-stamp the state law, or if they add, on purpose or inadvertently, additional restrictions.

On the first front mentioned earlier, should scholastic journalism educators examine more closely the reasons why the professional press generally supported the *Hazelwood* decision, and then put a concerted effort into addressing those concerns, especially the perception that the student press wants more freedom than the professional has in the workplace?

Obtaining insights to issues such as these will help concerned journalism educators when they enter unfamiliar political waters, may help increase the number of states with student free expression laws beyond the current five, and will help in the overall battle against the adverse effects of the *Hazelwood* decision.

Notes

<sup>1</sup>Overbeck, an attorney, presented a paper "Protecting student press freedom by state law: The experience in California" to the Secondary Education Division at the 1977 annual convention in Madison, WI. After summarizing student press freedom cases that followed *Des Moines vs Tinker* in 1969, Overbeck examined what he called "a remarkable first instance of any state setting up specific statutory safeguards for the freedom of official school newspapers" (1). This paper will be useful when the authors examine the specific pitfalls leaders in each of the five states experienced in getting legislation passed.

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## Appendix

### Complete Text of All Enacted Student Free Speech Legislation

#### **Massachusetts Student Free Expression Law** Section 82 — Rights of Students to Freedom of Expression.

The right of students to freedom of expression in the public schools of the commonwealth shall not be abridged, provided that such right shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols, (b) to write, publish and disseminate their views, (c) to assemble peaceably on school property for the purpose of expressing their opinions. Any assembly planned by students during regularly scheduled school hours shall be held only at a time and place approved in advance by the school principal or his designee.

No expression made by students in the exercise of such rights shall be deemed to be an expression of school policy and no school officials shall be held responsible in any civil or criminal action for any expression made or published by the students.

For the purposes of this section and sections eighty-three to eighty-five, inclusive, the word student shall mean any person attending a public secondary school in the commonwealth. The word school official shall mean any member or employee of the local school committee.

Mass. Ann. Laws ch. 71 \ 82.

## California Student Free Expression Law

### Section 48907 — Student Exercise of Freedom of Speech and Press.

Students of the public schools 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, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be materials 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.

Each governing board of a school district and each county board of education shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.

Student editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section. However, it shall be the responsibility of a journalism adviser or advisers of student publications within each school to supervise the production of the student staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay prior to any limitation of student expression under this section.

“Official school publications” refers to materials produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

Nothing in this section shall prohibit or prevent any governing board of a school district from adopting otherwise valid rules and regulations relating to oral communication by students upon the premises of each school.

Cal. Educ. Code 48907

## Iowa Student Free Expression Law

### 280.21 Student Exercise of Free Expression

1. Except as limited by this section, students of the public schools have the right to exercise freedom of speech, including the right of expression in official school publications.

2. Students shall not express, publish, or distribute any of the following;

- a. Materials which are obscene.
- b. Materials which are libelous or slanderous under chapter 659.
- c. Materials which encourage students to do any of the following:
  - (1) Commit unlawful acts.
  - (2) Violate lawful school regulations.
  - (3) Cause the material and substantial disruption of the orderly operation of the school.

3. There shall be no prior restraint of material prepared for official school publications except when the material violates this section.

4. Each board of directors of a public school shall adopt rules in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its jurisdiction. The board shall make the code available to the students and their parents.

5. Student editors of official school publications shall assign and edit the news, editorial, and feature content of their publications subject to the limitations of this section. Journalism advisers of students producing official school publications shall supervise the production of the student staff, to maintain professional standards of English and journalism, and to comply with this section.

6. Any expression made by students in the exercise of free speech, including student expression in official school publications, shall not be deemed to be an expression of school policy, and the public school district and school employees or officials shall not be liable in any civil or criminal action for any student expression made or published by students, unless the school employees or officials have interfered with or altered the content of the student speech or expression, and then only to the extent of the interference or alteration of the speech or expression.



7. "Official school publications" means material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

8. This section does not prohibit a board of directors of a public school from adopting otherwise valid rules relating to oral communication by students upon the premises of each school.

Iowa Code Ann. \ 280.22 (West Supp. 1991).

## Colorado Student Free Expression Law

22-1-120 — Rights of free expression for public school students.

(1) The general assembly declares that students of the public schools shall have the right to exercise freedom of speech and of the press, and no exception contained in a student publication, whether or not such publication is school-sponsored, shall be subject to prior restraint except for the types of expression described in subsection (3) of this section. This section shall not prevent the advisor from encouraging expression which is consistent with high standards of English and journalism.

(2) If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.

(3) Nothing in this section shall be interpreted to authorize the publication or distribution by students of the following:

- (a) Expression which is obscene;
- (b) Expression which is libelous, slanderous, or defamatory under state law;
- (c) Expression which is false as to any person who is not a public figure or involved in a matter of public concern; or
- (d) Expression which creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school or which violates the rights of others to privacy.

(4) The board of education of each school district shall adopt a written publications code, which shall be consistent with the terms of this section 22-1-120, C.R.S., and shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district's jurisdiction. Said publications code shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of the 1991-92 school year and at the beginning of each school year thereafter.

(5) (a) Student editors of school-sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications advisor of school-sponsored student

publications within each school to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism.

(b) For the purposes of this section, “publications advisor” means a person whose duties include the supervision of school-sponsored publications.

(6) If participation in a school-sponsored publication is part of a school class or activity for which grades or school credits are given, the provisions of this section shall not be interpreted to interfere with the authority of the publications advisor for such school-sponsored publication to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experiences that the publication is intended to provide.

(7) No expression made by students in the exercise of freedom of speech or freedom of the press shall be deemed to be an expression of school policy, and no school district or employee, or parent, or legal guardian, or official of such school district shall be held liable in any civil or criminal action for any expression made or published by students.

(8) Nothing in this section shall be construed to limit the promulgation or enforcement of lawful school regulations designed to control gangs. For the purpose of this section, the definition of “gangs” shall be the definition found in section 19-2-1111 (2) (d) (II), C.R.S.

Colo. Rev. Stat. Ann \ 22-1-120 (West. Supp. 1990).

## **The Kansas Student Publications Act**

Section 1. This act shall be known and may be cited as the student publications act.

Section 2. As used in this act:

(a) "School district" means any public school district organized and operating under the laws of this state.

(b) "Student publications" means any matter which is prepared, substantially written, or published by students, which is distributed or generally made available, either free of charge or for a fee, to members of the student body, and which is prepared under the direction of a certified employee.

Section 3.

(a) The liberty of the press in student publications shall be protected. School employees may regulate the number, length, frequency, distribution and format of student publications. Material shall not be suppressed solely because it involves political or controversial subject matter.

(b) Review of material prepared for student publications and encouragement of the expression of such material in a manner that is consistent with high standards of English and journalism shall not be deemed to be or construed as a restraint on publication of the material or an abridgment of the right to freedom of expression in student publications.

(c) Publication or other expression that is libelous, slanderous or obscene or matter that commands, requests, induces, encourages, commends or promotes conduct that is defined by law as a crime or conduct that constitutes a ground or grounds for the suspension or expulsion of students as enumerated in K.S.A. 72-89-01, and amendments thereto, or which creates a material or substantial disruption of the normal school activity is not protected by this act.

(d) Subject to the limitations imposed by this section, student editors of student publications are responsible for determining the news, opinion, and advertising content of such publications. Student publication advisers and other certified employees who supervise or direct the preparation of material for expression in student publications are responsible for teaching and encouraging free and responsible expression of material and high standards of English and journalism. No such adviser or employee shall be

terminated from employment, transferred, or relieved of duties imposed under this subsection for refusal to abridge or infringe upon the right to freedom of expression conferred by this act.

(e) No publication or other expression of matter by students in the exercise of rights under this act shall be deemed to be an expression of school district policy. No school district, member of the board of education or employee thereof, shall be held responsible in any civil or criminal action for any publication or other expression of matter by students in the exercise of rights under this act. Student editors and other students of a school district, if such student editors and other students have attained the age of majority, shall be held liable in any civil or criminal action for matter expressed in student publications to the extent of any such student editor's or other student's responsibility for an involvement in the preparation and publication of such matter.

Section 4. This act shall take effect and be in force from and after is publication in the statute book.

1992 Kan. Laws ch. 5 (S.B. 62).

## Student Press Law Center Model Legislation

A. Students of the public schools 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, the performance of theatrical and musical events, and the publication of expression in school-sponsored publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities or are produced in conjunction with a class, except that student expression shall be prohibited as described in Section (B).

B. Students are prohibited from expressing, publishing or distributing material that,

- (1) is obscene as to minors as defined by state law,
- (2) is libelous or slanderous as defined by state law,
- (3) 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 material and substantial disruption of the orderly operation of the school. School officials must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior, and not on undifferentiated fear or apprehension.

C. Student editors of school-sponsored publications shall be responsible for determining the news, opinion and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of a journalism adviser or advisers of student publications within each school to supervise the production of the school-sponsored publication and to teach professional standards of English and journalism to the student staff. No journalism adviser will be fired, transferred, or removed from his or her position for refusing to suppress the protected free expression rights of student journalists.

D. No student publication, whether school-sponsored or non-school-sponsored, will be subject to prior review by school administrators.

E. No expression made by students in the exercise of free speech or free press rights shall be deemed to be an expression of school policy, and no

school officials shall be held responsible in any civil or criminal action for any expression made or published provided they have not interfered with or altered the content of the student expression.

F. Each governing board of a school district shall adopt rules and regulations in the form of a written student freedom of expression policy in accordance with this section, which shall include reasonable provisions for the time, place, and manner of student expression and which shall be distributed to all students at the beginning of each school year.

G. Any students, individually or through parent or guardian, or publications adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section.