SENATE, No. 108

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning student speech and supplementing chapters 36 and 62 of Title 18A of the New Jersey Statutes.

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

1. a. Except as otherwise provided in section 2 of this act, a public school student shall have the right to exercise freedom of speech and of the press.
   
b. By the 2020-2021 school year, each school district shall adopt a written policy concerning student freedom of expression in accordance with the provisions of section 2 of this act. The policy shall include reasonable provisions for the time, place, and manner of student expression. The policy may also include limitations on language that may be defined as profane, harassing, threatening, or intimidating.

2. a. As used in this section:
   
   “School-sponsored media” means any material that is prepared, substantially written, published, or broadcast by a student journalist at a public school, distributed or generally made available to members of the student body, and prepared under the direction of a student media adviser. School-sponsored media does not include media intended for distribution or transmission solely in the classroom in which the media is produced.

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

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

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

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

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

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

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

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

3. a. As used in this section:

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

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

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

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

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

The bill requires school districts to adopt a written policy by the 2020-2021 school year concerning student freedom of expression in accordance with the provisions of the bill. The policy must include reasonable provisions for the time, place, and manner of student expression, and may also include limitations on language that may be defined as profane, harassing, threatening, or intimidating. The bill also contains provisions to protect employees of school districts and public institutions of higher education from retaliation for acting to protect a student engaged in freedom of expression.
It is a well-established legal principle that students in the public schools do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). In the 1969 *Tinker* opinion, the United States Supreme Court explained that school officials may not censor student speech absent a reason to anticipate that such expression will substantially disrupt or materially interfere with school activities or intrude upon the rights of others. In 1988, however, the United States Supreme Court held that public school officials can regulate the style and content of student speech in school-sponsored expressive activities as long as their actions are reasonably related to legitimate educational concerns. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988). This bill is similar to other state statutes, such as those in North Dakota, California, Oregon, and Colorado, which were enacted to afford broader protection of free expression rights for student journalists.