
Education Committee

SSB 5064

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).

Brief Summary of Substitute Bill

- Provides that student editors of school-sponsored media (at public schools and public institutions of higher education) are responsible for determining the news, opinion, feature, and advertising content of the media, within certain limitations.
- Declares that a student media adviser may teach professional standards of English and journalism to the student journalists and may not be terminated, transferred, removed, or otherwise disciplined for complying with the free expression provisions.
- Creates an appeal process for students who allege violation of the free expression provisions.
- Protects school officials and governing boards from civil or criminal liability resulting from school sponsored media.
- Specifies student media at public institutions of higher education is not subject to mandatory prior review by school officials.

Hearing Date: 3/16/17

Staff: Megan Wargacki (786-7194).

Background:

Free Expression Laws. The First Amendment of the United States (U.S.) Constitution protects students freedom of speech and freedom of the press. The Washington state Constitution

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provides that every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

In 1969, in *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court stated that neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. The court held that school officials may only regulate student expression when it would materially and substantially interfere with the work and discipline of the school.

In 1988, in *Hazelwood School District v. Kuhlmeier*, the Supreme Court held that educators do not offend the First Amendment by exercising editorial control over the style and content of student expression in school-sponsored expressive activities so long as the educator's actions are reasonably related to legitimate pedagogical concerns. The Supreme Court expressly refrained from deciding whether this standard applies to school-sponsored expressive activities at the college and university level. Most of the federal appellate courts that have considered the issue of freedom of the press in higher education institutions have extended the *Hazelwood* analysis to higher education, at least in part. In general, as long as school officials do not censor students, there can be regulation of student expression.

In addition, the Supreme Court has held that freedom of speech does not include the right to incite actions that would harm others or make or distribute obscene materials.

Current Free Speech and Free Press Laws and Policies. There are no state statutes that require public elementary or secondary schools, or public institutions of higher education, to adopt policies related to student free speech or freedom of the press. However, the State Board for Community and Technical Colleges requires that each community college adopt rules establishing student rights related to, among other things, freedom of expression and freedom of the press.

The Washington State School Directors' Association has developed a model policy on freedom of expression, which school districts may, but are not required to, modify or adopt. The model policy specifies that students' verbal and written expression of opinion on school premises is to be encouraged so long as it does not substantially disrupt the operation of the school. The policy goes on to state that students are expressly prohibited from the use of vulgar or offensive terms in classroom or assembly settings.

The public institutions of higher education are the University of Washington, Washington State University, Western Washington University, Central Washington University, Eastern Washington University, the Evergreen State College, and the 34 community and technical colleges. The rules and policies at these institutions range from merely reiterating that students have certain constitutional rights to describing in detail what students and staff may or may not do with regard to student-sponsored expressive activities.

Use of Public Funds for Political Purposes. Public funds, whether derived through taxes, fees, penalties, or any other sources, may not be used to finance political campaigns for state or school district office. In 2006 the state Public Disclosure Commission established guidelines for school districts use of public resources in election campaigns. In relevant part, the guidelines provide that students may use public resources to carry out school projects promoting or opposing ballot

measures to the extent that such resources are regularly and routinely made available for other student projects. However, teachers and other district employees or officials may not assign or use school projects to influence an election's outcome.

Federal Communication Act and Commission. The federal Communications Act of 1934 created the Federal Communications Commission (FCC) to regulate interstate and international communications by radio, television, wire, satellite, and cable. The FCC, an independent U.S. government agency overseen by Congress, is the primary authority for communications laws, regulation and technological innovation.

Summary of Bill:

Definitions. The bill includes the following definitions:

- "School-sponsored media" means any matter that is prepared, substantially written, published, or broadcast by student journalists, that is distributed or generally made available, either free of charge or for a fee, to members of the student body, and that is prepared under the direction of a student media adviser. "School-sponsored media" does not include media that is intended for distribution or transmission solely in the classrooms in which they are produced.
- "Student journalist" means a student who gathers, compiles, writes, edits, photographs, records, or prepares information for dissemination in school-sponsored media.
- "Student media adviser" means a person who is employed, appointed, or designated by the school to supervise, or provide instruction relating to, school-sponsored media.

Public Elementary and Secondary Schools. In general, student editors of school-sponsored media are responsible for determining the news, opinion, feature, and advertising content of the media. A student media adviser may teach professional standards of English and journalism to the student journalists and may not be terminated, transferred, removed, or otherwise disciplined for complying with the free expression provisions.

School officials may only prohibit student expression that is:

- libelous or slanderous;
- an unwarranted invasion of privacy;
- obscene or indecent pursuant to the federal Communications Act or any rule or regulation of the FCC;
- in violation of applicable FCC rules or regulations; or
- inciting of students so as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of lawful school regulations, or the 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, and not on 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 his or her parent or guardian, enrolled in a public high school may appeal an alleged violation of the free expression provisions to the superior court.

Expression made by students in school-sponsored media is not necessarily the expression of school policy. Neither a school official nor the governing board of the school or school district may be held responsible in any civil or criminal action for any expression made or published by students in school-sponsored media.

Each school district that includes a high school must adopt a written student freedom of expression policy in accordance with these provisions. 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 by use of school facilities, or are produced in conjunction with a class. All school-sponsored media produced primarily by students are public forums for expression by the student journalists and student editors at the particular institution. Student media, whether school-sponsored or nonschool sponsored, are not subject to mandatory prior review by school officials.

In general, student editors of school-sponsored media are responsible for determining the news, opinion, feature, and advertising content of the media. A student media adviser may teach professional standards of English and journalism to the student journalists and may not be terminated, transferred, removed, or otherwise disciplined for refusing to suppress the protected free expression rights of 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 FCC; or
- so incites students as to create a clear and present danger of the commission of unlawful acts on school premises, the violation of lawful school regulations, or the 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, and not on undifferentiated fear or apprehension.

Any student enrolled in an institution of higher education may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by a court for violation of the free expression provisions by the institution. A court may award reasonable attorneys' fees to a prevailing plaintiff.

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

Severability Provision. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Appropriation: None.

Fiscal Note: Requested on March 10, 2017.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.