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Senate Bill 156 (as introduced 2-3-05)
Sponsor: Senator Michael Switalski
Committee: Education

Date Completed: 4-14-05

CONTENT

The bill would amend the Revised School Code to do the following:

- Prohibit a school from subjecting a pupil publication to prior review or prior restraint except under specific circumstances.**
- Require a school to appoint a faculty adviser to supervise the production of a pupil publication.**
- Require a school to prepare a pupil publication policy consistent with the bill.**
- Limit the liability of a school for expressions made by a pupil.**
- Provide for the liability of an adult pupil for involvement in or content of a pupil publication.**
- Allow a pupil or faculty adviser to bring an action to enforce the bill.**

The bill would define "pupil publication" as any matter that is prepared, substantially written, or published by pupils; that is distributed, broadcast by closed circuit or cable, or otherwise generally made available to members of the student body, either free of charge or for a fee; and that is prepared under the direction of a certificated teacher.

Prior Review or Restraint

The bill would prohibit a school board, school administrator, or school employee from subjecting a pupil publication to prior review or prior restraint unless the content of the publication met one or more of the following:

- It was obscene as to minors under State or Federal law.
- It was actionable as defamation or invasion of privacy under State or Federal law.
- It caused a school administrator, based on specific facts and not undifferentiated fears or apprehension, reasonably to believe that there was a clear and present danger of either 1) the commission of an unlawful act or the violation of a lawful school regulation, or 2) a material and substantial disruption of the orderly operation of the school or of any school facility.
- It constituted advertising for a product or service that was illegal for minors.

A school board, administrator, or employee also could subject a pupil publication to prior review or restraint if a pupil seeking to disseminate the publication voluntarily obtained prior review upon his or her own initiative. ("School board" would mean a school board, intermediate school board, or board of directors of a public school academy.)

Faculty Adviser

The bill would require a school to appoint a faculty adviser to supervise the production of a pupil publication, teach professional standards of English and journalism, and encourage

free and responsible expression of pupil content. The bill specifies that the faculty adviser's review of material prepared for a pupil publication to encourage high standards of English and journalism would not be considered a restraint on publication of the material or an abridgement of the freedom of expression in pupil publications.

Subject to the provisions of applicable collective bargaining agreements, a school board or administrator could not discipline, discharge, transfer, or reassign a faculty adviser, or remove a faculty adviser from his or her position, for refusing to alter or interfere with the free expression rights specified in the bill or in other law.

Pupil Publication Policy

If a school board operated a school that regularly had a pupil publication, the board would have to prepare a written pupil publication policy consistent with the bill, and make the policy available to pupils and parents in written or electronic form, within one year after the bill's effective date. The policy could include reasonable regulations of time, place, and manner of distribution of pupil publications.

Liability & Enforcement

The bill specifies that a school board, school district, school board member, school administrator, or faculty adviser would not be liable in any civil or criminal action for any expression made by a pupil unless the board, district, board member, or administrator altered or interfered with the content of the pupil's expression. ("School district" would mean a school district, intermediate school district, or public school academy.)

A student editor or other pupil of a school district who had reached the age of majority could be found liable in a civil or criminal action for content expressed in a pupil publication to the extent of his or her responsibility for and involvement in the preparation and publication of that content.

A pupil or faculty adviser could bring an action for injunctive or declaratory relief or damages in the circuit court in a county in which a school district was located, to enforce the bill. A substantially prevailing plaintiff could recover actual attorney fees and court costs.

Other Provisions

The bill provides that the pupils constituting the editorial staff would be responsible for determining the news, opinion, and advertising content, if any, of a publication.

The bill also specifies that a pupil publication or other expression by a pupil in the exercise of rights under the bill would not be considered to be an expression of school district policy.

Proposed MCL 380.1315

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.