

# FINAL BILL REPORT

## ESHB 1230

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Synopsis as Enacted

**Brief Description:** Protecting students' religious rights.

**Sponsors:** By House Committee on Education (originally sponsored by Representatives Backlund, Johnson, Lambert, Carrell, Sherstad, D. Schmidt, Thompson, Boldt and Pennington).

### House Committee on Education Senate Committee on Education

**Background:** Both the Washington Constitution and the U.S. Constitution protect the right of free speech and the right to practice religion. The Washington Constitution also prohibits spending public money for religious worship, exercise, or instruction, or the support of any religious establishment. The Washington Constitution also specifically provides that all public schools must be free from sectarian control or influence. The tension between these principles has spawned substantial litigation regarding the permissible expression of religious views or practices in schools.

A student has a right not to express his or her religious beliefs. The First Amendment protects a student from official compulsion to adopt or verbalize any particular political or personal philosophy, including religion. The Washington administrative code prohibits a school from using written or oral tests, questionnaires, surveys, or examinations to elicit the personal beliefs of a student or his or her family regarding sex or religion without parental consent.

Several of the cases involving the tension between the right to free speech and the right to practice religion involve the issue of whether the free expression by one student or set of students under the auspices of school authority results in violating other students' rights by subjecting a "captive audience" to certain religious beliefs or programs. When public money is spent to promote or support a religious program, then the issue is even more complicated.

The Washington Supreme Court has held that the Washington Constitution is far stricter than the U.S. Constitution because the state constitution contains a specific prohibition against using public funds to maintain or support any school that is under sectarian control or influence.

In one case, the Washington Supreme Court found that the practice of distributing cards and other promotional materials for a religious program in which students

participated during "release time" violated the constitution. The practice had the effect of influencing the pupils, while assembled in the classrooms as a captive audience, to participate in a religious program. The Ninth Circuit Court of Appeals has held that a school policy permitting students to organize and include prayers in school assemblies or commencement exercises violates the U.S. Constitution's Establishment Clause. However, not all mention of religion is prohibited in public schools. Students are not prohibited from praying on their own initiative, either singly or in groups. In addition, the United States Supreme Court has held that if a school creates an "open forum" for other groups, religious groups may not be excluded. That ruling was codified in the federal Equal Access Act. The Ninth Circuit has held that any public school that receives federal assistance must comply with the Equal Access Act, even if compliance means violating the Washington Constitution.

**Summary:** The Legislature recognizes that federal and state constitutional rights of free speech and religion extend to students enrolled in common schools.

A student may freely express and incorporate his or her religious beliefs and opinions where relevant and appropriate in class work, homework, evaluations, or tests. School personnel may not grade or censure a student's work based on religious content but may grade the student's work based on scholastic content such as spelling, and the degree to which the student complied with the assignment. School personnel may not penalize a student for expressing religious beliefs in his or her work when relevant and appropriate.

The provision is not intended to limit the exchange of ideas in common schools. However, an officer, employee, agent, or contractor of a school district may not impose his or her religious beliefs on any student.

The Superintendent of Public Instruction must distribute to the school districts information about laws governing students' rights of religious expression in school.

**Votes on Final Passage:**

House 84 4  
Senate 37 12 (Senate amended)  
House 93 3 (House concurred)

**Effective:** June 11, 1998