

Adopted: June 24, 2014

Revised: _____

BLUESKY CHARTER SCHOOL POLICY No. 5.7.3 STUDENTS' FREE SPEECH RIGHTS

I. PURPOSE

The purpose of this policy of the Board of BlueSky Charter School is to set forth the standards regarding acceptable student speech.

II. POLICY STATEMENT

The Board of BlueSky Charter School recognizes and appreciates the importance of protecting the free speech rights of students. At the same time, it is important that such speech does not interfere with the educational mission of the school nor impair the rights of others. This policy will delineate the acceptable bounds of student speech with due consideration for both important values.

III. DEFINITION OF SPEECH

“Speech” includes any form of communication in which it reasonably appears that a student is intending to convey a message, whether verbal, written, electronic or non-verbal. “Speech” specifically includes messages that are displayed on a student’s clothing.

IV. TRUE THREATS

A. Definition. A “true threat” is a communication, whether verbal, written, electronic or non-verbal, which a reasonable person would interpret as a serious intent to cause injury to another. In determining whether a student has communicated a true threat, the Board of BlueSky Charter School will consider the following factors:

1. The reaction of those who heard the alleged threat;
2. Whether the threat was conditional;
3. Whether the person who made the alleged threat communicated it directly to the object of the threat;
4. Whether the speaker had a history of making threats against the object of the threat;
5. Whether the recipient had reason to believe that the speaker had a propensity to engage in violence.

This policy does not constitute legal advice; any questions regarding this policy should be directed to your attorney.

6. Even if the speaker did not communicate the threat directly to the object of the threat, the speech will not be protected if the object of the threat learned about the threat and reasonably believed that the threat was serious.
- B. Consequences for True Threats. If a student's communication meets the definition of a "true threat", the speech will be subject to discipline according to the student conduct code. True threats will be subject to discipline regardless of where the speech occurred. Discipline that may be imposed includes expulsion.

V. LEWD AND OFFENSIVE SPEECH

- A. Definition. "Lewd and offensive speech" is speech that is offensive because it is inappropriately sexual in nature. It does not include speech that is offensive simply because the listener does not agree with the message.
- B. Consequences for Lewd and Offensive Speech. If a student's communication meets the definition of "lewd and offensive speech", the speech will be subject to discipline according to the student conduct code. Lewd and offensive speech that is communicated off-campus, outside of a school-sponsored activity and without the use of school resources will not be subject to discipline.

VI. SPEECH THAT OCCURS IN SCHOOL-SPONSORED ACTIVITIES

- A. Definition. "School-sponsored speech" is student speech that occurs during activities over which the school has substantial input or control. Whether speech is considered to be "school sponsored" will be determined by consideration of one or more of the following factors:
1. When and where the speech occurred;
 2. To whom the speech was directed and whether recipients were a "captive audience";
 3. Whether the speech occurred during an event or activity organized by the school conducted pursuant to official guidelines, or supervised by school officials; or
 4. Whether the activities where the speech occurred were designed to impart some knowledge or skills to the students.
- B. Basis for Imposing Discipline. The basis for determining whether student speech in school sponsored activities can be disciplined is whether disciplining the speech is "reasonably related to a legitimate pedagogical concern." These concerns include:
1. Issues concerning the age, immaturity and sophistication of the students;
 2. Use of vulgarity and profanity;
 3. Conformity or non-conformity to shared community values;

4. Lack of neutrality on religious matters;
 5. Quality or professionalism;
 6. Existence of bias or prejudice;
 7. State statutes and regulations;
 8. Other school board policies.
- C. Consequences. If the student speech meets the criteria above, it may be disciplined in accordance with the student conduct code up to and including expulsion. Student speech that occurs in a school-sponsored activity off-campus may be disciplined as well as speech that occurs on campus.

VII. SPEECH THAT ADVOCATES ILLEGAL DRUG OR ALCOHOL USE

- A. Prohibition. Student speech that can reasonably be construed to advocate illegal drug or alcohol use and that is expressed during school hours or in a school sponsored activity is prohibited.
- B. Consequences. If the student speech meets the criteria above, it may be disciplined in accordance with the student conduct code, up to and including expulsion. Student speech that occurs in a school-sponsored activity off-campus may be disciplined as well as speech that occurs on campus.

VIII. REGULATING THE CONTENT OF STUDENT SPEECH THAT DOES NOT FALL INTO ANY OF THE CATEGORIES ABOVE

- A. Regulating the Content of a Student's Speech. When a student's speech does not fall into any of the categories contained in sections IV through VII above, the speech may be subject to discipline if the administration has reason to anticipate that: The speech will cause:
1. The speech will cause a substantial disruption of or material interference with the work of the school; or
 2. The speech would substantially interfere with or impinge upon the rights of others.
- B. Forecasting Substantial Disruption and/or, Material Interference with the Work of the School or the Rights of Others. In determining whether a student's speech will cause disruption:
1. An undifferentiated fear or apprehension of a disturbance is not enough.

2. The school administration must be able to articulate substantial facts which reasonably support a forecast of likely disruption, but need not wait for an actual disruption to occur.
 3. Prior disruptions and incidents need not have happened in the context of classroom instruction to be relevant and a prior incident does not have to have occurred at school to be relevant.
 4. There does not need to be a direct causal connection between the expression and disruption.
- C. **Disciplining the Content of Student Speech.** If the administration determines that there are facts sufficient to establish that the student's speech will likely cause, or has caused a substantial disruption of or material interference with the work of the school or the rights of others, the speech may be disciplined according to the student conduct code. Discipline may include suspension through expulsion.
- D. **Disciplining Speech that Occurs Off-Campus.** Speech may be subject to discipline regardless of where the speech occurred and regardless of whether school resources were used to communicate the student's speech. Off-campus speech will be subject to discipline if the speech causes substantial disruption at school or materially interferes with the work of the school or the rights of others.

Legal References: U.S. Const. Am. 1
Bethel v. Frazer, 478 U.S. 675 (1986)
B.W.A. v. Farmington, 508 F. Supp. 2d 740 (E.D. Mo. 2007)
Chambers v. Babbitt & Independent Sch. Dist. 833, 145 F.Supp.2d 1068 (D. Minn. 2001)
Chandler v. McMinnville Sch. Dist., 978 F.2d 524, 529 (9th Cir. 1992)
Doe v. Pulaski, 306 F.3d 616 (8th Cir. 2002)
Hazelwood v. Kuhlmeier, 484 U.S. 260 (1988)
Morse v. Frederick, 551 U.S. 393 (2007)
Phillips v. Anderson County Sch. Dist. No. 5, 987 F. Supp. 488, 492 (D.S.C. 1997)
Tinker v. Des Moines Public Schools, 393 U.S. 503 (1969)