

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 2, 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

1 (G) substantially disrupts a school's operation.

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

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

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

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

25 (d) A student media publication advisor may not be subjected
26 to disciplinary action or any other form of punishment or
27 retaliation for acting to protect or refusing to infringe on a

1 student's rights as provided by this section.

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

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

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

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

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

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

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

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

27 (2) limitations on speech that is not protected

1 speech, including speech the board of trustees defines as profane,
2 harassing, threatening, or intimidating.

3 (i) A school administrator shall:

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

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

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

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

20 SECTION 2. Section 12.104(b), Education Code, as amended by
21 Chapters 542 (S.B. 168), 887 (S.B. 1697), 915 (H.B. 3607), 974 (S.B.
22 2081), and 1046 (S.B. 1365), Acts of the 87th Legislature, Regular
23 Session, 2021, is reenacted and amended to read as follows:

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

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

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

1 and

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

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

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

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

12 (D) accelerated instruction under Section
13 28.0211;

14 (E) high school graduation requirements under
15 Section 28.025;

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

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

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

23 (I) extracurricular activities under Section
24 33.081;

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

27 (K) health and safety under Chapter 38;

- 1 (L) the provisions of Subchapter A, Chapter 39;
- 2 (M) public school accountability and special
3 investigations under Subchapters A, B, C, D, F, G, and J, Chapter
4 39, and Chapter 39A;
- 5 (N) the requirement under Section 21.006 to
6 report an educator's misconduct;
- 7 (O) intensive programs of instruction under
8 Section 28.0213;
- 9 (P) the right of a school employee to report a
10 crime, as provided by Section 37.148;
- 11 (Q) bullying prevention policies and procedures
12 under Section 37.0832;
- 13 (R) the right of a school under Section 37.0052
14 to place a student who has engaged in certain bullying behavior in a
15 disciplinary alternative education program or to expel the student;
- 16 (S) the right under Section 37.0151 to report to
17 local law enforcement certain conduct constituting assault or
18 harassment;
- 19 (T) a parent's right to information regarding the
20 provision of assistance for learning difficulties to the parent's
21 child as provided by Sections 26.004(b)(11) and 26.0081(c) and (d);
- 22 (U) establishment of residency under Section
23 25.001;
- 24 (V) school safety requirements under Sections
25 37.108, 37.1081, 37.1082, 37.109, 37.113, 37.114, 37.1141, 37.115,
26 37.207, and 37.2071;
- 27 (W) the early childhood literacy and mathematics

1 proficiency plans under Section 11.185;

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

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

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

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

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

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