



**Title:** Student Free Speech

**Code:** S-SFRS

**Section:** STUDENTS & FAMILIES

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## **I. PURPOSE**

The Charlotte-Mecklenburg Board of Education strongly supports the free speech rights of its students as enshrined in the First Amendment to the United States Constitution. The freedom to speak one’s mind on matters of public importance is essential in a democratic republic, and support of student free speech rights is an essential element of Charlotte-Mecklenburg Schools’ commitment to civic education. The Board desires for all of its students to become engaged, productive citizens who are willing and able to participate actively in the “marketplace of ideas” that makes democratic self-governance possible.

As the United States Supreme Court has said, “students do not shed their constitutional rights at the schoolhouse gates.”<sup>1</sup> However, because of the “special characteristics of the school environment,” including the need to avoid material disruptions and protect the rights of other students, student free speech rights are not unlimited.<sup>2</sup> The purpose of this policy is balance these interests, and to provide clear guidance for students, parents, staff, and the general public.

## **II. SCOPE AND APPLICABILITY**

This policy applies to all student speech that occurs at school, at school-sponsored events, or in the context of school-sponsored programming. This policy may also apply to some instances of student speech, including social media speech, that occur off campus and outside the context of school-sponsored events or programming, especially if the speech involves threats, bullying or harassment of other students, failure to follow school rules regarding online school activities, or breaches of school security devices. Because the legal doctrines governing school regulation of off-campus student speech are still emerging, school administrators should consult with the Office of General Counsel before restricting or imposing disciplinary consequences under the Code of Student Conduct for any such speech.

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<sup>1</sup> *Tinker v. Des Moines Independent School Community District*, 393 U.S. 503 (1969).

<sup>2</sup> *Tinker v. Des Moines Independent School Community District*, 393 U.S. 503 (1969).

For purposes of this policy, “speech” includes both spoken and written words, as well as images and symbolic or expressive conduct intended to communicate ideas.

### III. PROTECTED STUDENT SPEECH

Unless otherwise restricted by law or policy, non-disruptive student speech that does not impair the rights of others should be presumed to be protected under the First Amendment. In other words, the default position is that student speech is constitutionally protected. This includes, but is not limited to, political and religious speech. School administrators should consult with the Office of General Counsel before restricting or imposing disciplinary consequences for any student speech that is not squarely covered in this or other policies.

### IV. RESTRICTED STUDENT SPEECH

Depending on all the facts and circumstances, the following categories of student speech may not be protected by the First Amendment. Accordingly, schools may potentially apply disciplinary consequences for student speech that falls within one of these categories if it also violates a specific rule in the Code of Student Conduct:

- A. **Disruptive Speech.** Student speech that causes, or is reasonably likely to cause, substantial disruption of or material interference with school activities is not protected under the First Amendment and may be regulated consistent with other laws and policies. However, speech cannot be restricted for a vague and unsupported fear of disruption nor a mere desire to avoid discomfort of an unpopular view.<sup>3</sup>
- B. **Speech that Invades the Rights of Other Students.** Student speech that invades the rights of other student is not protected under the First Amendment.<sup>4</sup> For example, students do not have a First Amendment right to bully or harass other student in violation of the Board’s bullying policy (Policy S-BULY) and its accompanying regulation (Regulation S-BULY/R) or to extort or threaten others in violation of the Student Code of Conduct.
- C. **Profane Speech.** Vulgar and lewd student speech that would undermine the school’s basic educational mission is not protected under the First Amendment. This may include profanity, sexual innuendo, and other forms of lewd conduct.<sup>5</sup>
- D. **Promotion of Illegal Drug Use.** School officials may restrict student expression that they reasonably regard as promoting illegal drug use.”<sup>6</sup> This does not include social and political commentary on drug laws or policies.
- E. **School-Sponsored Speech.** Schools may exercise editorial control over student speech in school-sponsored expressive activities so long as the restrictions are reasonably related to legitimate educational concerns. For example, schools may

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<sup>3</sup> *Tinker v. Des Moines Independent School Community District*, 393 U.S. 503 (1969).

<sup>4</sup> *Tinker v. Des Moines Independent School Community District*, 393 U.S. 503 (1969).

<sup>5</sup> *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).

<sup>6</sup> *Morse v. Frederick*, 551 U.S. 393 (2007).

exercise editorial control over the content of student articles in school newspapers that are supervised by school personnel as learning experiences for students and that the public may perceive as being approved by the school.<sup>7</sup>

School administrators are encouraged to contact the Office of General Counsel if there are questions as to whether any specific instance of student speech is constitutionally protected.

## **V. VIEWPOINT DISCRIMINATION**

The Charlotte-Mecklenburg Board of Education appreciates and respects the wide diversity of thought and opinion in its large student body. The Board understands that all individuals have the right to hold and express their own convictions, including but not limited to political, social, and religious views. In determining whether any type of student speech may be restricted, school officials must apply this policy and other applicable policies fairly, neutrally, and without regard to the viewpoints expressed. For example, while student political protests may be restricted if they create or are reasonably anticipated to create a substantial disruption of school activities, the political orientation that motivates the protest is irrelevant, and the consequences for such disruptions must be consistent regardless of political affiliations or views. Similarly, while students are generally required to remain focused on classroom activities, they may not be prohibited from praying or engaging in private prayer or other non-disruptive religious practices at times when other students are allowed to engage in comparable, non-disruptive, secular activities.

## **VI. PUBLIC FORUMS**

In addition to the principles stated above, special rules apply to student speech that occurs in a “public forum.” The mere fact that speech occurs in any particular area of a school does not mean that the place is a “public forum.” Rather a “public forum” only exists when a school, by policy or practice, intentionally designates some portion of school property for the free expression of ideas. When it does so, special rules may apply, as summarized below.

### **A. Non-Public Forums.**

In general, school property is reserved for school purposes and is considered a “non-public forum.” The mere fact that speech occurs in any particular area does not mean that the place is a “public forum.” In a non-public forum, schools may impose any reasonable and viewpoint-neutral restrictions on the content (i.e., subject matter) of speech so long as they are consistent with this and other applicable policies.

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<sup>7</sup> *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

## **B. Designated Public Forums.**

A designated forum is an area open to any type of speaker for any type of expression. In such a forum, no speaker may be excluded and no content may be forbidden unless the restriction satisfies an exacting constitutional standard known as “strict scrutiny.” Because it is difficult to regulate speech in a designated forum, even if it proves to be disruptive, schools are not permitted to create designated public forums without the prior approval of the Superintendent and Office of General Counsel.

## **C. Limited Public Forums.**

A limited public forum is a forum for free expression that is restricted by category of speakers, subject matter, or both. For example, an assembly for student council candidates to explain their positions on a proposed student dress code would be a limited public forum reserved for a specific class of speakers (candidates for student council) on a specific subject (the proposed dress code). In a limited public forum, the school may enforce any set restrictions on speaker identity and subject matter. However, any additional restrictions would need to satisfy the “strict scrutiny” standard and require prior approval of the Superintendent and Office of General Counsel.

## **D. Designated Areas for Student Expression.**

Most schools have at least one forum designated for student expression. These forums may be “spirit rock(s),” student parking spaces, murals, benches, or other designated areas available for decoration by students. To provide clarity for all members of the school community and help ensure that the First Amendment rights of students are honored, the Board directs the principal of each school that has a spirit rock and/or other designated area for student expression to develop a written policy, subject to review and approval by the Superintendent and Office of General Counsel, that designates these areas as limited public forums and defines the scope of the forums. The Office of General Counsel may also be consulted in the development of any such policy prior to its submission for approval.

Each such policy shall be publicly posted on the school’s website within sixty (60) days of the adoption of this policy and shall address, at a minimum, the following:

1. A specific description of the areas designated and available for decoration by students.
2. A specific, clear, objective, and comprehensive description of the subjects or topics that may be addressed in the limited public forum (e.g., school celebrations, student birthdays, athletic events, social or political issues) and the category of persons who may be authorized to paint them (e.g., all students, seniors, students selected through a random lottery).

3. A clear statement that no student proposal that is within published parameters will be rejected based on viewpoint, including religious or political perspective, and that any student application that complies with all published parameters and that does not contain restricted student speech, as defined in Section IV, above, must be approved (though competing applications will be subject to #12 below).
4. A clear statement that students must provide all supplies and specify if there is a restriction on the type of materials that may be used to decorate.
5. A prohibition on painting sidewalks, trees, groundcover, or other areas that are not part of the area available for decoration.
6. A prohibition against the use of scaffolding or ladders, which increase risks of injury.
7. A requirement that if students are painting the rock, parking space, bench, mural, or other designated area parents must provide written permission and sign an assumption of risk form to be developed by the Office of General Counsel.
8. A requirement that only enrolled students and their parents/guardians may submit an application for decorating these designated areas, and that all participants (including any third-party artists) be listed on the written application.
9. The date(s) and specific time frames within which the designated area may be decorated once an application has been approved.
10. The maximum frequency with which any particular student or student group may decorate the designated area (e.g., once per month, once per semester, once per year)
11. Specific procedures for written applications to decorate the specific designated area, including any deadlines for submissions, how such applications should be submitted, and who will review the applications.
12. The fair and viewpoint-neutral basis upon which competing applications to decorate the designated areas will be decided (e.g., first-come/first-served, random lottery among all timely applications received).
13. A reference to this policy and clear statement that nothing in the school-based policy should be interpreted to contradict it in any way.
14. A clear statement that the designated area may be painted over if this policy, the school-based policy, or any other school system policy is violated.
15. A clear statement that the rejection of any student application to decorate a designated area may be appealed per applicable policies and procedures found in S-SCOM.