

Novato USD

Board Policy

Advertising And Promotion

BP 1325

Community Relations

*****Note: The following policy addresses the distribution of commercial and noncommercial materials as well as advertising in school-sponsored publications, on school web sites and social media, and on school facilities and grounds by outside/nonschool groups. Student speech, including the distribution of printed materials by students, is addressed in BP/AR 5145.2 - Freedom of Speech/Expression. *****

The **Governing** Board of Education establishes this policy to ensure effective and consistent ~~implementation of its directions related to~~ **standards for** advertisements and promotions by nonschool groups in school-sponsored publications, **on district and school** web sites, and social media, and on school facilities **and grounds**. Student speech shall be regulated in accordance with BP/AR 5145.2 - Freedom of Speech/Expression.

(cf. 1113 - District and School Web Sites)
(cf. 1114 - District-Sponsored Social Media)
(cf. 1330 - Use of School Facilities)
(cf. 5145.2 - Freedom of Speech/Expression)
(cf. 6145.5 - Student Organizations and Equal Access)

*****Note: School facilities and school-sponsored publications are public property and are subject to freedom of expression rights granted by the First Amendment to the United States Constitution and Article 1, Section 2 of the California State Constitution. However, because school facilities and school-sponsored publications are generally for school purposes, they are regarded as "nonpublic fora" and the Governing Board typically has extensive authority to regulate them. In exercising this authority, the Board may decide not to accept any form of advertising or distribution of materials (nonpublic forum), as stated in Option 1 below, or to accept some advertising and/or distribution of materials, but only from certain groups or on certain topics (limited public forum), as stated in Option 2. It is also possible for the Board to prohibit advertisement by nonschool groups in some types of district forums (Option 1), while allowing nonschool groups to advertise at other forums (Option 2). For example, a K-12 district could decide not to allow any advertisement on its elementary school sites, while allowing advertisements of a nonpolitical and nonreligious nature on its high school campuses. When a districtwide policy would involve adopting both options, the Board must include clarifying statements in the policy to specify when and where each option would apply. *****

*****Note: Whichever option(s) the district chooses, school officials should ensure that they**

enforce the policy in a consistent manner, as courts look beyond the district's intent as stated in its policy and look to the actual practice of school officials in determining whether a district facility or publication is a "nonpublic" or "limited public" forum. See Board of Education of the Westside Community Schools v. Mergens. Because this area of law is complex, it is strongly recommended that legal counsel be consulted prior to the adoption of policy in this area. ***

***Note: Items #1-5 below present examples of the types of materials and/or advertising that the district may allow, and should be revised to reflect district practice. See section "Criteria for Approval" below for examples of permissible restrictions on the content of the advertising. ***

The Board of Education desires to promote positive relationships between schools and the community in order to enhance community **partnerships**, support and involvement in **the district schools**. ~~and limit student exposure to advertising and promotional materials.~~ **The Superintendent or designee may, consistent with the criteria established in this policy, approve:**

~~Flyers and promotional materials from non-school sponsored groups shall not be distributed or posted.~~

~~1. Materials for distribution:~~

~~a. Materials to be distributed through students at the school must meet the following criteria:~~

~~(1) Notices of meetings, activities or events from PTA, PTSA, Parent Clubs, and Booster Clubs;~~

~~(2) Notices of meetings, activities or events from the City of Novato Parks, Recreation and Community Services and The Novato Foundation for Public Education (School Fuel);~~

~~(3) Notices of school-sponsored performances or events;~~

~~(4) Notices of events, meetings, or sign-ups by Novato-based, non-profit youth groups.~~

~~2. The following types of materials will not be distributed:~~

~~a. Political~~

~~b. Religious~~

~~c. Non-student related~~

~~d. For profit related organizations~~

1. Distribution of noncommercial materials that publicize services, special events, public meetings, or other gatherings of interest to students or parents/guardians

**(cf. 1400 - Relations Between Other Governmental Agencies and the Schools)
(cf. 6162.8 - Research)**

2. Distribution of promotional materials of a commercial nature to students or parents/guardians

(cf. 1700 - Relations Between Private Industry and the Schools)

3. Paid advertisements on school property, including, but not limited to, advertisements on school buildings, athletic fields, scoreboards, and billboards

4. Paid advertisements in school-sponsored publications, yearbooks, announcements, and other school communications, including web sites and social media

5. Products and materials donated by commercial enterprises for educational use, including those that bear the name and/or logo of the donor, as long as they do not unduly promote the donor or any commercial activity or product

**(cf. 3290 - Gifts, Grants and Bequests)
(cf. 6161.11 - Supplementary Instructional Materials)**

*****Note: Generally, courts have upheld procedures that place reasonable "time, place, and manner" restrictions on materials to be distributed, as long as the same restrictions are placed on all materials. See Henry v. School Board of Colorado Springs. Procedures that limit the "time, place, and manner" of distributions, such as limiting distribution to before or after school hours or creating a central location for the distribution of all materials, may be developed, but districts should consult legal counsel as appropriate when creating such restrictions. *****

Prior to the distribution, posting, or publishing of any nonschool group's promotional materials or advertisement, the Superintendent, principal, or designee shall review the materials or advertisement based on the criteria listed below. He/she may not disapprove materials or advertisement in an arbitrary or capricious manner or in a way that discriminates against a particular viewpoint on a subject that is otherwise allowed by Board policy.

All materials to be distributed shall bear the name and contact information of the sponsoring entity.

*****Note: Districts may require sponsoring entities to include a disclaimer on all materials to be distributed. For example, a disclaimer might state that "this event is not school-sponsored or approved" or that "opinions are not necessarily those of the school district or school personnel." The district should consult legal counsel as appropriate. *****

As necessary, the Superintendent, principal, or designee shall require a disclaimer on any nonschool group's promotional materials to be distributed, posted, or published, stating that the distribution, posting, or publishing of the materials does not imply district endorsement of the group's activities, products, or services. District- and school-sponsored publications shall include a disclaimer stating that the district or school does not endorse any advertised products or services.

Criteria for Approval

*****Note: The following section is for use by districts that select Option 2 (limited public forum) above and may be revised to reflect criteria established by the Board. *****

The Superintendent, principal, or designee shall not accept for distribution, or allow on school property, any materials or advertisements that:

1. Are lewd, obscene, libelous, or slanderous
2. Incite students to commit unlawful acts, violate school rules, or disrupt the orderly operation of the schools

*****Note: Optional item #3 below prohibits the distribution of political materials or political advertising except under certain circumstances. Pursuant to Education Code 7058, the Board may conduct a political forum if it is made available to all sides on an equitable basis. *****

3. Promote any particular political interest, candidate, party, or ballot measure, unless the candidates or advocates from all sides are provided the opportunity to present their views to the students during school hours or during events scheduled pursuant to the Civic Center Act

(cf. 1160 - Political Processes)

(cf. 4119.25/4219.25/4319.25 - Political Activities of Employees)

*****Note: Districts wishing to establish policy dealing with the distribution of religious materials should consult legal counsel. *****

*****Note: In Hills v. Scottsdale Unified School District, the Ninth Circuit Court of Appeals held that a district may only reject advertising with religious content if the advertising exceeds the subject matter of the limited forum created by the district. The court held that a district could not reject a camp brochure with religious content since the district had permitted distribution of similar literature by secular groups. To avoid viewpoint discrimination, a district must allow an advertisement on an otherwise permissible topic even if cast from a religious viewpoint. *****

*****Note: The court explained, however, that a district may reject advertisements that**

contain "proselytizing language" to the extent that the language exceeds the scope of the district's limited forum. For example, in DiLoreto v. Downey Unified School District, the court held that a district could reject an advertisement that contained a posting of the Ten Commandments where the district had only opened a baseball field fence to commercial advertising. In addition, the court in DiLoreto held that the district had an inherent right to control its property, including the right to close a previously open forum to avoid the appearance of government endorsement of religion. ***

4. Contain prayer or proselytizing language

5. Position the district on any side of a controversial issue

(cf. 6144 - Controversial Issues)

6. Discriminate against, attack, or denigrate any group on account of any unlawful consideration

(cf. 0410 - Nondiscrimination in District Programs and Activities)

7. Promote the use or sale of materials or services that are illegal or inconsistent with school objectives, including, but not limited to, materials or advertisements for tobacco, intoxicants, and movies or products unsuitable for children

(cf. 5131.6 - Alcohol and Other Drugs)

(cf. 5131.62 - Tobacco)

***Note: Education Code 49431.9, as added by AB 841 (Ch. 843, Statutes of 2017), prohibits schools, districts, and charter schools that participate in the National School Lunch or Breakfast Program from advertising any food or beverage during the school day, as defined, including on any property or facility owned or leased by the district or school and used for school-related activities, unless the food or beverage meets nutritional standards to be served or sold on the school campus during the school day. Schools and districts are not required to replace durable nonconsumable items, such as scoreboards or team uniforms in use as of January 1, 2018, but must comply with this prohibition as items are replaced or contracts are renegotiated. ***

8. Promote during the school day any food or beverage that does not comply with state nutritional standards pursuant to Education Code 49430-49434, including a corporate incentive program that offers free or discounted foods or beverages that do not meet nutritional standards as rewards for students who reach certain academic goals. This prohibition does not include advertising on clothing with brand images worn on school grounds, advertising contained in product packaging, or advertising of infrequent school fundraising events involving food or beverages that do not meet the nutritional standards. (Education Code 49431.9)

(cf. 3550 - Food Service/Child Nutrition Program)

(cf. 5030 - Student Wellness)

9. Solicit funds or services for an organization, with the exception of solicitations authorized in Board policy

(cf. 1321 - Solicitation of Funds from and by Students)

10. Distribute unsolicited merchandise for which an ensuing payment is requested

The Superintendent or designee may also consider the educational value of the materials or advertisements, the age or maturity of the students in the intended audience, and whether the materials or advertisements support the basic educational mission of the district, directly benefit the students, or are of intrinsic value to the students or their parents/guardians.

(cf. 0000 - Vision)

Schools may establish additional criteria pertaining to the content of advertisements in school publications and yearbooks, as deemed appropriate by the Superintendent or designee in accordance with law and Board policy.

Legal Reference:

EDUCATION CODE

7050-7058 Political activities of school officers and employees

35160 Authority of governing boards

35160.1 Broad authority of school districts

35172 Promotional activities

38130-38138 Civic Center Act

49430-49434 The Pupil Nutrition, Health, and Achievement Act of 2001, especially:

49431.9 Advertisement of non-nutritious foods

BUSINESS AND PROFESSIONS CODE

25664 Advertisements encouraging minors to drink

CALIFORNIA CONSTITUTION

Article 1, Section 2 Free speech rights

U.S. CONSTITUTION

Amendment 1, Freedom of speech and expression

UNITED STATES CODE, TITLE 42

1751-1769j School Lunch Program

1773 School Breakfast Program

COURT CASES

Hills v. Scottsdale Unified School District 48, (2003) 329 F.3d 1044

DiLoreto v. Downey Unified School District, (1999) 196 F.3d 958

Yeo v. Town of Lexington, (1997) ~~U.S. First Circuit Court of Appeals, No. 96-1623131 F.3d~~
241

Henry v. School Board of Colorado Springs, (D.Col. 1991) 760 F.Supp. 856

Bright v. Los Angeles Unified School District, (1976) ~~134 Cal. Rptr. 639, 556 P.2d 1090~~, 18 Cal. 3d 350

Lehman v. Shaker Heights, (1974) 418 U.S. 298

Management Resources:

~~CSBA PUBLICATIONS~~

~~School Based Marketing of Foods and Beverages: Policy Implications for School Boards, Policy Brief, March 2006~~

WEB SITES

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

Policy NOVATO UNIFIED SCHOOL DISTRICT

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