88R9121 ANG-F

By:  Zwiener H.B. No. 5266

A BILL TO BE ENTITLED

AN ACT

relating to speech protections for student media publications in public schools.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter Z, Chapter 25, Education Code, is amended by adding Section 25.905 to read as follows:

Sec. 25.905.  STUDENT MEDIA PUBLICATIONS. (a) In this section:

(1)  "Protected speech" means speech protected by the First Amendment to the United States Constitution or by Section 8, Article I, Texas Constitution. The term does not include speech that:

(A)  is obscene;

(B)  is defamatory, libelous, or slanderous;

(C)  constitutes a clear, unwarranted invasion of privacy;

(D)  violates a federal or state law to the extent that law conforms to the United States Constitution or the Texas Constitution;

(E)  advertises or promotes the purchase of a product or service that is unlawful for purchase by minors;

(F)  is intended to incite the imminent commission of a crime or violation of school policy and is likely to produce that result; or

(G)  substantially disrupts a school's operation.

(2)  "Student media publication" means any material that is primarily prepared, written, published, or broadcast by students enrolled at a school district campus who are under the direction of a student media publication advisor if the material is distributed or generally made available to students enrolled at the campus. The term does not include material intended for distribution only in the classroom in which the material is produced.

(3)  "Student media publication advisor" means an individual employed or designated by a school district or a campus of the district to supervise or provide instruction relating to student media publications.

(b)  A student is entitled to exercise freedom of speech and freedom of the press in producing any student media publication, including by determining the content of the publication so long as the content constitutes protected speech, regardless of whether the publication is produced using the school district's money, equipment, or facilities or in conjunction with any class in which the student is enrolled. A student may not be disciplined for acting in accordance with this subsection.

(c)  Subsection (b) may not be construed to prohibit a student media publication advisor from teaching professional standards of English and journalism to students.

(d)  A student media publication advisor may not be subjected to disciplinary action or any other form of punishment or retaliation for acting to protect or refusing to infringe on a student's rights as provided by this section.

(e)  The content of a student media publication may not be construed as the policy or position of the campus at which the publication is produced or the school district in which the campus is located.

(f)  A school district, a student media publication advisor of a district campus, or any employee of the district is not liable in any civil or criminal action for the content of a student media publication produced by students enrolled at a district campus unless the district, advisor, or employee acted with wilful or wanton misconduct in permitting the publication to be produced.

(g)  The board of trustees of a school district shall adopt a written policy establishing rules regarding students' right to exercise freedom of speech and freedom of the press in producing any student media publication.

(h)  The policy adopted under Subsection (g) may include:

(1)  reasonable restrictions on the time, place, and manner of student expression in a student media publication if those restrictions:

(A)  are necessary to further a compelling school district interest and are the least restrictive means of furthering that interest;

(B)  employ clear, published, content-neutral, and viewpoint-neutral criteria; and

(C)  leave open ample alternative means of expression; and

(2)  limitations on speech that is not protected speech, including speech the board of trustees defines as profane, harassing, threatening, or intimidating.

(i)  A school administrator shall:

(1)  interpret the policy adopted under Subsection (g) in accordance with law; and

(2)  determine whether a student media publication includes speech that is not protected.

(j)  A student, individually or through the student's parent or person standing in parental relation to the student, whose freedom of speech, freedom of the press, or expressive rights have been violated under this section or a student media publication advisor may bring an action for injunctive relief to compel the school district to comply with this section.

(k)  In addition to the injunctive relief under Subsection (j), a person whose freedom of speech, freedom of the press, or expressive rights are affected by a policy adopted by a school district under this section may file suit against the district for declaratory judgment in the manner provided by Chapter 37, Civil Practice and Remedies Code.

SECTION 2.  Section 12.104(b), Education Code, as amended by Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B. 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular Session, 2021, is reenacted and amended to read as follows:

(b)  An open-enrollment charter school is subject to:

(1)  a provision of this title establishing a criminal offense;

(2)  the provisions in Chapter 554, Government Code; and

(3)  a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A)  the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B)  criminal history records under Subchapter C, Chapter 22;

(C)  reading instruments and accelerated reading instruction programs under Section 28.006;

(D)  accelerated instruction under Section 28.0211;

(E)  high school graduation requirements under Section 28.025;

(F)  special education programs under Subchapter A, Chapter 29;

(G)  bilingual education under Subchapter B, Chapter 29;

(H)  prekindergarten programs under Subchapter E or E-1, Chapter 29, except class size limits for prekindergarten classes imposed under Section 25.112, which do not apply;

(I)  extracurricular activities under Section 33.081;

(J)  discipline management practices or behavior management techniques under Section 37.0021;

(K)  health and safety under Chapter 38;

(L)  the provisions of Subchapter A, Chapter 39;

(M)  public school accountability and special investigations under Subchapters A, B, C, D, F, G, and J, Chapter 39, and Chapter 39A;

(N)  the requirement under Section 21.006 to report an educator's misconduct;

(O)  intensive programs of instruction under Section 28.0213;

(P)  the right of a school employee to report a crime, as provided by Section 37.148;

(Q)  bullying prevention policies and procedures under Section 37.0832;

(R)  the right of a school under Section 37.0052 to place a student who has engaged in certain bullying behavior in a disciplinary alternative education program or to expel the student;

(S)  the right under Section 37.0151 to report to local law enforcement certain conduct constituting assault or harassment;

(T)  a parent's right to information regarding the provision of assistance for learning difficulties to the parent's child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);

(U)  establishment of residency under Section 25.001;

(V)  school safety requirements under Sections 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115, 37.207, and 37.2071;

(W)  the early childhood literacy and mathematics proficiency plans under Section 11.185;

(X)  the college, career, and military readiness plans under Section 11.186; [~~and~~]

(Y) [~~(X)~~]  parental options to retain a student under Section 28.02124; and

(Z)  speech protections for student media publications under Section 25.905.

SECTION 3.  This Act applies beginning with the 2023-2024 school year.

SECTION 4.  To the extent of any conflict, this Act prevails over another Act of the 88th Legislature, Regular Session, 2023, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.