

# STATE OF NEW YORK

2958

2021-2022 Regular Sessions

## IN SENATE

January 26, 2021

Introduced by Sens. KAVANAGH, BRESLIN, HOYLMAN, JACKSON, MAY, O'MARA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to enacting the student journalist free speech act

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

Section 1. The education law is amended by adding a new article 18 to read as follows:

### ARTICLE 18

#### STUDENT JOURNALIST FREE SPEECH ACT

##### Section 860. Short title.

##### 861. Definitions.

##### 862. Student journalist free speech rights.

##### 863. Exemptions.

##### 864. Liability.

§ 860. Short title. This article shall be known and may be cited as the "student journalist free speech act".

§ 861. Definitions. For the purposes of this article the following terms shall have the following meanings:

1. "Educational institution" means a public high school.

2. "School-sponsored media" means any material that is prepared, written, published, or broadcast by a student journalist at an educational institution, distributed or generally made available to members of the student body, and prepared under the direction of a student media advisor. "School-sponsored media" shall not include media intended for distribution or transmission solely in the classroom in which the media is produced.

3. "Student journalist" means a student enrolled in an educational institution who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.

4. "Student media advisor" means an individual employed, appointed, or designated by an educational institution to supervise or provide instruction relating to school-sponsored media.

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

LBD03638-02-1

1     § 862. Student journalist free speech rights. 1. Except as otherwise  
2 provided in section eight hundred sixty-three of this article, a student  
3 journalist shall have the right to exercise free speech and of the press  
4 in school-sponsored media, regardless of whether the media is supported  
5 financially by the educational institution or by use of the facilities  
6 of an educational institution or produced in conjunction with a class in  
7 which the student is enrolled.

8     2. Subject to section eight hundred sixty-three of this article, the  
9 appropriate student journalist shall be responsible for determining the  
10 news, opinion, and feature content of school-sponsored media.

11     3. Nothing in this section shall preclude a student media advisor from  
12 teaching professional standards of English and journalism to student  
13 journalists or from grading the performance of a student in accordance  
14 with such standards.

15     4. There shall be no prior restraint of material prepared for official  
16 publications of an educational institution except for the material  
17 described in section eight hundred sixty-three of this article.

18     5. Educational institution administrators shall have the burden of  
19 demonstrating justification without undue delay prior to a limitation of  
20 student expression under this article.

21     6. No student media advisor or employee shall be dismissed, suspended,  
22 disciplined, reassigned, transferred, or otherwise retaliated against  
23 solely for acting to protect a pupil engaged in the conduct authorized  
24 under this article; and further no student media advisor or employee  
25 shall be dismissed, suspended, disciplined, reassigned, transferred or  
26 otherwise retaliated against solely for an action, undertaken in good  
27 faith with this article, which results in the prohibition of the publi-  
28 cation of speech pursuant to this article.

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

31     § 863. Exemptions. Nothing in this article shall impose a duty on  
32 educational institution administrators to review school-sponsored media  
33 prior to publication. To the extent that an educational institution  
34 administrator chooses to engage in pre-publication review, the follow-  
35 ing forms of expression shall not be protected by this article:

36     1. Expression that is libelous, slanderous or obscene;

37     2. Expression that constitutes an unwarranted invasion of privacy;

38     3. Expression that violates federal or state law; or

39     4. Expression that incites students to commit an unlawful act where  
40 such unlawful act would be both imminent and likely to occur, to  
41 violate the policies of the educational institution, or to materially  
42 and substantially disrupt the orderly operation of such educational  
43 institution.

44     § 864. Liability. No expression made by students in the exercise of  
45 free speech or freedom of the press protected by this article shall be  
46 deemed to be an expression of policy, opinion or position of the educa-  
47 tional institution, nor shall any such expression be considered to be an  
48 endorsement in any way by the educational institution and no educational  
49 institution, student media advisor, employee, parent, legal guardian or  
50 administrator of an educational institution shall be held liable in any  
51 civil or criminal action for any expression made or published by  
52 students, except in cases of willful or wanton misconduct. Nothing in  
53 this section shall be construed to create any private action on behalf  
54 of a student other than to seek injunctive relief allowing the publica-  
55 tion of the speech in question.

56     § 2. This act shall take effect immediately.