

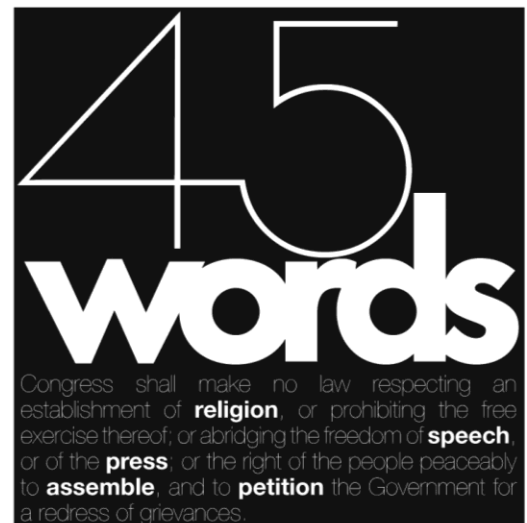
EDITOR'S EMERGENCY KIT

The following is a collection of resources for student journalists facing censorship or crises relating to First Amendment rights and scholastic press.

This kit was made by the Scholastic Press Student Partners, a group of students committed to protecting scholastic press rights.

Visit us at 45words.org

Updated November 2010



"Our liberty depends on the freedom of the press,
and that cannot be limited without being lost."

--Thomas Jefferson

**CONGRESS SHALL MAKE NO LAW
RESPECTING AN ESTABLISHMENT
OF RELIGION, OR PROHIBITING
THE FREE EXERCISE THEREOF; OR
ABRIDGING THE FREEDOM OF
SPEECH, OR OF THE PRESS; OR
THE RIGHT OF THE PEOPLE
PEACEABLY TO ASSEMBLE, AND
TO PETITION THE GOVERNMENT
FOR A REDRESS OF GRIEVANCES.**

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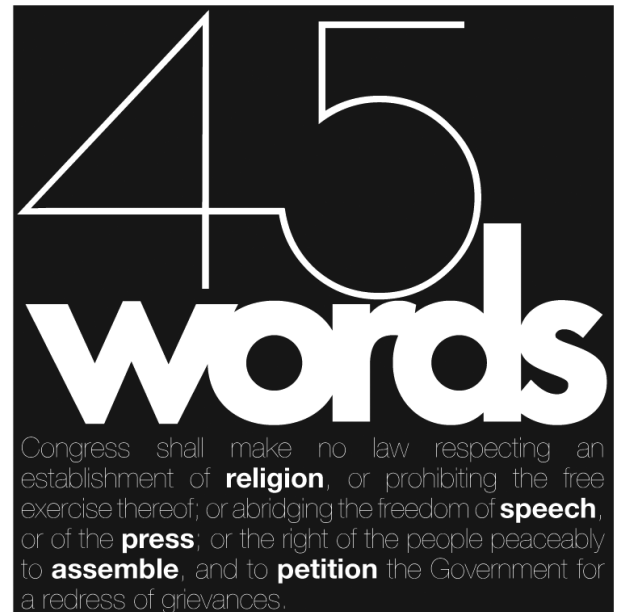
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“A free press can be good or bad, but, most certainly, **without freedom** a press will never be anything but **bad**.”

-- Albert Camus

WHO WE ARE:

The Scholastic Press Partners are a group of student journalists from across the country.



WHAT WE DO:

We are committed to defending and raising awareness of the First Amendment, and helping students like you who face censorship situations.

"It's easy to embrace freedom of speech for ideas we accept. The essence of freedom of speech and the press is that we must **protect the ideas we hate.**"

--Harriet Pilpel

The Student Partners

If you ever face censorship or simply have an ethical dilemma, the Student Partners are here to help. Just send an e-mail or post on our Facebook wall and we'll give you advice.



Meghan Morris is the co-editor-in-chief of The Spoke, Conestoga High School's Pacemaker award-winning newspaper in Berwyn, Pa. Prior to this year, she was a reporter for two years and an assistant managing editor for one year, covering controversial topics such as her district's concussion policy and religious diversity; she is now a finalist for the 2010 NSPA Diversity Story of the Year. In addition to her participation in 45words, she is the co-director of [Friends of The Spoke](#), an organization that promotes scholastic press rights founded when The Spoke faced censorship in 2009. She also helps students on a local level, through her involvement with the Pennsylvania School Press Association's Student Board.

E-mail Meghan at meg.morris3@gmail.com.



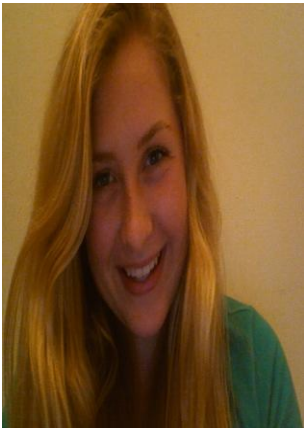
Sara Rogers is currently a senior and the editor-in-chief of her school newspaper, The HiLite, at Carmel High School in Carmel, Indiana. Beginning as a freshman, she served as a reporter and page editor prior to this year. Last year, Sara became involved with JEA Student Press Rights Partners, advocating for awareness and positive fulfillment of First Amendment rights. After having to cover a difficult incident at my school, she's spoken about how to handle and report appropriately controversial topics at the high school level. "Awareness of the rights contained in the First Amendment is crucial to journalists, especially those in the realm scholastic journalism."

Email Sara at carmellax32@aim.com



Zachary Knudson resides in Isanti, Minnesota and attends Saint Francis High School. There, he is the Editor-in-Chief of his school newspaper The Crier. He is also involved in Speech, Student Council, Debate, Congressional Debate, LINK, Open Minds Diversity Club, GSA, serves on his High School's Site Management Council, and also serves on his hometown's Economic Development Authority Board as the Youth Representative. Zachary understands what it takes to deal with Administration and School Boards when it comes to student publications. "For me, it's not just a publication. It's exercising the First Amendment freedoms that so many people in the world live without. We need to let people know that we are able to report and write, and also that we won't tolerate being written off as unqualified to report because of age."

E-mail Zachary at zachariah2468@hotmail.com.



Zoe Newcomb, a senior at Convent of the Sacred Heart High School in San Francisco, California, is currently the editor-in-chief of her high school paper, The Broadview.

“The job of a journalist is to inform people about the events around them that are important, a job which cannot be done without the rights given to us by the First Amendment. I want to take advantage of everything that the First Amendment has to offer so that I can make change in the world, and be involved in what goes on around me, and not just be a bystander.”

E-mail Zoe at znnewcomb@gmail.com.



Morgan Brewster has been a part of the Mustang Express Newspaper staff for the past four years, and is now the multimedia/online editor. Since her freshman year she has written for magazines, been an editor for two years, as well as starting up a news website.

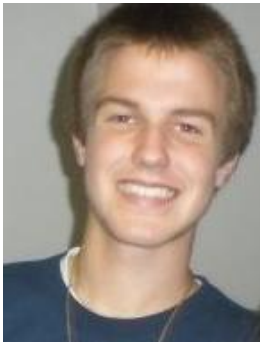
If you are having problems working with your administrations to let your staff start up a website or your administrators have issues that you can't seem to compromise with, you can e-mail her at morganmichelle93@gmail.com.



Ted Noelker- Junior at Francis Howell Central in St. Charles, Missouri has worked as the multi-media editor, and one of the managing editors for his school publication, The Central Focus.

“The First Amendment means being able to do what I love. It means being able to speak freely. It means being able to share ideas with others through free press. It means being able to have a free and open mind. Without the First Amendment, we would be cornered into oppression when trying to express ourselves. Without the First Amendment, I could not function as journalist. It is fundamental to a free and open society. Having seen the effects of censorship both on others and my own publication, I wish to be a part of any effort against it.”

Email Ted at t.noelker@gmail.com



Joe Weber, a junior at Kirkwood High School, Missouri, is the In-Depth editor for the school newspaper, The Kirkwood Call. "Some may see the newspaper as a dying industry, but I see an opportunity to re-shape how everyone receives, uses, and appreciate the world of journalism. To truly make a difference you need to absolutely believe in what your are working for, and I believe in journalism. I want a chance to help bring all of the great ideas journalism students have together, in hope that we can shape the journalism world we will be working in tomorrow."

Email Joe at Jweber@thekirkwoodcall.com



Christopher Kim is a senior at Seoul International School in Seoul Korea is the co-editor-in-chief of the Tiger Times newspaper.

"The public has a right to the truth though some truths are ugly. The First Amendment guarantees our right to talk about these ugly truths; the court is there to expose those who misuse these rights and whereas there have been many cases of libel and otherwise unethical practices, there are far more cases of important truths being revealed for all to know. The risk is one we have to take." E-mail Christopher at cfxsm@gmail.com.

If the Student Partners are not able to help, you can reach any one of the four 45words advisers:

Matthew Schott is the publications adviser at Francis Howell Central H.S. in St. Charles, Mo. He is in his fifth year as adviser at FHC and prior to that was a graphic designer at several daily newspapers around the country. Schott is a member of the JEA Scholastic Press Rights Commission, as well as the incoming president of the Missouri Interscholastic Press Association and of Sponsors of School Publications of St. Louis. He was also awarded the Missouri Journalism Teacher of the Year in 2009. Email: matthew.schott@fhdschools.org

Sarah Nichols, MJE, advises Details yearbook, The Roar newsmagazine and Whitney Update online at Whitney High School in Rocklin, Calif. Nichols is a member of the JEA Scholastic Press Rights Commission and Certification Commission. She is past-president of the Journalism Education Association of Northern California. (JEANC). Nichols was awarded the NSPA Pioneer Award in 2008 and JEA Distinguished Yearbook Adviser Award in 2006. She a frequent workshop speaker, publications evaluator and contest judge for state and national organizations and wrote the current edition of the NSPA Yearbook Guidebook. E-mail: curioussjg@yahoo.com

John and Candace Bowen are both prominent members in the Journalism Education association. Candace Perkins Bowen was a high school journalism teacher in Illinois and Fairfax County, Vir. and a former president of the Journalism Education Association. She is now an assistant professor and the director of the Center for Scholastic Journalism at Kent State University. John Bowen is JEA's Scholastic Press Rights Commission chairman. He has been a high school journalism teacher and adviser and currently teaches as Kent State University's School of Journalism and Mass Communication.

Candace Bowen: cbowen@kent.edu

John Bowen: JBowen1007@aol.com

Helpful links:

45words:

- Facebook: <http://www.facebook.com/home.php?#!/group.php?gid=268257200265&ref=ts>
- Blog: <http://www.45words.org/>
- Twitter: <http://twitter.com/45words>
- Website: <http://www.jeasprc.org/45words/>

Student Press Law Center **resource center**:

<https://www.splc.org/resource.asp>

SPLC Virtual Lawyer: https://www.splc.org/virtual_lawyer/

Panic button: any JEA member needing assistance can use the press rights commission's panic button to locate someone locally:

<http://www.jeasprc.org/panic/>

Friends of The Spoke: an organization created by editors of The Spoke, a student newspaper that overcame a censorship threat in 2009. The site now serves to help other student journalists facing censorship crises:

http://friendsofthespoke.org/Friends_of_The_Spoke.html

"I detest what you write, but I would **give my life** to make it possible for you to continue to write."

--Voltaire

Ten-step guide for a censorship situation:

If you find yourself in a possible censorship situation, follow these steps:

1. Take a deep breath. Know there are plenty of people and resources ready to help and support you.
2. Advise all staffers and especially your adviser to use only **non-school** e-mail addresses to discuss this situation as it unfolds.
3. Plan future communications outside of school time and away from your school.
4. Use the Panic Button feature on the Scholastic Press Rights Commission blog (jeasprc.org) and use the interactive map to find your contact people for support within the Journalism Education Association.
5. Call the SPLC and contact your state press association for advice.
6. Contact Student Partners to alert your peers and ask for help—they have faced censorship in varying situations before, so someone can help you. You're never alone!
7. Research precedents for your case—talk to former editors-in-chief of your paper; review legal cases; research policies at other area school districts so that you can respond with facts, not feelings.
8. Contact school board members and/or the school district administration in order to correct misinformation and understand their point of view so that you can build your case.
9. Organize an activism campaign, through Facebook and/or independent websites. Visit friendsofthespoke.org for an example of one student paper that fought censorship with Internet outreach. Reach out to community members—ask them to email or write to the school board, administration and local papers in support of your publication. Keep the community informed throughout your fight.
10. Notify the local media.

"Censorship reflects a society's lack of confidence in itself. It is the hallmark of an **authoritarian regime**."

— Potter Stewart, U.S Supreme Court Justice

Multimedia resources for students facing censorship:

- **Interactive maps:**
 - “Know your rights”--SPLC’s state-by-state map of scholastic press rights legislation:
<http://splc.org/knowyourrights/statelegislation.asp>
 - “Freedom map”: created by JEA's Scholastic Press Rights Commission and Kent State University's Center for Scholastic Journalism to show prior review and censorship, as well as states that have passed legislation protecting student expression and schools reporting no prior review:
<http://www.jeapressrights.org/2008documents/2008freedomap2.html>
- **Videos:**
 - Fighting back: Taking on censorship: “In 2009, editors at The Spoke, the award-winning student newspaper of Conestoga High School in Berwyn, Pa., waged one of the most effective anti-censorship battles of all time. Watch as Friends of The Spoke [including 45words’ Meghan Morris] and the Student Press Law Center present a workshop on waging an effective censorship campaign to a packed house at the 2010 JEA/NSPA Spring convention in Portland, Oregon” (SPLC).
<http://vimeo.com/12375359>
 - Fauquier County School Board, in Virginia, adopted a publications policy July 13, 2009 that if implemented would have dramatically changed their award winning high school journalism program. The Falconer adviser Marie Miller and senior editor-in-chief William Willcox, confronted the administration about the negative effects that this policy could have on the paper. The school board eventually amended the policy because of Miller's and Willcox's suggestions. Watch how Miller and Willcox did it and understand why it is important for you to know your school's publications policy (SPLC). <http://www.vimeo.com/12031222>
- **Podcasts:** SPLC monthly podcasts: <http://www.splc.org/podcasts/>

Prior review vs. prior restraint

By Mike Hiestand, Student Press Law Center

It's time to set the record straight. Prior review vs. prior restraint. The practices are related, but the terms are not interchangeable. Both can be loosely grouped together under the broad category of censorship. Both hinder the existence of a free and independent press. And one frequently leads to the other. But they are not the same.



Prior Review

Prior review means *reading only*.

More specifically for student media, the term refers to the practice of school officials - or anyone in a position of authority outside the editorial staff - demanding that they be allowed to read (or preview) copy prior to publication and/or distribution.

While there exists fairly strong case law holding that prior review is unconstitutional at the public college level, there is no similar legal authority that flatly prohibits the practice in high schools. Indeed at least one federal appellate court has stated clearly that, "Writers on a high school newspaper do not have an unfettered constitutional right to be free from pre-publication review," and the Supreme Court, while not quite as blunt, has said that school officials can exercise "prepublication control" over school-sponsored high school media, even absent written guidelines. (Non-school-sponsored, or underground, high school student media are in a much stronger legal position to contest prior review.) While some individual schools or school districts (for example, Dade County in Florida) have enacted their own policies that prohibit administrative prior review and while legal arguments might be made in specific situations, there is no federal or statewide authority that provides a clear shield.

A better course is probably to argue why prior review, even if permitted by law, is simply a bad practice.

For example, most journalism education groups in the country have condemned the practice of administrative prior review as both educationally and journalistically unsound. Among them, the Journalism Education Association, which has issued a Statement on Prior Review that can be downloaded at: <http://www.jea.org/news/jobspolicy.html>.

For another take, see Dianne Smith's list of "Advantages to Ending Prior Review and Censorship," which is part of "The Voice of Freedom" article by Alan Weintraub and Harry Proudfoot available at: <http://www.splc.org/mediaadvisers.asp>.

And last but not least, school officials that screen student work and essentially give or withhold from their student media an official "stamp of approval" may be creating financial liability for their school district that they *might* otherwise avoid. For more information, see the SPLC's Student Media Liability Guide, available at:

<http://www.splc.org/legalresearch.asp?id=30>.

Keep in mind that no law anywhere *requires* administrative prior review.

Prior Restraint

Prior restraint, on the other hand, occurs when an administrator - often *after* he or she has read material (prior review) -- actually does something to inhibit, ban or restrain its publication.

Unlike prior review, prior restraint of high school student media is limited by the First Amendment and state laws in Arkansas, California, Colorado, Iowa, Kansas and Massachusetts (and state regulations in Pennsylvania and Washington) (all of which can be found at: http://www.splc.org/law_library.asp), and various local school and school district policies.

The legal protection from prior restraint that is available to high school student media can vary depending on where they are located and/or the nature of the media. For example, in California (whose law is similar to most of the other state laws and many student media policies found elsewhere), an adviser - and probably other school officials - can probably insist on *reading* a student newspaper before it goes to the printer. However, he or she can only *stop* it from being published *if* they find content that is either unlawful (libelous, legally obscene, invasive of privacy as defined by law, etc.) or seriously disruptive of the school. If school officials don't find material that falls into one of those categories, they must allow it to be published no matter how much they might personally object.

Practically, prior review often eventually leads to prior restraint, which is why student media should fight prior review tooth and nail. To wage that fight, however, it's essential to have a clear sense of both the enemy and your defenses.

“MYTHBUSTING” HIGH SCHOOL JOURNALISM



This document was made by the Student Press Law Center, with input from board members of Friends of The Spoke.

Since 1974, the Student Press Law Center has been the leading source of information about legal issues impacting the student media. The legal staff and attorney volunteers of the SPLC publish the widely used reference text, *Law of the Student Press*, which is recognized as the nation's most comprehensive compendium of legal research about student media.

The SPLC is frequently called upon to help resolve disputes between students and schools over what students may publish. Censorship of student publications typically grows out of unfounded fears and misperceptions, which don't hold up when examined factually.

Myth: *Students will libel people, invade their privacy, and otherwise injure people if left to publish without tight administrative control.*

Reality: Seven states have laws under which student media are designated “public forums” over which students have editorial control, and there is no evidence of any greater incidence of libel, invasion of privacy or other injury in those states—even in California, which has had such a law on the books for over 30 years. But there *is* evidence that student autonomy creates better journalism—two of the longest-established “student free press” states, California and Kansas, are disproportionately represented among top award-winners in national student media competitions year after year. And, for the record, Pennsylvania is one of the seven states with regulations designed to protect free student expression.

Myth: *Administrators need to review the paper to minimize the risk of the school district being sued.*

Reality: A comprehensive search of the Westlaw© and Lexis© case law databases shows a grand total of zero—that's right, *zero*—published cases in which a school district was held responsible for what students wrote in a student newspaper. While there is the rare nuisance suit that quickly settles or is dismissed, the fact is that people almost never file suits over the content of high school newspapers: it's incredibly hard to show that a person's life was ruined by a story in a high school paper, and the public understands that journalists-in-training are going to make errors. Other school activities are exponentially more dangerous than uncensored journalism—like football, which is blamed for an average of 12 student deaths nationwide each year. Yet no one advocates that students be forbidden from tackling each other because someone might get hurt (or even killed). We accept that students must run the risk of physical contact so they can learn to play the game properly and be prepared for the rigors of college athletics, and the same rule makes sense in journalism. As a matter of historical fact, a school is more likely to be sued—and sued successfully—for violating students' First Amendment rights by censoring a newspaper than by allowing the newspaper to publish uncensored.

Myth: *Administrators need to review the paper because the school district is legally liable for everything in it.*

Reality: Although lawsuits are so rare that this legal principle has never been put to the test in the high-school context, in the handful of lawsuits against *college* publications, the courts have unanimously said that colleges can't be held financially liable for students' editorial content if

they are barred by law or regulation from censoring the content—no control, no liability. Increased administrative control over editorial content maximizes, not minimizes, whatever slight risk of legal exposure exists.

Myth: *A principal reviewing – and reserving the right to change – a student newspaper is just doing what professional newspaper publishers do.*

Reality: Actually, what professional newspaper publishers do is hire well-trained editors and get out of their way. Most publishers—like most principals—are not trained journalists, and (like principals) they don't have the expertise, or the time, to be playing "super-editor." And—unlike in a professional newspaper—the principal's policies are the primary subject of the student newspaper's coverage. If the publisher of a professional newspaper is personally involved in a story, it is imperative under all accepted codes of ethics that the publisher remove himself from reviewing that story. A principal who changes, or pulls, a story about her own administration is violating basic ethical standards—and is teaching students that ethics don't matter.

Myth: *The Supreme Court has said that the principal is the publisher of the paper, and he can do anything he wants with it.*

Reality: Not true. The Supreme Court's 1988 *Hazelwood* case reaffirms that students have First Amendment rights even when speaking in school-sponsored publications. All the Supreme Court said in *Hazelwood* is that school administrators can override students' editorial judgments if they can point to a "legitimate pedagogical justification." Subsequent cases have made clear that merely protecting the P.R. image of the school or its administrators, or eliminating references to controversial subjects, is not a "legitimate pedagogical justification."

Myth: *"Prior review" isn't "prior restraint."*

Reality: Administrators sometimes play this word-game to comfort themselves because they've learned (correctly) that "prior restraint" is almost never permissible under the First Amendment and is the most disfavored form of censorship. "Prior restraint" simply means exercising authority to keep all or part of a newspaper from being distributed. That is exactly what most "prior review" systems provide—that the principal may remove editorial content, or keep it from being circulated. "Prior review" differs from "prior restraint" only if it functions as nothing more than an advance heads-up—allowing the principal to see, but not change or withhold, the newspaper before it goes public. And even though administrators insist that they are reviewing only for libel or other illegality, school principals are not trained libel lawyers and, in practice, they never limit prior review to those narrow confines. By far the most common reason that administrators cite when they remove content from a student publication is not that the content is unlawful, but that it "makes the school look bad." That is the essence of prior restraint.

Myth: *Administrative control over student media is a widely approved practice.*

Reality: There are no statistical studies indicating whether prior review is or is not the majority rule among American schools, but the most authoritative and knowledgeable national organization – the Journalism Education Association, headquartered at Kansas State University – has adopted a policy statement disavowing the use of prior review: "Prior review leads only to censorship by school officials or to self-censorship by students with no improvement in journalistic quality or learning." It is a violation of the JEA Code of Ethics for a journalism teacher to remove editorial content over the objection of student editors. In fact, Robert Harr, the lawyer who represented the school district before the Supreme Court in the *Hazelwood* case, has gone

on record as saying he would not want his own child attending a school with prior review of student media because that is known to be an inferior way to teach journalism. School administrators would not overrule the leading standard-setting body in any other area of education—they would not tell school nurses how to administer shots contrary to protocols set by the national nursing association—and they should not do so in the field of journalism.

45words' guide: Working with, not against, administrators

Advice from Student Partners:

"My advice to publications looking to improve their administration relationships is to develop a **mutual trust**. Have a student, typically the editor-in-chief or another high-ranking editor, regularly cover important figures such as the principal, superintendent and school board. In the case of our publication, the HiLite, we assign these to be covered as a beat report. This allows **regular communication**, usually a report every two weeks, and helps develop a trusting, respectful relationship.

Also, be sure to maintain the **credibility** of your publication at all times. Check quotes, facts, spelling and grammar throughout the entire issue.

Proofreading is key to putting out a quality product. Continuously providing your audience, including administrators, with a reputable product helps ensure a trusting relationship. In all instances, trust is key. Both parties **depend on each other** for success and having a strong, confident relationship forms the basis for success on each end."

--Sara Rogers, 45words member and editor-in-chief of The HiLite

Previously published resources:

- "Stirring the Pot" In an article published in the *American School Board Journal*, a former high school student newspaper editor -- later elected to his school board -- discusses the value of a robust, free student press in cultivating a healthy, vibrant school district:
http://splc.org/pdf/StirringthePot_Buller.pdf
- An article published in *The School Administrator*, a magazine produced by the American Association of School Administrators, in which a superintendent shares his thoughts -- and his conversion -- regarding the importance of a vibrant student press:
<http://splc.org/pdf/aasafreepressarticle2.pdf>

JEA Adviser Code of Ethics

Media advisers will:

- Model standards of professional journalistic conduct to students, administrators and others.
- Empower students to make decisions of style, structure and content by creating a learning atmosphere where students will actively practice critical thinking and decision making.
- Encourage students to seek out points of view and to explore a variety of information sources in their decision making.
- Ensure students have a free, robust and active forum for expression without prior review or restraint.
- Emphasize the importance of accuracy, balance and clarity in all aspects of news gathering and reporting.
- Show trust in students as they carry out their responsibilities by encouraging and supporting them in a caring learning environment.
- Remain informed on press rights and responsibilities to provide students with sources of legal information.
- Advise, not act as censors or decision makers.
- Display professional and personal integrity in situations which might be construed as potential conflicts of interest.
- Support free expression for others in local and larger communities.
- Counsel students to avoid deceptive practices in all practices of publication work.
- Model effective communications skills by continuously updating knowledge of media education.

JEA Board of Directors

JEA's statement on prior review

The Journalism Education Association, as the nation's largest association of scholastic journalism educators and secondary school media advisers, denounces the practice of administrative prior review as serving no legitimate educational purpose. Prior review leads only to censorship by school officials or to self-censorship by students with no improvement in journalistic quality or learning.

Better strategies exist that enhance student learning while protecting school safety and reducing school liability.

School administrators provide leadership for just about every dimension of schools. They set the tone and are crucial in a meaningful educational process. Undeniably, administrators want their schools' graduates to be well-educated and effective citizens. Often, school or district missions statements state this goal explicitly. JEA supports them in that effort.

So, when the Journalism Education Association challenges the judgment of administrators who prior review student media, it does so believing better strategies more closely align with enhanced civic engagement, critical thinking and decision-making.

Prior review by administrators undermines critical thinking, encourages students to dismiss the role of a free press in society and provides no greater likelihood of increased quality of student media. Prior review inevitably leads to censorship. Prior review inherently creates serious conflicts of interest and compromises administrator neutrality, putting the school in potential legal jeopardy.

Without prior review, administrators retain better strategies that support journalism programs. Such approaches include:

- Working with students cooperatively to be good sources for stories
- Hiring qualified advisers and journalism teachers
- Building trust in the learning and communication process in a way that also lessens liability concerns of the school system
- Offering feedback after each publication
- Increasing dialogue among school staff and students, thus encouraging outlets of expression that strengthens school safety
- Expanding school and community understanding and appreciation of the value of free – and journalistically responsible – student media
- Providing necessary resources to support and maintain publication programs, including financial support, master schedule preferences, development opportunities and time

These strategies, and others listed below can enhance the influence of administrators without intruding on student control of their media as outlined by court decisions and the First Amendment.

Administrators can and should:

- Foster appreciation for America's democratic ideals by inspiring students and their advisers to practice democratic principles through free student media
- Hire the most qualified educator to teach and advise or help one without solid journalism background become more knowledgeable. This allows the educator to provide training so students can better become self-sufficient as they make decisions and practice journalism within the scope of the school's educational mission and the First Amendment
- Trust and respect their advisers, their student media editors and staff as the students make decisions
- Maintain dialogue and feedback to protect and enhance student expression, to afford students real input in the process, and to broaden their opportunities to excel

Teachers and advisers can and should:

- Model standards of professional journalistic conduct to students, administrators and others
- Emphasize the importance of accuracy, balance and clarity in all aspects of news gathering and reporting
- Advise, not act as censors or decision makers
- Empower students to make decisions of style, structure and content by creating a learning atmosphere where students will actively practice critical thinking and decision-making
- Encourage students to seek other points of view and to explore a variety of information sources in their decision-making
- Ensure students have a free, robust and active forum for expression without prior review or restraint
- Show trust in students as they carry out their responsibilities by encouraging and supporting them in a caring learning environment

Student journalists can and should:

- Apply critical thinking and decision-making skills as they practice journalistic standards and civic responsibility
- Follow established policies and adopt new ones to aid in thorough, truthful and complete reporting using a range of diverse and credible sources
- Seek the advice of professionally educated journalism advisers, teachers and other media resources
- Maintain open lines of communication with other students, teachers, administrators and community members
- Operate media that report in verbal and visual context, enhancing comprehension and diverse points of view
- Develop trust with all stakeholders – sources, adviser, administration and fellow staffers

*JEA Board of Directors
Adopted April 16, 2009*

Hazelwood School District v. Kuhlmeier: A complete guide to the Supreme Court Decision 2008: Student Press Law Center

In January 1988, the United States Supreme Court handed down its opinion in *Hazelwood School District v. Kuhlmeier*. The Decision upheld the authority of public high school administrators at Hazelwood East High School in suburban St. Louis, Mo., to censor stories concerning teen pregnancy and the effects of divorce on children from a school-sponsored student newspaper.

Hazelwood was in dramatic contrast to court decisions from across the country handed down over the previous two decades that had given student journalists extensive First Amendment protections.

Although the Supreme Court was only dealing with a student newspaper in *Hazelwood*, all public high school student news and information media have been affected. Student newspapers, yearbooks and literary magazines as well as online student media and non-broadcast radio and TV programs can use the information in this guide.

Probably the most significant aspect of the *Hazelwood* decision was the emphasis it placed on determining whether a student publication is or is not a “public forum” for student expression.

As a growing number of lower court cases have confirmed, student media that qualify as public forums receive greater First Amendment protection than non-public forum student media and are not subject to *Hazelwood*'s censorship standards. The determination of forum status may not always be clear, but this guide points out the factors that a court is likely to consider.

Recent court decisions have also helped to more clearly define what types of administrative censorship *Hazelwood* allows and what types it does not. While the *Hazelwood* standard remains far from clear, these cases provide some useful guidance about where the outer boundaries lie.

Please note one thing above all else: All public high school students still have important First Amendment protections that limit the ability of school officials to restrict what students publish or to punish them for what they say or write. Public school officials — no matter what they may say or think — do not have an unlimited license to censor.

What the Decision Says

Hazelwood School District v. Kuhlmeier was decided on January 13, 1988. The 5-3 vote reversed the decision of the U.S. Court of Appeals for the Eighth Circuit in St. Louis, which had upheld the rights of the students. Justice Byron White wrote the Court's majority opinion, which was joined by Justices Rehnquist, Stevens, O'Connor and Scalia. Justice William Brennan filed a dissenting opinion that was joined by Justices Marshall and Blackmun.²

Justice White began by noting that the rights of students in public schools are not necessarily the same as those of adults in other settings. White also pointed to a student speech decision the Court had handed down two years earlier, *Bethel School District No. 403 v. Fraser*,³ where it found that even within the school, a student's First Amendment rights could vary depending on the type of expression involved and where and how it took place.

In *Hazelwood*, the Court found that the *Spectrum*, the student newspaper at Hazelwood East High School, which was produced as part of a journalism class, was not a “forum for public expression” by students.⁴ Therefore, the Court held that the school was not required to follow the standard established in *Tinker v. Des Moines Independent Community School District*,⁵ a 1969 Supreme Court case that struck down as unconstitutional a school's suspension of students who had worn black armbands to protest the Vietnam War. In *Tinker*, the Court said school officials could only limit student speech when they could demonstrate that it would cause a material and substantial disruption of school activities or an invasion of the rights of others.

The *Hazelwood* majority noted that unlike the school-sponsored *Spectrum*, however, the armbands worn by the *Tinker* students constituted independent, non-school-sponsored student speech. This distinction between school-sponsored and non-school-sponsored student speech was one that the Court had not directly made before. The *Hazelwood* Court went on to say that a different category of student speech allowed for the application of a different legal standard.

From that point on, the Court said, a new — and less protective — First Amendment test could be used to analyze administrative censorship of school-sponsored speech that occurred in a non-public forum. Henceforth, the Court said, school officials could censor such speech if they could show it was “reasonably related to legitimate pedagogical concerns.”⁶ In other words, if a school could present a reasonable educational justification for its censorship, it would be allowed.

Applying its new standard, the Court found that the principal at Hazelwood East had acted lawfully in censoring the newspaper. The Court found that it was “not unreasonable” for the principal to have concluded that “frank talk” by students about their sexual history and use of birth control, even though the comments were not graphic, was “inappropriate in a school-sponsored publication distributed to 14-year-old freshmen....”⁷

In his sharp dissent, Justice Brennan said he found the newspaper at Hazelwood East to be a “forum established to give students an opportunity to express their views....”⁸ He said the Court should have applied the *Tinker* standard. Brennan said the censorship “aptly illustrates how readily school officials (and courts) can camouflage viewpoint discrimination as the ‘mere’ protection of students from sensitive topics.”⁹

“Such unthinking contempt for individual rights is intolerable from any state official,” Brennan continued. “It is particularly insidious from one to whom the public entrusts the task of inculcating in its youth an appreciation for the cherished democratic liberties that our Constitution guarantees.”¹⁰

What the Decision Means

The *Hazelwood* decision struck a serious blow to scholastic journalism. The Court significantly cut back the First Amendment protections public high school students had been afforded for years. At some schools, censorship has become standard operating procedure; at any school it remains an ever-present threat.

In 1974, the report of the Commission of Inquiry into High School Journalism, titled *Captive Voices*, made some significant findings.

“Censorship is the fundamental cause of the triviality, innocuousness and uniformity that characterize the high school press,” the report said. “Where a free, vigorous student press does exist, there is a healthy ferment of ideas and opinions with no indication of disruption or negative side effects on the educational experience of the school.”¹¹

If a free student press encourages active learning and civic participation by students, as *Captive Voices* found, *Hazelwood* was clearly a step backward and the decision, which one commentator has described as a potential “censorship tsunami,”¹² has been roundly criticized by journalism education groups.

While it is impossible to sugarcoat the negative impact *Hazelwood* has had on student media, the Court left some important safeguards against censorship intact. The following discussion will address those and other common questions raised by the decision.

Does *Hazelwood* apply only to student news media?

No. Any curricular, non-forum student activity that involves student expression is affected. The Court specifically mentioned theatrical productions, and over the years lower courts have cited *Hazelwood* in cases involving other student activities such as art shows, debates and academic presentations.¹³

Does *Hazelwood* apply to all high school student media?

No. It only applies to: (1) school-sponsored student media that are (2) not public forums for expression by students. Curricular and extracurricular student media that qualify as public forums, as well as independently produced (non-school-sponsored) “underground” student publications — even if distributed on school grounds — still retain much stronger First Amendment protections.¹⁴

Does *Hazelwood* apply to off-campus, private expression?

No. *Hazelwood* applies only to school-sponsored student expression. Independent student speech that takes place entirely outside of school — such as off-campus e-mail, a private Web site or social networking site, or a flier for a non-school organization published and distributed outside of school — is not subject to *Hazelwood*'s restrictions. Except in extraordinary cases, such expressive activity retains the highest level of First Amendment protection and school administrators will generally have no authority to restrict such content or punish students involved. Of course, as always,

students remain responsible for everything they publish and can be held liable if they commit libel, invade another's legal right to privacy or engage in some other unlawful speech or activity.¹⁵

What is “school-sponsored”?

The Court's opinion mentions three different criteria that it might look to in determining if a publication is school-sponsored and thus covered by the *Hazelwood* decision: (1) Is it supervised by a faculty member? (2) Was the publication designed to impart particular knowledge or skills to student participants or audiences? and (3) Does the publication use the school's name or resources?¹⁶ Even a student media organization that receives no direct funding from the school could be “school-sponsored” if it has a faculty adviser, uses school equipment or facilities or is produced in relationship to a class.

Are all school-sponsored student media covered by *Hazelwood*?

No. At least one federal court has found that school-sponsored student publications produced as part of a class can still be public forums where student editors have been allowed control over the publication's content.¹⁷

Does the decision apply to student media produced in an extracurricular activity?

It is unclear. In at least two federal court cases, judges have said that extracurricular student media may be beyond *Hazelwood*'s reach.¹⁸ However, at least one other court has said that even an extracurricular publication can be covered by *Hazelwood* if under faculty supervision and intended to impart particular skills to the student participants.¹⁹

What is forum analysis?

In weighing the authority of the government to regulate expressive activity that occurs on government property or that uses government resources, courts have turned to what is commonly known as “forum analysis.”²⁰ The idea is that the government's authority to regulate such speech varies according to the type of forum in which the speech takes place. Some places, it recognizes, are more appropriate for speech activities than others. For example, the government's interest in regulating speech that takes place in a town's public square, where speakers have traditionally been allowed to host gatherings and share their message, is much less than on a tightly guarded military base or in the private office of a government employee where the government can demonstrate a reasonable need to restrict free speech activities.

What is the difference between an “open public forum,” a “designated public forum” and a “non-public forum”?

Courts analyzing the constitutionality of administrative censorship of public high school student media first look to determine whether the media at issue is: (1) a traditional, open public forum, (2) a “designated” or “limited” public forum or (3) a non-public forum.²¹

In open public forums, such as streets, sidewalks or a town square, the government must accommodate virtually all speakers. “Designated” public forums (also called “limited” public forums), meanwhile, have not historically been open to the general public but are considered to occupy a middle ground because the government has opened the forum for a specific expressive purpose or for free speech use by a specific group of people (such as student journalists working on a public high school newspaper). Speakers using such forums in their designated manner are entitled to the same strong First Amendment protections as speakers in a traditional, open public forum.

Non-public forums have not been opened to the public, and speakers in such forums receive the least First Amendment protection. Because non-student members of the general public are generally not permitted to use a student publication to publish anything they choose, student media will generally be categorized as either a “designated” (or “limited”) public forum or a non-public forum.

Why is it important to determine whether a student outlet qualifies as a public forum for student expression?

Even curricular, school-sponsored student media may still be entitled to strong First Amendment protection and exempt from *Hazelwood*'s limitations if they qualify as “designated public forums for student expression.” Thus the key question for most student media in determining the impact of *Hazelwood* is whether they operate as such a forum.

Indeed, at least a half-dozen post-*Hazelwood* cases have emphasized the importance of forum analysis. As one court has said, “Whether a school newspaper is a ‘public forum’ can be determinative of whether attempts to limit or control the expressional activities undertaken by the newspaper violate constitutional rights.”²²

What are the factors used to determine the forum status of student media?

A designated or limited public forum is created when school officials have “by policy or practice” opened student media for students to express themselves freely.²³ In *Hazelwood*, the Court majority said it believed the adviser to the newspaper had acted as “the final authority with respect to almost every aspect of the production and publication...including its content.”²⁴ (The dissenting justices said they thought the facts indicated otherwise.) That finding by the majority, combined with the fact that the school never explicitly labeled the student newspaper as a “forum” in its written policies or gave other explicit evidence of an intent to designate the newspaper as a forum, prompted the Court to say a forum did not exist.

In fact, *Hazelwood* was the first case to find that a particular student newspaper did not constitute a forum for student expression, and the Court indicated that had student editors been given final authority over content or had the school explicitly designated *Spectrum* as a public forum for student expression, the result in the case would likely have been different.²⁵

As most Courts have agreed, the school’s intent is a critical factor in the forum calculus.²⁶ That can be determined by written school policy, if one exists, or by how the publication has operated over time. “‘Actual practice speaks louder than words’ in determining whether the government intended to create a limited public forum.”²⁷

In two recent cases, federal district courts found that high school-sponsored student newspapers were not subject to *Hazelwood* because they were operating as public forums.²⁸ In both cases, the courts noted that the publications had been operating free from censorship and that school officials were well aware of that fact. The advisers to these student publications also testified that neither they nor school administrators were telling the students what they could publish.

In cases where the publication is a public forum for student expression, school officials will only be allowed to censor when they can demonstrate a compelling reason, meeting the broader protections of the *Tinker* standard.

When is censorship by school officials allowed?

Hazelwood expanded the authority of school officials to censor student media that is school-sponsored and not a public forum. School officials will be allowed to censor non-forum student media when they can show that their censorship is “reasonably related to legitimate pedagogical [educational] concerns.”²⁹ When the censorship has “no valid educational purpose,” it will still be prohibited.³⁰

Despite what many seem to believe, school officials were not given limitless authority under *Hazelwood*. Even where a student publication is a non-public forum, administrators still have the burden of showing that their censorship has a valid educational purpose. If they cannot, the censorship will be struck down as unconstitutional.³¹

What is a “legitimate pedagogical [educational] concern” that justifies censorship under *Hazelwood*?

That is a question that student journalists, school officials and courts have struggled with since *Hazelwood* was handed down. Considering that every major national organization of journalism educators in the country has said that censorship in and of itself is an educationally unsound practice, one might think that schools could never get away with censorship. However, the Supreme Court indicated otherwise.

The Court gave several examples in its decision of what might be censorable: material that is “ungrammatical, poorly written, inadequately researched, biased or prejudiced, vulgar or profane, or unsuitable for immature audiences.” Potentially sensitive topics, such as “the existence of Santa Claus in an elementary school setting” or “the particulars of teenage sexual activity in a high school setting” can also be banned. And “speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the ‘shared values of a civilized social order’” may also be censored. In addition, the Court said school officials could censor material that would “associate the school with anything other than neutrality on matters of political controversy.”³²

These examples — frightening in their breadth and vagueness — suggest that school officials might be allowed to censor a great number of things simply because they disapprove of them. In fact, the Court said schools could demand of their student publications standards “higher than those demanded by some newspaper publishers ... in the ‘real’ world.”³³

Fortunately, a growing number of lower court decisions decided since *Hazelwood* have indicated that this standard still imposes significant limitations on school officials’ authority. For example, in *Desilets v. Clearview Regional Board of Education* the New Jersey Supreme Court rejected school officials’ justifications for censoring reviews of R-rated movies from a student newspaper under the *Hazelwood* standard as “equivocal and inconsistent.”³⁴ The court noted that there was nothing offensive in the reviews, that R-rated movies were discussed in class by teachers, that such reviews were available in the school library and that the student newspaper had, in fact, reviewed such movies in the past.

In *Dean v. Utica*,³⁵ a federal district court in Michigan rejected a school’s censorship of a student newspaper story about a lawsuit filed against the school by community members who claimed they were suffering health problems from breathing diesel exhaust from idling school buses.

The court found the student paper to be a public forum, but said even if it had not been, the school’s actions were unconstitutional under *Hazelwood*. Assessing the story on criteria including fairness, accuracy, writing quality and bias, the court said the school had presented no legitimate justification for censoring. Good, solid journalism, the judge found, can trump *Hazelwood*-based censorship.

Are there any other limitations on school officials’ authority to censor?

Most courts will also require that school officials be able to show that their censorship is “viewpoint neutral,”³⁶ that is, that they did not censor simply because they disagreed with a particular view students were expressing. For example, a principal who censored a pro-life editorial, but allowed the publication of a pro-choice editorial, would be engaging in viewpoint discrimination. However, there is some disagreement among lower courts about whether *Hazelwood* imposes a viewpoint-neutral requirement.³⁷ Until the Supreme Court clarifies the issue, most courts continue to conclude that censorship of student speech based on viewpoint is constitutionally impermissible.

Is prior review allowed after *Hazelwood*?

The *Hazelwood* Court indicated that school officials can review non-forum, curricular student publications before they go to press, and probably can do so without specific written regulations.³⁸ Prior review by school administrators has long been one of the most problematic and insidious forms of censorship. Where mandatory administrative prior review exists, it will likely be a rebuttable indicator that the publication is not operating as a public forum. For those publications that have been designated as public forums, prior review may require that written policies with procedural safeguards be present.

Did the Supreme Court overrule its decision in the *Tinker* case?

No. The *Hazelwood* Court reaffirmed the *Tinker* decision and the notion that neither students nor teachers lose their free expression rights at the schoolhouse gate. But it did seriously cut back on *Tinker*’s application. By refusing to apply that decision to any situation in a public high school involving a non-forum, school-sponsored student expression, the justices made *Tinker* a shadow of the protective shield for student journalists it had once been.

For all public forum and underground publications, the *Tinker* standard is still the law. School officials can only censor those publications when they can demonstrate that their content will result in a material and substantial disruption of school activities, invades the rights of other students, or falls into another area of unprotected speech, such as copyright infringement.³⁹

Are there any other legal protections students might have to fight censorship?

Yes. It is important to remember that *Hazelwood* only addressed the protections available under the First Amendment. The Court left open the possibility that other avenues of protection, including everything from state constitutional provisions or state laws to school board regulations, might still prevent school officials from censoring.

Arkansas, California, Colorado, Iowa, Kansas, Massachusetts and Oregon have state laws that protect the free expression rights of their high school students.⁴⁰ Other states across the country have considered — and continue to pursue — enacting similar legislation. In addition, some states, such as Pennsylvania and Washington, have state

regulations that may protect student rights. And dozens of individual school districts across the country, such as Dade County in Florida, Fairfax County in Virginia and Auburn School District in Washington State, have enacted student expression policies that provide significant protections to their student media programs.

Courts in New Jersey⁴¹ and Washington⁴² have specifically said their state constitutions may provide additional free speech protection to student media. Additionally, the free speech provisions of other state constitutions include language that could be interpreted as providing broader legal protections than the federal First Amendment.

Does *Hazelwood* apply to college student media?

In a footnote, the *Hazelwood* majority said, “We need not now decide whether the same degree of deference [to school censorship] is appropriate with respect to school-sponsored expressive activities at the college and university level.”⁴³ For nearly twenty years — up until a 2005 decision by the 7th U.S. Circuit Court of Appeals in *Hosty v. Carter* — courts had consistently rejected the application of *Hazelwood* to college student media. In *Hosty*, however, a divided court found that *Hazelwood* provided the “starting point” for analyzing college censorship cases.

For students attending a public college or university in Illinois, Indiana and Wisconsin (the states covered by the 7th Circuit), *Hosty* is now the law. As a practical matter, most college student newspapers will still be considered designated public forums and entitled to the strongest First Amendment protection because that is the way they have been operating for decades. (Moreover, in 2007 Illinois lawmakers passed a law protecting college student media from administrative censorship that should effectively negate *Hosty*'s impact for college students in that state.⁴⁴)

Most importantly, however, the *Hosty* decision has no legal impact outside the boundaries of the 7th Circuit, and the law prohibiting virtually all forms of administrative college censorship remains unchanged. In fact, the *Hosty* decision is in direct conflict with court rulings dating back nearly four decades. Moreover, the U.S. Supreme Court, which has still not ruled on the question, has consistently noted in other cases the important role of free speech on American college and university campuses. Unfortunately, some misguided or opportunistic college officials outside the 7th Circuit have pointed to *Hosty* to justify more administrative control over student media. College student media must challenge such interpretations immediately.⁴⁵

What the Decision Has Done

Requests for legal assistance to the SPLC from high school students and advisers around the country indicate that the *Hazelwood* decision has had at least one significant effect: a dramatic increase in the amount of censorship.

From 1988 to 2003, calls for help received by the Center increased by about 350 percent, a nearly constant rise that shows no sign of decline. Student media continue to report censorship of articles, editorials and advertisements that are perceived as “controversial” or that school officials feel might cast the school in a negative light. Disturbingly, professional student media advisers are also reporting a growing number of threats to their jobs if they refuse to follow school officials' orders to censor. And almost all student journalists and advisers have said that they attributed the censorship at least in part to the *Hazelwood* decision.

Some Final Words

The *Hazelwood* decision is now more than two decades old. An entire generation has lived its entire academic life — and is now moving into the professional ranks — under *Hazelwood*'s influence. Far too many of our future journalists, citizens and leaders unquestioningly accept that school administrators — government officials — should have the authority to dictate what they read, write and talk about.⁴⁶ What this means for the future of press freedom in America remains unknown, but we hope that no student or adviser is resigned to give up the battle against censorship.

Since 1974, the Student Press Law Center has been a source of free legal help and information for students and journalism advisers who are facing administrative censorship. You can contact our legal staff through our Web site (www.splc.org) or by telephone at (703) 807-1904. In addition, the Center remains the only national clearinghouse devoted solely to collecting information about the cases and controversies affecting America's student press, and we rely on you to help us track student media censorship. If you are involved in — or simply aware of — student media censorship in your area, please contact us. n

Endnotes

1) 484 U.S. 260 (1988).

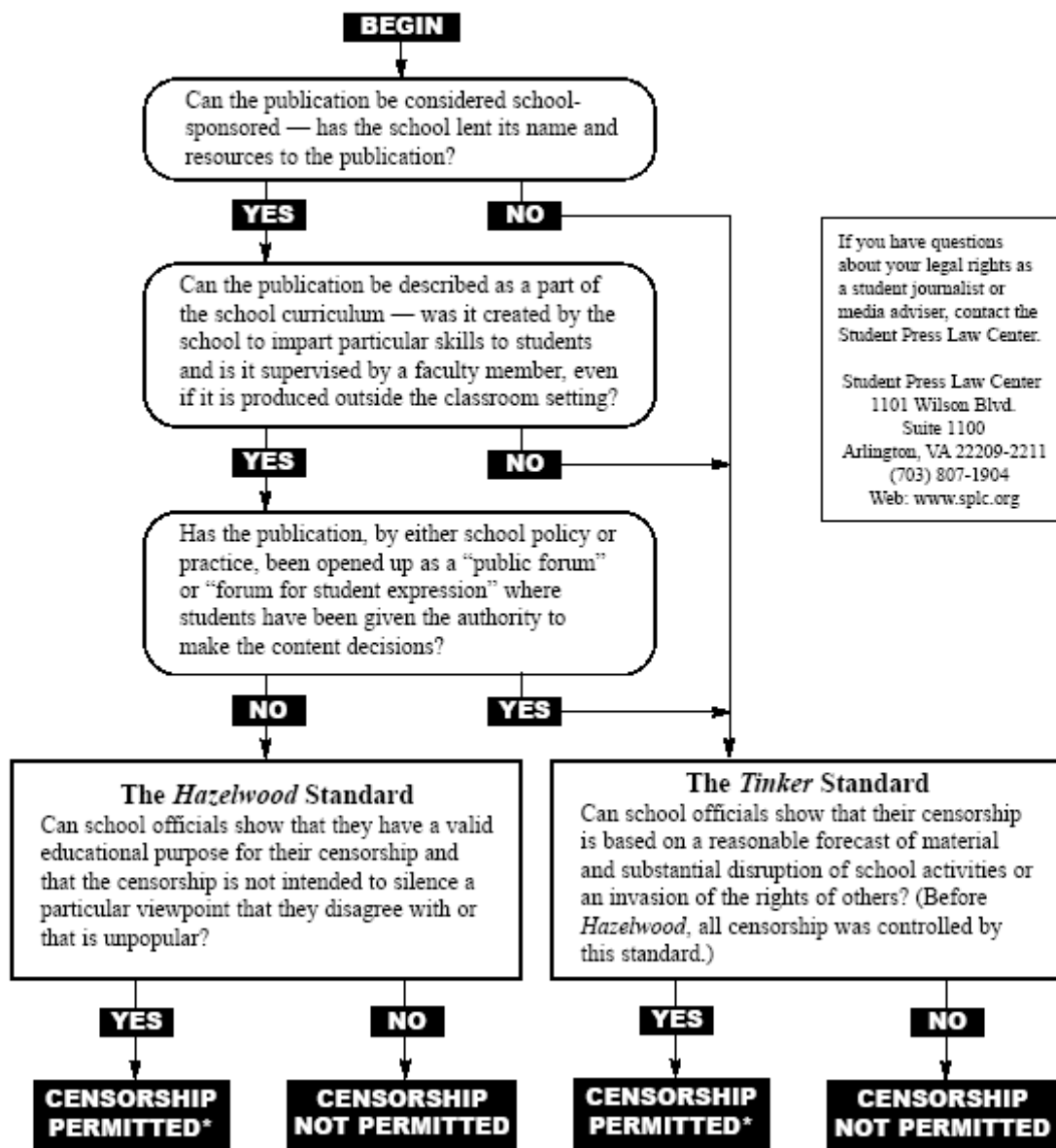
2) Because of the retirement of Justice Lewis Powell, Jr. in 1987, there were only eight sitting justices at the time *Hazelwood* was argued instead of the usual nine.

- 3) 478 U.S. 675 (1986).
- 4) *Hazelwood*, 484 U.S. at 270.
- 5) 393 U.S. 503 (1969).
- 6) *Hazelwood*, 484 U.S. at 273.
- 7) *Id.* at 274-75.
- 8) *Id.* at 277.
- 9) *Id.* at 288.
- 10) *Id.* at 289.
- 11) *Captive Voices*, The Report of the Commission of Inquiry into High School Journalism (J. Nelson ed. 1974).
- 12) Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the "College Hazelwood" Case*, 68 Tenn. L. Rev. 481 (2001).
- 13) See e.g., *Hansen v. Ann Arbor Public Schools*, 293 F.Supp.2d 780 (E.D.Mich. 2003); *Curry ex rel. Curry v. School Dist. of the City of Saginaw*, 452 F.Supp.2d 723 (E.D.Mich. 2006).
- 14) More information about the rights of underground newspaper publishers — and suggestions for avoiding trouble — are available in the SPLC guide *Surviving Underground*: <http://www.splc.org/legalresearch.asp?id=40>
- 15) More information for student publishers of private, off-campus print and online media is available on the SPLC Web site at: <http://www.splc.org/legalresearch.asp?subcat=5>
- 16) *Hazelwood*, 484 U.S. at 272-73.
- 17) *Dean v. Utica Community Schools*, 345 F.Supp.2d 799, 806 (E.D.Mich. 2001).
- 18) *Romano v. Harrington*, 725 F. Supp. 687 (E.D.N.Y. 1989) (finding that rights of student journalists who produced newspaper after school and not for class credit were "less limitable" than those of the students on the *Hazelwood* newspaper, even though both publications received school funding); *Lodestar v. Board of Education*, No. B-88-257 (D. Conn. March 10, 1989) (holding that school-sponsored publication might not be "characterized as part of the school's curriculum" and censored under the *Hazelwood* standard if its history and method of operation show it was an independent student voice).
- 19) *Desilets v. Clearview Regional Board of Education*, 137 N.J. 585, 590 (N.J. 1994).
- 20) *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).
- 21) While some courts debate whether there is a distinction between a "limited" and a "designated" public forum, we use the terms interchangeably here. See, e.g., *Roberts v. Haragan*, 2004 WL 2203130 (N.D. Tex. Sept. 30, 2004).
- 22) *Desilets*, 137 N.J. at 589. See also *Lodestar*, No. B-88-257 at 10 ("fair ground for litigation exists as to [the student publication's] status ... as a 'public forum' never validly closed by school authorities"); *Planned Parenthood of Southern Nevada v. Clark County School District*, 941 F.2d 817 (9th Cir. 1991) (upholding the authority of school officials to limit pregnancy-related advertising in student publications, but only after it had determined that the publications in question had not been opened as public forums).
- 23) *Hazelwood*, 484 U.S. at 267.
- 24) *Id.* at 268.
- 25) *Id.* at 267-271
- 26) See, e.g., *Lueneburg v. Everett School District*, 2007 WL 2069859 (W.D.Wash. July 13, 2007).
- 27) *Kincaid v. Gibson*, 236 F.3d 342 (6th Cir. 2001).
- 28) *Draudt v. Wooster City School District*, 246 F.Supp.2d 820 (N.D. Ohio 2003); *Dean*, 345 F.Supp.2d at 806.
- 29) *Hazelwood*, 484 U.S. at 273.
- 30) *Id.*
- 31) See, e.g., *Dean*, 345 F.Supp.2d at 810.
- 32) *Hazelwood*, 484 U.S. at 272.
- 33) *Id.*
- 34) *Desilets*, 137 N.J. at 593.
- 35) 345 F.Supp.2d 799 (E.D.Mich. 2004).
- 36) See e.g., *Planned Parenthood*, 941 F.2d at 829; *Dean*, 345 F.Supp. at 813; *Hansen*, 293 F.Supp.2d at 780.
- 37) *Compare, Fleming v. Jefferson County School District*, 298 F.3d 918, 926-928 (10th Cir. 2002), *cert denied*, 537 U.S. 1110 (2003), with *Peck v. Baldwinville Central School District*, 426 F.3d 617, 631-632 (2nd Cir. 2005), *cert. denied*, 547 U.S. 1097 (2006). See also, *Busch v. Marple Newtown School Dist.*, 2007 WL 1589507, *8 n. 15 (E.D.Pa. May 31, 2007) (discussing conflicts among circuits).
- 38) *Hazelwood*, 484 U.S. at 273 n. 6.
- 39) The Supreme Court's recent decision in *Morse v. Frederick*, 127 S.Ct. 2618, 2625-26 (2007) held that student expression that advocates illegal drug use can be penalized without violating the First Amendment.
- 40) The text and citations for these laws can all be found at: http://www.splc.org/law_library.asp
- 41) *Desilets v. Clearview Regional Board of Education*, 266 N.J.Super. 531 (N.J. Super A.D. 1993); *affirmed on other grounds*, 137 N.J. 585, 590 (N.J. 1994).
- 42) *Lueneburg*, 2007 WL 2069859 at *9.
- 43) *Hazelwood*, 484 U.S. at 273 n. 7.
- 44) 110 ILCS 13/1 - 13/97. (Effective June 1, 2008). As of January 2008, Oregon and California had also passed laws protecting college student media as a result of the *Hosty* decision. The text and citations for these laws can all be found at: http://www.splc.org/law_library.asp
- 45) More information about the *Hosty* case and *Hazelwood's* application to college student media can be found at: <http://www.splc.org/legalresearch.asp?subcat=4>
- 46) A 2004 national study sponsored by the Knight Foundations revealed, among other sobering statistics, that more than a third of all high school students surveyed believed the First Amendment went "too far" in guaranteeing freedom of speech and freedom of the press. More information from the "Future of the First Amendment" study is available at: <http://www.firstamendmentfuture.org/>
- 47) <http://www.splc.org/legalresearch.asp?id=52>

First Amendment Rights of Public High School Student Journalists After *Hazelwood School District v. Kuhlmeier*

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This diagram describes how a court would determine if a particular act of censorship by school officials is legally permissible.



*As of February 2008, if your state is Arkansas, California, Colorado, Iowa, Kansas, Massachusetts, Oregon, Pennsylvania or Washington, the censorship may not be permitted under your state law or regulations.

Student Press Law Center:**Model Guidelines for High School Student Media****I. STATEMENT OF POLICY**

Freedom of expression and press freedom are fundamental values in a democratic society. The mission of any institution committed to preparing productive citizens must include teaching students these values, both by lesson and by example.

As determined by the courts, student exercise of freedom of expression and press freedom is protected by both state and federal law, especially by the First Amendment to the United States Constitution. Accordingly, school officials are responsible for encouraging and ensuring freedom of expression and press freedom for all students.

It is the policy of the _____ Board of Education that (newspaper), (yearbook), (literary magazine) and (electronic or on-line media), the official, school-sponsored student media of _____ High School have been established as forums for student expression and as voices in the uninhibited, robust, free and open discussion of issues. Each medium should provide a full opportunity for students to inquire, question and exchange ideas. Content should reflect all areas of student interest, including topics about which there may be dissent or controversy.

It is the policy of the _____ Board of Education that student journalists shall have the right to determine the content of student media. Accordingly, the following guidelines relate only to establishing grounds for disciplinary actions subsequent to publication.

II. OFFICIAL STUDENT MEDIA**A. Responsibilities of Student Journalists**

Students who work on official, school-sponsored student publications or electronic media determine the content of their respective publications and are responsible for that content. These students should:

1. Determine the content of the student media;
2. Strive to produce media based upon professional standards of accuracy, objectivity and fairness;
3. Review material to improve sentence structure, grammar, spelling and punctuation;
4. Check and verify all facts and verify the accuracy of all quotations; and

5. In the case of editorials or letters to the editor concerning controversial issues, determine the need for rebuttal comments and opinions and provide space therefore if appropriate.

B. Unprotected Expression

The following types of student expression will not be protected:

1. Material that is "obscene as to minors." "Obscene as to minors is defined as material that meets all three of the following requirements:

- (a) the average person, applying contemporary community standards, would find that the publication, taken as a whole, appeals to a minor's prurient interest in sex; and
 - (b) the publication depicts or describes, in a patently offensive way, sexual conduct such as ultimate sexual acts (normal or perverted), masturbation and lewd exhibition of the genitals; and;
 - (c) the work, taken as a whole, lacks serious literary, artistic, political or scientific value.
- Indecent or vulgar language is not obscene.

[Note: Most states have statutes defining what is "obscene as to minors." If such a statute is in force in your state, it should be substituted in place of section II(B)(1).]

2. Libelous material. Libelous statements are provably false and unprivileged statements of fact that do demonstrated injury to an individual's or business's reputation in the community. If the allegedly libeled party is a "public figure" or "public official" as defined below, then school officials must show that the false statement was published "with actual malice," i.e., that the student journalists knew that the statement was false or that they published it with reckless disregard for the truth ? without trying to verify the truthfulness of the statement.

- (a) A public official is a person who holds an elected or appointed public office and exercises a significant amount of governmental authority.
- (b) A public figure is a person who either has sought the public's attention or is well known because of personal achievements or actions.
- (c) School employees will be considered public officials or public figures in relationship to articles concerning their school-related activities.
- (d) When an allegedly libelous statement concerns an individual who is not a public official or a public figure, school officials must show that the false statement was published willfully or negligently, i.e., the student journalist who wrote or published the statement has failed to exercise reasonably prudent care.
- (e) Students are free to express opinions. Specifically, a student may criticize school policy or the performance of teachers, administrators, school officials and other school employees.

3. Material that will cause "a material and substantial disruption of school activities."

- (a) Disruption is defined as student rioting, unlawful seizures of property, destruction of property, or substantial student participation in a school boycott, sit-in, walk-out or other related form of activity. Material such as racial, religious or ethnic slurs, however distasteful, is not in and of itself disruptive under these guidelines. Threats of violence are not materially disruptive without some act in furtherance of that threat or a reasonable belief and expectation that the author of the threat has the capability and intent of carrying through on that threat in a manner that does not allow acts other than suppression of speech to mitigate the threat in a timely manner. Material that stimulates heated discussion or debate does not constitute the type of

disruption prohibited.

(b) For student media to be considered disruptive, specific facts must exist upon which one could reasonably forecast that a likelihood of immediate, substantial material disruption to normal school activity would occur if the material were further distributed or has occurred as a result of the material's distribution or dissemination. Mere undifferentiated fear or apprehension of disturbance is not enough; school administrators must be able affirmatively to show substantial facts that reasonably support a forecast of likely disruption.

(c) In determining whether student media is disruptive, consideration must be given to the context of the distribution as well as the content of the material. In this regard, consideration should be given to past experience in the school with similar material, past experience in the school in dealing with and supervising the students in the school, current events influencing student attitudes and behavior and whether there have been any instances of actual or threatened disruption prior to or contemporaneously with the dissemination of the student publication in question.

(d) School officials must protect advocates of unpopular viewpoints.

(e) "School activity" means educational student activity sponsored by the school and includes, by way of example and not by way of limitation, classroom work, official assemblies and other similar gatherings, school athletic contests, band concerts, school plays and scheduled in-school lunch periods.

C. Legal Advice

1. If, in the opinion of a student editor, student editorial staff or faculty adviser, material proposed for publication may be "obscene," "libelous" or would cause an "immediate, material and substantial disruption of school activities," the legal opinion of a practicing attorney should be sought. The services of the attorney for the local newspaper or the free legal services of the Student Press Law Center (703/807-1904) are recommended.

2. Any legal fees charged in connection with the consultation will be paid by the board of education.

3. The final decision of whether the material is to be published will be left to the student editor or student editorial staff.

D. Protected Speech

1. School officials cannot:

- a. Ban student expression solely because it is controversial, takes extreme, "fringe" or minority opinions, or is distasteful, unpopular or unpleasant;
- b. Ban the publication or distribution of material relating to sexual issues including, but not limited to, virginity, birth control and sexually-transmitted diseases (including AIDS);
- c. Censor or punish the occasional use of indecent, vulgar or so called "four-letter" words in student publications;
- d. Prohibit criticism of the policies, practices or performance of teachers, school officials, the school itself or of any public officials;
- e. Cut off funds to official student media because of disagreement over editorial policy;

- f. Ban student expression that merely advocates illegal conduct without proving that such speech is directed toward and will actually cause imminent unlawful action.
- g. Ban the publication or distribution by students of material written by non-students;
- h. Prohibit the endorsement of candidates for student office or for public office at any level.

2. Commercial Speech

Advertising is constitutionally protected expression. Student media may accept advertising. Acceptance or rejection of advertising is within the purview of the publication staff, which may accept any ads except those for products or services that are illegal for all students. Ads for political candidates and ballot issues may be accepted; however publication staffs are encouraged to solicit ads from all sides on such issues.

E. On-Line Student Media and Use of Electronic Information Resources

1. On-Line Student Media.

On-line media, including Internet Web sites, e-mail, listserves and Usenet and Bitnet discussion groups, may be used by students like any other communications media to reach both those within the school and those beyond it. All official, school-sponsored on-line student publications are entitled to the same protections and are subject to no greater limitations than other student media, as described in this policy.

2. Electronic Information Resources

Student journalists may use electronic information resources, including Internet Web sites, e-mail, listserves and Usenet and Bitnet discussion groups, to gather news and information, to communicate with other students and individuals and to ask questions of and consult with sources. School officials will apply the same criteria used in determining the suitability of other educational and information resources to attempts to remove or restrict student media access to on-line and electronic material. Just as the purchase, availability and use of media materials in a classroom or library does not indicate endorsement of their contents by school officials, neither does making electronic information available to students imply endorsement of that content. Although faculty advisers to student media are encouraged to help students develop the intellectual skills needed to evaluate and appropriately use electronically available information to meet their newsgathering purposes, advisers are not responsible for approving the on-line resources used or created by their students.

3. Acceptable Use Policies

The Board recognizes that the technical and networking environment necessary for on-line communication may require that school officials define guidelines for student exploration and use of electronic information resources. The purpose of such guidelines will be to provide for the orderly, efficient and fair operation of the school's on-line resources. The guidelines may not be used to unreasonably restrict student use of or communication on the on-line media. Such guidelines may address the following issues: file size limits, password management, system security, data downloading protocol, use of domain names, use of copyrighted software, access to computer facilities, computer hacking, computer etiquette and data privacy.

III. ADVISER JOB SECURITY

The student media adviser is not a censor. No person who advises a student publication will be fired, transferred or removed from the advisership by reason of his or her refusal to exercise editorial control over student media or to otherwise suppress the protected free expression of student journalists.

IV. NON-SCHOOL-SPONSORED MEDIA

A. Non-school-sponsored student media and the students who produce them are entitled to the protections provided in section II(D) of this policy. In addition school officials may not ban the distribution of non-school-sponsored student media on school grounds. However, students who distribute material describe in section II(B) of this policy may be subject to reasonable discipline after distribution at school has occurred.

1. School officials may reasonably regulate the time, place and manner of distribution.

(a) Non-school-sponsored media will have the same rights of distribution as official student media;

(b) "Distribution" means dissemination of media to students at a time and place of normal school activity, or immediately prior or subsequent thereto, by means of handing out free copies, selling or offering copies for sale, accepting donations for copies of the media or displaying the media in areas of the school which are generally frequented by students.

2. School officials cannot:

(a) Prohibit the distribution of anonymous literature or other student media or require that it bear the name of the sponsoring organization or author;

(b) Ban the distribution of student media because it contains advertising;

(c) Ban the sale of student media; or

(d) Create regulations that discriminate against non-school-sponsored media or interfere with the effective distribution of sponsored or non-sponsored media.

B. These regulations do not apply to media independently produced or obtained and distributed by students off school grounds and without school resources. Such material is fully protected by the First Amendment and is not subject to regulation by school authorities. Reference to or minimal contact with a school will not subject otherwise independent media, such as an independent, student-produced Web site, to school regulation.

V. PRIOR RESTRAINT

No student media, whether non-school-sponsored or official, will be reviewed by school administrators prior to distribution or withheld from distribution. The school assumes no liability for the content of any student publication, and urges all student journalists to recognize that with editorial control comes responsibility, including the responsibility to follow professional journalism standards each school year.

VI. CIRCULATION

These guidelines will be included in the handbook on student rights and responsibilities and circulated to all students.

Student Press Law Center: Sample press release

The following is a sample press release that might be issued by a student media staff to contest administrative censorship. A press release provides accurate information—with a point of view—to news media, community members and others who might provide public attention or support. It generally follows a standard news story format, similar to that shown below. In addition to providing the basic facts, a press release often includes quotes from those involved and/or their supporters that offer their perspective on the controversy (and that are often used verbatim in third-party news coverage). It also tells those interested where they can obtain additional information. Because a press release is often the public's first news of a controversy or conflict and their first contact with the students involved, it is essential that it be well-reasoned, well-written, accurate and polished.

FOR IMMEDIATE RELEASE

April 11, 2008

Principal Confiscates Student Newspapers Claiming They ‘Would Hurt School Spirit’

Students say censored column raises legitimate concerns about quality of education they receive, plan anti-censorship protest; press lawyer says censorship is illegal

CENTRAL CITY — More than 1,000 copies of Central High School's student newspaper remain locked away in the principal's office and CHS students say the time has come for them to take a stand to contest what they allege is an unfair and unlawful act of censorship by school district officials.

According to Student Times Managing Editor Jessica Diaz, she and two other student editors met with CHS Principal Barbara Smith and district Superintendent Tim Riley Monday afternoon, but came to no agreement.

“As far as they were concerned, the matter is closed. It's not. Locking up newspapers because you don't like what's in them is just not something government officials can do in this country and expect people to simply shrug their shoulders,” Diaz said. “We intend to fight this.”

Smith ordered CHS custodians to confiscate all copies of the April 4 issue of the Student Times shortly after the newspaper's printer delivered them to the school last Tuesday.

Smith told the staff she confiscated the newspapers because of a student opinion column that claimed there is a "lack of motivation" from students and staff at school, Diaz said.

Diaz said administrators told her and her staff that the editorial “reflects poorly” on the school and would “hurt school spirit and morale.”

In the Student Times column, Opinions Editor Devery Sheffield wrote that he felt CHS suffered from a "lack of motivation on the part of both students and staff to get the most out of their educational experience at Central." Among other things, he pointed to students who showed up unprepared for class and too many teachers who showed little passion for their work and "make it obvious they are simply counting the days until retirement."

"Such attitudes about teaching and learning create a less-than-ideal educational environment, which may help explain Central's declining standardized scores," he wrote.

School officials did not dispute the facts contained in the editorial, Diaz said.

Frank LoMonte, executive director of the Student Press Law Center — a nonprofit group near Washington, D.C., that provides legal help to student media — said the administration's justification for withholding the newspaper is not legally sufficient.

"The First Amendment makes clear that public school officials can't censor otherwise lawful student speech simply because they think it makes the school look bad," LoMonte said.

Diaz believes the censorship is all about school officials wanting to protect the school's image.

"They want a public relations newsletter that is full of happy stories. Well, the fact is we are a newspaper. We report the news — and not all news is happy news. We think Central High School can be better than it is. That's all we are trying to say. And — as students at Central most affected by what goes on here — we think we should be allowed to say so."

To protest the district's censorship, Diaz said the Student Times staff will cover their mouths with tape and silently distribute copies of the First Amendment to students as they arrive on campus Thursday morning before the opening bell.

She said the staff has also created an off-campus Web site using home computers, where they have posted the contested editorial as well as other information about the controversy.

"We are proud of our award-winning newspaper and the work we do and we want our readers and other community members to make up their own minds about the censored editorial," Diaz said.

The Web site address is: <http://www.studenttimescensorship.com>.

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The Student Times was founded in 1957 and is the award-winning, student-edited newspaper at Central High School in Central City, Anystate.

Activities to promote First Amendment awareness:

- Scholastic Journalism Week: sponsored by JEA, this annual event supports journalism in schools across the country. For a list of suggested activities, visit:
<http://www.jea.org/resources/jweek/index.html>
- Educate journalists about freedom of speech: visit http://www.firstamendmentschools.org/resources/lessonplans_press.aspx and <http://splc.org/presentations/> for lesson plans
- Follow news about student press rights, such as SPLC news flashes (<http://www.splc.org/newsflash.asp>)
- Place posters and signs around campus with the First Amendment
- Shoot PSAs for school broadcast/morning announcements
- Start a poster design contest for graphic arts/design classes
- Decorate and wear T-shirts with the five freedoms from the First Amendment; hand out buttons, shirts, pins, etc to commemorate the First Amendment and/or Scholastic Journalism Week
- Memorize the First Amendment as a class/staff or have a contest to see who can recite it
- Celebrate Constitution Day on September 17



Sources:

Prior review vs. prior restraint:

<http://www.studentpress.org/nsipa/trends/~law0602hs.html>

Mythbusting:

<http://www.friendsofthespoke.org/pdf/SPLC.MYTHBUSTERS.pdf>

Guide to *Hazelwood*: <https://www.splc.org/pdf/HazelwoodGuide.pdf>

Hazelwood diagram: <https://www.splc.org/legalresearch.asp?id=38>

SPLC model guidelines: <https://www.splc.org/legalresearch.asp?id=6>

Sample press release:

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

Jea statements: <http://www.jea.org/about/statements.html>

"The **liberty** of the press is essential to the
security of the state"

--John Adams