MODEL POLICY #34

EMPLOYEE EXPRESSION IN NON-SCHOOL SETTINGS

Why Adopt This Policy?

School boards should consider adopting a policy acknowledging the free speech rights of district staff to discuss issues of public concern in non-school settings and establish guidelines for when the district may take adverse action based on an employee's speech outside of school. This policy ensures clarity and fairness in addressing matters related to employee expression outside of school. This approach promotes transparency, protects constitutional rights, and maintains a balance between employee expression and organizational interests.

Policy

The School Board acknowledges the right of its professional staff members, as citizens in a democratic society, to speak out on issues of public concern in non-school settings. The District issues this policy to balance its employees' right to free speech against the District's interests in an efficient, disruption-free workplace.

Consistent with this balance, there are certain limited occasions when the statements of District employees, even in non-school settings, and on issues of public concern, can adversely affect the District and when the District may take action adverse action against the employee.

These include, but are not limited to:

1. Where the employees speaks as an employee of the District rather than as a private citizen;
2. Where the employee makes threats or abusive comments about co-workers, administrators, officials in the District, students, or parents or guardians of students;
3. Where the employee discloses any confidential information that the employee has obtained during the course of his or her employment with the District;
4. Where the employee makes statements that are false and defamatory; or
5. Where the employee makes statements that so disrupt the employee's workplace that the District is justified in taking adverse action against the employee.

Violations of this policy, as determined by the Board to be sufficiently severe and disruptive, may result in disciplinary action.

Legal Analysis

Public employees do not surrender all their First Amendment rights by reason of their employment; Rather, the First Amendment protects the right of a public employee to speak as a citizen addressing matters of public concern. *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L.Ed.2d 689 (2006). Teachers may not constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public school in which they work. *Pickering v. Board of Education of Tp. High School Dist. 205*, Will County, Illinois, 391 U.S. 563, 88 S. Ct. 1731, 20 L.Ed.2d 811 (1968). In determining a public employee's rights of free speech, courts balance interests of the employee as a citizen, commenting upon matters of public concern, and the interest of the employer, in promoting the efficiency of the public services it performs through its employees. *Connick v. Myers*, 461 U.S. 138, 103 S. Ct. 1684, 75 L.Ed.2d 708 (1983).

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