



## HOUSE EDUCATION COMMITTEE

### PSEA Comments on House Bill 1309

On behalf of PSEA's 178,000 members, we urge you to support House Bill 1309, sponsored by Rep. Melissa Shusterman, and championed by student journalists and school media advisors in Pennsylvania and around the country. Freedom of speech and expression is a founding ideal of our country, and one that must be nourished for generations to ensure its continued existence and legacy. That legacy begins in our schools with young people joining a yearbook or media clubs and school newspapers, participating in a televised school news station, or perhaps enrolling in a journalism course.

Students' freedom of speech/expression is governed by two historic Supreme Court decisions. The first, *Tinker v. Des Moines Independent Community School District* (1969), related to three students' suspension for wearing black armbands to protest the Vietnam war. The 7-2 decision resulted in the famous words that students don't "shed their constitutional rights to freedom of speech or expression at the schoolhouse gates." The majority of the court took the position that school officials could not limit speech based on the mere suspicion that student speech would lead to disruption of the educational process.

The second Supreme Court ruling in *Hazelwood School District v. Kuhlmeier* (1988), related to the removal of articles on teen pregnancy and the impact of divorce in a student newspaper. The 5-3 ruling held that a high school newspaper produced as part of class, and not a public forum, could be censored for a "legitimate pedagogical concern." However, the term "legitimate pedagogical concern" was never defined and can be interpreted differently by different people. In this case, school staff were even sued. Nevertheless, even with the Hazelwood decision, concern over disruption or disagreement with the content of student media is not a legitimate pedagogical concern.

Another layer to this issue can be found in 22 Pa Code § 12.9 maintains that content can only be excluded if determined to be: 1) libelous, slanderous, or obscene; 2) an unwanted invasion of privacy; 3) violating Federal or State law; 4) inciting students to commit an unlawful act or violate the school entity's policies; or 5) materially and substantially disrupting the orderly operation of the school entity. Moreover, the regulations specifically delineate that students "have a right and are as free as editors of other newspapers to report the news and to editorialize..." and "school officials may not censor or restrict material simply because it is critical of the school or its administration."

Like many things in life, this can be a complicated issue for students and educators, including school administrators who are under pressure from school boards and parents to limit controversy in public schools. Passionate community debate is not unknown to Pennsylvania's public schools today. But that does not mean that our Commonwealth should avoid student media programs or in any way censor existing student media. Unfortunately, educators have faced discipline and transfers in their efforts to uphold students' First Amendment rights – including here in Pennsylvania. Today, seventeen states, including Arkansas, West Virginia, Maryland, New Jersey, Illinois, Iowa, Kansas, and others, have taken the important step to protect the first amendment rights of student journalists and school media advisors.

House Bill 1309 would provide much needed clarity across the public education spectrum, as well as strengthen free speech protections for students. The bill codifies the current free speech exclusions referenced in 22 Pa

Code § 12.9 (referenced above), but importantly also reinforce that only a student editor may grant approval for a publication or broadcast of school-sponsored media. The student media advisor shall appoint the student editor, and only act as an educator and advisor to the student media group. The bill further protects student media advisors by ensure they cannot be dismissed, suspended, disciplined, reassigned or transferred for taking action to protect a student journalist or refusing to infringe on the conduct of a student journalist under the school entity's policies. The bill requires school entities to update their policies to comply with the act. Additionally, and we would argue of great importance, is the requirement for student journalists to receive media law training. Student media programs teach students about the First Amendment, how to write, broadcast, interview and otherwise produce content within the confines of state and federal laws. These students have a passion that could lead to future careers. Public schools have the capability of supporting this potential career pathway, no different from career and technical programs, or encouraging the next generation of teachers.

PSEA members discussed HB 1309 on three occasions between September 2022 and October 2023. And while initially cautious in their endorsement of HB 1309, the more they learned about the history of free speech protections in student media, the actions of seventeen other states, and what has happened to their colleagues who presently or previously served as student media advisors, the more they felt it was necessary to enact the Pennsylvania Student Journalism Protection Act. With that said, they are not immune to the pressure on school administrators and school boards – especially in our current environment where school board meetings have become partisan battlegrounds for political disagreements. Consequently, they urge the House Education Committee to extend the media law training requirement to school administrators and school boards as part of their professional development and mandated training requirements. Training will not stop community controversy, but it can better inform school leaders to provide answers to their communities if and when questioned. It could also be a proactive step to protect against retaliatory actions against student media advisors.

PSEA appreciates the advocacy of New Voices Pennsylvania, the Student Press Law Center, and the Pennsylvania students and teachers presenting to the House Education Committee. House Bill 1309 is an opportunity to strengthen student media programs and embolden our young people to step away from social media and bring conversations about important topics into public forums. Censoring students or pushing them away from covering topics ultimately fails students. It sends the message that their ideas aren't important. It is possible to strengthen student journalism, protect First Amendment rights, and have hard conversations in responsible ways. PSEA maintains that House Bill 1309 is a vital component to that process. Again, we urge your support for House Bill 1309 and consideration of an amendment to broaden media law training to further strengthen the legislation. Thank you for your consideration of our comments.

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