

Thank you for the opportunity to provide comments on the policy drafts you will be discussion regarding Act 24, Session Laws of Hawai‘i 2022 (House Bill 1848, Relating to Student Journalism). My name is Cynthia Reves and I am a McKinley High School journalism teacher.

Draft Language	<i>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.</i>
Comments	<p>I would like to request a change and additions to the time frame.</p> <p>I suggest this language: <i>Administrative prior review shall be rare, if it occurs at all. Sound pedagogical, ethical and legal rationale exist opposing all forms of prior review. Any reason for such prior review shall be clearly communicated to the student journalist in writing, and at no time will school-sponsored student media be held for prior review longer than 72 hours or more than 24 hours beyond the publication deadline time as established by the student journalist, whichever comes first. Any costs borne by the student media program as a result of delays pertaining to administrative prior review shall be covered by the school.</i></p>

Draft Language	<p><i>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.</i></p> <p><i>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:</i></p> <ol style="list-style-type: none"> <i>1. Is libelous or slanderous;</i> <i>2. Constitutes an unwarranted invasion of privacy;</i> <i>3. Is obscene;</i> <i>4. Violates federal or state law; or</i> <i>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.</i> <p><i>The above five exceptions are not authorized or protected by the Hawaii Student Journalist Protection Act.</i></p> <p><i>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.</i></p>
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Comments	<p>I would like this policy to give more guidance to administrators regarding PRIOR REVIEW because the more judgment calls that are in the hands of administration that are beyond the bounds or in contravention of HSJPA, the less liability protection the district gets to enjoy despite the language of the policy as drafted.</p> <p>I suggest this language: <i>Administrative prior review shall be rare, if it occurs at all. Sound pedagogical, ethical and legal rationale exist opposing all forms of prior review. Any reason for such prior review shall be clearly communicated to the student journalist in writing,</i></p>
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Draft Language	<p>Language from Option 1 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 ...</p> <p>Language from Option 2 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 ...</p>
Comments	I prefer the language in Option 1

Draft Language	<p>Language from Option 1 Appeals Process ... 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. ...</p> <p>Language from Option 2 Appeals Process ...The student journalist shall have the right to have their parent or legal guardian and the student media adviser present at the hearing. The principal or the principal's designee shall explain the reason(s) for the objection(s) to the media.</p>
Comments	<p>I prefer the language “burden of proof” in Option 1.</p> <p>I would like it added that, in addition to a guardian and media advisor, the student can bring a third party advocate if so desired. An EIC might want to bring in the reporter or editor on the piece as an advocate, or the other way around.</p>

<p>Draft Language</p>	<p>Language from Option 1 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.</p> <p>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.</p> <p>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.</p> <p>Language from Option 2 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.</p> <p>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.</p> <p>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.</p>
<p>Comments</p>	<p>Broadly when comparing these two drafts, I prefer the language in Option 1.</p> <p>I do request this committee discuss the pros/cons of WHO makes the decisions: “Superintendent” vs. “Complex Area Superintendent or Complex Area educational officer designee.” Which class of administrator makes decisions similar to this on a regular basis?</p> <p>I also request this committee discuss the pros/cons of the VENUE for the decision. I like affording the student an opportunity to approach the board of education, but Hawaii’s BOE usually meets during school hours.</p> <p>I would like language added to indicate the fact that a record will be kept of the proceedings for later review/appeal.</p>

I also wish the policy provided clearer definitions. I've shared a model policy with the DOE and was told that a lot of that language would be more appropriate in a separate document, something like a "Student-Journalism Guidance Document." My concern with this is that the Hawaii Student Journalism Protection Act was signed into law in May 2022 and if the process of getting a "guidance document" created takes as long as it is taking to revise Policy 101-9, those involved in scholastic journalism will end up without district guidance for years. The policy that has existed since 1999 has a line "The Department shall establish regulations that provide guidelines and other standards for school-sponsored student publications." However, in over a decade advising the student newspaper I have never seen DOE guidance regulations beyond Policy 101-9.

Here is an example of "definition" language from the model policy:

Determination of a risk of material and substantial disruption shall be based on specific facts, including past experience at the school and current events influencing student behavior, and not on undifferentiated fear or apprehension of disturbance. Actual or potential heated discussion or debate alone is not sufficient evidence of a material and substantial disruption.