

# KNOW YOUR STUDENT PRESS FREEDOM LAW

NDCC 15-10-55 and 15.1-19-25

## A Guide to the John Wall New Voices Act

Signed by Gov. Jack Dalrymple in 2015, the law protects the press freedom of North Dakota's public school and college or university student journalists and their advisers. The law says that student journalists cannot be censored by school officials, except in certain very narrow circumstances, and that advisers cannot be penalized for refusing to infringe on their student's press rights.

This brochure, which was last updated in in November 2021, provides information about the law and its impacts on student journalists, advisers and school officials. It is not exhaustive and should not be considered a substitute for legal advice. If you have specific questions about the law, please contact the Student Press Law Center's legal hotline at [splc.org/legalrequest](https://www.splc.org/legalrequest).



The Student Press Law Center (SPLC) is an independent, non-partisan 501c(3) which 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 provides information, training and legal assistance at no charge to student journalists and the educators who work with them. For more information, visit [www.splc.org](https://www.splc.org) or contact our legal hotline at [splc.org/legalrequest](https://www.splc.org/legalrequest).



# EXECUTIVE SUMMARY

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Details about the law and its protections for public high school and college student journalists and advisers are enclosed within. To summarize, the law says:

- Student journalist determine the news, opinion, feature and advertising content of school-sponsored media.
- School officials can restrict school-sponsored media that
  - is libelous or slanderous;
  - constitutes an unwarranted invasion of privacy;
  - violates federal or state law; or
  - so incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies, or the material and substantial disruption of the orderly operation of the school.
- School districts cannot engage in prior restraint of lawful student speech.
- School officials must show justification for any limitation of unprotected student media expression before the censorship occurs.
- School districts must have a written student freedom of expression policy, which cannot be stricter than this law.
- Advisers and other school employees cannot be penalized for refusing to censor, interfere with or overrule student decisions relating to lawful school-sponsored media.

# PUBLIC-SCHOOL STUDENTS

NDCC 15.1-19-25

The law protects the press freedom of North Dakota's public school student journalists. The law says that student journalists cannot be censored by school officials, except in certain very narrow circumstances, and that advisers cannot be penalized for refusing to infringe on their students' press rights.

## School-sponsored media

The law protects from censorship anything that is "prepared, substantially written, published, or broadcast by a student journalist at a public school, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser." This includes newspapers, yearbooks, broadcast channels, audio or video programs, literary magazines, and other forms of media that may evolve in the future.

School-sponsored media does not include projects you do just for class, your personal social media, or anything you distribute to the student body on your own time without an adviser involved.

## Media content

Student journalists are responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. While your adviser may make suggestions and offer their opinions, you make the final decision about what is, and what is not, included. This also means that you are responsible for the final product, including any praise, criticisms, or (in very rare circumstances) any potential lawsuits.

## Censorship

Censorship can take many forms, but in general it is any action that is meant to stop, dissuade, or discourage you from producing or distributing

student media. Sometimes it is overt ("you may not publish this") but sometimes there are more subtle forms of censorship. This can include, but is not limited to, strong suggestions that a story be withheld or changed, "reviewing" a student piece until the publication deadline has passed, threats to change your grades unless some aspect of a piece is changed, outright or suggested cuts to your student media program's funding following a controversial piece, reassignment of your adviser, or the disappearance/destruction of student media once you have distributed it. If you believe you have experienced or are at risk of censorship, contact the Student Press Law Center's legal hotline immediately at [splc.org/legalrequest/](http://splc.org/legalrequest/).

If a school official believes your media contains unprotected speech, they are required to demonstrate this to you before they interfere with your ability to publish or distribute the media in question.

## Prior restraint

Prior restraint is when a school official tells you that you cannot publish a story or takes action to prevent you from doing so. The law is clear that no school district shall allow for any kind of prior restraint unless your media includes the unprotected speech detailed below.

## Unprotected speech

The law does allow for school officials to restrict some student media, just as you can be penalized for saying certain things in class.

School officials may only prohibit student media that:

- Is libelous or slanderous;
- Constitutes an unwarranted invasion of privacy;
- Violates federal or state laws; or
- So incites students so as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies, or the material and substantial disruption of the orderly operation of the school.

If content in your media does not fall into one of these categories, school officials — including your principal or your adviser — cannot stop you from producing or distributing it. They also cannot penalize you or your student media adviser for your decision to produce or distribute the media.

Following sound journalism practices and ethics will help ensure your work does not meet any of these criteria. If you are concerned that your work falls into one of these categories, you should talk with your adviser, the Student Press Law Center, or other legal counsel. You can do this at any point in the research, production or distribution process.

## School policy

Every school district is required to have a written student freedom of expression policy. This policy shall include “reasonable provisions for the time, place, and manner of student expression,” and may include “limitations to language that may be defined as profane, harassing, threatening or intimidating.” It cannot restrict your speech further than this law allows. A policy can be helpful in making sure everyone has the same understanding and expectation of the student media program. These policies are a public record. If your district does not have such a policy or it does not match what is described in this brochure, they may be inadvertently violating the law and you should contact the Student Press Law Center.

## If you’ve been censored

If you believe or suspect that you have been censored or are about to be censored, contact the SPLC’s legal hotline as soon as possible at [splc.org/legalrequest/](https://splc.org/legalrequest/). There are a range of options available to you. Whenever possible, write down the dates, times and description of events as they happen to help keep your facts in order and establish a timeline.

## FAQs

### Isn’t freedom of the press protected by the First Amendment?

Yes, but the U.S. Supreme Court has given public schools some authority to restrict the activities of students. A U.S. Supreme Court decision known as *Tinker v. Des Moines Independent Community School District* allows school officials to restrict student speech in certain narrow circumstances (including if it would cause a “material disruption” in the school community or could be libelous or slanderous). Another Supreme Court decision known as *Hazelwood School District v. Kuhlmeier*

allowed schools broader authority to censor student journalist's speech. As a result, many school districts have censored students for reasons that have nothing to do with legitimate pedagogical concerns. The New Voices Act restores key aspects of *Tinker* as it applies to student journalists and puts your speech back in line with the standard established by the *Tinker* decision.

### **What is libel? What is slander?**

Libel is the publication of false statements of fact that seriously harm a person's reputation. Slander is the speaking of false statements of fact that seriously harm a person's reputation. If a statement is true, it cannot be libelous or slanderous, no matter how harmful it is to the person's reputation.

### **If my school is sued for libel because of content in our student media, who is responsible?**

You. However, libel lawsuits against high school journalists are exceptionally rare. (In fact, when this brochure went to press, there had not been a single reported case in the U.S. finding a school district liable for work published by its student media.) As long as you are following standard journalistic practices you should not have to worry.

### **What is a "material and substantial disruption"?**

A substantial disruption is anything that could so interfere with the school day as to make normal school activities nearly impossible. This is decided on a case-by-case basis, but could include walkouts, fights, interruptions to class, or harassment of teachers or students. This "substantial disruption" standard was established by the U.S. Supreme Court in the *Tinker vs. Des Moines* decision many years ago, so your administrators and advisers have plenty of practice applying it to student speech. Remember, the law does not prohibit you from reporting on these things, just from inciting them.

### **Can my adviser tell me there are problems with my article?**

Your adviser may teach you English and journalism standards, and may give you feedback regarding your article including questioning if something you have written is untruthful or ensuring you are prepared for

any controversy. Unless your speech falls within one of the unprotected speech categories above, however, they cannot stop you from distributing your work.

### **How do I know if I'm being censored?**

If nobody has expressly told you "don't publish this," it can be easy to tell yourself you're not being censored or that you are overreacting. Talk with your adviser, parents and the SPLC if you suspect you are receiving any pressure to hold or edit material that does not contain unprotected speech.

### **Can my principal ask to review something before we distribute it?**

This is called "prior review," and while it's not expressly prohibited by this law there is certainly no need for your principal to engage in it unless they have reason to believe you are engaging in unprotected speech. In fact, the practice of mandatory prior review by administrators has been roundly condemned by every major journalism education group in the country as the wrong way to teach young journalists. If your principal asks to review your materials before publication, ask if there is anything they are concerned about. If your principal does engage in prior review and holds your work for more than 72 hours, you should contact the SPLC's legal hotline at [splc.org/legalrequest/](http://splc.org/legalrequest/).

### **What if my adviser or principal says something is unprotected and I disagree?**

They should be able to tell you exactly why it is unprotected, including pointing to the specific law or rule you are violating or giving you a clear reason why they believe your work presents a material and substantial disruption. If they do not give you this information within 72 hours or you disagree with their decision, you should contact the SPLC's legal hotline at [splc.org/legalrequest/](http://splc.org/legalrequest/).

### **I go to a private school. Am I protected?**

This law does not apply to you at this time. Private schools have more ability to restrict student speech than public schools. However, you may still be able to push back against censorship at your school. Contact the SPLC's legal hotline at [splc.org/legalrequest/](http://splc.org/legalrequest/) for more information.

# COLLEGE STUDENTS

NDCC 15-10-55

The law protects the press freedom of North Dakota's public college and university student journalists. The law says that student journalists cannot be censored by school officials, except in certain very narrow circumstances, and that advisers cannot be penalized for refusing to infringe upon their students' press rights.

## School-sponsored media

The law protects from censorship anything that is "prepared, substantially written, published, or broadcast by a student journalist at a public institution of higher education, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser." This includes newspapers, yearbooks, broadcast channels, literary magazines, and other forms of media that may evolve in the future.

School-sponsored media does not cover projects you do just for class, your personal social media, or anything you distribute to the student body on your own time without an adviser involved.

## Media content

Student journalists are responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. While your adviser may make suggestions and offer their opinions, you make the final decision about what is, and is not, included. This also means that you are responsible for the final product, including any praise, criticisms, or (in very rare circumstances) lawsuits.

## Censorship

Censorship can take many forms, but in general it is any action that is meant to stop, dissuade, or discourage you from producing or distributing student media. Sometimes it is overt ("you may not publish this") but sometimes there are more subtle forms of censorship. This can include, but is not limited to, strong suggestions that a story be withheld or changed, "reviewing" a student piece until the publication deadline has passed, threats to change your grades unless some aspect of a piece is changed, outright or suggested cuts to your student media program's funding following a controversial piece, reassignment of your adviser, or the disappearance/destruction of student media once you have distributed it. If you believe you have experienced or are at risk of censorship, contact the Student Press Law Center's legal hotline immediately at [splc.org/legalrequest/](http://splc.org/legalrequest/).

## Unprotected speech

In general, the courts have held that college student journalists cannot be censored by school officials. However, it still happens. This law makes clear that school officials may only limit the speech of college student journalists in very specific circumstances.

School officials may only prohibit student expression that:

- Is libelous or slanderous, or obscene;
- Constitutes an unwarranted invasion of privacy;

- Violates federal or state law; or
- So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of institution or state board of higher education policies, or the material and substantial disruption of the orderly operation of the institution.

If your media content does not fall into one of those categories, school officials cannot stop you from producing or distributing it. They also cannot penalize you or your student media adviser for your decision to produce or distribute the media. Following sound journalism practices and ethics will help ensure your work does not meet any of these criteria. If you are concerned that your work falls into one of these categories, you should talk with your adviser, the Student Press Law Center, or other legal counsel. You can do this at any point in the research, production or distribution process.

## If you've been censored

If you believe or suspect that you have been censored or are about to be censored, contact the SPLC's legal hotline as soon as possible at [splc.org/legalrequest/](https://splc.org/legalrequest/). There are a range of options available to you. Whenever possible, write down the dates, times and description of events as they happen to help keep your facts in order and establish a timeline.



## FAQs

### Can my adviser tell me there are problems with my article?

Your adviser can teach you English and journalism standards, and may give you feedback regarding your article including questioning if something you have written is untrue or ensuring you are prepared for any resulting controversy. They cannot stop you from moving forward with the piece.

### How do I know if I'm being censored?

If nobody has expressly told you "don't publish this," it can be easy to tell yourself you're not being censored or are overreacting. Talk with your adviser and the SPLC if you suspect you are receiving any pressure not to put out material that does not contain unprotected speech.

## What is a “material and substantial disruption?”

A substantial disruption is anything that could so interfere with the school environment as to make normal school activities impossible. This is decided on a case-by-case basis, but could include walkouts, fights, interruptions to class, or harassment of teachers or students. Remember, the law does not prohibit you from reporting on these things, just from inciting them.



## If my school is sued for libel because of the content of our student media, who is responsible?

You. However, libel lawsuits against student journalists are very rare. As long as you are following journalistic standards and ethics, you should not encounter a problem.

## Can school administration ask to review something before we distribute it?

They can ask, but they cannot require. If school officials, including the public relations department, ask to review your work, ask if there is anything they are concerned about before deciding whether or not to grant permission for them to see it. This often happens when a university public relations official wants to “check in” on a story. Be aware that you are under no obligation to share your story prior to publication. If you feel pressured to turn over your work, this is censorship and you should contact the SPLC’s legal hotline immediately at [splc.org/legalrequest/](https://splc.org/legalrequest/).

# ADVISERS

NDCC 15-10-55 amd 15.1-19-25

The law protects student media advisers from retaliation for refusing to infringe upon your students' rights. No employee of a school district or public institution of higher education may be "dismissed, suspended, or disciplined for acting to protect a student journalist" who is engaging in protected speech in school-sponsored media, or for refusing to infringe on their rights.

## Media content

Student journalists are responsible for determining the news, opinion, feature, and advertising content of the media. While you may make suggestions and offer opinions, you cannot sway or overrule the students' final decisions about what is, and what is not, included in school-sponsored media. The law clarifies that you are permitted to teach "professional standards of English and journalism."

## Adviser protection

Often, advisers report that censorship of school-sponsored media means professional consequences for them instead of academic ones for the student. Under this law, a student media adviser "may not be terminated, transferred, removed or otherwise disciplined" for refusing to overrule, suppress or interfere with lawful student media expression.



## Unprotected speech

The law does allow for school officials to restrict student media content in some narrow circumstances.

Public school officials may restrict student journalist expression that:

- Is libelous or slanderous, obscene;
- Constitutes an unwarranted invasion of privacy;
- Violates federal or state law; or
- So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies, or the material and substantial disruption of the orderly operation of the school.

College officials may restrict student journalist expression that:

- Is libelous or slanderous, obscene;
- Constitutes an unwarranted invasion of privacy;
- Violates federal or state law; or
- So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of policies of institution or state board of higher education policies, or the material and substantial disruption of the orderly operation of the institution.

Unless the student media meets these criteria, the media cannot be restricted and you cannot be penalized for refusing to restrict it. If the student has a strong understanding of sound journalism practices

and ethics, their work is unlikely to fall into any of these criteria.

## Censorship and retaliation

Censorship can take many forms, but in general it is any action that is meant to stop, dissuade, or discourage a student from producing or distributing student media. This can include, but is not limited to, strong suggestions that a story be withheld or changed, “reviewing” a student piece until the publication deadline has passed, threats to change a student’s grades unless an aspect of a student media piece is changed, or the disappearance/destruction of student media once it has been distributed.

Often, advisers report that the censorship took the form of professional consequences for them instead of academic ones for the student. This has included loss of funding for the student media program, adviser reassignment, meetings or phone calls with administrators in which the administration’s dislike of a story is the main topic, or pressure from other teachers and school employees. These actions are prohibited under the law. If you believe you have experienced or are at risk of retaliation, contact the SPLC’s legal hotline immediately at [splc.org/legalrequest/](https://splc.org/legalrequest/).

### If your student has been censored or you have been retaliated against

Contact the SPLC’s legal hotline at [splc.org/legalrequest/](https://splc.org/legalrequest/).



## FAQs

### Can I suggest my students not run an article? What if my student produces something I suspect will be disruptive?

You can share your concerns with your students, but unless the work includes unprotected speech, the decision is ultimately theirs. If you believe your student is planning to distribute work which meets the criteria for unprotected speech, you should be as clear as possible with them about the concerns and the reasons why you believe their work is not protected by the New Voices Act.

### What do I do if the administration tells me to edit or stop something from being distributed?

Contact the Student Press Law Center’s legal hotline at [splc.org/legalrequest/](https://splc.org/legalrequest/).



# SCHOOL OFFICIALS

NDCC 15-10-55 amd 15.1-19-25

The law says that public school and college, university or community college student journalists cannot be censored except in certain specific circumstances. The law also prohibits terminating or otherwise disciplining a student media adviser who refuses to infringe upon student press rights.

## School-sponsored media

The law covers any media that is “prepared, substantially written, published, or broadcast by a student journalist” at a public school or institution of higher education, that is “distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser.” This includes newspapers, yearbooks, broadcast channels, literary magazines, and any other form of media that may evolve in the future.

Student media does not include projects students do just for class, their personal social media (which may be protected by other laws and/or court decisions), or anything they distribute to the student body on their own time without an adviser involved.

## Media content

Student journalists are responsible for determining the news, opinion, feature, and advertising content of the media. While advisers may make suggestions and offer opinions, they cannot sway the students’ final decisions about what is, and what is not, included. This also means that student journalists are responsible for the final product, including receiving any praise, criticisms or (in very rare circumstances) lawsuits.

## Prior restraint and prior review

Prior restraint is when a school official tells a student journalist they cannot publish a story, or takes any action to prevent the student journalist from doing so. Prior restraint is limited by the First Amendment. This law clarifies that prior restraint is also not permitted against public school students, except when the media in question contains unprotected speech defined below.

Prior review is when a school official reads the content of school-sponsored media before it is published or distributed. The practice of mandatory prior review has been roundly condemned by nearly every major journalism education group in the country as the wrong way to teach young journalists. Prior review should be avoided unless there are specific, articulable concerns that the school-sponsored media contains unprotected speech.

## Unprotected speech

The law brings the speech rights of student journalists in line with the standard for all other student speech set forth in *Tinker vs. Des Moines*, and allows for the restriction of student media in certain narrow circumstances.

School officials may only prohibit school-sponsored media that:

- Is libelous or slanderous, obscene;
- Constitutes an unwarranted invasion of privacy;
- Is profane or obscene;
- Violates federal or state law; or
- So incites students so as to create a clear and present danger of the commission of an unlawful act, the violation of school district policies or policies of the public institution of higher education, or the material and substantial disruption of the orderly operation of the school or institution.

Unless the school-sponsored media meets these criteria, school officials—including principals, deans, advisers, and college public relations departments—cannot stop student journalists from producing or distributing their work.

School officials are required to show justification for any limitation of school-sponsored media at the time the media is limited.

## Material and substantial disruption

A substantial disruption is anything that could so interfere with the school day as to make school activities nearly impossible. The material and substantial disruption exemption applies only if a student journalist is inciting the disruption; reporting on a controversial topic is itself not sufficient cause for restricting student speech. These are taken on a case-by-case basis, but there must be an articulable risk of disruption, informed by specific facts, including past history at the school and current events influencing student behavior.

Whenever a risk of material and substantial disruption occurs, school officials should consider

all other avenues of alleviating this disruption before resorting to censorship. School officials are required to inform student journalists before the censorship occurs why the censorship is necessary.

## Types of censorship

Censorship can take many forms, but in general it is any action that is meant to stop, dissuade, or urge a student journalist not to produce or distribute student media. While some students have been explicitly told not to publish a particular story, others have faced more subtle forms of censorship. This can include, but is not limited to, strong suggestions that a story be withheld or changed, “reviewing” a student piece until the publication deadline has passed, threats to change a student’s grades certain aspects of a piece are changed, outright or suggested cuts to the student media program’s funding following a controversial piece, reassignment of the student media adviser, or the disappearance/destruction of student media once it has been distributed.

## Adviser protection

Often, advisers report that the censorship took the form of professional consequences for them instead of academic ones for the student. This has included loss of funding for the class or club, adviser reassignment, meetings or phone calls with administrators in which the administration’s dislike of a story is the main topic, or pressure from other teachers and coaches. All of these actions are prohibited under the law, which expressly states that no employee of a school district may be “dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against” solely for protecting or refusing to infringe upon a student journalist who is not engaging in unprotected speech.

## Student media policy

Every school district is required to have a written student freedom of expression policy. This policy shall include “reasonable provisions for the time, place, and manner of student expression” and can “include limitations on language that may be defined as profane, harassing, threatening, or intimidating.” It cannot restrict student journalists’ speech further than this law allows. A clear policy can be helpful in making sure everyone has the same understanding and expectation of the student media program. If your district does not have such a policy, they may inadvertently be violating the law and may be subject to penalties. A model policy is available via the Student Press Law Center.



## FAQs

### Doesn't *Hazelwood* give school administrators the right to restrict student media?

States are always able to extend more protections to their residents than Supreme Court decisions hold to be required. The State of Washington has joined a growing number of other states in extending stronger protections to student journalists and providing more concrete guidance to schools than that put forth by the U.S. Supreme Court in the *Hazelwood School District v. Kuhlmeier* decision.

### What do I tell angry parents when a student writes a controversial article?

The law makes clear student journalists alone determine the content of school-sponsored media. Parents certainly have the option of registering their opinion with the student editor.

### If my school is sued for libel or slander, who is responsible?

The student journalist. However, lawsuits against student journalists are exceedingly rare. (In fact, as of when this brochure went to press, there had not been a single officially reported case in the U.S. finding a school district liable for work published by its high school student media.)

Journalism standards and ethics prevent libel and slander. Schools should ensure that advisers and student journalists have adequate training and appropriate resources to thoroughly educate students on media law and journalistic ethics. Students can also reach out to the Student Press Law Center's legal hotline for more guidance on libel and slander.

### **What if a student journalist exposes private things about another student?**

Journalism standards and ethics prevent unwarranted invasions of privacy. Schools should ensure that advisers and student journalists have adequate training and appropriate resources to thoroughly educate students on media law and journalistic ethics.

If the student in question did not willingly participate in the article and you believe the student journalist has engaged in an unwarranted invasion of privacy, you may be able to prevent the student journalist from distributing the media. You should express your concerns to the adviser and/or student before resorting to censorship.

### **If student journalists report on rumors of a walkout, does that constitute a material and substantial disruption?**

If they are simply reporting on information, no. The disruption already exists. If they are calling for a walkout and there is a history of such walkouts proving irreparably disruptive to the school, maybe. However, before resorting to the censorship of a student journalist you should consider whether the same call is already reaching students through social media and whether the work by the student journalist offers school officials an opportunity to engage in meaningful dialogue with the student body about their concerns.

### **Can I talk to a student journalist about my concerns relating to their article?**

You can certainly help student journalists have as many facts as possible. You cannot require, suggest or encourage a student journalist to pull a story from school-sponsored media.

### **How can I get more information about the New Voices Act and our rights and responsibilities?**

Contact the Student Press Law Center's legal hotline at [splc.org/legalrequest](http://splc.org/legalrequest).



# RESOURCES

For more information or assistance on the New Voices Act, student press freedom, or other issues regarding student media, please contact:

## **Student Press Law Center**

[www.splc.org](http://www.splc.org)

Legal hotline: [www.splc.org/legalrequest/](http://www.splc.org/legalrequest/)

## **Journalism Education Association Scholastic Press Rights Committee**

[www.jeasprc.org](http://www.jeasprc.org)

Panic button: <http://jea.org/wp/panic-button/>