

SENATE, No. 108

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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District 34 (Essex and Passaic)

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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.



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:

6

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 2020-2021 school year, each school district shall adopt
11 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 of
14 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
8 have the burden of showing justification without undue delay prior
9 to a 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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19 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 by the
40 2020-2021 school year concerning student freedom of expression in
41 accordance with the provisions of the bill. The policy must include
42 reasonable provisions for the time, place, and manner of student
43 expression, and may also include limitations on language that may
44 be defined as profane, harassing, threatening, or intimidating. The
45 bill also contains provisions to protect employees of school districts
46 and public institutions of higher education from retaliation for
47 acting to 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
4 Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969). In the 1969
5 Tinker opinion, the United States Supreme Court explained that
6 school officials may not censor student speech absent a reason to
7 anticipate that such expression will substantially disrupt or
8 materially interfere with school activities or intrude upon the rights
9 of others. In 1988, however, the United States Supreme Court held
10 that public school officials can regulate the style and content of
11 student speech in school-sponsored expressive activities as long as
12 their actions are reasonably related to legitimate educational
13 concerns. Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273
14 (1988). This bill is similar to other state statutes, such as those in
15 North Dakota, California, Oregon, and Colorado, which were
16 enacted to afford broader protection of free expression rights for
17 student journalists.