

# An Act

ENROLLED SENATE  
BILL NO. 361

By: Daniels and Bergstrom of  
the Senate

and

Lepak, O'Donnell, Osburn,  
Martinez, Wright, McDugle,  
Mize, Miller, Olsen,  
Phillips, Townley, Frix,  
Sneed, Manger, Roberts  
(Dustin), Stark, Echols,  
Conley, Davis, West  
(Kevin), Hill, Sterling,  
Taylor, Sanders, Ortega,  
Crosswhite Hader, Caldwell  
(Chad), Gann, Pae, Kerbs,  
Boatman, Boles, Moore,  
McBride, Kiger, Russ,  
Fincher, Nollan, Roberts  
(Sean), Pfeiffer,  
Randleman, Steagall,  
Tadlock, Lawson, Humphrey,  
Baker, West (Tammy),  
Luttrell, Patzkowsky, Sims,  
Burns, Hardin (David),  
McEntire, Newton, Smith and  
Marti of the House

An Act relating to higher education; providing definitions; providing for the protection of certain expressive activities; prohibiting public institutions of higher education from creating free speech zones or certain other designated areas; allowing public institutions of higher education to maintain certain narrowly tailored restrictions; allowing a person to engage in certain expressive activity; providing certain construction; directing

public institutions of higher education to make certain policies available in handbooks, on websites and through orientation programs; providing for the development of materials, programs and procedures for individuals who have responsibility for the discipline and education of students; directing public institutions of higher education to post on their websites and submit to the Governor and the Legislature certain report annually by certain date; providing for contents of report; providing for cause of action to be brought against a public institution of higher education; providing for relief; allowing certain students to assert certain violation as certain defense or counter in certain proceedings; requiring suits for violation to be brought within certain time frame; providing for calculation of time frame; providing for severability; and providing for codification.

SUBJECT: Higher education

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2120 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. As used in this act:

1. "Campus community" means students, administrators, faculty and staff at the public institution of higher education and their invited guests;

2. "Harassment" means only that expression that is unwelcome, so severe, pervasive and subjectively and objectively offensive that a student is effectively denied equal access to educational opportunities or benefits provided by the public institution of higher education;

3. "Materially and substantially disrupts" means when a person, with the intent to or with knowledge of doing so, significantly hinders another person's or group's expressive activity, prevents the communication of the message or prevents the transaction of the business of a lawful meeting, gathering or procession by:

- a. engaging in fighting, violent or other unlawful behavior, or
- b. physically blocking or using threats of violence to prevent any person from attending, listening to, viewing or otherwise participating in an expressive activity. Conduct that "materially disrupts" shall not include conduct that is protected under the First Amendment to the United States Constitution or Section 22 of Article 2 of the Oklahoma Constitution. Such protected conduct includes but is not limited to lawful protests in the outdoor areas of campus generally accessible to the members of the public, except during times when those areas have been reserved in advance for other events, or minor, brief or fleeting nonviolent disruptions of events that are isolated and short in duration;

4. "Outdoor areas of campus" means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community;

5. "Public institution of higher education" means any institution within The Oklahoma State System of Higher Education or technology center schools overseen by the State Board of Career and Technology Education; and

6. "Student organization" means an officially recognized group at a public institution of higher education, or a group seeking official recognition, comprised of admitted students that receive or are seeking to receive benefits through the public institution of higher education.

B. Expressive activities protected under the provisions of this section include but are not limited to any lawful verbal, written, audio-visual or electronic means by which individuals may communicate ideas to one another, including all forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs and circulating petitions.

C. 1. The outdoor areas of campuses of public institutions of higher education in this state shall be deemed public forums for the campus community, and public institutions of higher education shall not create "free speech zones" or other designated areas of campus outside of which expressive activities are prohibited. Public institutions of higher education may maintain and enforce reasonable time, place and manner restrictions narrowly tailored in service of a significant institutional interest only when such restrictions employ clear, published, content- and viewpoint-neutral criteria and provide for ample alternative means of expression. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble and distribute literature.

2. Nothing in this subsection shall be interpreted as limiting the right of student expression elsewhere on campus.

D. 1. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institutions of higher education, subject only to the requirements of subsection C of this section.

2. Nothing in this subsection shall prohibit public institutions of higher education from maintaining and enforcing reasonable time, place and manner restrictions that are narrowly tailored to serve a significant institutional interest only when such restrictions employ clear, published, content- and viewpoint-neutral criteria. Any such restrictions shall allow for members of the campus community to spontaneously and contemporaneously assemble, speak and distribute literature.

3. Nothing in this subsection shall be interpreted as preventing public institutions of higher education from prohibiting,

limiting or restricting expression that the First Amendment does not protect or prohibiting harassment as defined by this section.

4. Nothing in this section shall enable individuals to engage in conduct that intentionally, materially and substantially disrupts another person's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular group.

E. Public institutions of higher education shall make public in their handbooks, on their websites and through their orientation programs for students the policies, regulations and expectations of students regarding free expression on campus consistent with this section.

F. Public institutions of higher education shall develop materials, programs and procedures to ensure that those persons who have responsibility for discipline or education of students, including but not limited to administrators, campus police officers, residence life officials and professors, understand the policies, regulations and duties of public institutions of higher education regarding free expression on campus consistent with this section.

G. 1. Each public institution of higher education shall publicly post on its website, as well as submit to the Governor and the Legislature annually by December 31, a report that details the course of action implemented to be in compliance with the requirements of this section. A report shall also be given in the instance of any changes or updates to the chosen course of action. The information required in the report shall be:

- a. accessible from the institution's website home page by use of not more than three links,
- b. searchable by key words and phrases, and
- c. accessible to the public without requiring registration or use of a user name, password or another user identification.

2. The report shall include:

- a. a description of any barriers to or incidents of disruption of free expression occurring on campus, including but not limited to attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students without revealing those students' personally identifiable information, and
- b. any other information each public institution of higher education deems valuable for the public to evaluate whether free expression rights for all members of the campus community have been equally protected and enforced consistent with this act.

3. If a public institution of higher education is sued for an alleged violation of First Amendment rights, a supplementary report with a copy of the complaint, or any amended complaint, shall be submitted to the Governor and the Legislature within thirty (30) days.

H. Any person or student organization aggrieved by a violation of this section may bring an action against the public institution of higher education and its employees acting in their official capacities responsible for the violation and seek appropriate relief, including but not limited to injunctive relief, monetary damages, reasonable attorneys' fees and court costs. Any person or student organization aggrieved by a violation of this section may assert such violation as a defense or counter claim in any disciplinary action or in any civil or administrative proceedings brought against such student or student organization. Nothing in this subsection shall be interpreted to limit any other remedies available to any person or student organization.

I. A person shall be required to bring suit for violation of this section no later than one year after the day the cause of action occurs. For purposes of calculating the one-year limitation period, each day that the violation persists and each day that a

policy in violation of this section remains in effect shall constitute a new day that the cause of action has occurred.

J. If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of the section and the application of the provision to any other person or circumstance shall not be affected.

Passed the Senate the 13th day of March, 2019.

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Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2019.

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Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_