
Judiciary Committee

SSB 5064

Title: An act relating to the freedom of expression rights of students at public schools and institutions of higher education.

Brief Description: Concerning freedom of expression rights of students at public schools and institutions of higher education.

Sponsors: Senate Committee on Early Learning & K-12 Education (originally sponsored by Senators Fain, Rolfes, Rivers, Pedersen, Ranker, Mullet, Billig, Becker, Braun, King, Darneille, Chase, Carlyle and Palumbo).

Brief Summary of Substitute Bill

- Provides that student editors of school-sponsored media are responsible for determining the content of the media and limits a school's ability to control the content of student speech, within certain limitations.
- Protects a student media advisor from disciplinary action for compliance with free expression provisions.
- Provides an appeals process for students at public high schools and a civil cause of action for students at public institutions of higher education who allege a violation of free expression provisions.
- Grants school officials and governing boards immunity from civil or criminal liability resulting from school-sponsored media.
- Requires school districts to adopt a written student freedom of expression policy.

Hearing Date: 2/14/18

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Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Constitutional protections for student expression.

The First Amendment of the United States (U.S.) Constitution protects student freedom of speech and freedom of the press. The Washington State Constitution provides that every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right. The U.S. Supreme Court (Court) has recognized that the right to freedom of expression applies to students in public schools. In *Tinker v. Des Moines Independent School District*, the Court held that a school may not regulate student expression unless the expression would cause a material and substantial interference with the operation of the school or invade the rights of others.

In *Hazelwood School District v. Kuhlmeier*, the Court subsequently narrowed *Tinker*, holding that educators in a public high school setting may exercise editorial control over a school-sponsored newspaper without violating the First Amendment when their actions are reasonably related to legitimate educational concerns. The Court expressly refrained from deciding whether this standard applies to school-sponsored activities at the college and university level, and federal appellate courts have been divided on the issue. The distinction between public and non-public forums has been discussed at the appellate level, and courts generally hold that student media may be considered a public forum if the school has a regulation or policy that the paper is open for free expression. In a public forum, the state must show that any regulation on communication is necessary to serve a compelling state interest and the regulation is narrowly drawn to achieve that end. If the student media is a non-public forum, the school may regulate the content based on legitimate educational reasons.

Washington educational institutions and schools.

There are no state statutes that require public elementary or secondary schools, or public institutions of higher education, to adopt policies related to student free speech or freedom of the press. However, Washington administrative rules generally state that public elementary and secondary students have the constitutional right to freedom of speech and press and that a school district may not limit these rights without good and sufficient cause. In addition, Washington's four-year institutions have express policies providing editorial freedom for their student papers. The State Board for Community and Technical Colleges' regulations require each community college district to adopt policies relating to students' rights and responsibilities regarding freedom of expression and freedom of the press.

Summary of Bill:

Student expression.

A public school or public institution of higher education may not control the content of student speech, unless the content:

- is libelous or slanderous;
- is an unwarranted invasion of privacy;
- violates the Federal Communications Act or rules of the Federal Communications Commission; or
- incites other students to violate federal or state laws or violate school regulations, or is reasonably forecast to cause a material and substantial disruption to the orderly operation of the school.

"School-sponsored media" means any material that is prepared, written, published, or broadcast by student journalists that is distributed or made available to members of the student body. Student-sponsored media is prepared under the direction of a student media advisor.

Student editors of school-sponsored media are responsible for determining the news, opinion, feature, and advertising content of the media. A student media advisor may teach student journalists professional standards of English and journalism and may not be terminated or otherwise disciplined for refusing to censor school-sponsored media.

Institutions of higher education.

Students of public institutions of higher education have the right to exercise freedom of speech and freedom of the press in school-sponsored media. School-sponsored media produced at institutions of higher education are designated public forums and are not subject to prior review by school officials.

Common Schools (Kindergarten through Grade 12).

Each school district that includes a public high school must adopt a policy relating to written student freedom of expression which may include reasonable provisions for the time, place, and manner of student expression. Political expression by public high school students in school-sponsored media is not considered a use of public funds for political purposes.

Remedies.

A student of a public high school may appeal an alleged violation of free expression provisions to the local school board. A student of a public institution of higher education may file a cause of action for injunctive or declaratory relief for a violation of free expression provisions by the institution. The court may award reasonable attorney's fees to a prevailing plaintiff.

Liability.

An official or governing board of a public school or institution of higher education is not responsible for expressions made in school-sponsored media and may not be held civilly or criminally liable for content unless the school official or governing board has interfered with or altered the content.

Appropriation: None.

Fiscal Note: Requested on February 8, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.