

***Students Say the Darndest Things:
The Do's and Don'ts to Censoring Student Publications***

**By N. Scott Kimble
Mickes Goldman O'Toole, LLC
MARE, Fall 2009**

Bill Cosby hosted the hit TV show “Kids Say the Darndest Things” in the late 1990s. The premise of the show was that the host, Cosby, would ask a question to a child who would then usually respond in a “cute” way. While high school student’s comments are often not as “cute” as some of those children on the TV show, they do say the darndest things, many times in print.

Most high schools in Missouri allow students to operate school newspapers. The newspapers are run by high school students and typically a journalism teacher/advisor. The articles are researched and written by students with the help of the advisor. It gives students the opportunity to write articles and experience the inner-workings of the publication process. It is truly a unique feature to the high school experience. However, at some point during the operation of the student newspaper, an article will undoubtedly touch upon some topic that could be considered inappropriate for a school setting.

This article will discuss applicable case law in regard to student censorship as well as advice on what district administrators should do and should not do in regard to censoring its student publications.

So, what is a school administrator’s responsibility when a potentially inappropriate topic is about to be printed in the school newspaper? Also, what are the appropriate guidelines to follow when this occurs? Before answering these questions, it is necessary to review the United States Supreme Court decision, *Hazelwood v. Kuhlmeier*, as this case is the authority regarding student publication issues.

Hazelwood v. Kuhlmeier (1988)

This landmark decision concerned the extent to which educators could exercise editorial control over the contents of a high school newspaper produced as part of the school’s journalism curriculum.

The practice at Hazelwood East High School was for the journalism teacher to submit page proofs of each issue of the student newspaper, “Spectrum,” to Principal Reynolds for his review prior to publication. As was required, the journalism teacher delivered the proofs to Principal Reynolds. Principal Reynolds objected to an article scheduled to appear in an edition of the newspaper. The article described three Hazelwood East students’ experiences with pregnancy. Principal Reynolds was concerned that, although the pregnancy story used false names “to keep the identity of these girls a secret,” the pregnant students still might be

identifiable from the text. He also believed that the article's references to sexual activity and birth control were inappropriate for some of the younger students at the school. The superintendent concurred with Principal Reynolds decision not to print the article.

After Principal Reynolds' decision to not print the article and the superintendent's concurrence, the students filed suit in the United States District Court for the Eastern District of Missouri seeking among other things a declaration that their First Amendment rights had been violated.

Justice White, writing for the Court, stated, "A school must be able to set high standards for the student speech that is disseminated under its auspices – standards that may be higher than those demanded by some newspaper publishers or theatrical producers in the 'real' world – and may refuse to disseminate student speech that does not meet those standards." Justice White further noted that a school must be able to take into account the "emotional maturity" of the intended audience in determining whether to distribute student speech on a potentially sensitive topic.

Justice White explained that there are several topic areas that may not be appropriate for the school setting. The topic areas that Justice White mentioned were articles that could be perceived as advocating drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the "shared values of a civilized social order or to associate the school with any position other than neutrality on matters of political controversy."

It should be noted at this juncture that it is extremely difficult to gage what would and would not be appropriate topics. Topics that touch on sensitive materials may in fact be deemed appropriate by the administrator after having had an opportunity to review the article. Censoring student publications requires a fact intensive analysis and should be looked at on a case-by-case basis. There are no cookie cutter guidelines to determine what is or is not appropriate.

The Court went on to hold, "...educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are **reasonably related to legitimate pedagogical concern.**" The Court further held, "**It is only when the decision to censor a school-sponsored publication, theatrical production, or other vehicle of student expression has no valid educational purpose that the First Amendment is so directly and sharply implicated as to require judicial intervention to protect students' constitutional rights.**" This then, is the "RULE" which district administrators must follow.

While this decision does not grant district administrators unbridled discretion to censor its student publications, it does allow for administrators to exercise a considerable amount of control over those publications. This is an important ruling because it outlines how a district should go about monitoring and censoring student speech in the written form. Below is a

discussion of what district officials should and should not do when they are faced with potentially censoring their student publication.

What District Administrators Should Not Do

As Justice White opined for the court, a school district may censor its student publication as long as that censorship is related to a legitimate educational reason. Where districts, and administrators in particular, run afoul of the *Hazelwood* decision is when there is no educational reason articulated for censoring the publication. While the district does not want to impinge on the student's First Amendment rights, it must also make decisions that are in the best interest of its students. So, having stated such, here are the "Don'ts" related to censoring student publications.

- **Don't** censor a student publication and refuse to articulate a reason as to why you censored that publication.

Per Hazelwood v. Kuhlmeier, an administrator must demonstrate an articulable reason as to why he or she deems the censorship necessary.

- **Don't** censor a student publication for the sole reason that you do not agree with what has been written.

An administrator should not censor a student publication just because he or she disagrees with what has been written. Due to the *Hazelwood* decision, an administrator does possess a considerable amount of discretion regarding what will and will not be published. After all, a student newspaper is part of the high school curriculum. However, a decision to censor a publication based on a "knee-jerk" reaction could place the district in a difficult position with the public, or even worse, land the district in federal court. Therefore, each decision made in regard to censoring a student publication should be well thought-out.

- **Don't** attempt to create a list that will limit the scope of what that student publication will be permitted to publish.

An administrator should not try to limit the types of topics that can be discussed by students by developing a list of topics that are not to be covered. As noted above, censoring student publications requires a fact intensive analysis. Also, it is inevitable that the administrator would fail to include a topic that would be deemed inappropriate at some later juncture. Simply stated, it is impossible to determine what will be appropriate and inappropriate.

- **Don't** ignore your student publication.

Perhaps the worst idea a district administrator could have would be to ignore what is being written in the student publication. If a district administrator determines that he or she will do nothing, that administrator leaves the district open to attack from the public or worse, lawyers. A student newspaper should write for their audience, which includes high school students, as well as the community that may have access to the student publication. The district administrator should be mindful of these potential readers and not permit the student publication to print inappropriate material.

What District Administrators Should Do

Assuming the school district does have a student newspaper, there are a few ideas that the Board of Education should consider implementing:

- **Do** have the Board of Education adopt a policy that governs student publications.
- **Do** have a policy that contains a provision in which the principal or his designee may delay or stop distribution of any materials that may be deemed inappropriate for the school setting. For example:

The building principal/designee may delay or stop distribution of any materials proposed for printing or that have been printed which may be reasonably forecast to cause substantial and material disruption or obstructions of any lawful mission, process, or function of the school.

That provision more than likely should include a sentence which states:

The principal or his designee shall make the final determination as to what topics will be appropriate for publication.

- **Do** develop provisions/procedures for that policy which will determine how challenged material will be handled. For example:

Editorial Level

If material submitted to a page editor is rejected, the writer, after a conference with the editor, may appeal to the Editorial Board. If the Editorial Board rejects the material, the writer may appeal to the faculty advisor. The faculty advisor, after hearing both sides, considering all factors and giving guidance and counsel, shall submit in writing his/her recommendations and resolutions.

Editor-in-Chief Level

If material presented by a page editor is rejected by an editor-in-chief, the writer after a conference with the editor-in-chief may appeal to the Editorial Board. If the Editorial Board rejects the material, the writer may appeal to the faculty advisor. The faculty advisor, after hearing both sides, considering all factors and giving guidance and counsel, shall submit in writing his/her recommendations and resolutions.

Faculty Advisor Level

Material found unobjectionable by the Editorial Board but questioned by the faculty advisor shall be discussed by both parties. If the difference cannot be resolved, the material shall be presented to the building principal for review and guidance.

Material still found unobjectionable by the Editorial Board but questioned by the faculty advisor and/or building principal shall be presented at a joint meeting of the Editorial Board and the advisor. The faculty advisor must give specific reasons for his/her objections and give guidance to the group. The student writer shall be afforded an opportunity to present his/her viewpoint. If the Editorial board by a two-thirds vote still finds the material unobjectionable it may be printed. A quorum will be considered present when two thirds of the Editorial Board attend a meeting, and two thirds of those present must agree.

A brief statement summarizing the dialogue held and signed by all parties shall be presented to the building principal. The building principal shall forward the statement and copies of the article to the Superintendent and the Board of Education for their information. The signed statement shall signify that the Editorial Board fully understand the reservations of the faculty advisor and/or building principal and has chosen to exercise its option under the Board Policy.

Building Principal Level

The building principal/designee may delay or stop distribution of any materials proposed for printing or that have been printed which may be reasonably forecast to cause substantial and material disruption or obstruction of any lawful mission, process or function of the school.

The building principal/designee must forward a copy of the material to the Superintendent and a statement of reasons for delay or stoppage. The Superintendent shall schedule a hearing with all parties immediately to determine if the delay or stoppage was warranted.

(The above referenced provisions/procedures, shown in italics, were taken from the Missouri Consultants for Education Policy Manual).

- **Do** follow the Board's policy to the letter! Failure to follow the above recommendations may result in some of the following:

The district could find itself in court litigating an allegation that the district deprived their students of their First Amendment rights. The district could also find itself in trouble with the local media. Anytime a school newspaper is censored, local papers clamor at the opportunity to place the district in a negative light. The district could also find itself in a difficult position with teachers, students, and parents. There may be mistrust of the administration if there is not a clear policy in place to delineate what will occur when there is challenged material.

In conclusion, student publications serve an educational purpose. Administrators have a responsibility to oversee the operation of their student newspapers to ensure that students and the community benefit from a properly run student publication. The importance of a written policy and following that policy cannot be overstated.

Should you find that you require assistance regarding decisions related to censoring a student publication, the Law Offices of Mickes Goldman O'Toole, LLC stand ready to assist you.

N. SCOTT KIMBLE IS A NEW ASSOCIATE WITH MICKES GOLDMAN O'TOOLE, LLC. HE RECENTLY GRADUATED FROM THE UNIVERSITY OF MISSOURI-KANSAS CITY SCHOOL OF LAW. SCOTT WAS A SUMMER ASSOCIATE FOR DOSTER, MICKES, JAMES, ULLOM, BENSON AND GUEST, LLC, AS WELL AS A LEGAL INTERN FOR THE DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION. SCOTT ALSO WORKED AS A LAW CLERK FOR THE KANSAS CITY, MISSOURI SCHOOL DISTRICT. SCOTT CAN BE REACHED AT THE LAW OFFICES OF MICKES GOLDMAN O'TOOLE, LLC AT (314)-878-5600.