



Deciding which forum best serves your students – and your community

Editorial policies are among the most important documents scholastic media can have. But, they can be double-edged swords. Poorly worded, they will undermine all efforts to make student publications complete learning experiences. Correctly worded, they will protect student expression – and the school – from harm.

Correctly wording parts of the editorial policy starts with selecting the most effective forum.

It's the position of JEA, its Scholastic Press Rights Commission and the SPLC that the best type of forum, and how it is worded, is the designated open public forum.

Forums come in three types: closed, limited and open. In a closed, and in some limited forums, freedom of expression does not have to be allowed. In some limited forums and in an open forum, freedom of expression, hence civic responsibility, is the cornerstone.

Open public (designated) public forum

The recommended category is an open forum, much like speaker's corner in the United Kingdom. Anyone can speak, and the school (government) bears no legal responsibility. Schools can designate student media as open forums by policy or practice. This is noted within the Hazelwood decision, as is a limited open forum with student decision-making control.

Within the open and limited forums, students would certainly not publish any materials they found to be unprotected speech, or libel, obscenity, material disruption of the school process (Tinker guidelines), unwarranted invasion of privacy and copyright infringement. Students would be taught this through a journalism curriculum by a trained adviser or through workshops and seminars available to an extracurricular publication.

- Students have an expectation of freedom of expression

- Students should expect to learn news or objective journalism
- Students should expect to create original material
- Students should expect to make decisions
- Tinker applies if no prior review

Limited public forum

A limited forum can be limited to whatever the establisher of the forum wants it to be: a forum for sports coverage, for example. It can be reviewed, or not reviewed, by the originator's designation. If reviewed, the owner of the forum has all the legal responsibility and control. If not reviewed, the students, for example, could be designated as being in charge and bear the freedoms and the responsibility. A good many student media fall into this category where school districts trust their students, their advisers and their curriculum. Students learn about the media's role in a democracy, and about their own civic responsibility. If education about the media's role in a democracy and learning critical-thinking and responsibility are the school's mission, then the second type of limited forum is used.

Limited-closed:

- Students have no expectation of freedom of expression
- Students should have no expectation of learning news or objective journalism
- Students should have no expectation of creating original pieces
- Students should have no expectation of decision-making
- Hazelwood applies

Limited-open:

- Students have an expectation of freedom of expression
- Students should expect to learn news or objective journalism
- Students should expect to create original material
- Students should expect to make decisions
- Tinker applies if no prior review

Closed forum

An example of closed is a PTA newsletter. The owner of the forum can control its content. Censorship is allowed. Little learning about the role of a free press in a democracy would take place. Little learning about the various roles of journalism would take place.

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Being a Tinker or Hazelwood state

Speaking of the Hazelwood and Tinker decisions, it is important to note that “Tinker state” and “Hazelwood state” are really misleading. Just because student media exist in a state without state legislation does not mean they are automatically limited by Hazelwood (or enhanced by Tinker).

The determination for that is in the forum status and who makes final content decisions.

”[Being a public forum] gives responsibility to the students in question,” SPLC attorney Adam Goldstein says. 'It insulates the school from liability and it parallels the system of American government. Students are citizens, too, after all. The Tinker, Fraser and Hazelwood standards in three major U.S. Supreme Court cases have laid the groundwork for the types of free speech students and student journalists are entitled to.’”

Resources:

- Tinker v Des Moines

http://www.splc.org/knowyourrights/law_library.asp?id=2

- Hazelwood v Kuhlmeier

<http://www.splc.org/knowyourrights/legalresearch.asp?id=4>

- A complete guide to Hazelwood

<http://www.splc.org/pdf/HazelwoodGuide.pdf>

- Public forum doctrine

<http://www.freedomforum.org/packages/first/publicforumdoctrine/>

- What are the free expression rights of students under the First Amendment?

<http://www.firstamendmentschools.org/freedoms/faq.aspx?id=12991>

- Twenty years of Hazelwood

http://www.splc.org/news/report_detail.asp?edition=44&id=1399

- Going public: “public forum” locations revel in pumped-up press power

http://www.splc.org/news/report_detail.asp?id=1270&edition=39

- A manual for student media advisers on responding to censorship
<http://www.splc.org/pdf/adviserspfip.pdf>

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