

## Colorado Student Free Expression Law

(Cite as: Colo. Rev. Stat. 22-1-120)

Section 22-1-120 — Rights of free expression for public school students

Became law June 7, 1990

The expansion of specified student publications to include online and video seemed like a no-brainer.

(1) The general assembly declares that students of the public schools shall have the right to exercise freedom of speech and of the press, and no expression contained in a student publication, **WHETHER PRINTED, BROADCAST, OR ONLINE, AND** whether or not such publication is school-sponsored, **IS** subject to prior restraint except for the types of expression described in subsection (3) of this section. **AN ADVISOR MAY ENCOURAGE EXPRESSION** which is consistent with high standards of English and journalism.

(2) If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.

(3) Nothing in this section shall be interpreted to authorize the publication or distribution by students of the following:

- (a) Expression which is obscene;
- (b) Expression which is libelous, slanderous, or defamatory under state law;
- (c) Expression which is false as to any person who is not a public figure or involved in a matter of public concern;
- (d) Expression which creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school or which violates the rights of others to privacy.

(4) The board of education of each school district shall adopt a written publications code, which shall be consistent with the terms of this section and shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district's jurisdiction. Said publications code shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of the 1991-92 school year and at the beginning of each school year thereafter.

(5) (a) Student editors of school sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications advisor of school-sponsored student publications within each school to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism.

(b) For the purposes of this section, "publications advisor" means a person whose duties include the supervision of school-sponsored student publications.

(6) If participation in a school-sponsored publication is part of a school class or activity for which grades or school credits are given, the provisions of this section shall not be interpreted to interfere with the authority of the publications advisor for such school-sponsored publications to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experience that the publication is intended to provide.

(7) No expression made by students in the exercise of freedom of speech or freedom of the press shall be deemed to be an expression of school policy, and no school district employee, or parent, or legal guardian, or official of such school district shall be held liable in any civil or criminal action for any expression made or published by students.

(8) Nothing in this section shall be construed to limit the promulgation or enforcement of unlawful school regulations designed to control gangs. For this purpose of this section, the definition of "gang" shall be the definition found in section 19-2-1111(2)(d)(II), C.R.S.

**(9) A PUBLIC SCHOOL EMPLOYEE MUST NOT BE DISMISSED, SUSPENDED, DISCIPLINED, REASSIGNED, TRANSFERRED, OR OTHERWISE RETALIATED AGAINST SOLELY FOR ACTING TO PROTECT A STUDENT ENGAGED IN THE CONDUCT AUTHORIZED PURSUANT TO THIS SECTION OR FOR REFUSING TO INFRINGE UPON CONDUCT THAT IS PROTECTED BY THIS SECTION OR THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION.**

This final sentence of subsection 1 now says, "This section shall not prevent the advisor from encouraging expression which is consistent with high standards of English and journalism."

The legislative attorney who drafted the final language was trying to avoid "shall not" or "shall be" (in the same subsection).

It seems a bit wishy-washy and is contradicted by subsection 5 language that clearly states that it is the responsibility of the adviser to teach and encourage high standards of English and journalism.

SPLC thought the "may" was fine as it avoided adding something mandatory. Colorado is such a local control state that many legislators favor avoiding mandates for schools.

Subsection 9 is the key addition to the original law and explicitly spells out a protection for advisers who might come under fire merely for supporting lawful expression by publication students.

Currently, advisers are in a sort of gray area, owing allegiance to their employer (public schools) and to their students.

Advisers are not given total immunity by the new subsection. Failure to help enforce subsection 3, for instance, is difficult to defend.

Advisers need to at least read over expression prior to publishing or would have to forfeit that duty to administration (and that brings a new set of issues).