

**SENATE, No. 1176**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED JANUARY 25, 2018

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Concerns speech rights of student journalists at public schools and public institutions of higher education.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/14/2018)**

1 AN ACT concerning student speech and supplementing chapters 36  
2 and 62 of Title 18A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. a. Except as otherwise provided in section 2 of this act, a  
8 public school student shall have the right to exercise freedom of  
9 speech and of the press.

10 b. By the 2016-2017 school year, each school district shall  
11 adopt a written policy concerning student freedom of expression in  
12 accordance with the provisions of section 2 of this act. The policy  
13 shall include reasonable provisions for the time, place, and manner  
14 of student expression. The policy may also include limitations on  
15 language that may be defined as profane, harassing, threatening, or  
16 intimidating.

17

18 2. a. As used in this section:

19 “School-sponsored media” means any material that is prepared,  
20 substantially written, published, or broadcast by a student journalist  
21 at a public school, distributed or generally made available to  
22 members of the student body, and prepared under the direction of a  
23 student media adviser. School-sponsored media does not include  
24 media intended for distribution or transmission solely in the  
25 classroom in which the media is produced.

26 “Student journalist” means a public school student who gathers,  
27 compiles, writes, edits, photographs, records, or prepares  
28 information for dissemination in school-sponsored media.

29 “Student media adviser” means an individual employed,  
30 appointed, or designated by a school district to supervise or provide  
31 instruction relating to school-sponsored media.

32 b. Except as otherwise provided in subsection c. of this section,  
33 a student journalist has the right to exercise freedom of speech and  
34 of the press in school-sponsored media, regardless of whether the  
35 media is supported financially by the school district or by use of  
36 school district facilities, or produced in conjunction with a class in  
37 which the student is enrolled. Subject to subsection c. of this  
38 section, a student journalist is responsible for determining the news,  
39 opinion, feature, and advertising content of school-sponsored  
40 media. This subsection shall not be construed to prevent a student  
41 media adviser from teaching professional standards of English and  
42 journalism to student journalists.

43 c. This section does not authorize or protect expression by a  
44 student that:

- 45 (1) is libelous or slanderous;  
46 (2) constitutes an unwarranted invasion of privacy;  
47 (3) violates federal or State law; or

1 (4) so incites students as to create a clear and present danger of  
2 the commission of an unlawful act, the violation of school district  
3 policies, or the material and substantial disruption of the orderly  
4 operation of the school.

5 d. A school district shall not authorize any prior restraint of  
6 any school-sponsored media except for the types of expression  
7 described in subsection c. of this section. School officials shall have  
8 the burden of showing justification without undue delay prior to a  
9 limitation of student expression under this section.

10 e. A school district shall not sanction a student operating as an  
11 independent journalist.

12 f. An employee of a school district shall not be dismissed,  
13 suspended, disciplined, reassigned, transferred, or otherwise  
14 retaliated against solely for acting to protect a student engaged in  
15 the conduct authorized under this section, or refusing to infringe  
16 upon conduct that is protected by this section, the First Amendment  
17 to the United States Constitution, or paragraph 6 of Article I of the  
18 New Jersey Constitution.

19

20 3. a. As used in this section:

21 “School-sponsored media” means any material that is prepared,  
22 substantially written, published, or broadcast by a student journalist  
23 at a public institution of higher education, distributed or generally  
24 made available to members of the student body, and prepared under  
25 the direction of a student media adviser. School-sponsored media  
26 does not include media intended for distribution or transmission  
27 solely in the classroom in which the media is produced.

28 “Student journalist” means a student at a public institution of  
29 higher education who gathers, compiles, writes, edits, photographs,  
30 records, or prepares information for dissemination in school-  
31 sponsored media.

32 “Student media adviser” means an individual employed,  
33 appointed, or designated by a public institution of higher education  
34 to supervise or provide instruction relating to school-sponsored  
35 media.

36 b. Except as otherwise provided in subsection c. of this section,  
37 a student journalist has the right to exercise freedom of speech and  
38 of the press in school-sponsored media, regardless of whether the  
39 media is supported financially by the public institution of higher  
40 education or by use of institution facilities, or produced in  
41 conjunction with a course in which the student is enrolled. Subject  
42 to subsection c. of this section, a student journalist is responsible  
43 for determining the news, opinion, feature, and advertising content  
44 of school-sponsored media. This subsection shall not be construed  
45 to prevent a student media adviser from teaching professional  
46 standards of English and journalism to student journalists.

47 c. This section does not authorize or protect expression by a  
48 student that:

- 1 (1) is libelous or slanderous;
- 2 (2) constitutes an unwarranted invasion of privacy;
- 3 (3) violates federal or State law; or
- 4 (4) so incites students as to create a clear and present danger of
- 5 the commission of an unlawful act, the violation of policies of the
- 6 public institution of higher education, or the material and
- 7 substantial disruption of the orderly operation of the institution.

8 d. An employee of a public institution of higher education shall  
9 not be dismissed, suspended, disciplined, reassigned, transferred, or  
10 otherwise retaliated against solely for acting to protect a student  
11 engaged in the conduct authorized under this section, or refusing to  
12 infringe upon conduct that is protected by this section, the First  
13 Amendment to the United States Constitution, or paragraph 6 of  
14 Article I of the New Jersey Constitution.

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16 4. This act shall take effect immediately.

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#### STATEMENT

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21 This bill guarantees certain freedom of expression rights for  
22 students in public schools and public institutions of higher  
23 education. The bill provides that a student at a public school or a  
24 public institution of higher education who gathers, compiles, writes,  
25 edits, photographs, records, or prepares information for  
26 dissemination in school-sponsored media has the right to exercise  
27 freedom of speech and of the press, and is responsible for  
28 determining the news, opinion, feature, and advertising content of  
29 the school-sponsored media. The bill does not protect student  
30 expression that: (1) is libelous or slanderous; (2) constitutes an  
31 unwarranted invasion of privacy; (3) violates federal or State law;  
32 or (4) so incites students as to create a clear and present danger of  
33 the commission of an unlawful act, the violation of policies of the  
34 school district or institution, or the material and substantial  
35 disruption of the orderly operation of the school or institution. A  
36 school district may not authorize prior restraint of any school-  
37 sponsored media except for the types of expression described in  
38 these categories.

39 The bill requires school districts to adopt a written policy  
40 concerning student freedom of expression in accordance with the  
41 provisions of the bill. The policy must include reasonable  
42 provisions for the time, place, and manner of student expression,  
43 and may also include limitations on language that may be defined as  
44 profane, harassing, threatening, or intimidating. The bill also  
45 contains provisions to protect employees of school districts and  
46 public institutions of higher education from retaliation for acting to  
47 protect a student engaged in freedom of expression.

1       It is a well-established legal principle that students in the public  
2 schools do not “shed their constitutional rights to freedom of speech  
3 or expression at the schoolhouse gate.” Tinker v. Des Moines Indep.  
4 Cnty. Sch. Dist., 393 U.S. 503, 506 (1969). In the 1969 Tinker  
5 opinion, the United States Supreme Court explained that school  
6 officials may not censor student speech absent a reason to anticipate  
7 that such expression will substantially disrupt or materially interfere  
8 with school activities or intrude upon the rights of others. In 1988,  
9 however, the United States Supreme Court held that public school  
10 officials can regulate the style and content of student speech in  
11 school-sponsored expressive activities as long as their actions are  
12 reasonably related to legitimate educational concerns. Hazelwood  
13 Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988). This bill is  
14 similar to other state statutes, such as those in North Dakota,  
15 California, Oregon, and Colorado, which were enacted to afford  
16 broader protection of free expression rights for student journalists.