

Appendix B

Miami-Dade County Schools play selection policy

The Miami-Dade County school system has a unique policy guideline on play selection that strongly endorses the student's right to free expression and places all of the responsibility for choosing scripts for production on the teacher's desk.

Provided she stays away from plays that venture into any of four areas of unprotected speech (obscenity, defamation, material that is likely to be disruptive of school activities, or material that breaches the separation between church and state) a Miami-Dade theatre educator is empowered to select her school's repertory without administrative review. Principals are specifically enjoined from exercising prior restraint—that is, they cannot block production of a play unless it violates one of the unprotected speech guidelines—and from disciplining a teacher or student who has operated within the bounds of the policy.

Here's the text of the policy, known as "Guideline 28: Student Theatrical Performances."

Current practices and procedures

The Miami-Dade County School Board recognizes student theatrical performances to be essential to the establishment and maintenance of an atmosphere on campus that fosters open discussion, intellectual, cultural, and artistic exchanges, and freedom of expression.

It is, therefore, the policy of Miami-Dade County Public Schools that theatre arts students shall be afforded protection against censorship.

Such freedom does not extend to the following four classifications of materials that are considered unprotected speech because they are prohibited by law or not protected by the First Amendment to the United States Constitution (see section B for legal definitions):

1. Obscene as to minors;
2. Defamatory, including libel and/or slander;
3. Materially and substantially disruptive of school activities [as defined in the Supreme Court decision *Hazelwood School District v. Kuhlmeier*]
4. Infringes on "separation of church and state."

Procedures

A. School/District-Sponsored Performances and/or Productions
1. Students who work on official student performances and/or productions, i.e., those sponsored by the school or district, will:

- a.** determine that the content of the student performance and/or production does not fall within any of the categories of unprotected speech, as set forth in section B. All other content is considered appropriate and shall not be censored;
- b.** have the right to form and express their own opinions on controversial issues without jeopardizing their relations with the teachers, advisors, or administrators, provided, however, that their expression does not fall within any of

the categories of unprotected speech, as set forth in section B; and

c. consult with legal resources, local and national, in any case where the legality of content is questioned, with the understanding that the final resolution of disputes will rest with the teacher or advisor.

2. Theatre arts teachers and/or advisors to official student performances and/or productions will:

- a.** guide students to an understanding of the nature, function, and ethics of free artistic expression;
- b.** nurture among students a realization and vision that encompasses intelligent choices, a focused and unified production, and a central concept based on cultural, artistic, and educational growth;
- c.** function as liaisons between staff and students to ensure full communication of administrative guidelines by:

- (1)** advising students of their right to perform without censorship or prior administrative review with the understanding that their expression shall not fall within any of the areas of unprotected speech, as set forth in section B;
- (2)** advising school officials that it is the duty of the institution to allow full and vigorous freedom of expression, with the understanding that students will not present material that falls within any of the areas of unprotected speech; and
- (3)** consulting with students, staff, and legal resources on questions regarding the legality of content before making any final determinations.

- d.** be accessible to students who may seek assistance;
- e.** not act as censors, except where performances and/or productions contain material that falls within the areas of unprotected speech, as set forth in section B; and
- f.** ensure that theatrical productions are grade level appropriate.

3. School administrators will:

- a.** communicate to the theatre arts teacher and/or advisor and theatre arts students any district guidelines that may affect student performances and/or productions;
- b.** be aware of the most current court rulings as they relate to free speech;
- c.** support the First Amendment rights of students and the efforts of theatre arts teachers and/or advisors to guarantee those rights in their daily work with performances and/or productions;
- d.** communicate to other members of the school community the rights of theatre arts students to examine, explore, and express themselves through student performances and/or productions;
- e.** exercise no prior review;
- f.** not terminate, transfer, or remove a person from his/her theatre arts teaching position or advisorship for failure to

exercise content control over student performances and/or productions or otherwise suppress the rights of free expression of theatre arts students, except in cases involving the endorsement of material whose content falls within the areas of unprotected speech, as set forth in section B; and **g.** not impose academic disciplinary action upon theatre arts students, except in cases involving material whose content violates the principles set forth in section B.

B. Definitions—unprotected speech

The following are the [four] classifications of speech that are prohibited, or not protected, by the First Amendment. Use of the following during a performance and/or production, may subject the user to legal and/or official school action:

1. Material that has content that is “obscene as to minors.”

“Minor” includes any person under the age of eighteen. “Obscene as to minors” is defined as follows:

- a.** where the average person, applying contemporary community standards, would find that the performance and/or production, taken as a whole, appeals to a minor’s prurient interest;
- b.** where the performance and/or production depicts or describes, in a patently offensive way, sexual conduct such as actual or simulated sexual intercourse (normal or deviate), masturbation, excretory functions, and actual lewd exhibition of genitalia; and
- c.** where the performance and/or production, taken as a whole, lacks serious literary, artistic, political, or scientific value.

2. Material that has content that is “defamatory.” “Defamatory” is defined as the depiction of false unprivileged communication about an individual which injures that person’s reputation in the community or good name. If the depiction is written, it is libelous. If it is spoken, it is slander.

a. If the false depiction is about a “public figure” or “public official,” as defined below, then, in order to constitute defamation, the false depiction must have been presented “with actual malice,” i.e., that the theatre arts student knew that the depiction was false, or that the depiction was presented with reckless disregard for the truth without trying to verify the truthfulness of the presented depiction.

(1) A public official is a person who holds an elected or appointed public office.

(2) A public figure includes the following persons: one who has general fame and notoriety in the community; one who has voluntarily injected himself or herself into a public controversy in order to influence the resolution of the issues involved; and one who is an involuntary public figure and who is directly affected by the actions of the other public officials.

(3) School employees are considered to be public officials or public figures in depictions concerning their

school-related activities.

b. If the false depiction concerns a private individual, then, in order to constitute defamation, the false depiction must have been presented willingly or negligently, i.e., the theatre arts students failed to exercise the care that a reasonably prudent person would exercise regarding the truth of the depiction.

c. Notwithstanding the preceding, under “the fair comment rule,” a student is free to express an opinion on matters of public interest and the student enjoys the privilege of criticizing the performance of school employees, provided the comment is free from actual malice.

3. Material that has content that will cause “a material and substantial disruption of school activities.”

a. Disruption is defined as: student rioting; unlawful seizures of property; destruction of property; widespread shouting or boisterous conduct; or substantial student participation in a school boycott; sit-in; stand-in; walkout; or other related form of activity. Material that stimulates heated discussion or debate does not constitute the type of disruption prohibited.

b. In order for a student performance and/or production to be considered disruptive, there must exist specific facts upon which it would be reasonable to predict that a clear and present likelihood of an immediate, substantial, material disruption of normal school activity would occur if the production and/or performance were presented. Undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.

c. In determining whether a student performance and/or production is disruptive, consideration must be given to the context of the presentation as well as the content of the material. In this regard, consideration should be given to the past experiences of the school in dealing with:

(1) similar material;

(2) supervising the students;

(3) current events that influence student attitudes and behavior; and

(4) instances of actual or threatened disruption prior to or contemporaneously with the presentation of the student performance and/or publication in question.

d. School personnel must act to protect the safety of advocates of unpopular viewpoints.

4. Material that infringes on “separation of church and state.” The First Amendment to the United States Constitution, which guarantees freedom of speech and expression, also contains the following clause: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” Under the doctrine of separation of church and state, certain religious activities, such as proselytizing, have been held to be unconstitutional if conducted within the context of a school-sponsored activity.