



Senate

General Assembly

File No. 716

January Session, 2009

Substitute Senate Bill No. 1056

Senate, April 20, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING STUDENTS' RIGHT TO FREE SPEECH.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) (a) For the purposes of this
2 section, "school" means any public elementary or secondary school or
3 public institution of higher education in this state, and "speech" means
4 any expression, whether written, oral or nonverbal, that is protected
5 under the first amendment to the United States Constitution or section
6 4 or 5 of article first of the Constitution of the state.

7 (b) No school may censor or punish speech of a school student,
8 whether or not the speech is school-sponsored, unless the speech:

9 (1) Is demonstrably likely to cause material and substantial
10 disruption to the educational process, provided mere inconvenience to
11 school officials or employees shall not be deemed to constitute
12 disruption;

13 (2) (A) Is lewd, vulgar or indecent, and (B) occurs on school grounds

14 during school hours or occurs during a school-sponsored activity;

15 (3) Is directed against another student with the intent to ridicule,
16 harass, humiliate or intimidate the other student and has a direct and
17 negative impact on the other student's academic performance or safety
18 in school, whether or not the speech occurs on school grounds or
19 during school hours;

20 (4) Is directed against another person with the intent to ridicule,
21 harass, humiliate or intimidate the other person and has a direct and
22 negative impact on the other person's academic or behavioral
23 performance or safety in school, whether or not the speech occurs on
24 school grounds or during school hours; or

25 (5) Materially and substantially invades privacy.

26 (c) Nothing in this section shall prevent faculty advisors or persons
27 performing the functions of advisors from taking appropriate steps to
28 ensure that school-sponsored student speech, within their jurisdiction,
29 meets accepted professional standards.

30 (d) No school employee who acts in good faith shall be discharged,
31 disciplined, transferred or removed from his or her position for (1)
32 advising students of their rights under this section, (2) refusing to
33 violate the provisions of this section, or (3) reporting violations of the
34 provisions of this section to a superior or other competent authority,
35 an affected student or such student's parent or guardian or the public.

36 (e) No school district or school shall be held liable for student
37 speech that is protected under this section. No school district official or
38 school administrator, teacher or other employee shall be held
39 personally liable for student speech that is protected under this section
40 unless such person has, in bad faith, instigated or encouraged such
41 speech.

42 (f) Any person aggrieved by a violation of the provisions of this
43 section may bring an action for injunctive or declaratory relief,
44 damages and a reasonable attorney's fee in any court of competent

45 jurisdiction.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	New section

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

The bill's conditional prohibition of students' speech has no fiscal impact on the State Department of Education or local boards of education. The authorization to bring civil actions for any violation under the bill would not necessitate additional Judicial Department resources.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sSB 1056*****AN ACT CONCERNING STUDENTS' RIGHT TO FREE SPEECH.*****SUMMARY:**

This bill prohibits public schools from censoring or punishing a student's speech, whether or not the speech is school-sponsored, unless the speech:

1. is demonstrably likely to cause material and substantial disruption to the educational process (but not mere inconvenience to school officials or employees);
2. is lewd, vulgar, or indecent and occurs (a) on school grounds during school hours or (b) during a school-sponsored activity;
3. is directed at someone with intent to ridicule, harass, humiliate, or intimidate, whether or not the speech occurs on school grounds or during school hours and the target is (a) a student and the speech has a direct and negative impact on his or her academic performance or safety in school or (b) someone else and the speech has a direct and negative impact on the person's academic or behavioral performance or safety in school; or
4. materially and substantially invades privacy.

The bill applies to public elementary, secondary, and higher education schools. It applies to speech that is written, oral, or nonverbal expression and protected by the U.S. Constitution or the free speech provisions of the Connecticut Constitution.

The bill does not prevent faculty advisors or someone performing an advisor's functions from taking appropriate steps to ensure that school-sponsored student speech within their jurisdiction meets

accepted professional standards.

It protects (1) schools, school districts, and their personnel from liability for student speech protected by the bill and (2) school employees from employment actions for certain actions they take regarding the bill's provisions.

The bill authorizes anyone aggrieved by a violation of its provisions to bring an action for an injunction, declaratory relief, damages, and reasonable attorneys' fees in a court of competent jurisdiction.

EFFECTIVE DATE: July 1, 2009

PROTECTION FROM LIABILITY

The bill protects (1) school districts and school from liability for student speech that is protected by the bill and (2) school district officials and administrators, teachers, and other employees from personal liability for student speech protected by the bill unless the person instigated or encouraged the speech in bad faith.

PROTECTION FROM EMPLOYMENT ACTIONS FOR SCHOOL EMPLOYEES

The bill prohibits discharging, disciplining, transferring, or removing a school employee who acts in good faith for:

1. advising students of their rights under the bill;
2. refusing to violate the bill's provisions; and
3. reporting violations of the bill to a superior, other competent authority, an affected student, the student's parent or guardian, or the public.

BACKGROUND

Recent Case on Free Speech Rights of Students

The courts have interpreted how the First Amendment right to free speech applies to students in schools.

In a recent case, *Doninger v. Niehoff*, the federal 2nd Circuit Court of Appeals considered whether a student's rights were violated when she was disqualified from running for senior class secretary after posting a vulgar and misleading message about the supposed cancellation of an upcoming school event on an independently operated, publicly accessible web log (527 F.3d 41 (2008)).

Citing U.S. Supreme Court opinions, the court stated that the constitutional rights of students in public schools are not the same as the rights of adults in other settings. First Amendment rights must be applied in a way consistent with the special characteristics of the school environment. School administrators can prohibit student expression that will materially and substantially disrupt the work and discipline of the school and vulgar or offensive speech can be disciplined because of the school's responsibility for teaching students the boundaries of socially appropriate behavior. Educators can exercise editorial control over school-sponsored expressive activities, such as school publications and theatrical productions, as long as their actions are reasonably related to legitimate pedagogical concerns.

The court stated that the U.S. Supreme Court has not ruled on the scope of a school's authority to regulate expression that does not occur on school grounds or at school sponsored events. But a student can be disciplined for expressive conduct, even occurring off school grounds, when it would foreseeably create a risk of substantial disruption within the school environment at least when it is foreseeable that the off-campus expression might also reach campus.

The court ruled that the school's discipline of the student in this case was permissible. They found that (1) it was reasonably foreseeable that the posting would reach school property, students would view the blog, and school administrators become aware of it; (2) the posting was designed to come onto the campus and it was related to events at school; (3) it foreseeably created a risk of substantial disruption in the school environment because the language was plainly offensive and potentially disruptive to resolving the controversy; (4) the information

was also either misleading or false; and (5) the conduct posed a substantial risk that school administrators and teachers would be diverted from their core educational responsibilities by the need to dissipate misguided anger or confusion over the purported cancellation. The court also found that the student's discipline, which related to her extracurricular role in student government, was significant because the activity was a privilege that can be rescinded when students do not comply with the obligations inherent in the activities.

Connecticut Constitution

The Connecticut Constitution provides:

1. "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty" (Art 1, § 4).
2. "No law shall ever be passed to curtail or restrain the liberty of speech or of the press" (Art. 1, § 5).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 25 Nay 15 (03/31/2009)