



December 7, 2023

Mr. Arthur Rogers  
Interim Superintendent  
Webster County Public Schools  
315 South Main Street  
Webster Springs, WV 26288  
*Sent via Email: arogers@k12.wv.us*

Dear Superintendent Rogers:

I write to you following submission of a board policy public comment through the district's public comment portal. Instead of having the comments exist only in the portal system, I wanted to introduce myself and my organization, the Student Press Law Center, as its concerns are uniquely directed at Proposed Policy po5722, School-Sponsored Media, a required memorialization of W. Va. Code § 18B-21-4. I would ask that you also please send this to the board of education.

A little about myself: I am an education law attorney with experience representing both school districts and students. Here, I represent neither, but come to you as an advocate for the free speech rights related to student press in school districts. This work is paramount not only for promoting self-actualization of students as they improve their districts through the written or broadcast word, but also improving the communities in which those districts sit, fostering citizenship for those communities' future leaders. Both school districts and students immensely benefit from openness unimpeded by improper censorship. Founded in 1974, the Student Press Law Center is a nonprofit center of legal research serving the student media nationwide.

To reiterate the substance of the comment submission, there are a few items that must be addressed. In particular, the policy as currently proposed does not include the adviser protection provided by W. Va. Code § 18B-21-4(f). Adviser protection is not only enmeshed in the law ("A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting in conformity with this article", W. Va. Code § 18B-21-4(f)), but lacking it undermines every effort to curtail the censorship the law aims to stop. A threat by administration to punish or remove a beloved adviser from a journalism program has proven time and again to be an effective means of indirectly censoring the students, compelling them into publishing a more sanitized product. Adviser protection must be included in the policy.

We would recommend from [our model policy](#) on the subject the following language: "A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for acting to protect a student journalist engaged in permissible conduct or refusing to infringe on conduct that is protected by the First Amendment to the United States Constitution or W. Va. Code § 18B-21-4.



Second, the provision “Student expression related to classrooms or educational settings not otherwise directly associated with school-sponsored media are nonpublic forums” and goes on to explain that forum, presents a problem. This will present confusion to student journalists, their advisers, and administrators surrounding activity in a classroom setting that happens to produce a publication. Newspaper and yearbook classes may be “classroom or educational settings” and it is worrisome that there is a distinction built into the policy when the law does not do so. No student should be unlawfully censored because the product of a newspaper classroom is somehow seen as a “nonpublic forum” because of misinterpretation of the policy with the provision extraneous to the law. This phrasing must be struck from the policy. In the alternative, we would recommend rewording to the following to comply with the spirit of the statute: “Student expression created in a classroom or educational setting that is not distributed or generally made available to members of the student body or otherwise directly associated with school- sponsored media are nonpublic forums.”

Third, there are concerns with the language “to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards”, which is not included at all in W. Va. Code § 18B-21-4 and has the potential to make for confusion. This should be clearly aspirational and not something that could be used to justify censorship (student journalists are not professionals, and it's not right to hold them to that nebulous standard). We would instead suggest the following: "Student journalists, content-creators, and performers *should strive* to establish and enforce standards for their publications/productions that are consistent with professional journalism/artistic/theatrical/broadcast standards."

Fourth and finally, the appeals process must include language that the appeal's purpose is for prior restraint, not just discipline. The law states “School officials have the burden of showing prior justification for their limitation of student journalists' expression under this section and shall afford students a timely opportunity for appeal” (W. Va. Code § 18B-21-4(c)). As the proposed policy currently reads, it appears as though a student must be disciplined to appeal (“A student journalist following the requirements established herein shall not be subject to discipline. If a student journalist has been disciplined, they may appeal utilizing the following process...”). It should not get to the point where a student journalist risks punishment via insubordination to challenge a move of censorship against the student's expression. The phrasing related to discipline must be changed to include prior restraint, and not just discipline.

Thank you for considering these concerns in public comment. The Student Press Law Center is open to having further conversation on the matter, as well as to providing any helpful educational materials for your students, advisers, or administration. Please feel free to reach out at my contact information below. We appreciate your valuable time.

*Jonathan Gaston-Falk*

Jonathan Gaston-Falk  
Staff Attorney