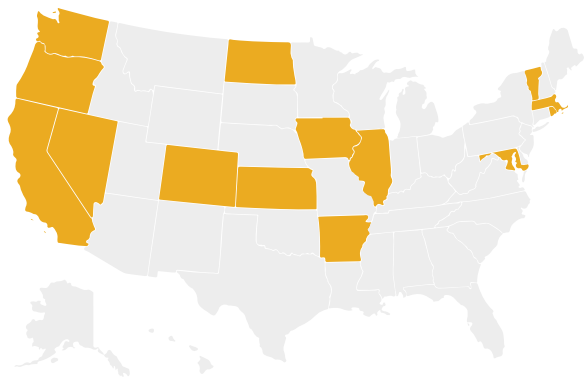


DETERMINING WHETHER AN ACT OF CENSORSHIP BY PUBLIC SCHOOL OFFICIALS IS LEGALLY PERMISSIBLE

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STEP 1. STATE LAW ANALYSIS



IS THE SCHOOL IN ANY OF THE FOLLOWING STATES?

Arkansas (Ark. Code §§ 6-18-1201 - 6-18-1204)
California (Cal. Ed. Code §§ 48957)
Colorado (Colo. Rev. Stat. § 22-1-120)
Illinois (105 Ill. Comp. Stat. § 80)
Iowa (Iowa Code § 280.22)
Kansas (Kan. Stat. Ann. §§ 72.1504 - 72.1506)
Maryland (Md. Code, Ed. § 7-121)
Massachusetts (Mass. Gen. Laws ch. 71, § 82)
Nevada (Nev. Rev. Stat. Ann. § 388.077)
North Dakota (N.D. Cent. Code § 15.1-19-25)
Oregon (Or. Rev. Stat. § 336.477)
Rhode Island (R.I. Gen. Laws § 16-109-1 - 16-109-3)
Vermont (Vt. Stat. Ann. tit. 16 §§ 180 & 1623)
Washington (Wash. Rev. Code § 28A.600.027)

Some also include the District of Columbia and Pennsylvania in this list, which have regulations protecting student press freedom that may have the force of law.

IF SO, THESE STATES HAVE STATUTES DEFINING STUDENT PRESS RIGHTS that are more protective than the rights embodied in the First Amendment. Thus you look to the provisions of the state law to determine if the censorship fits within one of the categories of unprotected speech it lists. If yes, the censorship is permitted. If not, the censorship is not allowed. In these states, schools can only censor when they can show the speech meets at least one criteria listed in their state law.

STEP 2. FIRST AMENDMENT ANALYSIS

IF THE SCHOOL IS NOT IN ONE OF THOSE STATES, proceed to determine whether the First Amendment prohibits the school's censorship. To do that, ask each of the following questions:

- 1. Is the content being censored pervasively vulgar, lewd or indecent?** (*Bethel School District v. Fraser* allows this kind of content to be censored.)
- 2. Does the content being censored advocate illegal drug use?** (*Morse v. Frederick* allows this kind of content to be censored.)
- 3. Will the content being censored create a material and substantial disruption of school activities or an invasion of the rights of others?** (*Tinker v. Des Moines Independent Community School District* allows this kind of content to be censored.)
- If the answer to each of those questions is **NO**, then ask the next series of questions. (These are required by the *Hazelwood School District v. Kuhlmeier* decision.)
 - a. Is the publication in question school-sponsored?** (Has the school provided its name or resources to support the publication including a faculty adviser or the use of school equipment). If **YES**, continue. If **NO**, the censorship is not allowed and will be rejected.
 - b. Is the publication a part of the school curriculum?** (Whether tied to a class or produced outside of class, does it serve the curricular mission of the school?) If **YES**, continue. If **NO**, the censorship is not allowed and will be rejected.
 - c. Is the publication operating as a designated public forum?** (Have student editors been given the authority to determine content by school policy or practice?) If **YES**, continue. If **NO**, the censorship is not allowed and will be rejected.
 - d. Is the decision by school officials to censor based on a reasonable educational justification?** (*Hazelwood* allows this kind of content to be censored.) If **YES**, continue. If **NO**, the censorship is not allowed and will be rejected.
 - e. Is the censorship viewpoint neutral?** (Is it not intended to silence a particular viewpoint?) If **YES**, the censorship is allowed.* If **NO**, the censorship is not allowed and will be rejected.

*Some courts have refused to apply this viewpoint neutral requirement.