



August 11, 2021

Dr. Penny Schwinn
Commissioner
Tennessee Department of Education
710 James Robertson Parkway
Nashville, TN 37243

Submitted via E-mail (EDU.PublicComments@tn.gov)

RE: Proposed Draft Rule Promulgated to Implement Section 51 of Chapter 493 of the Public Acts of 2021(Tenn. Code Ann. § 49-6-1019)

Dear Dr. Schwinn:

As requested, we submit the following comments in response to the Proposed Draft Rule Promulgated to Implement Section 51 of Chapter 493 of the Public Acts of 2021(Tenn. Code Ann. § 49-6-1019).

The Student Press Law Center is a non-partisan, non-profit 501(c)(3) corporation established in 1974 to provide free legal assistance to student journalists around the country. The SPLC works at the intersection of law, journalism and education to promote, support and defend the First Amendment and press freedom rights of student journalists and their advisers at the high school and college level. The SPLC uses the law to help students of all ages meaningfully participate in civic life and learn essential skills, ethics and values through the vehicle of journalism.

The SPLC believes the regulations, as drafted, pose a serious threat to Tennessee's student journalists, journalism educators and journalism education as a whole. In particular, we are deeply concerned about the chilling effect these regulations could have on Tennessee's student journalists. Fundamentally, the state is wading into dangerous territory by positioning itself as the arbiter of ideas in environments where the free flow of information should be promoted and encouraged as young people learn how to become responsible and engaged civic-minded members of society.

The SPLC is providing comments on the proposed rules, not the underlying merits of the law itself.

The regulations as drafted directly conflict with the First Amendment rights of student journalists who produce content for student publications that may touch on any of the vague concepts and broad topical areas these regulations prohibit. It is unclear whether a student publication like a newspaper or yearbook would be considered a "supplemental instructional material," but if any product of student media is categorized as such, there are grave free speech and free press implications for these students, along with potential severe financial penalties for schools, that cannot be ignored.

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With these regulations in place, student journalism faces an unprecedented threat to its traditional role as a forum for student news and opinion. Student editors, for example, may not be able to publish point/counter-point opinion pieces side by side that someone could argue would “promot[e] division between, or a resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people.” Such content is a staple for many student publications wanting to reflect and support the complexity and diversity of viewpoints on important issues in the life of a school or broader community.

In addition, news stories or opinion pieces involving religion, such as the issue of keeping “Christ” in Christmas also run the risk of setting off a parent who may then report the school as violating the state law. Last year, a conservative student columnist in Wisconsin was reportedly fired for writing a column opposing the defunding of police departments. The current regulations could be read to encourage censorship by frightened school officials of just this type of writing.

“Promoting division” is a highly subjective standard and, again, leaves student journalists vulnerable to complaints filed about their work that could cost the school significant financial resources. Surely the lawmakers would be disappointed to see the law they crafted being used as a weapon to stifle student voices and scare them out of thinking critically.

Additionally, the “prohibited concepts” in the regulations make it nearly impossible for Tennessee students to study journalism as journalism educators and practitioners recommend. Students cannot learn to identify and produce good journalism unless they can compare and critique examples of both good and bad journalism in the classroom. Under these regulations, however, students are effectively barred from studying or practicing balanced, ethical and well-researched journalism because school officials may now feel compelled to ban any story containing the mere hint of certain topics. The regulations are a substantial blow to the ability to teach journalism and put all of Tennessee’s student media at risk.

Under the current regulations, even the relatively benign documentation of a year-in-review spread for a student yearbook could be impacted. If a yearbook staff wants to publish a year-in-review spread where they highlight important events that took place in the world and in their community, school officials might attempt to prohibit them from publishing the spread if it mentions events that involve race or sex. Just this month SPLC was alerted to an egregious act of censorship in Arkansas where school officials tore out a matter-of-fact year-in-review spread in the yearbook after receiving backlash from the community because the spread merely mentioned the 2020 election and the death of George Floyd.

Similarly, there have already been instances of students whose Make America Great Again gear was blurred out of photos in the yearbook. Innocent photos like this will almost certainly end up being censored even more if student media is considered supplemental instructional material and parents or other members of the community consider the photos to be promoting division between nonviolent political affiliations.

Yearbooks are time-honored traditions of high school and crucial to documenting history. With these regulations in place, Tennessee students could face a lot more than just pages ripped out of their yearbooks and blurred photos. If not clarified, these regulations threaten to cost schools up to millions of dollars in education funding by simply allowing student journalists to record the events happening around them, as student yearbook and newspaper staff have done for generations.

As we raise this next generation of journalists to enter the world, it will be a disservice to everyone to discourage those students from approaching and covering important topics. A weakened press will fundamentally endanger our democracy.

There is no indication that the lawmakers intended this law to apply to students. The Student Press Law Center urges you to carve out clear and specific exemptions for student media to ensure that the teaching of and practice of journalism is not hampered.

We have tried to clearly identify the specific section of the proposed regulations addressed by our comments and have arranged them in the same order as the proposed regulations:

Section 0520-xx-xx-.02 (14) Definition of “Supplemental Instructional Materials”

We recommend that the Department clarify the definition to explicitly exclude student media as SIMs. We propose the following language:

Amend definition of “supplemental instruction materials” to add: “Supplemental instruction materials” does not include or mean student media.

Student Media is defined as: any material that is prepared, substantially written, published or broadcast, in any media, by a student journalist at a public middle, or high school under the direction of a student media adviser and distributed or generally made available to members of the student body. Student media includes but is not limited to yearbooks, student newspapers, literary magazines, broadcast or television media. Students are responsible for determining the news, opinion, feature, and advertising content of school-sponsored media.

Student Journalist is defined as: a middle or high school student who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in student media.

Section 0520-xx-xx-.03 (2) - Permissible Instruction

We recommend that the Department add to its list of permitted instruction the following:

- Teaching of professional standards of English and responsible journalism
- Guidance on the ethics of journalism
- Instruction on the law of the student press (including First Amendment-related rights and responsibilities)
- Teaching of the media’s role in democracy, and
- Feedback/constructive criticism on student journalistic work

Section 0520-xx-xx-.05 Reporting and Investigating Prohibited Concepts

Add:

No school is to be considered to have included or promoted a prohibited concept as a result of student work appearing in student media. A teacher or student media adviser may not be considered responsible or accountable for student work appearing in student media.

The Student Press Law Center appreciates the opportunity to comment on these proposed regulations. Thank you for your time and attention to these concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hadar Harris', with a stylized flourish extending to the right.

Hadar Harris
Executive Director