



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 ASSEMBLY BILL 551

October 23, 2023 - Introduced by Representatives MICHALSKI, MURPHY, BEHNKE, BRANDTJEN, DITTRICH, GOEBEN, GUNDRUM, MAXEY, O'CONNOR, PENTERMAN, RETTINGER, S. JOHNSON and JACOBSON, cosponsored by Senators CABRAL-GUEVARA, TOMCZYK and SPREITZER. Referred to Committee on Colleges and Universities.

AN ACT *to amend* 36.35 (1); and *to create* 36.42, 38.43 and 118.129 of the statutes; **relating to:** freedom of speech and of the press in school-sponsored media.

Analysis by the Legislative Reference Bureau

This bill affords certain rights and protections to student journalists who are public school pupils or students enrolled in a University of Wisconsin System institution or technical college.

Public school pupils

Under the bill, a public school pupil journalist in grade 6 to 12 has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the school-sponsored media is supported financially by a public school, uses the facilities of the public school, or is produced in conjunction with a class in which the pupil is enrolled. The bill further establishes that a pupil journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media and prohibits a school official from exercising prior restraint of materials prepared for school-sponsored media. Under the bill, neither a pupil journalist nor a media adviser may be disciplined for acting in accordance with the bill. Finally, the bill requires each school board and operator of a charter school to adopt a policy related to pupil journalists exercising their freedom of

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speech and of the press in school-sponsored media and specifies that the policy must include an appeal process for pupils. Under the bill, a pupil journalist and a media adviser may bring an action in circuit court to enforce the rights established under the bill.

UW System and technical college students

Under the bill, a student journalist enrolled in a UW System institution or technical college (hereafter, “school”) has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the school-sponsored media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a course in which the student is enrolled. The bill further establishes that a student journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media and prohibits the school from exercising prior restraint of materials prepared for school-sponsored media. Under the bill, neither a student journalist nor a media adviser may be disciplined for acting in accordance with the bill. Finally, the bill requires the Board of Regents of the UW System and each technical college district board to adopt a policy related to student journalists exercising their freedom of speech and the press in school-sponsored media and specifies that the policy must include an appeal process for students. Under the bill, a student journalist and a media adviser may bring an action in circuit court to enforce the rights established under the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 36.35 (1) of the statutes is amended to read:

36.35 (1) POWER TO SUSPEND; RULES. The board may delegate the power to suspend or expel students for misconduct or other cause prescribed by the board. Subject to sub. (4) and s. 36.42 (5) (a), the board shall promulgate rules under ch. 227 governing student conduct and procedures for the administration of violations.

SECTION 2. 36.42 of the statutes is created to read:

36.42 Institution-sponsored media; freedom of speech and of the press. (1) In this section:

(a) “Institution-sponsored media” means any material that is prepared,

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substantially written, published, or broadcast, in any media, by a student journalist at an institution, under the direction of a media adviser, and distributed or generally made available to students enrolled in the institution. “Institution-sponsored media” does not include material intended solely for use in a course offered at the institution.

(b) “Media adviser” means an individual employed, appointed, or designated by an institution to supervise or provide instruction relating to institution-sponsored media.

(c) “Student journalist” means a student enrolled in an institution who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in institution-sponsored media.

(2) (a) Except as provided in sub. (3), a student journalist has the right to exercise freedom of speech and of the press in institution-sponsored media regardless of whether the institution-sponsored media is supported financially by the institution, uses the facilities of the institution, or is produced in conjunction with a course in which the student journalist is enrolled.

(b) Subject to sub. (3), a student journalist is responsible for determining the news, opinion, feature, and advertising content of institution-sponsored media. A media adviser may teach professional standards of English and journalism to student journalists, consistent with this section.

(3) (a) Nothing in this section authorizes or protects expression that is any of the following:

1. Libelous or slanderous.

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2. Constitutes an unwarranted invasion of privacy.

3. Obscene.

4. Violates state or federal law.

5. Incites students as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful board policy or institution policy, or the material and substantial disruption of the orderly operation of the institution.

(b) For purposes of par. (a) 5., an institution administrator shall base a decision on whether or not an expression will create a clear and present danger of material and substantial disruption of the orderly operation of the institution on specific facts, including past experience in the institution and current events influencing student behavior, and may not base the decision on undifferentiated fear or apprehension.

(c) Nothing in this section requires an institution to publish an advertisement in institution-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by a person who has not attained 21 years of age.

(4) An institution may not exercise prior restraint of material prepared for institution-sponsored media unless the material violates sub. (3). An institution's administrators have the burden of showing prior justification for their limitation of a student journalist's expression under this section and affording students a timely opportunity for appeal.

(5) (a) A student journalist may not be disciplined for acting in accordance with sub. (2).

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(b) Notwithstanding any contrary provision of a personnel system established under s. 36.115, a media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for any of the following:

1. Refusing to infringe on conduct that is protected by this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

2. Acting to protect a student journalist engaged in permissible conduct under this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

(6) The board shall adopt a policy, applicable to each institution, for the exercise of the right of student journalists to freedom of speech and of the press in institution-sponsored media in accordance with this section. The policy shall include at least all of the following:

(a) Reasonable provisions for the time, place, and manner of distribution of institution-sponsored media.

(b) A process to timely appeal decisions made under this section.

(7) No expression made by student journalists in the exercise of free speech or free press rights is considered to be an expression of an institution's policy, and no institution or institution administrator may be held responsible in any civil or criminal action for an expression made or published by student journalists.

(8) A student journalist or media adviser may bring an action for injunctive or declaratory relief in circuit court to enforce the rights provided in this section. Nothing in this section may be construed to create a private action on behalf of a

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student journalist other than to seek injunctive relief allowing the publication of the speech in question. A court may award reasonable attorney fees to a plaintiff who substantially prevails in an action brought under this subsection.

SECTION 3. 38.43 of the statutes is created to read:

38.43 District board-sponsored media; freedom of speech and of the press. (1) In this section:

(a) “District board-sponsored media” means any material that is prepared, substantially written, published, or broadcast, in any media, by a student journalist at a technical college of the district, under the direction of a media adviser, and distributed or generally made available to students enrolled in the technical college. “District board-sponsored media” does not include material intended solely for use in a course offered at the technical college.

(b) “Media adviser” means an individual employed, appointed, or designated by a district board to supervise or provide instruction relating to district board-sponsored media.

(c) “Student journalist” means a student enrolled in a technical college who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in district board-sponsored media.

(2) (a) Except as provided in sub. (3), a student journalist has the right to exercise freedom of speech and of the press in district board-sponsored media regardless of whether the district board-sponsored media is supported financially by the district board, uses the facilities of the district board, or is produced in conjunction with a course in which the student journalist is enrolled.

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(b) Subject to sub. (3), a student journalist is responsible for determining the news, opinion, feature, and advertising content of district board-sponsored media. A media adviser may teach professional standards of English and journalism to student journalists, consistent with this section.

(3) (a) Nothing in this section authorizes or protects expression that is any of the following:

1. Libelous or slanderous.
2. Constitutes an unwarranted invasion of privacy.
3. Obscene.
4. Violates state or federal law.
5. Incites students as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful district board policy, or the material and substantial disruption of the orderly operation of the technical college.

(b) For purposes of par. (a) 5., a district board administrator shall base a decision on whether or not an expression will create a clear and present danger of material and substantial disruption of the orderly operation of the technical college on specific facts, including past experience in the technical college and current events influencing student behavior, and may not base the decision on undifferentiated fear or apprehension.

(c) Nothing in this section requires a district board to publish an advertisement in district board-sponsored media that promotes the purchase of a product or service that is unlawful for purchase or use by a person who has not attained 21 years of age.

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(4) A district board may not exercise prior restraint of material prepared for district board-sponsored media unless the material violates sub. (3). A district board's administrators have the burden of showing prior justification for their limitation of a student journalist's expression under this section and affording students a timely opportunity for appeal.

(5) (a) A student journalist may not be disciplined for acting in accordance with sub. (2).

(b) A media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for any of the following:

1. Refusing to infringe on conduct that is protected by this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

2. Acting to protect a student journalist engaged in permissible conduct under this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

(6) Each district board shall adopt a policy for the exercise of the right of student journalists to freedom of speech and of the press in district board-sponsored media in accordance with this section. The policy shall include at least all of the following:

(a) Reasonable provisions for the time, place, and manner of distribution of district board-sponsored media.

(b) A process to timely appeal decisions made under this section.

(7) No expression made by student journalists in the exercise of free speech or

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free press rights is considered to be an expression of a district board's policy, and no district board or district board administrator may be held responsible in any civil or criminal action for an expression made or published by student journalists.

(8) A student journalist or media adviser may bring an action for injunctive or declaratory relief in circuit court to enforce the rights provided in this section. Nothing in this section may be construed to create a private action on behalf of a student journalist other than to seek injunctive relief allowing the publication of the speech in question. A court may award reasonable attorney fees to a plaintiff who substantially prevails in an action brought under this subsection.

SECTION 4. 118.129 of the statutes is created to read:

118.129 School-sponsored media; freedom of speech and of the press.

(1) In this section:

(a) "Media adviser" means an individual employed, appointed, or designated by a school board or charter school to supervise or provide instruction relating to school-sponsored media.

(b) "Pupil journalist" means a pupil in grade 6 to 12 who gathers, compiles, writes, edits, photographs, records, or prepares information for inclusion in school-sponsored media.

(c) "School" means a public middle, junior high, or high school, including a charter school.

(d) "School-sponsored media" means any material that is prepared, substantially written, published, or broadcast, in any media, by a pupil journalist at a school, under the direction of a media adviser, and distributed or generally made

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available to pupils attending the school. "School-sponsored media" does not include material intended solely for classroom purposes.

(2) (a) Except as provided in sub. (3), a pupil journalist has the right to exercise freedom of speech and of the press in school-sponsored media regardless of whether the school-sponsored media is supported financially by the school, uses the facilities of the school, or is produced in conjunction with a class in which the pupil journalist is enrolled.

(b) Subject to sub. (3), a pupil journalist is responsible for determining the news, opinion, feature, and advertising content of school-sponsored media. A media adviser may teach professional standards of English and journalism to pupil journalists, consistent with this section.

(3) (a) Nothing in this section authorizes or protects expression that is any of the following:

1. Libelous or slanderous.
2. Constitutes an unwarranted invasion of privacy.
3. Obscene.
4. Violates state or federal law.

5. Incites pupils as to create a clear and present danger of the commission of an unlawful act, the violation of a lawful school district or charter school policy, or the material and substantial disruption of the orderly operation of the school.

(b) For purposes of par. (a) 5., a school administrator shall base a decision on whether or not an expression will create a clear and present danger of material and substantial disruption of the orderly operation of the school on specific facts,

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including past experience in the school and current events influencing pupil behavior, and may not base the decision on undifferentiated fear or apprehension.

(c) Nothing in this section authorizes 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.

(4) A school official may not exercise prior restraint of material prepared for school-sponsored media unless the material violates sub. (3). A school official has the burden of showing prior justification for his or her limitation of a pupil journalist's expression under this section and affording pupils a timely opportunity for appeal.

(5) (a) A pupil journalist may not be disciplined for acting in accordance with sub. (2).

(b) A media adviser may not be dismissed, suspended, disciplined, reassigned, transferred, or otherwise retaliated against for any of the following:

1. Refusing to infringe on conduct that is protected by this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

2. Acting to protect a pupil journalist engaged in permissible conduct under this section, the First Amendment to the U.S. Constitution, or article I, section 3, of the Wisconsin Constitution.

(6) Each school board and operator of a charter school shall adopt a policy for the exercise of the right of pupil journalists to freedom of speech and of the press in

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school-sponsored media in accordance with this section. The policy shall include at least all of the following:

(a) Reasonable provisions for the time, place, and manner of distribution of school-sponsored media.

(b) A process to timely appeal decisions made under this section.

(7) No expression made by pupil journalists in the exercise of free speech or free press rights is considered to be an expression of school policy, and no school official, school district, or charter school may be held responsible in any civil or criminal action for an expression made or published by pupil journalists.

(8) A pupil journalist, individually or through a parent or guardian, or media adviser may bring an action for injunctive or declaratory relief in circuit court to enforce the rights provided in this section. Nothing in this section may be construed to create a private action on behalf of a pupil journalist other than to seek injunctive relief allowing the publication of the speech in question. A court may award reasonable attorney fees to a plaintiff who substantially prevails in an action brought under this subsection.

(END)