

# 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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1 content of their work. If an assignment requires a student's viewpoint  
2 to be expressed in coursework, artwork or other written or oral assign-  
3 ments, a public school shall not penalize or reward a student on the  
4 basis of religious content or a religious viewpoint. In such an assign-  
5 ment, a student's academic work that expresses a religious viewpoint  
6 shall be evaluated based on ordinary academic standards of substance and  
7 relevance to the course curriculum or requirements of the coursework or  
8 assignment.

9 3. Freedom to organize religious groups and activities. a. Students  
10 in public schools may pray or engage in religious activities or reli-  
11 gious expression before, during and after the school day in the same  
12 manner and to the same extent that students may engage in nonreligious  
13 activities or expression. Students may organize prayer groups, religious  
14 clubs, "see you at the pole" gatherings, or other religious gatherings  
15 before, during and after school to the same extent that students are  
16 permitted to organize other non-curricular student activities and  
17 groups. Religious groups must be given the same access to school facili-  
18 ties for assembling as is given to other non-curricular groups without  
19 discrimination based on the religious content of the group's expression.  
20 If student groups that meet for nonreligious activities are permitted to  
21 advertise or announce meetings of the groups, the school district may  
22 not discriminate against groups that meet for prayer or other religious  
23 speech. A school district may disclaim school sponsorship of non-curri-  
24 cular groups and events in a manner that neither favors nor disfavors  
25 groups that meet to engage in prayer or religious speech.

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

30 4. Limited public forum; school district policy. a. To ensure that the  
31 school district does not discriminate against a student's publicly stat-  
32 ed voluntary expression of a religious viewpoint, if any, and to elimi-  
33 nate any actual or perceived affirmative school sponsorship or attri-  
34 bution to the district of a student's expression of a religious  
35 viewpoint, if any, a school district shall adopt a policy, which must  
36 include the establishment of a limited public forum for student speakers  
37 at all school events at which a student is to publicly speak. The policy  
38 regarding the limited public forum must also require the school district  
39 to:

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

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

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

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

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

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

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

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

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

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

27 (1) Football games;  
28 (2) Any other athletic events designated by the district;  
29 (3) Opening announcements and greetings for the school day; and  
30 (4) Any additional events designated by the school district, which may  
31 include, without limitation, assemblies and pep rallies.

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

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

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

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

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

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

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

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

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

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

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

24 f. A written disclaimer shall be printed in the graduation program  
25 that states, "The students who will be speaking at the graduation cere-  
26 mony were selected based on neutral criteria to deliver messages of the  
27 students' own choices. The content of each student speaker's message is  
28 the private expression of the individual student and does not reflect  
29 any position or expression of the school district or the board of trus-  
30 tees, or the district's administration, or employees of the district, or  
31 the views of any other graduate. The contents of these messages were  
32 prepared by the student volunteers, and the district refrained from any  
33 interaction with student speakers regarding the student speakers' view-  
34 points on permissible subjects."

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

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

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

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

10 (1) require any person to participate in prayer or in any other reli-  
11 gious activity; or

12 (2) violate the constitutional rights of any person.

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

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

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

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

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