



Students' First Amendment Rights and School District Demographics: Gauging School Board Responsiveness to Student Speech Policy

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Abstract

This study examined the extent to which Texas school boards of education made efforts to locally modify student speech policy. Using online policy manuals provided by the Texas Association of School Boards, speech policies for 91 school districts were gathered using a purposive stratified sampling procedure and examined for local modifications to student speech policies under school-sponsored publications, expression, distribution of non-school literature, use of school facilities, and harassment. The geographical location of the district, district percentage of minority students, and total district student enrollment were employed as explanatory variables. The results of a chi-square statistic indicate geographical location and

student enrollment were significantly related to whether school boards made changes to its speech policy. Although not entirely surprising, the more pertinent issue is whether an over reliance on school board associations for policy development curbs meaningful discussion of critical issues such as free speech.

Keywords: First Amendment, student speech policy, school board policy, student civil liberties, school leadership

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Gauging School Board Responsiveness to Student Speech Policy¹

The legal principles surrounding student speech are becoming increasingly complex. As student difference in racial and ethnic distribution, family structure, religious identity, and wealth increases, school leaders will surely face a much broader array of viewpoint and perspective (Hodgkinson, 2002). What is more, current and future leaders are expected to make sound legal decisions and choices. Take for instance, the Orange Unified School District school board's decision to deny club status to the Gay-Straight Alliance (Folmar & Martelle, 1999; Folmar & Richardson, 2000). While the school board presumed its actions were justified, a federal district court ruled the club's exclusion violated the federal Equal Access Act under the First Amendment, which protects students from prohibited viewpoint discrimination. Under the Equal Access Act,

it shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings... (Equal Access Act, 20 USC 4071, 1984).

The reality is that while school officials feel their decisions reflect the children's best interest, a lack of legal awareness may potentially result in costly litigation. For this reason, this study examines the degree to which school boards address speech concerns within their school districts.

School board responsiveness is measured according to the degree to which boards modify, adapt, or revise speech policy to meet the particular needs of a school district. This study

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investigates speech policy using a purposive/stratified sample of traditional Texas public school districts (i.e., no charter schools) by geographical setting (i.e., urban and rural). Assuming changes to speech policy reflect a level of discernment on the part of school boards, one may anticipate diverse school districts tailor speech policy in a manner different from that of less diverse school communities. To be sure, little is known about the influence of local context on legal matters related to student free speech, which makes this exploratory study significant. To begin, this study explores literature addressing the legal complexity of student speech protection and school governance of policy issues which is subsequently used to sketch a framework for probing the nexus between student speech rights and district decisions to locally tailor policies. The methodology is explained in turn followed by a discussion of the results. Conclusions and implications for school leaders and policy makers are offered in closing.

Framework

The Legal Contours of Permissible Speech

The role of the First Amendment of the U.S. Constitution in public schools has been extensive. As the First Amendment reads, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Constitution). While clear and direct, the amendment has been at the center of many legislative, judicial and administrative controversies. Its purposeful inexactness has created difficulties and challenges as far as its applicability in practice. Fortunately, case law, state constitutions, and school board policy together have forged a more thorough and practical understanding of student speech. While case law has been illuminating alone, the courts’ scope of influence is fairly constrained. As Horowitz (1977) notes,

courts are in large measure “backward looking” in that “they are well equipped to see the past and present fairly clearly, and ill equipped to gauge the future” (p. 284).

Recent opinions indicate the U.S. Supreme Court is consistent in upholding forms of speech diverse and extreme in political, religious, and philosophical character. Cases such as *R.A.V. v. City of St. Paul* (1992) and *Virginia v. Black* (2003) serve as prime examples. In *R.A.V.*, a city ordinance making certain types of speech unlawful because of their emotive impact was ruled unconstitutional because it discriminated against viewpoint and content. Citizens were charged with misdemeanors if symbols or objects were placed on public and private property that “[aroused] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender...” (p. 380). The court would conclude, “the ordinance [was] facially unconstitutional in that it [prohibited] otherwise permitted speech solely on the basis of the subjects the speech addresses” (p. 381). Similarly, in *Virginia v. Black* (2003), the High Court struck down a state statute prohibiting all forms of cross burning. Justice O’Connor writing for the majority acknowledged the “hypothetical” association (p. 357) between cross-burning and violent threats, but stopped well short of categorically condemning cross burning as an unprotected classification of speech.

While the Court has accorded considerable speech protection to the ordinary citizen, the speech rights of students have been treated somewhat differently. Considered by many to be the watershed case in student speech jurisprudence, the U.S. Supreme Court in *Tinker v. Des Moines* (1969) ruled that forms of student expression should be protected by the First Amendment but limited at the occurrence of material and substantial disruption or when the rights of others are infringed upon. Per *Tinker*, the Court upheld students’ right to passively and symbolically express their disapproval of the Vietnam War on school grounds. As the *Tinker* court surmised,

schools “may not be enclaves of totalitarianism” (p. 511) nor suppress speech solely upon the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint” (p. 509). In sum, the school failed to justify its actions in prohibiting the speech. Fifteen years later, the court would further clarify the contours of student speech in favor of school official discretion. In *Bethel School District v. Fraser* (1986), the court ruled that student speech is subject to censorship when it violates standards of civility. Shortly following *Bethel*, the Court in *Hazelwood v. Kuhlmeier* (1988) would determine that schools may regulate content of school-sponsored student newspapers.

Two recent cases however, *Saxe v. State College Area School District* (2001) and *Morse v. Frederick* (2007), epitomize the present day complexity of student speech. In *Saxe*, the U.S. Circuit Third Circuit Court reversed a district court ruling holding that a district “anti-harassment” policy was unconstitutional because it violated the student’s First Amendment right to “speak out about the sinful nature and harmful effects of homosexuality” (*Saxe*, p. 203).

According to the district policy, harassment was defined (in part) as:

verbal or physical conduct based on one’s perceived race, religion, color, national origin, gender, sexual orientation, disability, or other personal characteristics, and which has the purpose or effect of substantially interfering with a student’s educational performance or creating an intimidating, hostile or offensive environment (*Saxe*, p. 202).

The Third Circuit court found the language overbroad and inexact, as it “[prohibited] a substantial amount of non-vulgar, non-sponsored student speech” and would further inappropriately classify forms of speech as materially and substantially disruptive (*Saxe*, p. 216). Furthermore, it concluded that “emotive impact” alone was insufficient grounding. The court was not persuaded by the district’s contention that the policy suppressed a form of speech that

would by its very nature create a material and substantial disruption.² While the implications of *Saxe* are far reaching, the case itself serves as a cautionary tale to school agencies that policies governing speech must be carefully developed and implemented.

The U.S. Supreme Court ruling in *Morse v. Frederick* (2007) reveals a similar complexity. A high school student, Joseph Frederick, displayed a banner with the message “Bong Hits 4 Jesus” at a school-sponsored event. When the principal asked the student to remove the banner, the student refused and was subsequently suspended for violating the school district policy prohibiting “any assembly or public expression that ... advocates the use of substances that are illegal to minors...” (p. 3). The U.S. Ninth Circuit found in Frederick’s favor holding the “banner expressed a positive sentiment about marijuana use” (p. 4) and that his entitlement to speech protection was “well established” (p. 5).

In reversing, the U.S. Supreme Court concluded that while the expression may be interpreted as “meaningless” or “gibberish,” it contains an “undeniable reference to illegal drugs” (p. 7). The Court relied on two factors from its prior speech ruling in *Bethel v. Fraser*. First, the level of constitutional protection students enjoy in schools is less so than the ordinary citizen due to the unique function and context of schools. Second, other factors besides whether a material and substantial disruption had or would have manifested should be considered when assessing the suitability of student speech, which in the present case, was not seen as an appropriate analysis. The majority was narrowly interested in the policy violation of speech that encourages illegal drug use, not whether the content of the speech should be interpreted as “plainly offensive” (p. 14). The court states in conclusion that the “First Amendment does not

² See *Tinker v. DesMoines* (1968), 393 U.S. 503; *Bethel v. Fraser* (1986), 478 U.S. 675; *Hazelwood v. Kublmeier* (1988) 484 U.S.

require schools to tolerate at school events student expression that contributes to those dangers” (p. 15).

Beyond whether the *Morse* ruling signifies a victory for schools, both courts were cautious in avoiding language that connoted banning any speech considered “offensive.” In other words, the courts issued no ultimatum on what forms or types of speech should be made permissible. In spite of unclear criteria, schools must still make legally appropriate decisions regarding expression and be keenly aware and sensitive to religious, social, and cultural change. The extent to which school boards attend to speech and other relevant issues is not well understood. Neither is the impact of politics on decision-making regarding speech policy. Research demonstrates that particular factors predict greater board involvement in issues.

Leadership Responsiveness to Issues

While demands intensify for board members to acquire an increasingly technical expertise of educational issues (e.g., examining test data), little is known about board engagement in student speech policy. Much research, however, has examined board engagement in general policies and affairs. For instance, Greene’s (1990) study of board responsiveness to constituent and policy issues found board members preferred to approach their policymaking duties as technical rather than political responsibilities. Factors identified included the competitiveness of an election, opposition from a candidate, district student enrollment, and whether the district was involved in a controversy in the past year. A later study by Greene (1992) revealed a greater number of students served in the district predicted greater board member political involvement while socioeconomic status was not a factor.

Other studies reveal similar findings. Hess (2002) in a national study of school board members found board members in large school districts engaged more often in political affairs

(i.e., campaigns, political platforms, interest group activity, formalized community input) than board members from smaller school districts. Newman and Brown (1993) found board members from larger districts were more interactive with the community on issues and were less disposed to accepting recommendations from the district superintendent.

With respect to policy development and diversity, findings by Hess (2002) suggest racial and ethnic concerns rate low in importance among factors school board members use to assess superintendent performance. Results from Hess' survey indicated board and superintendent relationship (86%), system morale (81%), and student safety (80%) rated as most important while only 40% of members surveyed considered racial and ethnic concerns as most important. When district size was used as factor, the largest disparity existed in the racial and ethnic concern category. Fifty-six percent of large district school board members compared to 32% of small district board members considered racial and ethnic concerns very important.

In sum, the governance literature as a whole suggests leadership responsiveness may correlate to a fair degree with district size and diversity. In the present study, student speech policy was purposefully selected as an issue in which to evaluate district leadership action for two reasons. First, student speech policies are usually low visibility policies, which typically fail to capture widespread interest. Because student speech garners less attention compared to other more pressing concerns (e.g., accountability and finance), it typically is regarded as a low stakes issue. In view of local control, the manner in which speech policies are developed and implemented hinges largely upon local educational agency policy and to some degree individual schools. Minimal policy discussion afforded to speech usually results in school personnel serving as the ultimate arbiters of policy. Second, increasing ethnic and cultural diversity calls for practitioners and policy-makers at every level to give added attention to difference. As the

Orange Unified School District example illustrates, board member misgivings in granting club status to a gay group violated civil provisions under the Equal Access Act. Boards can potentially face legal challenges if their stance toward a protected viewpoint appears indifferent and discriminatory. Unprecedented social and cultural change demands an appraisal of leadership responsiveness to this largely unattended area.

In this study, leadership responsiveness to student speech is measured according to whether districts locally tailored any of the five standardized speech policies issued by the Texas Association of School Boards (TASB) as of October 2004 (a further explanation of TASB and its policies will follow). The researchers assessed leadership responsiveness to speech policies by probing the following two questions: (a) to what extent are school boards locally addressing student speech policies?; and (b) to what extent do district student enrollment, district minority percentage, and the geographical location of the school predict whether school boards are tailoring speech policy to meet local needs?

Method

Sources of Data

Information regarding student speech and harassment policy was collected via a stratified random sample of school districts in Texas in October 2004. Approximately 10% of the 1,039 independent Texas school districts were randomly selected and stratified according to district geographical indicators gathered from the Common Core Data through the National Center for Education Statistics (NCES). The Texas Education Agency's Academic Excellence Indicator System (AEIS) provided data for minority representation and student population for the school district (TEA, 2004). A stratified purposive approach was selected to gather a larger sampling of urban districts. This sampling method was crucial in light of the sizable disparity in number

between urban and non-urban school districts in Texas. In total, there are 1,039 school districts in Texas and only 28% of the school districts come from “large central city” and “urban fringe of large city” metropolitan statistical areas (MSA). All other districts are situated in mid-sized cities and below. To ensure an adequate amount of data, larger school districts were over-sampled. Thus, 33% out of the 183 large city and urban fringe of large city school districts yielded a sub-sample of 61 while 6% of the 856 cases in all other geographical cases generated a sub-sample of 57. To ensure a more balanced data set, a purposive sampling technique was used to offset the large number of smaller school districts as well as to explore the urban effect more broadly. Purposive sampling, according to Kerlinger (1986), involves the “use of judgment and a deliberate effort to obtain representative samples...” (p. 120). Of the 118 selected school districts, speech policy information was not available for 27 districts thus resulting in a final sample size of 91.

Treatment of Data

Three independent variables (i.e., district geographical location, district minority enrollment percentage, and district student enrollment) were utilized in the study. Note that due to sample size limitations, variables were coded into binary form.

Geographical Location

A core objective to the study was to assess responsiveness of school boards to policy under the realm of speech by district type (e.g., urban v. rural). For the variable “geographical location of the school district,” the Common Core Data (U. S. Department of Education) provided locale identifiers for each district in the sample. Each district was assigned to one of two geographical groups - one designating urban and the other mid-sized town, small town, and rural. In the sample, 55 districts were identified as “large central city” and “urban fringe of large

city” while the remaining smaller districts including “mid-sized city,” “urban fringe of mid-sized city,” “large town,” “small town,” and “rural” were categorized as mid-sized and smaller (N=36).

Minority Enrollment Percentage

The study also examined whether school boards serving higher concentrations of minority students would be more inclined to alter speech policy given greater diversity. The “percentage of minority students” for each school district was collected via the Texas Education Agency website (Texas Education Agency, n.d.). Districts were then classified into one of two clusters. Two reports issued by the NCES were consulted to construct categorical minority school system variable. A report entitled *Contexts of Elementary and Secondary Education: School Characteristics and Climate* (Wirt, J., Rooney, P., Hussar, B., Choy, S., Provasnik, S., & Hampden-Thompson, G., 2005), defined high minority schools as schools having minority enrollments 50% or greater (U.S. Department of Education, National Center for Educational Statistics, 2005). Fifteen percent of the sampled districts met this criterion. A second NCES report entitled *Efforts by Public K-8 Schools to Involve Parents in Children’s Education: Do School and Parent Reports Agree?* (Xianglei, 2001a) identified high minority schools as having minority enrollments greater than 75% (Xianglei, 2001b). Only 4% of the sampled districts fit this definition for high minority district. To minimize bias, both operational definitions were utilized in the analysis.

School District Size

A third objective was to examine whether school district size measured by student enrollment influenced district responsiveness to speech policy concerns. A report issued by the NCES entitled *Characteristics of the 100 Largest Public Elementary and Secondary School*

Districts in the United States: 2001-2002 (Sietsema, 2003) indicated that a cumulative percentage of 52.1% of students were enrolled in 5.6% of school districts in the U.S. that served at least 10,000 students (Sietsema, 2002). Thus, a district size of 10,000 was used as the dividing point because of its close distance to the midpoint. Based on this criterion, 21% of the districts were assigned to the large category while the remaining 79% represented the small district category.

School Board Engagement in Speech Policy

The present study required that student speech policies of various types be assessed for local changes or adaptations. The online policy manuals provided by the Texas Association of School Boards (TASB) provided the most efficient means to accessing district policy. TASB develops policy manuals for most school districts in Texas. Nearly a third of member districts post their policy online (Texas Association of School Boards, n.d.). Online manuals utilize a standardized delivery format. Thus, the presentation and organization of policy is virtually the same for every member district. Policies are assigned by type to one of seven different policy categories which include “basis district foundations,” “local governance,” “business and support services,” “personnel,” “instruction,” “students,” and “community and governmental relations.” Student speech policies are found in the “students” policy section. These policies include (a) school sponsored publications; (b) student expression; (c) distribution of non-school related literature; (d) use of school facilities; and (e) harassment.

As a service, TASB additionally develops standardized local policies, which school districts can choose to adopt word for word depending on the policy area (see Table 1 for examples of standardized policy versions retrieved). School districts have the discretion to locally modify policy if they so choose. Policies are coded with a letter “X” or “W” if the policy

has undergone a local revision. TASB’s online *Localized Policy Manual* provides information pertaining to local adaptations, which reads as follows:

Local policy versions have been created to reflect language common to many districts and determined by the Board to be appropriate for the District. Local versions have the code in the lower left corner with the designation (LOCAL) followed by a letter (or letter/number combination) that identifies the version. A unique local policy developed by the District can be distinguished from the standard local versions by the designation (LOCAL)-X or -W in the lower left corner of the page (TASB, n.d.).

Board engagement in student speech policy is evaluated by whether districts have locally modified the standardized versions offered by TASB. For the purposes of this study, local changes to the policy signify school board engagement in student speech issues. For instance, departing from the standardized local version of the “school sponsored publications” policy, one school district added the following to more accurately reflect its stance on student speech:

Student participation in the publication of school newspapers, yearbooks, literary magazines, and similar publications is encouraged by the District as an educational experience. Student publications shall be directed by faculty advisors and shall strive to meet high standards of journalism (Texas Association of School Boards, 2005).

Efforts at tailoring the policy to accommodate local conditions were perceived as school boards giving added attention to societal issues and perhaps a shift in board governance roles and responsibilities as well.

Table 1

TASB Local Speech Policies- Standardized Version A

Policy	Policy Description (excerpts)
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<p>School Sponsored Publications</p>	<p>All publications edited, printed, or distributed in the name of or within the District schools shall be under the control of the school administration and the Board. All publications approved and issued by individual schools shall be part of the instructional program, under the supervision of a faculty sponsor, and shall be carefully edited to reflect the ideals and expectations of the citizens of the District for their schools. The principal shall be responsible for all matters pertaining to the organization, issuance, and sale of such publications and any other publication procedure, subject to the Superintendent's approval.</p>
<p>Student Expression*</p>	<p>Students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. At school and school events, students have First Amendment rights, applied in light of the special characteristics of the school environment. Student expression that is protected by the First Amendment may not be prohibited absent a showing that the expression will materially and substantially interfere with the operation of the school or the rights of others.</p>
<p>Distribution of Non-School Literature</p>	<p>For purposes of this policy, "distribution" means the circulation of more than ten printed copies of material from a source other than the District. The District's classrooms during the school day are provided for the limited purpose of delivering instruction to students in the courses and subjects in which they are enrolled. Hallways in school buildings are provided for the limited purpose of facilitating the movement of students between classes and allowing access to assigned lockers. Classrooms and hallways shall not be used for the distribution of any materials over which the school does not exercise control. Each school campus shall designate an area where materials that have been approved for distribution by students in accordance with this policy may be made available or distributed. Campus principals may develop reasonable time, place, and manner restrictions regarding the distribution of materials at designated areas.</p>
<p>Use of School Facilities</p>	<p>For purposes of the Equal Access Act, the Board has created a limited open forum for students attending the District's secondary schools. District secondary schools shall offer an opportunity for noncurriculum-related student groups to meet on school premises during noninstructional time. Each principal shall set aside noninstructional time before or after actual classroom instruction for meetings of noncurriculum-related student groups. Students wishing to meet on school premises shall file a written request with the campus principal. The request shall contain a brief statement of the group's purposes and goals, a list of the group's members, and a schedule of its proposed meeting times. Requests shall be approved by the principal and Superintendent subject to availability of suitable meeting space and without regard to the religious, political, philosophical, or other content of the speech likely to be associated with the group's meetings. Notices of meetings may be posted in a manner determined by the principal.</p>
<p>Harassment</p>	<p>Students shall not engage in harassment motivated by race, color, religion, national origin, or disability and directed toward another student. A substantiated charge of harassment against a student shall result in disciplinary action.</p>

* TASB provides only a "legal" not "local" policy for student expression

Method of Analysis

A chi-square analysis was employed to measure the association between two categorical variables. Using a 2 x 2 contingency table format, the researchers gauged the strength of the association between the one dependent variable (i.e., whether any of the speech policies were locally modified) and three independent variables by computing phi. The statistic phi is useful in assessing a relationship's strength in a 2 x 2 table format (Healey, 1999). The following relationships were examined in order:

Test 1: Is district minority enrollment related to whether school boards are locally modifying speech policy?

X= district minority enrollment

Y= whether any of the speech policies were locally modified

Test 2: Is district student enrollment related to whether school boards are locally modifying speech policy?

X= district student enrollment

Y= whether any of the speech policies were locally modified

Test 3: Is district geographical location related to whether school boards are locally modifying speech policy?

X= geographical location

Y= whether any of the speech policies were locally modified

Limitations and Assumptions to the Study

Because TASB school district policy was not retrievable for every school district in the original sample, the reduced size may have resulted in sampling bias. Lack of available information for smaller school districts resulted in uneven representation, which may

inadvertently bear on the accuracy of the findings. In all, speech policies for 91 of the 118 districts originally sampled (77%) were gathered and reviewed. Also, the researchers assumed for exploratory reasons that policy modification may be a direct or indirect consequence of effort on the part of school boards to adapt speech policy to meet local needs. In other words, local changes of any sort to the speech policies developed by TASB might suggest greater attention to students' speech rights. The researchers concede that while changes may occur in the absence of substantive school board discussion and deliberation, it is nonetheless important to specifically identify factors that lead districts to become more active in student speech governance. The possibility critical events or patterns of undesirable activity prompt more intense board engagement deserves greater scrutiny indeed and is beyond the scope of the current research. Furthermore, it is important to acknowledge the data could largely reflect the inevitable outcomes of socioeconomic and cultural difference as opposed to a greater or lesser commitment to address student speech concerns. With more diversity in urban areas, there is likely greater conflict. This factor alone could be a fairly strong predictor of board engagement and responsiveness.

Results

In all, 23% of the school districts opted to locally tailor versions of their speech policy. The remaining 77% chose to adopt standardized versions of policy created by the Texas Association of School Boards. When the dependent variable was cross-referenced by school district geographical locale, 86% of the 23% (18/21) of school districts modifying policy were situated in large central city and urban fringe of large city school districts. Of the 18 small town and rural school districts examined (outside the MSA), none had locally modified their speech policy.

To test the association between minority student enrollment (percentage of minority students in a school district) and the district’s modification of the speech regulation, a chi-square statistic was used. Two cut points, 50% and 75%, were used as low minority student enrollment or high minority enrollment of the school. The Pearson chi-square results are shown in Table 2 and Table 3 and indicate that both cut points for minority student enrollment of the school are not significantly different on whether the schools modified the regulation ($\chi^2= 1.489, df= 1, N= 91, p = .222$, for 50% cut point; and $\chi^2= 1.255, df= 1, N= 91, p = .263$, for 75% cut point).

Table 2

Summary of Chi-square Analysis for Local Modified by Minority Student Enrollment (50%)

		Locally Modified?					
Variable		<i>n</i>	Yes	No	χ^2	<i>p</i>	
Minority (50%)	Low	77	16	61	1.489	.222	
	High	14	5	9			
Totals		91	21	70			

Note. Minority: Low < 50%; High >=50%. Phi= .128.

Table 3

Summary of Chi-square Analysis for Local Modified by Minority Student Enrollment (75%)

		Locally Modified?					
Variable		<i>n</i>	Yes	No	χ^2	<i>p</i>	
Minority (75%)	Low	87	21	66	1.255	.263	

	High	4	0	4
Totals		91	21	70

Note. Minority: Low < 75%; High >= 75%. Phi= -.117.

A Chi-square statistic was also employed to investigate whether district size (total student enrollment equal to or greater than 10,000 considered as large, less than 10,000 considered as small) was related to the district's modification of speech regulations. The Pearson chi-square results in Table 4 indicate that small and large district size are significantly related to speech policy modification ($\chi^2=7.982, df= 1, N= 91, p = .005$. Phi = .296). Large districts are more likely than expected to make modification to the regulation than are small schools districts. Phi, which indicates the strength of the association between the two variables, is .296 reflecting a small to medium effect size.

Table 4

Summary of Chi-square Analysis for Local Modified by District Size

		Locally Modified?			χ^2	<i>p</i>
Variable	<i>n</i>	Yes	No			
District Student #	Small	72	12	60	7.982	.005**
	Large	19	9	10		
Totals		91	21	70		

Note. Total District Student #: Small < 10,000; Large >= 10,001. Phi= .296**. ***p* <.01.

Again, a chi-square statistic was used to examine the association between geographical location of school (urban and other) and whether districts modified speech policy. As the Pearson chi-

square results suggest in Table 5, urban and schools in other locations are significantly different on whether the district modified the regulation ($\chi^2=7.294, df= 1, N = 91, p = .007. Phi = .283$). Urban school districts are more likely than expected to make modification of the regulation than are school districts in other locations. The strength of the association (Phi) between the two variables is .283 thus reflecting a small to medium effect size.

Table 5

Summary of Chi-square Analysis for Local Modified by Location

		Locally Modified?				
Variable		<i>n</i>	Yes	No	χ^2	<i>p</i>
Geocode	Urban	55	18	37	7.294	.007* *
	Other	36	3	33		
Totals		91	21	70		

Note. Phi= .283**. ***p* <.01.

In sum, the findings suggest the geographical location of the school district and size of the district student population have significant influence on the decision of school districts to make local adaptations to student speech policies (see Table 6). These two factors, student population size and geographical location, proved influential in prior studies in the area of school governance (Hess, 2002; Newman & Brown, 1993).

Table 6

Summary of all Chi-square Analyses

Variable	χ^2	<i>p</i>
Minority (50%)	1.489	.222
Minority (75%)	1.255	.263
District Student Population	7.982	.005**
Geographical Location of School District	7.294	.007**

***p* < .01.

Discussion

A review of school board policy indicates Texas school districts vary little with respect to student speech policies, which may suggest minimal attention to speech. Because most school districts are members of the Texas Association of School Boards (TASB), member districts, as a service, are issued policy in standardized form reflecting yearly changes in federal and state law. This is an important development because school districts may not be independently engaging in conversation and dialogue about critical legal issues.

TASB describes itself as a “voluntary, nonprofit, statewide educational association that serves and represents local Texas school districts” (Texas Association of School Boards, n.d, About TASB). It serves 1,042 school districts and represents the “largest group of publicly elected officials in the state” (Texas Association of School Boards, n.d, About TASB). The membership fee includes services in the areas of training, legislative and regulatory information and support, legal services, timely publications, risk and cash management services, and cooperative purchasing (Texas Association of School Board, n.d., Products and services). In addition, the organization markets paid services such as policy development, personnel

administration, and superintendent searches. There is a tacit overlapping of the free and paid services. For example, free legal advice is available as part of the membership but only in order to answer questions and review policy. There are also paid legal services. The result is a large organization with a large number of employees.

Given the deference to TASB, it is not surprising that school boards generally prefer to abstain from modifying policy in general. However, the results from this analysis suggest to some degree that context may be influential. The findings suggest districts in urban settings as well as districts serving high student enrollments modified speech policy to a significantly greater degree. This could be interpreted as greater board attention and responsiveness, which would be consistent with prior research on urban boards (Hess, 2002; Newman & Brown, 1993) and boards representing districts with high student enrollments (K. R. Greene, 1990; Kenneth R. Greene, 1992). The non-influential impact of district minority representation was also consistent prior findings (Kenneth R. Greene, 1992).

For the large urban school district, issues naturally attract greater public attention and require school board members to address political implications. Urban board members, as the research suggests, seem to be more oriented to serving as “politicians” and “negotiators” (Kenneth R. Greene, 1992; Lutz & Gresson, 1980; Merz, 1986; Tucker & Zeigler, 1980) especially in circumstances where greater social volatility exists and when policy is inherently values laden. But what is noteworthy from the findings is that not a single small town or rural school district within the sample locally modified a single speech policy. Perhaps, such issues are trivial in relation to other pressing demands facing rural schools such as meeting accountability requirements and balancing district budgets. If such issues truly generate minimal responsiveness in small town/rural school districts, administrators become the final arbiters of law and policy.

Should anyone in a district be responsive to speech concerns, it should be the superintendent. Working with the board on policy is one of their major responsibilities. While superintendents are immersed in the day-to-day operation of the district, their involvement relates to the “big” issues, such as managing the budget and their role as communicator to the community at large. Boards are dependent upon campus administrators to tell them when free speech issues arise. Whether or not they are informed will depend on the sensitivity of campus administrators to this issue. Consider the following scenario: a student appears on campus wearing a confederate flag t-shirt, a teacher notifies the office that this might be a problem, a vice-principal quietly talks with the student whom he or she knows well, and the shirt is replaced with another one without incident. The entire episode may take no more than 15 minutes early in the morning and is not ever reported to the superintendent. The result is that the educator responsible for the policy is unaware of the need until a significant incident involving free speech occurs.

Even in small schools where the superintendent may be the only district level administrator and serve as the principal of one or more campuses, there are pressures that work against addressing free speech issues in policy. In these districts, reliance on a policy service is seen as a necessity. Since the board hires and fires the superintendent, there is also a need and obligation to address the board’s interests and needs. The superintendent is aware of the obligation to protect the democratic rights of students through policy, but this issue is rarely, if ever, brought to their attention to the board or the public. It is therefore, rarely addressed by the superintendent and is likely not to be brought forward as an issue without a critical incident that makes addressing the issue compulsory. Prior research has uncovered a similar form of role “variety,” “autonomy,” and informal “power” in decision-making within rural and small schools

(Pearson & Sutton, 1999) as well as a considerable amount of role “socialization,” especially for rural school leaders, in terms of role expectations and problem solving (Hurley, 1992).

Conclusion

Although dependence on external policy services may be a necessity, school districts could face challenges to speech policies if content and viewpoints are being censored inappropriately. Actions such as those taken by the Orange County Unified School District are likely neither isolated nor uncommon and serve as cautionary examples of minimized board involvement in systematic legal education and policy development. Increasing diversity in the form of race/ethnicity, wealth, political thought, and religious faith, to name a few, demand school leaders reassess policy domains and perhaps in some instances issue clarifications or render substantial revisions. The need for greater responsiveness, particularly in rural communities, is further substantiated by a report issued by the Rural School and Community Trust Policy Program (Johnson & Strange, 2007), which indicates a considerable increase in rural student enrollment as a percentage of the national enrollment along with massive increases in minority populations (i.e., American Indian/Alaskan Native, Asian Pacific Islander, Black, Hispanic) in rural areas nationally -- an increase of 55% between 1995 and 2005. Clearly, the issues of administrative discretion and policy attention/implementation warrant further scrutiny. Future research should more closely examine factors that lead to greater school board involvement in policy/legal areas, particularly in circumstances when school districts outsource policy development. For instance, one might examine whether critical incidents (e.g., crises) or board member level of education impact the level of board engagement in developing local policy. Studies may also broaden their analysis of district codes of conduct relative to speech to include a greater geographical diversity of school districts or explore the impact of poverty on

board involvement. A future study may also explore school board member role types (i.e., political v. professional) and their relationship to various forms of policy.

In sum, the findings of this exploratory analysis suggest that while district leaders in urban communities and districts serving large student populations may be locally tailoring student speech policy to a greater degree, a considerable number of districts seemingly do not. Cases such as *Saxe* and *Morse* illustrate the evolving complexity of speech litigation and student protections and serve as reminders to school leaders at every level that continuing legal education and substantive conversations around diversity and civil liberties are fundamentally important and necessary to sustaining an effective government. Whether over-dependency on external policy-making organizations leads school government to be less responsive to student speech policy is a question beyond the scope of the study. Yet, the findings seem to suggest that this dependence could be inhibiting thoughtful deliberation of important topics to some degree.

References

- American Psychological Association. (2001). *Publication Manual of the American Psychological Association* (5th ed.). Washington, DC: Author
- Bethel School District v. Fraser* (1986), 478 U.S. 675.
- Castorina v. Madison County School Board* (2001), 246 F. 3d 536; 2001 U. S. App.
- Denno v. School Board of Volusia County, Florida* (2000), 218 F. 3d 1267; 2000 U. S. App.
- Eadie, D. (2004). The change challenge: How you deal with constant threat and opportunities will determine your effectiveness as a board. *American School Board Journal* (December), 32-34.
- Equal Access Act (1984). *Equal Access, 20 USC 4071*, Retrieved on September 1, 2007 from <http://www.usdoj.gov/crt/cor/byagency/ed4071.htm>
- Folmar, K., & Martelle, S. (1999, Dec 9). Gay Clubs Bring School Use Debate Back Into Spotlight; Rights: As Orange board bars group from campus, activists cite law first invoked by religious conservatives. *Los Angeles Times*, 1.
- Folmar, K., & Richardson, L. (2000, Feb 8). Fliers Mock Gays at School With Disputed Club; Officials denounce the act at El Modena High, where a federal judge has ordered the school board to allow the Gay-Straight Alliance to meet. *Los Angeles Times*, 1.
- Goldman, S., & Jahnige, T. P. (1985). *The federal courts as a political system* (2nd ed.). Philadelphia: Harper & Row.
- Greene, K. R. (1990). School-Board Members Responsiveness to Constituents. *Urban Education*, 24(4), 363-375.
- Greene, K. R. (1992). Models of School Board Policy-Making. *Educational Administration Quarterly*, 28(2), 220-236.
- Hess, F. M. (2002). *School Boards at the Dawn of the 21st Century: Conditions and Challenges of District Governance*. Arlington, VA: National School Boards Association.
- Hodgkinson, H. (2002). Demographics and teacher education: An overview. *Journal of Teacher Education*, 53(2), 102-105.
- Horowitz, D. L. (1977). *The courts and social policy*. Washington, D.C.: Brookings Institution.
- Hurley, (1992). The organizational socialization of rural high school principals: Teacher influences. *Journal of Research in Rural Education*, 8(2), 20-31.

- Johnson, C. A., & Canon, B. C. (1984). *Judicial process: Implementation and impact*. Washington, D.C.: Congressional Quarterly.
- Johnson, J. & Strange, M. (2007). *Why Rural Matters 2007: The Realities of Rural Education Growth*. Arlington, VA: The Rural School and Community Trust.
- Kerlinger, F.N. (1986). *Foundations of behavioral research (3rd ed)*. New York: Harcourt, Brace, Jovanovich
- Lutz, F. W., & Gresson, A. (1980). Local School Boards as Political Councils. *Educational Studies, 11*(2), 125-144.
- Melton v. Chattanooga Tennessee Board of Education* (1972), 465 F. 2d 1332; 1972 U. S. App.
- Merz, C. S. (1986). Conflict and Frustration for School Board Members. *Urban Education, 20*(4), 397-418.
- Newman, D. L., & Brown, R. D. (1993). School Board Member Role Expectations in Making Decisions about Educational Programs: Do Size of School and Region of Country Make a Difference? *Urban Education, 28*(3), 267-280.
- Pearson, R.E. & Sutton, J.M. (1999). Rural and small town school counselors. *Journal of Research in Rural Education, 15*(2), 90-100.
- Peltason, J. W. (1961). *Fifty-eight lonely men*. New York: Harcourt, Brace, and World, Inc.
- R.A.V. v. City of St. Paul* (1992), 505 U.S. 377
- Saxe v. State College Area School District* (2001). *240 F.3d 200*
- Sietsema, J. (2002). *Characteristics of the 100 largest public elementary and secondary school districts in the United States: 2000-2001*. Retrieved on March 7, 2006 from http://nces.ed.gov/pubs2002/100_largest/index.asp
- Sietsema, J. (2003). *Characteristics of the 100 largest public elementary and secondary school districts in the United States: 2001-2002*. Retrieved on September 1, 2004 from http://nces.ed.gov/Pubs2003/100_largest/acknowledgments.asp
- Sypniewski v. Warren Hills Regional Board of Education* (2002), 307 F. 3d 243; 2002 U. S. App.
- Texas Association of School Boards. (n.d.). About TASB. Retrieved December 9, 2004, from <http://www.tasb.org/about/index.shtml>
- Texas Association of School Boards. (n.d.). Localized policy manual. Retrieved on March 7, 2006 from <http://www.tasb.org/policy/pol/footer/intro/intro-ISD.html>

- Texas Association of School Boards (n.d.). Policy service: Policy reference manual. Retrieved on March 7, 2006 at <http://www.tasb.org/services/policy/prm.aspx>
- Texas Association of School Board. (n.d.). Products and services. Retrieved on December 9, 2004, from http://www.tasb.org/products_services/
- Texas Association of School Boards (2005). Dallas ISD policy on line. Retrieved on March 7, 2006 from <http://www.tasb.org/policy/pol/private/057905/pol.cfm?DisplayPage=FMA> (LOCAL). html
- Texas Education Agency (n.d.). Academic Indicator Excellence System. Retrieved on September 23, 2004 from <http://www.tea.state.tx.us/index.html>
- Tinker v. Des Moines School District* (1969), 393 U.S. 503.
- Tucker, H. J., & Zeigler, L. H. (1980). *Professionals versus the public attitudes, communication, and response in school districts*. New York: Longman.
- U.S. Department of Education, National Center for Educational Statistics (n.d.). Common core of data. Retrieved on September 1, 2004 from <http://nces.ed.gov/ccd/districtsearch/>
- U.S. Department of Education, National Center for Educational Statistics (2005). Contexts of Elementary and Secondary Education: School Characteristics and Climate. Retrieved on March 7, 2006 from <http://nces.ed.gov/programs/coe/2005/section4/table.asp?tableID=290>
- Virginia v. Black* (2003) 538 U.S. 343
- West v. Derby Unified School District No. 260* (2000), 206 F. 3d 1358; 2000 U. S. App.
- Wirt, J., Rooney, P., Hussar, B., Choy, S., Provasnik, S., & Hampden-Thompson, G. (2005). Contexts of elementary and secondary education: School characteristics and climate. Retrieved on September 1, 2004 from <http://nces.ed.gov/programs/coe/ack/2005.asp>
- Xianglei, C. (2001a). Efforts by public K-8 schools to involve parents in children's education: Do school and parent reports agree? (U.S. Department of Education, NCES 2001-076). Washington, D.C.: U.S. Department of Education.
- Xianglei, C. (2001b). Efforts by public K-8 schools to involve parents in children's education: Do school and parent reports agree? (U.S. Department of Education, NCES 2001-076). Retrieved on March 7, 2006 from http://nces.ed.gov/programs/quarterly/vol_3/3_4/q2-1.asp
- Wasby, S. L. (1973). Toward impact theory: An inventory of hypotheses. In T. L. Becker & M. M. Feeley (Eds.), *The impact of Supreme Court Decisions* (2nd ed., pp. 214-217). New York: Oxford University Press.



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