



ADMINISTRATIVE PROCEDURE 5101 Guidelines for Regulating Student Speech Through Clothing

Responsible: Office of the General Counsel

PURPOSE

This administrative procedure shall establish guidelines for regulating student speech through clothing in the Washoe County School District.

PROCEDURE

1. The District recognizes all cultures and ethnic groups as being important to our society and is committed to creating and fostering an educational environment that respects the cultural diversity of the various communities within the District. Every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
2. The District's dress requirements are in no way an attempt to silence free expression but to create a productive, uninterrupted, and safe learning environment.
3. The District does not seek to restrict or ban a student's wearing of religious clothing, with the exception of unprotected speech. Parents having religious-based concerns regarding the dress code or a site-based uniform policy are encouraged to discuss them with the principal.
 - a. Unprotected speech may include, but is not necessarily limited to, the following: obscenity, fighting words, defamation (includes libel, slander), child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes, and speech which is vulgar or profane. Unprotected speech includes any article or apparel which displays obscene words, pictures, or designs; speech which is sexually suggestive, or has a pro-alcohol, tobacco and/or controlled or illegal substances message; clothing or items that symbolize gang-related behavior; speech which is derogatory in nature, does not comply with the District's policies and regulations, interferes with the educational process and/or poses a threat to the safety of students or other individuals.
4. The following are guidelines to be used by site administrators in regulating student speech through clothing:
 - a. Is the message verbally or visually lewd or obscene?
 - i. The United States Supreme Court has defined obscene speech by stating, "(1) the proscribed material must depict or describe sexual conduct in a patently offensive way, (2) the conduct must be

specifically described in the law, and (3) the work must, taken as a whole, lack serious value and must appeal to a prurient interest in sex.

- ii. Obscenity is defined by Nevada Revised Statutes (NRS 201.235(4)) as "any item, material or performance which:
 1. An average person applying contemporary community standards would find, taken as a whole, appeals to prurient interest;
 2. Taken as a whole lacks serious literary, artistic, political or scientific value; and
 3. Does one of the following:
 - a. Depicts or describes in a patently offensive way ultimate sexual acts, normal or perverted, actual or simulated.
 - b. Depicts or describes in a patently offensive way masturbation, excretory functions, sadism or masochism.
 - c. Lewdly exhibits the genitals."
- b. Does the content contain defamatory remarks?
 - i. Black's Law defines Defamation as, "A false written or oral statement that damages another's reputation."
- c. Is an immediate danger created to students?
 - i. The "clear and present danger" test for restricting freedom of expression or association is met when expression is directed to "inciting or producing imminent lawless action and is likely to incite or produce such action." (Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S.Ct. 1827, 1829, 23 L.Ed.2d 430 (1969).)
- d. Does the message encourage students towards illegal act?
 - i. Messages which promote underage drinking, illegal drug use, violence, etc., are prohibited.
- e. Is the speech a substantial disruption to the orderly operation of the school?
 - i. Conduct by the student, in class or out of it, which for any reason whether it stems from time, place, or type of behavior materially disrupts classwork or involves substantial disorder or invasion of the

rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech. (*Tinker v. Des Moines School District*, 393 U.S. 503, 513, 89 S.Ct. 733, 740, 21 L.Ed.2d 731 (1969))

- f. Does the speech violate a specific school rule or policy?
 - i. This could include any Board Policy, Administrative Regulation, or school rule as reflected in the Parent/Student Handbook.
- 5. Any appeal of the principal's decision to prohibit a particular item of clothing or accessory shall follow the District's public complaint process.

DESIRED OUTCOMES

- 1. This Administrative Procedure is designed to recognize that every student is entitled to develop a sense of personal and cultural identity that is significant and individual, but also respectful towards the identities of others.
- 2. This Administrative Procedure established guidelines designed to create a productive, uninterrupted, and safe learning environment

IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS

- 1. This administrative procedure reflects the goals of the District's Strategic Plan.
- 2. This Administrative Regulation aligns with the following WCSD governing documents:
 - a. Board Policy 5105, Student Uniforms – Adoption of a Site-Based Policy, and its associated administrative regulation.
 - b. Administrative Procedure OSP-P002, Student Dress
 - c. Board Policy 5039, Student Discipline
 - d. Board Policy 1312, Public Complaint Procedure
- 3. This administrative procedure complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC).
- 4. This administrative procedure complies with federal laws and regulations.

REVIEW AND REPORTING

- 1. This procedure and any accompanying documents will be reviewed bi-annually, in the year opposite the regular session of the Nevada State Legislature.

REVISION HISTORY

Date	Revision	Modification
10/06/2014	1.0	Adopted