

FINAL BILL REPORT

SSB 5064

C 125 L 18
Synopsis as Enacted

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).

Senate Committee on Early Learning & K-12 Education
House Committee on Education
House Committee on Judiciary

Background: The courts have held that students retain their constitutional rights to freedom of expression in public schools. In the 1969 case, *Tinker v. Des Moines Independent Community School District*, the Supreme Court stated that neither students nor teachers "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." The court also recognized the duty and authority of school officials to prescribe and control the conduct in schools. 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 1988, the Supreme Court addressed the issue of the extent to which a public high school could regulate expression in high school newspapers. In *Hazelwood School District v. Kuhlmeier*, the court held that school-sponsored student expression that occurs in a nonpublic forum may be regulated as long as the regulations are "reasonably related to a legitimate pedagogical concern." In determining whether a newspaper was a public or limited public forum, rather than a nonpublic forum, the court stated that public schools generally are not open to the public for free speech. Therefore, a school may be considered a public or limited public forum only if the school has opened its facilities, by practice or policy, for use by the general public or some segment of the public, such as student organizations.

The Supreme Court in *Hazelwood* expressly refrained from deciding whether this standard applies to school-sponsored expressive activities at the college and university level. The First and Sixth Circuit Court of Appeals have found that the *Hazelwood* standard does not apply to school-sponsored student expression at colleges and universities. However, in 2005, the Seventh Circuit Court of Appeals held, in *Hosty v. Governors State University*, that the analysis used in *Hazelwood* does apply to colleges and universities. Thus, *Hosty* provides

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that if the student expression occurs in a nonpublic forum, a college or university may exercise control over the content of the expression based on reasonable pedagogical concerns. Under *Hosty*, student media may be considered a public forum or limited public forum if the school, through its policies or practices, has recognized the medium as a designated public forum where students determine the editorial content of the medium.

Washington's institutions of higher education currently have policies providing editorial freedom for their student papers. The State Board for Community and Technical Colleges regulations require each community college district to adopt rules relating to student rights and responsibilities regarding freedom of expression and freedom of the press. Some colleges have adopted regulations that expressly provide for freedom of expression in student publications. Others have more general rules that provide that students are free to express their views by orderly means, as long as they do not disrupt the operations of the college.

Summary: Public High Schools. Student editors at public high schools are responsible for determining the news, opinion, feature, and advertising content of student media. A student media adviser may not be terminated, transferred, removed, or otherwise disciplined for failing to suppress protected student media.

School officials may only prohibit student media that:

- is libelous or slanderous;
- is an unwarranted invasion of privacy;
- is obscene or indecent pursuant to the Federal Communications Act or any rule or regulation of the Federal Communications Commission;
- violates school district policy or procedure related to harassment, intimidation, bullying, or discrimination;
- incites students to commit an unlawful act on school premises or violate a lawful school regulation; or
- creates a material and substantial disruption of the orderly operation of the school.

A school official must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior. A school official may not base a forecast of a material and substantial disruption on an undifferentiated fear or apprehension.

Political expression by students in school-sponsored media may not be deemed the use of public funds for political purposes.

Any student, individually or through the student's parent or guardian, enrolled in a public high school may file an appeal of an alleged violation, as provided in statute.

Expression made by students in school-sponsored media is not necessarily the expression of school policy. No school official, governing board of the school, or school district may be held responsible in civil or criminal action for any expression made or published by students in school-sponsored media.

Each school district must adopt a written student freedom of expression policy. The policy may include reasonable provisions for the time, place, and manner of student expression.

Public Institutions of Higher Education. Students at public institutions of higher education have the right to exercise freedom of speech and of the press in school-sponsored media, including media that are supported financially by the school or produced in conjunction with a class. All school-sponsored media produced by students are public forums for expression by student journalists and editors. Student media, whether school-sponsored or non-school sponsored, are not subject to mandatory prior review by school officials.

Student editors are responsible for determining the news, opinion, feature, and advertising content of the media. A student media adviser may not be terminated, transferred, removed, or otherwise disciplined for refusing to suppress protected expression by student journalists.

Students are not authorized to engage in expression that:

- is libelous or slanderous;
- constitutes an unwarranted invasion of privacy;
- violates the Federal Communications Act or any rule or regulation of the Federal Communications Commission;
- incites students to commit unlawful acts on school premises or violate lawful school regulations; or
- incites other students so as to create a clear and present danger 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.

A school official must base a forecast of material and substantial disruption on specific facts, including past experience in the school and current events influencing student behavior. A school official may not base a forecast of a material and substantial disruption on an undifferentiated fear or apprehension.

Any student enrolled in an institution of higher education may commence a civil action for injunctive or declaratory relief for violation of the student's right to freedom of speech and of the press in school-sponsored media. A court may award reasonable attorney's fees to a prevailing plaintiff.

Expression made by students in school-sponsored media is not the expression of school policy. School officials or the governing board are not legally responsible for school-sponsored media, unless the school official or the governing board interfered with or altered the content of the media.

Votes on Final Passage:

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| Senate | 45 | 4 | |
| Senate | 43 | 5 | |
| House | 91 | 6 | (House amended) |
| Senate | 45 | 4 | (Senate concurred) |

Effective: June 7, 2018