

## Prior Review

### What is Prior Review?

Prior review occurs when a school administrator, other than an official member of the school-sponsored media's editorial staff, reviews content before it is published. If an administrator engages in prior review and then stops certain speech or ideas from being published, they cross the line into prior restraint, which *is* a First Amendment violation outside of a school context. It can also be a First Amendment violation in school-sponsored media if done without a valid educational reason (see "Prior Restraint" page).

Often, knowing that a school administrator will review material before it is published causes students to *self-censor* to ensure that their work gets approved. When students self-censor in response to prior review, this is referred to in First Amendment terms as a "chilling effect." There is a "chilling effect" when journalists self-restrict their work out of fear of retaliation or because they have been punished or prohibited from publishing work in the past.

### Are there any limits on Prior Review in school-sponsored media?

The Supreme Court has ruled that prior review of school-sponsored media is acceptable to ensure that it meets "high standards for the student speech that is disseminated [through school platforms] — standards that may be higher than those demanded by some newspaper publishers . . . in the 'real' world".<sup>1</sup>

The Supreme Court has given schools permission to review student work in order to "fulfill[] their role" in training students for the future. Specific examples the Supreme Court provides for why prior review is allowed in schools include: ensuring students learn lessons offered by instructors, making sure "readers or listeners are not exposed to material that may be inappropriate for their level of maturity," and keeping the individual speaker's views from being attributed to the school.<sup>2</sup>

This means that students engaging in "school-sponsored expressive activities" like a school newspaper or a school newscast receive less free-speech protection than students participating in media that does not require the school to "lend its name and resources to the dissemination".<sup>3</sup> As a result, students who write or produce content for school outlets such as their student paper, yearbook, or other school media organization are subject to more restrictions on their speech than students who, for example, run their own blog or post on a personal Instagram account.

### How can we try to reduce instances of Prior Review?

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<sup>1</sup> *Hazelwood School Dist. v. Kuhlmeier*, 108 S.Ct. 562, 570 (1988).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

A better alternative to prior review is to find a student media adviser to supervise students in developing material that meets ethical and professional journalism standards.<sup>4</sup> This adviser should work with the students to ensure that their product is well-sourced and does not contain material that is obscene, defamatory, or provides other grounds for legal challenges. This allows for oversight without causing students to fear that their material will be censored for subjective reasons, such as school administrators' dislike or discomfort with the subject matter or viewpoint of students' writing.

Unfortunately, even determined advisers who stand up for the free speech and press rights of student journalists can face negative employment consequences.<sup>5</sup> For example, one student wrote in her *New York Times* article, titled "Should Schools be Allowed to Censor Student Newspapers?", that when her adviser allowed students to publish articles that the administration deemed inappropriate, the school retaliated by threatening to fire her.<sup>6</sup>

Students and advisers participating in school-sponsored media may be able to push back against prior review if the media being reviewed can be "characterized as a forum for public expression."<sup>7</sup> This is the case when school authorities allow people who are not on the publication's staff to use the school-sponsored media to express themselves.<sup>8</sup> The publication may be considered a forum for public expression if it: does not have a policy stating that the school paper is part of the educational curriculum and regular classroom activities; allows non-students to submit entries for publication; or, has previously chosen not to exercise control over the contents of the publication.<sup>9</sup>

Additionally, state and local governments, as well as school districts themselves, are free to put in place laws or policies that prohibit prior review of student journalism in school-sponsored media. There are currently fourteen states with a law on the books that aim to give student journalists the freedom to publish what they choose: California, Massachusetts, Iowa, Colorado, Kansas, Arkansas, Oregon, North Dakota, Maryland, Rhode Island, Illinois, Washington, Vermont.<sup>10</sup> And in 2021, the New Jersey legislature passed a similar law that is waiting for a signature by the governor.<sup>11</sup>

To learn more about this national "New Voices" movement go to <https://splc.org/new-voices/>

### **What are the benefits of *not* engaging in Prior Review?**

Not engaging in prior review has benefits for both students and administrators. They include:

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<sup>4</sup> The Poynter Institute Code of Ethics provides a recommended code that many newsrooms follow and could be helpful to institute in school media organizations. <https://www.poynter.org/ethics-trust/2017/the-poynter-institute-code-of-ethics/>

<sup>5</sup> See Natalie Proulx *Should Schools be Allowed to Censor Student Newspapers*, *New York Times* (May 9, 2019) (student opinion paper describing her high school's handling of the National School Walkout and detailing account of advisers who have been fired for not reigning in student publications).

<sup>6</sup> *Hazelwood School Dist. v. Kuhlmeier*, 108 S.Ct. 562, 570 (1988).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 568.

<sup>9</sup> *Id.*

<sup>10</sup> See *New Voices*, STUDENT PRESS LAW CENTER, available at <https://splc.org/new-voices/>.

<sup>11</sup> See *New Voices in New Jersey*, STUDENT PRESS LAW CENTER, available at <https://splc.org/?s=new+jersey+new+voices>.

- Students have greater journalistic freedom to address timely and relevant issues in their community.
- Students are less likely to engage in self censorship for fear that their material will be cut in the final stages of review.
- More diverse content will be included in the school paper or other media platform, encouraging a larger readership that includes people from outside the school.
- The advisor has a true opportunity to work with and educate students about producing professional and ethical work product.
- Administrators will not have to worry about whether they've committed a First Amendment violation.

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