

SENATE EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 108

STATE OF NEW JERSEY

DATED: FEBRUARY 13, 2020

The Senate Education Committee favorably reports Senate Bill No. 108.

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.

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.