VERMONT SCHOOL BOARDS ASSOCIATION

Great Governance, Excellent Education, Strong Communities

To: Senate Education Committee
From: Nicole Mace, Executive Director
Re: S.18
Date: January 25, 2017

The standard for regulating speech through school-sponsored media was established by *Hazelwood School District v. Kuhlmeier* (1988). In that case, the U.S. Supreme Court decided that a district may remove articles from a school newspaper so long as the decision is reasonably related to the educational objectives of the school. Districts may exercise editorial control over school sponsored publications, theatrical productions, and other activities that parents or members of the public might reasonably think are published or produced by the school.

The thrust of S.18 is in section b(1), which provides that a student journalist may exercise "freedom of speech and freedom of the press" in school-sponsored media. This section purports to give a right by statute that is already granted to students in the First Amendment, although, as mentioned above, under federal case law a school district may exercise some editorial control over school-sponsored speech.

Section (d) sets limits on the exercise of speech. Content in school-sponsored media would not be protected if it is libelous/slanderous, invades privacy, violates law, creates an imminent danger of inciting students to violate law or school rules or to materially and substantially disrupt the orderly operation of the school. These elements are a rough restatement of federal First Amendment law, but neglect to include the important right granted to schools by the Supreme Court limit school-sponsored content if the need to do so is reasonably related to an educational objective. (*Hazelwood*)

Sections (f) and (g) protect students and staff, respectively, from discipline by the school for refusing to restrict or restrain speech protect by the bill. It is unlikely, under current law, that a court would uphold discipline against a student or a staff member for exercising, or refusing to prohibit another from exercising his or her First Amendment rights.

Subsection (h)(i) attempts to give school districts immunity from suit or criminal action based on the content of school-sponsored publications. It also states that the content of school-sponsored publications will not be deemed an expression of the school district.

Supreme Court rulings, however, give school districts the right to limit content that a member of the public might reasonably think is published or sponsored by the school district. The conflict between this provision and Supreme Court precedent will put school districts in a difficult position of defending content that state law intends to remove from the district's responsibility, but that federal case law deems to be within the district's power to regulate. One area of vulnerability for school districts created by this tension is hazing, harassment and bullying.

Our recommendation, should this bill move forward, would be to explicitly allow a school district to regulate content that interferes with a district's obligation to "provide safe, orderly, civil, and positive learning environments," pursuant to 16 VSA 570. This includes the ability to exercise editorial control over content that could be considered harassment or bullying, as defined in 16 VSA 11(26), (30), and (32).

We also recommend that the law explicitly allow for districts to exercise editorial control over obscene content. This is also consistent with U.S. Supreme Court case precedent and seems especially important for campuses that serve a K-12 student population.