

1 **CORRECTED**

2 **SENATE FLOOR VERSION**

3 February 26, 2019

4 SENATE BILL NO. 361

By: Daniels of the Senate

5 and

6 Lepak of the House

7
8
9 An Act relating to higher education; providing
10 definitions; providing for the protection of certain
11 expressive activities; prohibiting public
12 institutions of higher education from creating free
13 speech zones or certain other designated areas;
14 allowing public institutions of higher education to
15 maintain certain narrowly tailored restrictions;
16 allowing a person to engage in certain expressive
17 activity; providing certain construction; directing
18 public institutions of higher education to make
19 certain policies available in handbooks, on websites
20 and through orientation programs; providing for the
21 development of materials, programs and procedures for
22 individuals who have responsibility for the
23 discipline and education of students; directing
24 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 the waiving of certain immunity;
providing for severability; providing for
codification; providing an effective date; and
declaring an emergency.

1
2 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

6 A. As used in this act:

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

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

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

20 a. engaging in fighting, violent or other unlawful
21 behavior, or

22 b. physically blocking or using threats of violence to
23 prevent any person from attending, listening to,
24 viewing or otherwise participating in an expressive

1 activity. Conduct that "materially disrupts" shall
2 not include conduct that is protected under the First
3 Amendment to the United States Constitution or Section
4 22 of Article 2 of the Oklahoma Constitution. Such
5 protected conduct includes but is not limited to
6 lawful protests in the outdoor areas of campus
7 generally accessible to the members of the public,
8 except during times when those areas have been
9 reserved in advance for other events, or minor, brief
10 or fleeting nonviolent disruptions of events that are
11 isolated and short in duration;

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

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

21 6. "Student organization" means an officially recognized group
22 at a public institution of higher education, or a group seeking
23 official recognition, comprised of admitted students that receive or
24

1 are seeking to receive benefits through the public institution of
2 higher education.

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

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

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

24

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

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

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

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

24

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

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

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

- 20 a. accessible from the institution's website home page by
- 21 use of not more than three links,
- 22 b. searchable by key words and phrases, and

23
24

1 c. accessible to the public without requiring
2 registration or use of a user name, password or
3 another user identification.

4 2. The report shall include:

5 a. a description of any barriers to or incidents of
6 disruption of free expression occurring on campus,
7 including but not limited to attempts to block or
8 prohibit speakers and investigations into students or
9 student organizations for their speech. The
10 description shall include the nature of each barrier
11 or incident, as well as what disciplinary action, if
12 any, was taken against members of the campus community
13 determined to be responsible for those specific
14 barriers or incidents involving students without
15 revealing those students' personally identifiable
16 information, and

17 b. any other information each public institution of
18 higher education deems valuable for the public to
19 evaluate whether free expression rights for all
20 members of the campus community have been equally
21 protected and enforced consistent with this act.

22 3. If a public institution of higher education is sued for an
23 alleged violation of First Amendment rights, a supplementary report
24

1 with a copy of the complaint, or any amended complaint, shall be
2 submitted to the Governor and the Legislature within thirty days.

3 H. Any person or student organization aggrieved by a violation
4 of this section may bring an action against the public institution
5 of higher education and its employees acting in their official
6 capacities responsible for the violation and seek appropriate
7 relief, including but not limited to injunctive relief, monetary
8 damages, reasonable attorneys' fees and court costs. If a court
9 should find a violation of this section, it shall issue an award of
10 at least Five Thousand Dollars (\$5,000.00). Any person or student
11 organization aggrieved by a violation of this section may assert
12 such violation as a defense or counter claim in any disciplinary
13 action or in any civil or administrative proceedings brought against
14 such student or student organization. Nothing in this subsection
15 shall be interpreted to limit any other remedies available to any
16 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. The state waives immunity under the Eleventh Amendment to
24 the United States Constitution and consents to suit in a federal

1 court for lawsuits arising out of this section. A public
2 institution of higher education that violates this act is not immune
3 from suit or liability for the violation.

4 K. If any provision of this section or any application of such
5 provision to any person or circumstance is held to be
6 unconstitutional, the remainder of the section and the application
7 of the provision to any other person or circumstance shall not be
8 affected.

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

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

14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
15 February 26, 2019 - DO PASS
16
17
18
19
20
21
22
23
24