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.

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

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

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

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

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

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

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

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

1. Expression that is libelous, slanderous or obscene;

2. Expression that constitutes an unwarranted invasion of privacy;

3. Expression that violates federal or state law; or

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

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

§ 2. This act shall take effect immediately.