



March 17, 2021

**Position Statement  
Expressing Concerns  
A-169 (Caputo, Wirths)**

**Concerns speech rights of student journalists at public schools and public institutions of higher education.**

The New Jersey School Boards Association (NJSBA), a federation of all local school boards in the state, believes that the authority for management of public schools should rest with local boards of education, and state authority over school districts should not exceed the scope necessary to fulfill the constitutional mandate for a thorough and efficient system of free public education. With this belief in mind, the NJSBA expresses the following concerns about A-169:

**Bill not needed**—Decisions concerning the content and operation of a student newspaper should be guided by board of education policy and the sound judgment of its certified staff. No other extra-curricular activity involving student expression requires such specialized legislation. Thespian clubs perform the plays and musicals under the policies of the board and the direction of theater advisors. Debate, poetry, and photography clubs, for instance, all have at their hearts freedom of student expression. However, it is local board policy, developed according to law and regulation with community input and implemented by certified staff, that provides the contours under which these freedoms of expression will be exercised. This local policy process ensures the health and safety of the school community while keeping the focus on student development and achievement.

**A-169 disturbs U.S. Supreme Court precedent**—In *Hazelwood v. Kuhlmeier* 484 U.S. 260 (1988), the U.S. Supreme Court, when faced with a dispute over whether school personnel could exercise editorial control over a student-run newspaper determined that the paper was sponsored by the school and, as such, the school had a legitimate pedagogical interest in preventing the publication of articles that it deemed inappropriate and that might appear to have the imprimatur of the school. Specifically, the Court noted that the paper was not intended as a public forum in which everyone could share views; rather, it was a limited forum for journalism students to write articles, subject to school editing, that met the requirements of the school activity. **A-169 ignores this clear instruction of the U.S. Supreme Court.**

**A-169 undermines the important work that the N.J. Legislature has done to help students and their parents combat harassment, intimidation and bullying.** –*N.J.S.A. 18A:37-13 et seq.*, requires the establishment of anti-bullying policies by school districts. The law requires

that school districts not only combat actual instances of harassment, intimidation or bullying but also the conditions that permit acts of HIB to occur in the first place. *N.J.S.A.* 18A:37-21 requires the establishment of a school safety team who is charged with developing, fostering, and maintaining a positive school climate by focusing on the on-going, systemic process and practices in the school and to address school climate issues that may lead to instances of HIB. While A-169 specifically allows school personnel to limit language that may be defined as profane, harassing, threatening, or intimidating, there is nothing in the bill to limit language which *may lead to, or provide conditions for* HIB to occur. As currently written, A-169 may have the unintended consequence of impeding the positive school climates that school districts have developed.

**A-169 lacks adequate protections for school districts and their employees**—While there is language in the bill protecting an employee from any adverse employment action as a result of carrying out the provisions of the bill, there is currently nothing in the bill to protect a school district and its employees from civil or criminal liability which may arise as a result of this bill. A-169 should include language to ensure that no school district, member of the board of education or employee thereof, shall be held responsible in any civil or criminal action for any publication or other expression of matter by students in the exercise of rights under this bill.

In conclusion, NJSBA is concerned that A-169 interferes with local school district determinations concerning discipline and school climate, violates U.S. Supreme Court precedent, and lacks adequate protections for school districts and their personnel.

**NJSBA urges the Assembly Education Committee to hold this bill for further deliberation and consideration.**