STATE OF NEW YORK

5387

2019-2020 Regular Sessions

IN ASSEMBLY

February 11, 2019

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to enacting the "New York student religious liberties act of 2019" providing for voluntary student expression of religious viewpoints in public schools, allowing religious expression in class assignments and allowing students the freedom to organize religious groups and activities, and requiring public school districts to provide a limited public forum for student speakers at non-graduation and graduation events

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "New York Student Religious Liberties Act of 2019."

§ 2. The civil rights law is amended by adding a new section 79-o to read as follows:

§ 79-o. Religious liberties. 1. Student expression. A public school district shall not discriminate against students or parents on the basis of a religious viewpoint or religious expression. A school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

2. Religious expression in class assignments. Students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of their submissions. Homework and classroom assignments must be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school district. Students may not be penalized or rewarded on account of the religious

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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content of their work. If an assignment requires a student's viewpoint to be expressed in coursework, artwork or other written or oral assignments, a public school shall not penalize or reward a student on the basis of religious content or a religious viewpoint. In such an assignment, a student's academic work that expresses a religious viewpoint shall be evaluated based on ordinary academic standards of substance and relevance to the course curriculum or requirements of the coursework or assignment.

3. Freedom to organize religious groups and activities. a. Students in public schools may pray or engage in religious activities or religious expression before, during and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression. Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, or other religious gatherings before, during and after school to the same extent that students are permitted to organize other non-curricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other non-curricular groups without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce meetings of the groups, the school district may not discriminate against groups that meet for prayer or other religious speech. A school district may disclaim school sponsorship of non-curricular groups and events in a manner that neither favors nor disfavors groups that meet to engage in prayer or religious speech.

b. Students in public schools may wear clothing, accessories and jewelry that display religious messages or religious symbols in the same manner and to the same extent that other types of clothing, accessories and jewelry that display messages or symbols are permitted.

4. Limited public forum; school district policy. a. To ensure that the school district does not discriminate against a student's publicly stated voluntary expression of a religious viewpoint, if any, and to eliminate any actual or perceived affirmative school sponsorship or attribution to the district of a student's expression of a religious viewpoint, if any, a school district shall adopt a policy, which must include the establishment of a limited public forum for student speakers at all school events at which a student is to publicly speak. The policy regarding the limited public forum must also require the school district to:

(1) Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject;

(2) Provide a method, based on neutral criteria, for the selection of student speakers at school events and graduation ceremonies;

(3) Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd or indecent speech; and

(4) State, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position or expression of the district.

b. The school district disclaimer required by subparagraph four of paragraph a of this subdivision must be provided at all graduation ceremonies. The school district shall continue to provide the disclaimer at any other event in which a student speaks publicly for as long as a need exists to dispel confusion over the district's non-sponsorship of the student's speech.

c. Student expression on an otherwise permissible subject may not be excluded from the limited public forum because the subject is expressed from a religious viewpoint.

d. All school districts shall adopt and implement a local policy regarding a limited public forum and voluntary student expression of religious viewpoints. If a school district voluntarily adopts and follows the model policy governing voluntary religious expression in public schools as provided by subdivision five of this section, the district is in compliance with the provisions of this act covered by the model policy.

e. Model policy governing voluntary religious expression in public schools. In this section, "model policy" means a local policy adopted by the school district that is substantially similar to the provisions of subdivisions five, six, seven, eight, and nine of this section.

5. Student expression of religious viewpoints. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

6. Student speakers at non-graduation events. a. The school district hereby creates a limited public forum for student speakers at all school events at which a student is to publicly speak. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion. Student speakers shall introduce:

(1) Football games;

(2) Any other athletic events designated by the district;

(3) Opening announcements and greetings for the school day; and

(4) Any additional events designated by the school district, which may include, without limitation, assemblies and pep rallies.

b. Only those students in the highest two grade levels of the school and who hold one of the following positions of honor based on neutral criteria are eligible to use the limited public forum: student council officers, class officers of the highest grade level in the school, captains of the football team, and other students holding positions of honor as the school district may designate.

c. An eligible student shall be notified of the student's eligibility, and a student who wishes to participate as an introducing speaker shall submit the student's name to the student council or other designated body during an announced period of not less than three days. The announced period may be at the beginning of the school year, at the end of the preceding school year so student speakers are in place for the new year, or, if the selection process will be repeated each semester, at the beginning of each semester or at the end of the preceding semester so speakers are in place for the next semester. The names of the volunteering student speakers shall be randomly drawn until all names have been selected, and the names shall be listed in the order drawn. Each selected student will be matched chronologically to the event for which the student will be giving the introduction. Each student may speak for one week at a time for all introductions of events that week, or rotate after each speaking event, or otherwise as determined by the district. The list of student speakers shall be chronologically repeated as needed, in the same order. The district may repeat the selection process each semester rather than once a year.

d. The subject of the student introductions must be related to the purpose of the event and to the purpose of marking the opening of the event, honoring the occasion, the participants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event. The subject must be designated, a student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

e. For as long as there is a need to dispel confusion over the non-sponsorship of the student's speech at each event in which a student will deliver an introduction, a disclaimer shall be stated in written or oral form, or both, such as, "The student giving the introduction for this event is a volunteering student selected on neutral criteria to introduce the event. The content of the introduction is the private expression of the student and does not reflect the endorsement, sponsorship, position or expression of the school district."

f. Certain students who have attained special positions of honor in the school have traditionally addressed school audiences from time to time as a tangential component of their achieved positions of honor, such as the captains of various sports teams, student council officers, class officers, homecoming kings and queens, prom kings and queens, and the like, and have attained their positions based on neutral criteria. Nothing in this subdivision shall eliminate the continuation of the practice of having these students, irrespective of grade level, address school audiences in the normal course of their respective positions. The school district shall create a limited public forum for the speakers and shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

7. Student speakers at graduation ceremonies. a. The school district hereby creates a limited public forum consisting of an opportunity for a student to speak to begin graduation ceremonies and another student to speak to end graduation ceremonies. For each speaker, the district shall set a maximum time limit reasonable and appropriate to the occasion.

b. Only students who are graduating and who hold one of the following neutral criteria positions of honor shall be eligible to use the limited public forum: student council officers, class officers of the graduating class, the top three academically ranked graduates, or a shorter or longer list of student leaders as the school district may designate. A student who will otherwise have a speaking role in the graduation ceremonies is ineligible to give the opening and closing remarks. The names of the eligible volunteering students will be randomly drawn. The first name drawn will give the opening and the second name drawn will give the closing.

c. The topic of the opening and closing remarks must be related to the purpose of the graduation ceremony and to the purpose of marking the opening and closing of the event, honoring the occasion, the partic-

ipants, and those in attendance, bringing the audience to order, and focusing the audience on the purpose of the event.

d. In addition to the students giving the opening and closing remarks, certain other students who have attained special positions of honor based on neutral criteria, including, without limitation, the valedictorian, will have speaking roles at graduation ceremonies. For each speaker, the school district shall set a maximum time limit reasonable and appropriate to the occasion and to the position held by the speaker. For this purpose, the district creates a limited public forum for these students to deliver the addresses. The subject of the addresses must be related to the purpose of the graduation ceremony, marking and honoring the occasion, honoring the participants and those in attendance, and the student's perspective on purpose, achievement, life, school, graduation, and looking forward to the future.

e. The subject must be designated for each student speaker, the student must stay on the subject, and the student may not engage in obscene, vulgar, offensively lewd or indecent speech. The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

f. A written disclaimer shall be printed in the graduation program that states, "The students who will be speaking at the graduation ceremony were selected based on neutral criteria to deliver messages of the students' own choices. The content of each student speaker's message is the private expression of the individual student and does not reflect any position or expression of the school district or the board of trustees, or the district's administration, or employees of the district, or the views of any other graduate. The contents of these messages were prepared by the student volunteers, and the district refrained from any interaction with student speakers regarding the student speakers' viewpoints on permissible subjects."

8. Religious expression in class assignments. Students may express the students' beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination based on the religious content of the students' submission. Homework and classroom work shall be judged by ordinary academic standards of substance and relevance and against other legitimate pedagogical concerns identified by the school. Students may not be penalized or rewarded on account of religious content. If a teacher's assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (for example, a psalm) should be judged on the basis of academic standards, including literary quality, and not penalized or rewarded on account of its religious content.

9. Freedom to organize religious groups and activities. Students may organize prayer groups, religious clubs, "see you at the pole" gatherings, and other religious gatherings before, during and after school to the same extent that students are permitted to organize other noncurricular student activities and groups. Religious groups must be given the same access to school facilities for assembling as is given to other non-curricular groups, without discrimination based on the religious content of the group's expression. If student groups that meet for nonreligious activities are permitted to advertise or announce the groups' meetings, for example, by advertising in a student newspaper,

putting up posters, making announcements on a student activities bulletin board or public address system, or handing out leaflets, school authorities may not discriminate against groups that meet for prayer or other religious speech. School authorities may disclaim sponsorship of non-curricular groups and events, provided they administer the disclaimer in a manner that does not favor or disfavor groups that meet to engage in prayer or other religious speech.

10. Limitations. a. Nothing in this section shall be construed to authorize this state or any of its political subdivisions to:

(1) require any person to participate in prayer or in any other religious activity; or

(2) violate the constitutional rights of any person.

b. The provisions of this section shall not be construed to limit the authority of any public school to:

(1) maintain order and discipline on the campus of the public school in a content and viewpoint neutral manner;

(2) protect the safety of students, employees and visitors of the public school; or

(3) adopt and enforce policies and procedures regarding student speech at school provided that the policies and procedures do not violate the rights of students as guaranteed by the United States and New York constitutions and laws.

§ 3. This act shall take effect immediately and shall apply to all school years commencing on or after July 1, 2019.