



1 public institutions of higher education to post on  
2 their websites and submit to the Governor and the  
3 Legislature certain report annually by certain date;  
4 providing for contents of report; providing for cause  
5 of action to be brought against a public institution  
6 of higher education; providing for relief; allowing  
7 certain students to assert certain violation as  
8 certain defense or counter in certain proceedings;  
9 requiring suits for violation to be brought within  
10 certain time frame; providing for calculation of time  
11 frame; providing for severability; providing for  
12 codification; providing an effective date; and  
13 declaring an emergency.

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

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

18 A. As used in this act:

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

22 2. "Harassment" means only that expression that is unwelcome,  
23 so severe, pervasive and subjectively and objectively offensive that  
24 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

1 hinders another person's or group's expressive activity, prevents  
2 the communication of the message or prevents the transaction of the  
3 business of a lawful meeting, gathering or procession by:

4 a. engaging in fighting, violent or other unlawful  
5 behavior, or

6 b. physically blocking or using threats of violence to  
7 prevent any person from attending, listening to,  
8 viewing or otherwise participating in an expressive  
9 activity. Conduct that "materially disrupts" shall  
10 not include conduct that is protected under the First  
11 Amendment to the United States Constitution or Section  
12 22 of Article 2 of the Oklahoma Constitution. Such  
13 protected conduct includes but is not limited to  
14 lawful protests in the outdoor areas of campus  
15 generally accessible to the members of the public,  
16 except during times when those areas have been  
17 reserved in advance for other events, or minor, brief  
18 or fleeting nonviolent disruptions of events that are  
19 isolated and short in duration;

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

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

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

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

16          C. 1. The outdoor areas of campuses of public institutions of  
17 higher education in this state shall be deemed public forums for the  
18 campus community, and public institutions of higher education shall  
19 not create "free speech zones" or other designated areas of campus  
20 outside of which expressive activities are prohibited. Public  
21 institutions of higher education may maintain and enforce reasonable  
22 time, place and manner restrictions narrowly tailored in service of  
23 a significant institutional interest only when such restrictions  
24 employ clear, published, content- and viewpoint-neutral criteria and

1 provide for ample alternative means of expression. Any such  
2 restrictions shall allow for members of the campus community to  
3 spontaneously and contemporaneously assemble and distribute  
4 literature.

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

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

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

21 3. Nothing in this subsection shall be interpreted as  
22 preventing public institutions of higher education from prohibiting,  
23 limiting or restricting expression that the First Amendment does not  
24 protect or prohibiting harassment as defined by this section.

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

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

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

18 G. 1. Each public institution of higher education shall  
19 publicly post on its website, as well as submit to the Governor and  
20 the Legislature annually by December 31, a report that details the  
21 course of action implemented to be in compliance with the  
22 requirements of this section. A report shall also be given in the  
23 instance of any changes or updates to the chosen course of action.  
24 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.

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

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

17           I. A person shall be required to bring suit for violation of  
18 this section no later than one year after the day the cause of  
19 action occurs. For purposes of calculating the one-year limitation  
20 period, each day that the violation persists and each day that a  
21 policy in violation of this section remains in effect shall  
22 constitute a new day that the cause of action has occurred.

23           J. If any provision of this section or any application of such  
24 provision to any person or circumstance is held to be

1 unconstitutional, the remainder of the section and the application  
2 of the provision to any other person or circumstance shall not be  
3 affected.

4 SECTION 2. This act shall become effective July 1, 2019.

5 SECTION 3. It being immediately necessary for the preservation  
6 of the public peace, health or safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

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10 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 04/11/2019 - DO PASS,  
11 As Coauthored.

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