WEST virginia legislature

2022 regular session

Committee Substitute

for

Senate Bill 216

By Senator Azinger

[Originating in the Committee on Education; reported on February 7, 2022]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-34-1, §18-34-2, §18-34-3, and §18-34-4; and to amend said code by adding thereto a new article, designated §18B-21-1, §18B-21-2, §18B-21-3, and §18B-21-4 all relating to student journalist press freedom; creating the Secondary Student Journalist Press Freedom Restoration Act and the Higher Education Student Journalist Press Freedom Act; providing for legislative findings; defining terms; providing that a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media; allowing student media advisors to teach professional standards of English and journalism to student journalists; providing expression that is not authorized or protected by student journalists’ freedom of expression section; prohibiting prior restraint of material prepared for official school publications with certain exceptions; clarifying that nothing in student journalist freedom of expression section is to be construed as authorizing the publication of an advertisement in a school-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by minors; providing that a student journalist cannot be disciplined for exercising freedom of speech and of the press in school-sponsored media; providing that a state institution of higher education student media adviser cannot be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for certain specified reasons; requiring adoption of written policy for the exercise of the right of student journalists to freedom of speech and the press in school sponsored media; providing that no expression made by students in the exercise of free speech or free press rights is deemed to be an expression of school policy and no school district or employee of a school district shall be held responsible in any civil or criminal action for any expression made or published by students; allowing institution of proceedings for injunctive or declaratory relief to enforce rights provided in student journalists’ freedom of expression section; and providing that the student journalist press freedom restoration acts do not apply to private middle or high schools or private colleges or universities.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 34. Secondary student journalist press freedom restoration ACT.

§18-34-1. Short title.

This article may be cited and known as the Secondary Student Journalist Press Freedom Restoration Act.

§18-34-2. Legislative findings.

(a) The West Virginia legislature finds that:

(1) Freedom of expression through school-sponsored media is a fundamental principle in our democratic society granted by the First Amendment to the United States Constitution and the West Virginia Constitution;

(2) A robust and free student press is critical to the development of informed and civic-minded adults;

(3) Student journalists are denied the right to free expression guaranteed to other students, and their work censored when the speech of other students could not be infringed; and

(4) Teachers who defend their students’ freedom of expression do so at great professional risk.

§18-34-3. Definitions.

As used in this section:

(a) “School-sponsored media” means any material that is prepared, substantially written, published, or broadcast, in any media, by a student journalist at a public middle or high school under the direction of a student media adviser and distributed or generally made available to members of the student body. School-sponsored media does not include media intended for distribution or transmission for classroom purposes only.

(b) “Student journalist” means a public middle or high school student who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

(c) “Student media adviser” means an individual employed, appointed, or designated by a public secondary school to supervise or provide instruction relating to school-sponsored media.

§18-34-4. Student journalists’ freedom of expression.

(a) Except as provided in subsection (b) of this section, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. Student media advisers may teach professional standards of English and journalism to student journalists, consistent with this subsection.

(b) This section does not authorize or protect expression by a student that:

(1) Is libelous or slanderous;

(2) Constitutes an unwarranted invasion of the rights of others;

(3) Is obscene;

(4) Violates federal or state law; or

(5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful school district policy, or the material and substantial disruption of school activities. Administrators 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.

(c) There shall be no prior restraint of material prepared for official school publications except insofar as the material violates the standards of section (b). School officials shall have the burden of showing prior justification for their limitation of student journalist expression under this section and affording students a timely opportunity for appeal.

(d) Nothing in this section shall be construed as authorizing the publication of an advertisement in school-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by minors.

(e) A student journalist may not be disciplined for acting in accordance with subsection (a) of this section.

(f)(1) Each county board shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section.

(2) The policy must include reasonable provisions for the time, place, and manner of distribution of student expression.

(3) The policy must include a provision allowing for the timely appeal within the school district of decisions made pursuant to this section.

(g) No expression made by students in the exercise of free speech or free press rights shall be deemed to be an expression of school policy, and no school district or employee of a school district shall be held responsible in any civil or criminal action for any expression made or published by students.

(h) Any student, individually or through a parent or guardian, or student media adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section. 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. A court may award reasonable attorneys’ fees to a plaintiff that substantially prevails.

(i) This article does not apply to those students in private middle or high schools.

**CHAPTER 18B. HIGHER EDUCATION.**

ARTICLE 21. Higher Education student journalist press freedom restoration ACT.

§18B-21-1. Short title.

This article may be cited and known as the Higher Education Student Journalist Press Freedom Restoration Act.

§18B-21-2. Legislative findings.

(a) The West Virginia legislature finds that:

(1) Freedom of expression through school-sponsored media is a fundamental principle in our democratic society granted by the First Amendment to the United States Constitution and the West Virginia Constitution;

(2) A robust and free student press is critical to the development of informed and civic-minded adults;

(3) Student journalists are denied the right to free expression guaranteed to other students, and their work censored when the speech of other students could not be infringed; and

(4) Faculty members who defend their students’ freedom of expression do so at great professional risk.

§18B-21-3. Definitions.

As used in this section:

(a) “School-sponsored media” means any material that is prepared, substantially written, published, or broadcast, in any media, by a student journalist at a state institution of higher education under the direction of a student media adviser and distributed or generally made available to members of the student body. School-sponsored media does not include media intended for distribution or transmission for classroom purposes only.

(b) “Student journalist” means a state institution of higher education student who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

(c) “Student media adviser” means an individual employed, appointed, or designated by a state institution of higher education to supervise or provide instruction relating to school-sponsored media.

§18B-21-4. Student journalists’ freedom of expression.

(a) Except as provided in subsection (b) of this section, a student journalist has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course or class in which the student is enrolled. Subject to subsection (b) of this section, a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. Student media advisers may teach professional standards of English and journalism to student journalists, consistent with this subsection.

(b) This section does not authorize or protect expression by a student that:

(1) Is libelous or slanderous;

(2) Constitutes an unwarranted invasion of the rights of others;

(3) Is obscene;

(4) Violates federal or state law; or

(5) So incites students as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful state institution of higher education policy, or the material and substantial disruption of institution activities. Administrators must base a forecast of material and substantial disruption on specific facts, including past experience in the institution and current events influencing student behavior, and not on undifferentiated fear or apprehension.

(c) There shall be no prior restraint of material prepared for official state institution of higher education institution publications except insofar as the material violates the standards of section (b). The state institution of higher education shall have the burden of showing prior justification for their limitation of student journalist expression under this section and affording students a timely opportunity for appeal.

(d) Nothing in this section shall be construed as authorizing the publication of an advertisement in school-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by minors.

(e) A student journalist may not be disciplined for acting in accordance with subsection (a) of this section.

(f) A student media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for:

(1) Refusing to infringe on conduct that is protected by this section or the First Amendment to the United States Constitution or the West Virginia Constitution; or

(2) Acting to protect a student journalist engaged in permissible conduct under subsection (a) of this section or the First Amendment to the United States Constitution or the West Virginia Constitution.

(g)(1) Each state institution of higher education governing board shall adopt a written policy for the exercise of the right of student journalists to freedom of speech and the press in school-sponsored media in accordance with this section.

(2) The policy must include reasonable provisions for the time, place, and manner of distribution of student expression.

(3) The policy must include a provision allowing for the timely appeal within the institution of decisions made pursuant to this section.

(h) No expression made by students in the exercise of free speech or free press rights shall be deemed to be an expression of school policy, and no state institution of higher education or employee of the institution shall be held responsible in any civil or criminal action for any expression made or published by students.

(i) Any student, individually or through a parent or guardian, or student media adviser may institute proceedings for injunctive or declaratory relief in any court of competent jurisdiction to enforce the rights provided in this section. 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. A court may award reasonable attorneys’ fees to a plaintiff that substantially prevails.

(j) This article does not apply to those students in private colleges or universities.