



**TESTIMONY IN SUPPORT OF HAWAII BOARD OF EDUCATION POLICY 101-9,
SCHOOL-SPONSORED MEDIA
1/10/23**

The Student Press Law Center (SPLC) is an independent, non-partisan organization that promotes, supports and defends the press freedom and First Amendment rights of student journalists and their advisers. Our free legal hotline provides services to students and teachers across the country. As such, we are involved in the passage of state laws like Hawaii's Student Journalism Protection Act, which requires a board-passed policy like the drafts currently under consideration that would modify Policy 101-9 (HRS § 302A-451(g)). We now advocate for such an implementation.

We support the two options, attached hereto, that appropriately enshrine the requirements of HRS § 302A-451. The statutory requirement for this policy notwithstanding, such a memorialization of the law will clarify questions surrounding the rights of student journalists for journalism advisers, school administrators, or the students themselves. Policy 101-9 in its current form fails to meet the law's requirements, and will almost certainly cause administrators, who will attempt to follow this policy in good faith, to violate the law and open their schools up to significant and time-consuming legal consequences. The passage of one of the two options will remedy this problem.

Testimony submitted by Cynthia Reeves, McKinley High School journalism teacher, has recommended modifications to the text before you, which we support. We will not enter into detail about these to avoid duplicative testimony, but we wish to adopt Ms. Reeves' testimony as the perspectives from her journalism classroom are of paramount importance. The language she proposes has weathered the crucible of time in her classroom: she is an expert on the subject.

The only difference we see between the two options before you is the layout of the appeals process. We would recommend Option 1, which affords the student journalists an opportunity to approach you, the board of education, as the final word in the matter. This would not open some floodgate of appeals from student journalists. In our experience with such matters, it is rare for a student to decide to approach a panel of adults and request intervention. The simple ability to approach you, as with any other matter in the district ripe for appeal, honors the basic principles of due process for students. Option 2 deprives the students of this opportunity altogether. If you select Option 1, we ask that you provide in the policy that a record be kept of the proceedings for later review. Your student disciplinary hearings likely work the same way to provide a simple due process benefit, as well as clarity in the event that the student appeals to you.



Further concern with Option 2's appeals process is that a very important decision relating to student free speech rights would be in the hands of a "Complex Area Superintendent or Complex Area educational officer designee" as a final decision-maker. Unless that class of administrator routinely makes decisions involving the First Amendment rights of students on a regular basis, it would be inappropriate for them to field these questions that are best left to you, the Board of Education. We hope you elect to adopt Option 1 to modify Policy 101-9.

Either Option's appeals process would benefit from the provision that the appealing student may bring a third-party advocate if so desired (both Options currently only allow the adviser or parent/guardian). Student newsrooms work as a team. One student journalist likely would not want to carry an appeal alone without the help of a peer. For example, an editor-in-chief may wish to bring in the reporter or editor on the piece in question as an advocate. Otherwise, this question is purely subject to the whim of administrative discretion.

With these small amendments, we urge swift passage of this policy. The outcomes of these policies in other states are abundantly clear: they do not impact the safety of the school or keep administrators from intervening when necessary. In no school district has there been an outbreak of unethical journalism. Indeed, journalism education experts agree that the best way to teach journalism is supported by the structures and processes detailed in HRS § 302A-451 and the draft policies before you. To that end, we offer training for school administration or anyone else in the district with questions about the law, the policy, or even the history of student press freedoms in the country. Please let us know if this would be of interest to the district. Thank you for your support of modifying Education Policy 101-9, and Hawaii's student journalists.

SUBMITTED BY: Jonathan Gaston-Falk, staff attorney
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POLICY 101-9

SCHOOL-SPONSORED STUDENT PUBLICATIONS

School-Sponsored Media

Students of the public schools have the right of expression in ~~official, school-sponsored, student publications~~ **media, as embodied in the First Amendment of the United States Constitution and in the Hawaii Student Journalist Protection Act (HRS 302A-451)**. The right of expression, however, carries responsibilities. Student publications are considered, in part, a laboratory for learning, as students are still in the process of learning the skills and processes of effective and responsible communication, and are considered to be still in need of guidance and supervision.

~~Student publications provide students with an opportunity to express ideas and opinions and allow students to provide a service to others by making information more readily available, increasing awareness of timely issues and topics, and enhancing the image of the school and school community. The process of producing these publications also provides students with authentic, real life opportunities to apply academic learning.~~

~~Student publications~~ **School-sponsored media** include, but are not limited to, ~~various media including print media (books, newspapers, yearbooks, magazines, posters, etc.), audio and/or video productions, and publications disseminated through electronic media, and networks, or broadcasts.~~ **A School-sponsored publication media is one that is written, published, prepared, or broadcast by a student journalist at a school, is prepared under the direction of a student media advisor, and is distributed or made available to the school community for a fee or free of charge and/or produced substantially by students under the auspices of the school, approved by a representative of the school administration, and made generally available throughout the school.**

School-sponsored media does not include material intended for distribution or transmission for classroom purposes only.

~~Student editors and staff of school-sponsored student publications have the authority to determine the content of their publications subject to the limitations of this policy, other Board policies, and state and federal law. The Department shall establish regulations that provide guidelines and other standards for school-sponsored student publications.~~

School administrators, with input from school media advisors and student journalists, shall provide reasonable provisions for the time, place, and manner of distribution of school-sponsored media, and shall follow the appeals process written in this policy. Administrative prior review should be rare.

Per the requirements of the Hawaii Student Journalist Protection Act, there shall be no prior restraint of material prepared for school-sponsored media by student journalists, unless the school-sponsored media:

- 1. Is libelous or slanderous;**
- 2. Constitutes an unwarranted invasion of privacy;**
- 3. Is obscene;**
- 4. Violates federal or state law; or**
- 5. Incites students as to create a clear and present danger of the commission of an**

unlawful act, the violation of a lawful school district policy, or the material and substantial disruption of the orderly operation of the school.

The above five exceptions are not authorized or protected by the Hawaii Student Journalist Protection Act.

Any limitation of the student journalist's drafted publication shall be submitted and explained in writing to the student journalist within three business days. The media is automatically authorized if the time frame elapses. There shall be no prior restraint by any person of material prepared for school-sponsored media unless it falls within one of the exceptions.

Appeals Process

The student journalist shall have the right, within five business days of receiving the written reason for limitation of school-sponsored student media, to appeal the decision to the Superintendent. Appeals must be filed in writing. The Superintendent shall convene a hearing within five business days. The student journalist shall have the right to have the student's parent or legal guardian and the student media adviser present. The burden of proof shall be on the principal or his or her appointed representative to demonstrate that the media in question has met the criteria for exclusion. The Superintendent shall render a written decision within 48 hours of the hearing.

The student journalist shall have the right, within five business days of receiving the Superintendent's written decision, to appeal to the school board. The school board shall hear the appeal at the next regularly scheduled board meeting, or within 10 business days, whichever comes first. The school board shall render a written decision within 48 hours of the hearing.

The decision of the school board shall be considered the final determination by the District deemed ripe for judicial review if the student journalist should choose to do so.

A student journalist shall not be disciplined, penalized, restrained or otherwise censored or punished when acting in accordance with this policy.

A student media adviser shall 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, the Hawaii Student Journalism Protection Act, or this policy. No financial decisions relating to the student media program may be based, in whole or in part, on the past, present, or potential content of school-sponsored student media.

No publication or other expression of material by student journalists in the exercise of rights under HRS 302A-451 shall be deemed to be an expression of the school, board, or department. No state agency, member of the board, officer of the department, or employee of any agency or the board shall be held responsible in any civil or criminal action for the publication or other expression of materials by student journalists in the exercise of rights under the First Amendment of the United States Constitution or HRS § 302A-451.

[Approved: 05/05/2015 (as Board Policy 101.9); amended: 06/21/2016 (renumbered as Board Policy 101-9)]

Former policy 4015 history: approved: 01/1999

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Any limitation of the student journalist's drafted publication shall be submitted and explained in writing to the student journalist within three business days. The media is automatically authorized if the time frame elapses. There shall be no prior restraint by any person of material prepared for school-sponsored media unless it falls within one of the exceptions.

Appeals Process

Should a student journalist wish to appeal the decision of an administrator or advisor to not publish the student media, the student journalist shall have the right, within five (5) business days of receiving the written reason for limitation of the school-sponsored media, to appeal in writing to the Complex Area Superintendent. The Complex Area Superintendent or Complex Area educational officer designee shall offer, within five business days of receiving the written appeal, to convene a hearing. The student journalist shall have the right to have their parent or legal guardian and the student media advisor present at the hearing. The principal or the principal's designee shall explain the reason(s) for the objection(s) to the media. The student journalist shall be given the opportunity to challenge the school's determination. The Complex Area Superintendent or designee shall render a written decision within two business days. The Complex Area Superintendent's decision shall be considered the final agency order for the purposes of judicial review as provided for under HRS § 91-14.

A student journalist shall not be disciplined, penalized, restrained or otherwise censored or punished when acting in accordance with this policy.

A student media adviser shall 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, the Hawaii Student Journalism Protection Act, or this policy. No financial decisions relating to the student media program may be based, in whole or in part, on the past, present, or potential content of school-sponsored student media.

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[Approved: 05/05/2015 (as Board Policy 101.9); amended: 06/21/2016 (renumbered as Board Policy 101-9)]

Former policy 4015 history: approved: 01/1999

BOARD OF EDUCATION

JANUARY 11, 2024

FIC MEETING

**STATE OF HAWAII
BOARD OF EDUCATION
FINANCE AND INFRASTRUCTURE COMMITTEE**

MEMBERS:

Bill Arakaki Kaimana Barcarse Warren Haruki Makana McClellan Lauren
Moriarty

Ken Kuraya, Committee Chairperson

A. [Review of status of Department capital improvement projects](#)

COMMENTS:

I cannot add much to the He'e written testimony. Members of the board who have been here for awhile like Kaimana, Lauren, Ken, and Bill have heard me testify on the portal a number of times and requested access. Shouldn't be anything to hide, now.

Facilities has had the tools to be successful for a couple of years. The Facilities Portal bares witness to that.

For our new Facilities manager, I suggest that all aspects of the portal be made public and not require a login. Make it read only oir allow the public to have a read only login.

I guarantee you will not have to provide many. Eventually the Legislators will ask for it also.

B. [Update on status of schools' fire alarm systems.](#)

COMMENTS

- All Department schools have Emergency Action Plans for each school campus. For schools in the process of completing a fire alarm system replacement, each school has specific interim measures in place until their systems become operable.
- The Department has consulted with Honolulu and Maui County Fire Departments as well as leading Fire Alarm consultants and providers to discuss wireless solutions for fire alarm systems. At this time, the consensus is that the lack of certain products on the market essential for compliance will not meet national school code requirements.

As of December 28, 2023, there are 11 schools utilizing a fire watch plan for their campus due to inoperable systems. Below are the status of each project.

School	Project Name	Project Status	Construction Contract Cost
Heeia Elementary	Fire Alarm System Replacement	In Construction	\$1,590,660
Kahuku High & Intermediate	Fire Alarm System Replacement	In Construction	\$1,413,620

School	Project Name	Project Status	Construction Contract Cost
Kaunualii Elementary	Fire Alarm System Replacement	In Construction	\$1,189,190
Laie Elementary	Fire Alarm System Replacement	In Construction	\$562,709
Pearl City High	Fire Alarm System Replacement	In Construction	\$1,798,378
Sunset Beach Elementary	Fire Alarm System Replacement	Pre-Construction (Contract Awarded)	\$902,842

School	Project Name	Project Status	Estimated Construction Cost
Kainalu Elementary	Fire Alarm System Replacement	Permit Submitted	\$700,000
Kapaa High	Fire Alarm System Replacement	Design: Final	\$2,404,905
Kapalama Elementary	Fire Alarm Control Panel Replacement	Procurement: Pre-Bid	\$75,000
	Fire Alarm System Replacement	Design: Final	\$1,500,000
Konawaena Elementary	Fire Alarm Control Panel Replacement	Procurement: Pre-Bid	\$75,000
	Fire Alarm System Replacement	Design: Preliminary	\$1,500,000
Solomon Elementary	R&M Design Service Contract *Repair due to water damage from roof leak	Scoping	TBD Pending Scope

There are 8 Elementary schools, 1 Intermediate and 2 High Schools.

- Are parents aware?
- Have the schools mitigated the property by removing dry brush, grass and other combustible things.

- Has the fire department visited EACH school to recommend mitigation strategies?
- **I am not confident that these 11 schools are safe.**

Each of these schools are MANDATED to have a designated FIRE WATCH with NO OTHER DUTIES.

Provide a list of names of identified fire watch assignments for each school identified.

Date of training

List of competencies required.

What is a Fire Watch, and How to Conduct One

(Source: [What is a Fire Watch, and How to Conduct One - Vanguard \(vanguard-fire.com\)](https://vanguard-fire.com/what-is-a-fire-watch-and-how-to-conduct-one/))

You rely on your fire safety equipment and protocols to protect you in an emergency.

You've likely invested in fire suppression technology and alarm systems that are designed to save life and property during a fire. But what if a fire happens during an unexpected outage or system maintenance?

For many facilities, especially organizations that don't have hours of closure or whose residents can't evacuate quickly or safely — like hospitals or senior care facilities — this situation could end very badly.

Fortunately, a protocol exists to keep residents, patients, visitors, workers, and the property protected from fire danger, even if the fire safety system is temporarily out of commission — a fire watch.

What is a fire watch and how does it work? Let's get into it.

What is a Fire Watch?

NFPA Standard LS.01.02.01 requires that facilities provide protection for occupants of the building during the time the Life Safety Code is not met, including during maintenance or construction. During these times, the fire department must be notified, **and a fire watch initiated.**

A fire watch is a period of time when a group of dedicated staff continually circulate through the affected area of the building looking for signs of fire.

Part of the watch includes notifying the fire department or other emergency response group and documenting when that notification occurs, as well as noting the times the rounds are conducted by the fire watch staff.

When is a Watch Needed?

Any lapse in the facility's fire protection system must be covered by a fire watch to protect people in the building. This includes the fire alarm system, fire suppression, and sprinkler system, or other life-protecting fire safety measures.

Whether a planned or unplanned outage, **if it lasts more than 4 hours** (cumulative) over a 24-hour period, the building must be evacuated or a watch must be called. For example, if a whole zone is out on a fire alarm system or a valve must be closed on a sprinkler system for more than 4 hours, action must be taken.

How to Conduct a Fire Watch

Per NFPA Life Safety Code A.9.6.1.8, a fire watch requires staffing beyond the normal operation level. Staff must include individuals who are trained in fire prevention and fire department notification techniques, and who are confident operating a fire extinguisher.

The staff should have no other responsibilities than circulating through the affected area and looking for signs of fire and checking to make sure that fire escapes, exits, alarm systems, and other elements of the building's fire safety system remain unobstructed, functioning, and available if needed.

Cameras can be used to supplement the fire watch, **but cannot be used in place of human staff**. Camera equipment lacks the senses of smell, hearing, and perception for what conditions may produce a fire.

TRAINING

It's important to be prepared for a fire should the situation occur in your facility — not only to comply with NFPA standards but also to ensure the health and safety of everyone in your facility and the building itself.

Thorough fire safety training can help your employees to feel confident in case a fire emergency arises — from conducting a fire watch to notifying the fire department, to properly using a fire extinguisher. **Be sure to test their training using regular but varied fire drills.**

SAC Testimony

I. Discussion Items

C. Discussion regarding Act 24, Session Laws of Hawai'i 2022 (House Bill 1848, Relating to Student Journalism)

OPPOSE

The two suggested options come from a non journalistic points of view. This is exactly why the Acxt was written. To stop this nonsense. Why did the legislature feel it necessary to write this bill? Do you know why?

I went back into the 2022 archives and read all the testimonies from the 4 hearings. What you are proposing is not in line with the Act.

Cant you just use the verbiage from HRS **[\$302A-451]**?

There were 4 hearings:

February 3, 2022 33 pages of favorable testimony.

February 24, 2022 26 pages of favorable testimony.

March 16, 2022 13 pages of favorable testimony.

March 21, 2022 34 pages of favorable testimony.

This one hit my heart:

“...What is true, however, is that, without this bill, administrators are censoring the First Amendment rights of student journalists in Hawaii. While my students do not face censorship, in my role with JEA, I hear stories of Hawaii administrators whose actions show they do not trust student journalists and their advisers.

- A high school administrator did not allow the student media to run an opinion piece about the n-word. Here are the last sentences of that piece: “The n-word should always be a huge social taboo because of its historical origin and usage; however, society is beyond the point of that. If certain individuals want to continue using the word, then the general public must learn how to comprehend its given context to react in an appropriate manner.” This is a nuanced reflection on an issue that matters.

- A high school administrator didn't want editorials published unless they were in Pro/Con format. Two that gave the adviser and staff the most difficulty: an editorial about how a student hates Thanksgiving and an editorial criticizing Trump's cabinet picks.

- A high school administrator asked the following questions during prior review with the adviser: “Why is this phrased this way? Why is this article about things that Trump has

done called a ‘quick and dirty run down’? Some of these measures didn’t pass so why report on them? Why is this statistic phrased this way? Why is this the title of this article?”

- In a high school that has prior review, the administrator held on to the paper so long that the student staff decided it was too late to send it to the printer, so they published that issue online only.
- A high school journalism adviser had been attending meetings which included discussion of student press rights legislation but stopped attending for fear of angering administration
- A high school newspaper is required to produce a “community issue,” which is public relations, not journalism.
- A college newspaper didn’t cover an issue for fear it would get their adviser in trouble. What is also true is that student journalists serve an important role in our democracy.”

DOE Point of view of existing Board Policy

Board Policy 101-9 School-Sponsored Student Publications (Attachment A) is the Department’s existing student journalism policy. By analyzing the content of the existing policy against the requirements of Act 24, SLH 2022, as well as other student journalism policies, the Department realized that while the existing policy does meet some of the requirements delineated by Act 24, SLH 2022, the policy does not meet all of the legislative requirements.

THE INTENT OF ACT 24

SECTION 1. This Act shall be known and may be cited as the Hawaii Student Journalism Protection Act.

SECTION 2. The legislature finds that states may enhance the protections guaranteed by the First Amendment of the United States Constitution through state laws, rules, and regulations. The legislature further finds **that student journalists attending Hawaii public schools and colleges need additional protection against censorship, and that advisors need additional**

protections against retaliation for refusing to illegally censor student journalists.

The purpose of this Act is to establish the Hawaii Student Journalism Protection Act in order to:

- (1) Allow student journalists at public schools and colleges to exercise freedom of speech and freedom of the press in school-sponsored media; and
- (2) Protect advisors from retaliation for refusing to infringe upon student press freedom.

The board shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section; provided that the policy shall include:

- (1) Reasonable provisions for the time, place, and manner of distribution of student expression; and
- (2) A procedure for the timely appeal of decisions made pursuant to this section.

Report Title:

Student journalism; School-sponsored Media; University-sponsored Media; Freedom of Press

Description:

Establishes freedom of press protections for student journalists producing school-sponsored media or university-sponsored media unless subject to certain exceptions.

HRS [§302A-451] Student journalists; school-sponsored media. (a) A student journalist shall be allowed to exercise freedom of speech and freedom of the press in school-sponsored media and shall not be disciplined for acting in accordance with this section. A student journalist shall be responsible for determining the news, opinion, feature, and advertising content of school-sponsored media.

(b) Nothing in this section shall be construed to prevent a student media advisor from teaching professional standards of English language use and journalism to student journalists or determining grades and credit for those purposes.

(c) Nothing in this section shall be construed to authorize or protect student expression that:

- (1) Is libelous or slanderous;
- (2) Constitutes a clearly unwarranted invasion of personal privacy;
- (3) Violates state or federal law;
- (4) Is obscene; or
- (5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of lawful school or board policies, or the material and substantial disruption of the orderly operation of the school; provided that the determination of a risk of material and substantial disruption shall be based upon specific facts, including past experience at the school and current events influencing student behavior, and not on undifferentiated fear or apprehension of disturbance.

(d) There shall be no prior constraint of material prepared for school-sponsored media except as provided in subsection (c). **School officials shall have the burden of showing justification without undue delay before a limitation of student expression under this section and shall establish a reasonable period of review for material prepared for school-sponsored media. If the period of review elapses without a decision, the material prepared for school-sponsored media shall be considered authorized.**

(e) No publication or other expression of material by student journalists in the exercise of rights under this section shall be deemed to be an expression of the school, board, or department. No state agency, member of the board, officer of the department, or employee of any agency or the board shall be held responsible in any civil or criminal action for the publication or other expression of material by student journalists in the exercise of rights under this section or the First Amendment of the United States Constitution.

(f) A student media advisor shall not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for:

- (1) Acting to protect a student journalist engaged in conduct protected under this section or the First Amendment to the United States Constitution; or
- (2) Refusing to infringe on conduct that is protected by this section or the First Amendment to the United States Constitution.

(g) The board shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and freedom of the press in school-sponsored media in accordance with this section; provided that the policy shall include:

- (1) Reasonable provisions for the time, place, and manner of distribution of student expression; and
- (2) A procedure for the timely appeal of decisions made pursuant to this section.

(h) For the purposes of this section:

"School-sponsored media" means any material:

- (1) Prepared, written, published, or broadcast in any media by a student journalist at a school;
- (2) Distributed or generally made available, either free of charge or for a fee, to members of the student body; and
- (3) Prepared under the direction of a student media advisor, regardless of whether the material is supported financially by the school or by use of facilities of the school or produced in conjunction with a class for which the student is enrolled.

"School-sponsored media" does not include material intended for distribution or transmission for classroom purposes only.

"Student journalist" means a student who determines, gathers, compiles, writes, edits, photographs, records, or prepares information or advertising for inclusion in school-sponsored media.

"Student media advisor" means an individual employed, appointed, or designated by a school to supervise or provide instruction relating to school-sponsored media. [L 2022, c 24, §3]

- D. Review and Discussion of Strategic Plan, Desired Outcome 3.2.2, Action Item 4, "Align schools' academic plan templates with the strategic plan and integrate multiple planning requirements, as appropriate"