

# HOUSE BILL REPORT

## ESHB 1230

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### As Passed Legislature

**Title:** An act relating to students' rights.

**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).

**Brief History:**

**Committee Activity:**

Education: 1/31/97, 2/7/97 [DPS].

**Floor Activity:**

Passed House: 3/10/97, 92-4.

Senate Amended.

House Concurred.

Passed Legislature.

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### HOUSE COMMITTEE ON EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Johnson, Chairman; Hickel, Vice Chairman; Keiser, Assistant Ranking Minority Member; Linville; Quall; Smith; Sterk; Sump and Talcott.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Cole, Ranking Minority Member; and Veloria.

**Staff:** Pat Shelledy (786-7149) and Jim Morishima (786-7191).

**Background:** Both the Washington State Constitution and the Federal 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 inherent tension between these principles has spawned substantial litigation about what is 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 partially reflects this by providing that, "No written or oral test, questionnaire, survey, or examination, shall be used to elicit the personal beliefs or practices of a student or his parents as to sex or religion except with the written consent of the parent or guardian."

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 arguably spent to promote or support a religious program, then the issue is even more complicated.

Our Washington Supreme Court has held that our constitution is far stricter than the federal Constitution because the state constitution has a specific prohibition against using public funds to maintain or support any school which 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 has held that a school policy permitting students to organize and include prayers in school assemblies or commencement exercises violates the Establishment Clause. However, not all mention of religion is prohibited in public schools. Students are not prohibited from praying on their initiative, either singly or in groups. In addition, the U.S. Supreme Court has held that if a school creates an "open forum" for other groups, then 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 that means violating the Washington State Constitution.

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

Students may freely express and incorporate the student's 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 on religious content but may grade the student's work 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 their work when relevant and appropriate.

The provision is not intended to limit the exchange of ideas in common schools. However, an officer, employer, 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 student's rights of religious expression in schools.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** Students should be able to express religious views in classrooms without fear of censorship or fear of reprisal. One child who was asked to describe the three most important things to him was censored when he said he wanted to meet God and have all his friends be Christians. A child should not be impugned for religious beliefs. There is nothing wrong with praying in school and reading the Bible and the court cases to the contrary have contributed to weakening the fabric of our society.

**Testimony Against:** The principle of allowing children to express their views freely is a good one. However, there are children of multiple faiths in our public school system who are not of Christian faith or denomination, such as Muslims, Buddhists, and Jews. Our public school system needs to be concerned about trampling on the rights of those children. All of the upheaval in this country is not due to court interpretations of the separation of church and state.

**Testified:** Representative Backlund, prime sponsor; Matt Picora, student (pro); Daniel Picora, parent (pro); Jim Galbraith, Facts for Freedom (pro); Rev. David Alger, Associated Ministries of Pierce County (con); Robert Drohman, citizen (pro); Jeanette Whitcher, citizen (con); and Dwayne Slate, Washington State School Directors' Association (concerns).