



**Responsible Office:** Office of the General Counsel

## **BOARD POLICY 4500**

### **STAFF FREEDOM OF SPEECH and FREEDOM OF EXPRESSION**

#### **PURPOSE**

The Board of Trustees (“Board”) supports the constitutionally guaranteed right to freedom of speech and freedom of expression for all members of the Washoe County School District (“District” or WCSD”) community. As schools are a natural venue for a wide variety of expression, the District seeks to strike a balance between encouraging and promoting individual expression and ensuring such activities do not interfere with the District’s educational mission or the rights of others. This policy, and any associated documents, addresses those ideals by creating guidelines related to the rights and responsibilities of District staff.

#### **POLICY**

##### **1. Guiding Principles**

- a. The District seeks to ensure the rights of District staff are protected with respect to the exercise of free speech and free expression. Those rights, although not absolute, are addressed in the United States Constitution and the Nevada State Constitution.
  - i. “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of people peaceably to assembly, and to petition the government for a redress of grievances.” (First Amendment to the U.S. Constitution)
  - ii. “Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” (Article 1, Section 9 of the Constitution of the State of Nevada)
- b. When a District staff member makes statements pursuant to his/her official duties, the employee is not speaking as a private citizen regarding a public concern and, therefore, such speech is not protected speech for First Amendment purposes.

- c. Staff freedom of speech and/or freedom of expression may not be used to engage in harassment, sexual harassment, discrimination, or the intimidation of another person.
- d. Freedom of speech refers to a person's right to express his/her ideas. Freedom of expression refers to an act of seeking, receiving or imparting information or ideas, regardless of the medium used. The terms include, but are not limited to, the spoken word, clothing, gestures, images and video, and posts to social media.
- e. The District encourages the genuine discussion of issues or use of materials for legitimate academic, educational, or instructional purposes.
- f. Staff are encouraged to use appropriate internal channels regarding supervisory or administrative concerns.
  - i. The District recognizes the powerful impact of communication through social media. The participation in and sharing of information by staff through social media can be a beneficial tool to faculty and their students. When used responsibly and safely, the use of social media may be incorporated into the educational environment to support traditional instruction.

## 2. Guiding Practices

- a. District employees do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”<sup>1</sup> However, an employee does not have an absolute constitutional right to use a District building, to include a school or classroom, for unlimited speech or expression purposes.
- b. Appropriate and allowable staff speech or expression may include distributing literature, displaying signs, petitioning for change, and disseminating information concerning issues of public concern outside of work hours. However, these activities are also governed by procedures established by Board policy such as distribution of materials to students or political activity at school. Refer to the appropriate policy, regulation or procedure for additional information.
- c. The District may take action, to include discipline, within the confines of due process and the employee negotiated agreements as applicable, when a staff member, through speech or expression, causes a substantial disruption to the operation of the District. The District may limit or prohibit

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<sup>1</sup> *Tinker v. Des Moines Independent Community School District*

speech and/or expression by a staff member if the District can demonstrate reasonable cause that:

- i. It materially and substantially interferes with school activities; the staff member's ability to perform assigned duties; or the rights of other staff or students;
  - ii. The speech/expression does or could create substantial interference to the educational mission of the District;
  - iii. The speech/expression violates a District policy or regulation or a state or federal law or regulation; or
  - iv. The speech/expression challenges a supervisor or other staff by undermining his/her authority, resulting in insubordination, or creating a hostile environment. Generally, a hostile work environment exists when an employee experiences workplace harassment and fears going to work because of the offensive, intimidating, or oppressive atmosphere generated by the harasser. Staff are encouraged to use appropriate internal channels regarding supervisory or administrative concerns. In such cases, the District shall initiate an unbiased investigation into any such allegations. See Administrative Regulation 4425, Staff Complaint Process: Harassment, Sexual Harassment and Intimidation.
- d. Personal Views and Opinions. Staff members have the right to speak out on matters of public interest or of a public nature and generally cannot be disciplined or suffer negative consequences for such speech or expression. However, District employees are not always free to express their personal opinions and beliefs. When a staff member goes public with strictly personal concerns or engages in unprotected speech which includes statements that are defamatory or cause a substantial disruption to the operation of the District or of a school, the District may take appropriate action.
- e. Social Media. Staff shall be held to the same professional standards in his/her use of social media as for any other public conduct.
- f. Academic Freedom. Academic freedom includes the right of teachers to speak about a subject in the curriculum, raise questions and select appropriate teacher materials and methods. Staff should consider the age and maturity of students when engaging in discussion of topics that are of public interest, in the news, or outside the curriculum. Staff do not have an absolute right to academic freedom and the District retains control of the curriculum, both what is taught and how it is taught.

- g. Publications. The District retains the right to exercise control over publications and activities that appear to represent the District, a school and/or its students. The District/school may limit controversial subjects if the District/school is sponsoring the speech, such as with school newsletters or student publications, if the content would substantially disrupt the ability of the District/school to perform its educational mission or is used to engage in bullying, cyber-bullying, or the intimidation of another person.
  - i. District staff acting as an advisor for a student publication shall be protected from discipline, to include dismissal, suspension, or retaliation, when he/she acts to take responsible and appropriate action to protect a student engaged in protected free speech or expression related to the student publication.
- h. Religion.
  - i. Staff have the right to sincerely held theistic and non-theistic, ethical and moral beliefs and practices. The District shall provide staff with appropriate religious accommodations to the extent possible and in a manner that does not disrupt or interfere with the duties of the employee or other employees, student instruction, or activities of the school or workplace.
  - ii. The District shall not seek to restrict or ban the wearing of religious clothing, with the exception of unprotected speech.
- i. Patriotic Observances. The District shall encourage staff to express patriotism for the United States by reciting the Pledge of Allegiance, historical documents or singing official anthems. All staff shall behave in a respectful manner during such observances.

## DEFINITIONS

- 1. Unprotected speech may include, but is not limited to:
  - a. obscenity, fighting words, fraudulent misrepresentation, defamation (includes libel and slander), child pornography, perjury, blackmail, incitement to imminent lawless action, true threats, solicitations to commit crimes, and speech which is vulgar or profane.
  - b. any article of clothing or apparel which displays obscene words, pictures, or designs;
  - c. speech which is sexually suggestive, or has a pro-alcohol, tobacco and/or controlled or illegal substances message;
  - d. clothing or items that symbolize gang-related behavior;

- e. speech which 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.
2. "Social media" includes web-based, interactive communication between individuals, organizations, or communities, which includes but is not limited to web logs (e.g. blogs, electronic forums such as chat rooms, video-sharing websites (e.g. YouTube, Vimeo), editorial comments posted on the internet, and social networking sites including, but not limited to Facebook, Twitter, Google+, Instagram, LinkedIn, Wikispace, and Edmodo.

### **DESIRED OUTCOMES**

1. Through this policy, the Board of Trustees encourages:
  - a. Diverse points of view and free inquiry;
  - b. A respectful learning and working environment free from harassing or discriminatory speech or expression.

### **IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS**

1. This policy reflects the goals of the District's Strategic Plan and aligns/complies with the following governing documents of the District, to include:
  - a. Board Policy 4505, Standards of Professional Conduct
  - b. Board Policy 1140, Distribution and Display of Information and Non-School Materials
  - c. Board Policy 7120, Community Use of School Facilities
  - d. Board Policy 7200, 21<sup>st</sup> Century and Digital Learning
  - e. Board Policy 1310, Political Activity in Schools
  - f. Board Policy 9201, Bullying, Harassment and Discrimination Prohibited
2. This policy complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to include:
  - a. Chapter 391, Personnel
3. This policy complies with federal laws and regulations, to include:
  - a. U.S. Constitution
  - b. Family Educational Right to Privacy Act (FERPA)

**REVIEW AND REPORTING**

1. This document shall be reviewed as part of the bi-annual review and reporting process, following each regular session of the Nevada Legislature. The Board of Trustees shall receive notification of any required changes to the policy as well as an audit of the accompanying governing documents.
2. Administrative regulations, and/or other associated documents, will be developed as necessary for the consistent administration of this policy.

**REVISION HISTORY**

Date	Revision	Modification
9/26/2017	1.0	Adopted