

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 361

By: Daniels

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5
6 AS INTRODUCED

7 An Act relating to higher education; providing
8 definitions; providing for the protection of certain
9 expressive activities; prohibiting public
10 institutions of higher education from creating free
11 speech zones or certain other designated areas;
12 allowing public institutions of higher education to
13 maintain certain narrowly tailored restrictions;
14 allowing a person to engage in certain expressive
15 activity; providing certain construction; directing
16 public institutions of higher education to make
17 certain policies available in handbooks, on websites
18 and through orientation programs; providing for the
19 development of materials, programs and procedures for
20 individuals who have responsibility for the
21 discipline and education of students; directing
22 public institutions of higher education to post on
23 their websites and submit to the Governor and the
24 Legislature certain report annually by certain date;
25 providing for contents of report; providing for cause
26 of action to be brought against a public institution
27 of higher education; providing for relief; allowing
28 certain students to assert certain violation as
29 certain defense or counter in certain proceedings;
30 requiring suits for violation to be brought within
31 certain time frame; providing for calculation of time
32 frame; providing for the waiving of certain immunity;
33 providing for severability; providing for
34 codification; providing an effective date; and
35 declaring an emergency.

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

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

4 A. As used in this act:

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

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

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

18 a. engaging in fighting, violent or other unlawful
19 behavior, or

20 b. physically blocking or using threats of violence to
21 prevent any person from attending, listening to,
22 viewing or otherwise participating in an expressive
23 activity. Conduct that "materially disrupts" shall
24 not include conduct that is protected under the First

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

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

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

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

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

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

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

22 D. 1. Any person who wishes to engage in noncommercial
23 expressive activity on campus shall be permitted to do so freely, as
24 long as the person's conduct is not unlawful and does not materially

1 and substantially disrupt the functioning of the public institutions
2 of higher education, subject only to the requirements of subsection
3 C of this section.

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

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

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

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

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

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

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

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

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

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

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

18 J. The state waives immunity under the Eleventh Amendment to
19 the United States Constitution and consents to suit in a federal
20 court for lawsuits arising out of this section. A public
21 institution of higher education that violates this act is not immune
22 from suit or liability for the violation.

23 K. 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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