

DISTRIBUTION OF NON-SCHOOL SPONSORED LITERATURE IN THE SCHOOLS¹

Policy

It is the policy of the Peacham School District, Danville School District, Twinfield Union School District, Caledonia Cooperative School District, Cabot School District to allow limited distribution of non-school sponsored literature on school grounds or at school events by community members, or district employees acting on their own behalf or on behalf of a community group. Accordingly, the superintendent or designee may permit the distribution of non-school sponsored literature without discrimination in accordance with this policy.²

Definitions

1. **Non-school sponsored literature** means any printed, written, or electronic materials prepared by non-school organizations or individuals that are not made as a part of the curricular or approved extracurricular programs of the district. They include such things as fliers, invitations, announcements, pamphlets, posters, photographs, pictures, audio recordings, digital recordings, and electronic messages. Materials prepared under the supervision of school staff as part of classroom instruction or classroom activities are not restricted by this policy.
2. **Distribution** means circulating non-school sponsored literature in ways that include: handing to others on school property or during school-sponsored events; posting on school property such as walls, bulletin boards, and district web-sites; placing upon desks, tables, on or in lockers; or making available in the principal's office.

Administrative Responsibilities

1. The superintendent may authorize the distribution of non-school sponsored literature by community members, or district employees acting in their own behalf or on behalf of a community group for following purposes, provided all relevant procedures are followed:³
 - a. Literature from parent-teacher organizations;
 - b. Literature from school booster organizations;
 - c. Literature from professional organizations comprised of the school district employees;

¹ This policy does not apply to student distribution of materials. The rules for student speech are different. See the policy on student distribution of literature.

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

In a limited public forum, once the district allows a community group to distribute materials for one purpose then it and must allow all other community groups wishing to distribute materials dealing with the same topic, even if their view of the topic is different. The basic principle is that restrictions on distribution of materials may not be based on a group's viewpoint. *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Good News Club v. Milford Central Schools*, 533 U.S. 98 (2001). In these cases, the Supreme Court specifically held that religious groups' use of school facilities must be permitted when other groups seeking to teach morals have been permitted to use facilities; the same approach applies to distribution of materials.

³ This list is merely an example. An individual school district could decide to make this list broader or narrower. However, when designating categories, a district must remain viewpoint neutral.

- d. Literature regarding social, civic and recreational meetings;
 - e. Literature regarding entertainment; and
 - f. Literature regarding private academic tutoring, music lessons, or non-school sponsored athletics.
2. The superintendent shall establish procedures for the distribution of non-school sponsored literature, which:
- a. May include reasonable time, place, and manner restrictions.⁴
 - b. Shall not discriminate based on viewpoint.
 - c. Shall prohibit the distribution of literature that:
 - i. Is obscene, vulgar, or profane, or harms the reputation of others⁵
 - ii. Violates federal, state or local laws;
 - iii. Advocates the use or availability of tobacco, alcohol or illegal drugs;⁶
 - iv. Incites violence;
 - v. Interferes with or advocates interference with the orderly operation of the schools and their programs;⁷
 - vi. Primarily seeks to advertise for sale products or services;⁸ or
 - vii. Has fundraising as a primary purpose.⁹
 - d. Shall require that the superintendent or designee review all literature before it is distributed to confirm that the literature:
 - i. includes the name of the person or organization sponsoring the distribution;
 - ii. does not imply that it is endorsed by the school district; and
 - iii. does not fall in one of the prohibited categories listed above.

⁴ Examples of a “time” restriction are that literature be distributed before or after regular school hours. A “place” restriction might be that literature be posted only on bulletin boards and not on windows, or that it be made available on a specified table in the principal’s office. A “manner” restriction might specify whether or not persons distributing the material may stand at the main entrance to the building, or might limit the number of copies of a pamphlet that may be distributed. *Hedges v. Wauconda Community Unit Sch. Dist. No. 118*, 9 F.3d 1295 (7th Cir. 1993). Such restrictions must be applied without discrimination as to viewpoint of group or individual who wishes to distribute non-school sponsored literature. Note that the courts have held a school district’s internal mail distribution system is not a public forum, and thus school districts are not required to allow the mail system to be used for distribution of non-school sponsored materials. *Perry Educ. Ass’n v. Perry Local Educ. Ass’n*, 460 U.S. 37 (1983).

⁵ *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986) (student may be disciplined for giving speech at school assembly that contained sexual innuendos and vulgar language). T-shirt that impugned character of sitting U.S. president was not vulgar or offensive within meaning of *Fraser* according to Second Circuit Court of Appeals. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).

⁶ *Morse v. Frederick*, 551 U.S. 393 (2007) (school officials may prohibit speech that they reasonably believe advocates illegal drug use, so long as the speech cannot be interpreted as commenting on any political or social issue). Student had First Amendment right to wear T-shirt that criticized President Bush by depicting him as a drug and alcohol user and a “chicken-hawk” because it did not advocate use of drugs. *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006).

⁷ The standard for evaluating the reasonableness of controls on student self-expression and student speech is whether or not the speech substantially or materially disrupts school activity or could reasonably be forecast to cause such disruption. *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1979) (students protesting Vietnam War entitled to wear black armbands).

⁸ As indicated here, a district could choose to prohibit all distribution of literature that promotes the sale of products or services. As with all viewpoint neutral prohibitions, care must be taken that the prohibition is evenly enforced without exceptions. If a district wishes to allow distribution of materials supporting some commercial activity but not others, it must make the distinction based on criteria that are objective and viewpoint neutral.

⁹ A common question may be whether students selling items to raise money for parent-teacher organizations is permitted. If such organizations are clearly delineated (either in this policy or elsewhere) as school-sponsored groups and their literature is delineated as school-sponsored literature, then distribution of their fundraising materials would not be restricted by this policy.

- iv. Prior review of literature shall not be required when the non-school sponsored literature is distributed by an attendee to other attendees at a meeting intended for adults held after school hours.¹⁰
 - e. May include more restrictive rules for signs or messages on school property that bears the school imprimatur due to their location. For example, the school district may restrict the content of messages on advertising displayed on baseball field fences or brick pavers in walkways if advertising space is sold in those locations to raise money for the school district. Selling advertising in that way does not create a public forum in those locations.¹¹
3. The superintendent or designee may deny a request to distribute non-school sponsored literature on school grounds or at school events by community members, or district employees acting in their own behalf or on behalf of a community group for the following reasons:
- a. The non-school sponsored literature is likely to cause a material and substantial disruption to school operations.
 - b. The non-school sponsored literature promotes or sponsors a political party.¹²
 - c. The non-school sponsored literature could reasonably be expected to or actually does give rise to a riot or public disturbance.
 - d. The non-school sponsored literature promotes unlawful activities.

<i>VSBA Versions:</i>	06/05/2024
<i>Date Warned:</i>	March 6, 2026 - Caledonia Central Supervisory Union, March 27, 2026 - Peacham School District, March 27, 2026 - Danville School District, April 3, 2026 - Twinfield Union School District, May 1, 2026 - Caledonia Cooperative School District, May 15, 2026 - Cabot School District
<i>Date Adopted:</i>	March 16, 2026 - Caledonia Central Supervisory Union- recommended policy to be adopted at the district board levels, April 6, 2026 - Peacham School District, April 7, 2026 - Danville School District, April 14, 2026 - Twinfield Union School District, May 11, 2026 - Caledonia Cooperative School District, May 26, 2026 - Cabot School District
<i>Legal Reference(s):</i>	<i>Good News Club v. Milford Central Schools</i> , 533 U.S. 98 (2001) <i>Lamb's Chapel v. Center Moriches Union Free School Dist.</i> , 508 U.S. 384, 390 (1993) <i>Cornelius v. NAACP Legal Defense and Ed. Fund, Inc.</i> , 473 U.S. 788 (1985) <i>Perry Educ. Ass'n v. Perry Local Educ. Ass'n</i> , 460 U.S. 37 (1983) <i>Travis v. Owego-Apalachin School Dist.</i> , 927 F.2d 688 (2d Cir. 1991) <i>Chiu v. Plano Indep. Sch. Dist.</i> , 339 F.3d 273 (5 th Cir. 2003) <i>DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.</i> , 196 F.3d 958 (9 th Cir. 1999), cert. denied 529 U.S. 1067 (2000) <i>Hedges v. Wauconda Community Unit Sch. Dist. No. 118</i> , 9 F.3d 1295 (7 th Cir. 1993) <i>Kiesinger v. Mexico Academy and Cent. Sch.</i> , 427 F. Supp. 2d 182 (N.D.N.Y. 2006)
<i>Cross Reference:</i>	<i>Student Distribution of Literature</i> <i>Community Use of Facilities</i>

¹⁰ Prior review of literature is allowed by the law primarily for the purpose of preventing disruption of the School's educational activities. Those concerns are not present when literature is distributed after school hours to adults, so prior review can be viewed as an unconstitutional prior restraint. *Chiu v. Plano Indep. Sch. Dist.*, 339 F.3d 273 (5th Cir. 2003).

¹¹ *Kiesinger v. Mexico Academy and Cent. Sch.*, 427 F. Supp. 2d 182 (N.D.N.Y. 2006) (holding that school district may constitutionally exclude bricks in walkway containing religious or political messages, but may not restrict references to God by certain names and not others based on the particular religious viewpoint of those references); *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958 (9th Cir. 1999), cert. denied 529 U.S. 1067 (2000) (holding that school district may restrict advertising on baseball fence to messages that contain no political or religious content).

¹² In *Hickock v. Orange County Comm. College*, 472 F. Supp. 2d 469 (S.D.N.Y. 2006), the court held that the college's policy of excluding events that promote activities of political parties is an appropriate restriction for a limited public forum because it is viewpoint neutral. If a school district adopts a policy that permits political events, then it must permit all political groups to hold events regardless of their viewpoint.