

2 State of Arkansas
3 92nd General Assembly
4 Regular Session, 2019

A Bill

SENATE BILL 118

5
6 By: Senator K. Hammer

7 Filed with: Senate Committee on Education
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO REQUIRE CAMPUS FREE SPEECH POLICIES; AND
11 FOR OTHER PURPOSES.

Subtitle

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13
14 TO REQUIRE CAMPUS FREE SPEECH POLICIES.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code Title 6, Chapter 5, is amended to add an additional
21 subchapter to read as follows:

Subchapter 13 – Campus Free Speech Policies

6-5-1301. Definitions.

As used in this subchapter:

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25
26 (1) “Constitutional time, place, and manner restrictions” means
27 restrictions on the time, place, and manner of free speech that do not
28 violate the Arkansas Constitution or the First Amendment to the United States
29 Constitution that:

30 (A) Are reasonable and necessary;

31 (B) Are content- and viewpoint-neutral;

32 (C) Are narrowly tailored to satisfy a substantial
33 institutional purpose; and

34 (D) Leave open significant alternative channels for the
35 communication of the information or message to its intended audience;

36 (2) "Educational institution" means a:

1 (A) Public high school; or

2 (B) State-supported institution of higher education;

3 (3)(A) "Faculty" means any person, whether or not the person is
4 compensated by an educational institution, and regardless of political
5 affiliation, who is tasked with providing scholarship, academic research, or
6 teaching.

7 (B) "Faculty" includes without limitation:

8 (i) Tenured and nontenured professors;

9 (ii) Adjunct professors;

10 (iii) Visiting professors;

11 (iv) Lecturers;

12 (v) Graduate student instructors;

13 (vi) High school teachers; and

14 (vii) Other individuals in comparable positions,
15 however titled.

16 (C) "Faculty" does not include individuals whose primary
17 responsibilities are administrative or managerial;

18 (4)(A) "Free speech" means all verbal or written forms of
19 speech, all verbal or written forms of expression, and all forms of assembly,
20 including without limitation:

21 (i) Peaceful assembly;

22 (ii) A protest;

23 (iii) A demonstration;

24 (iv) A rally;

25 (v) A vigil;

26 (vi) A march;

27 (vii) The delivery of a public speech;

28 (viii) A publication;

29 (ix) A statement;

30 (x) An article;

31 (xi) A comment to the media;

32 (xii) The distribution of printed material;

33 (xiii) The carrying of signs;

34 (xiv) A display; and

35 (xv) The circulation of a petition.

1 (B) "Free speech" does not include speech primarily
2 designed for the explicit sale or distribution of any product or service; and

3 (5) "Student" means:

4 (A) An individual currently enrolled in a course of study
5 at an educational institution; or

6 (B) An organization that is:

7 (i) Comprised entirely of individuals currently
8 enrolled in a course of study at an educational institution; and

9 (ii) Registered with an educational institution
10 pursuant to policies of the educational institution.

11
12 6-5-1302. Requirements of educational institution.

13 (a) An educational institution and its administrators shall operate in
14 accordance with the following guarantees of free speech, which is the public
15 policy of this state:

16 (1) Students and faculty have a fundamental right to free
17 speech;

18 (2) An educational institution and its administrators shall give
19 students and faculty the broadest possible latitude to speak, write, listen,
20 challenge, learn, and discuss any issue, subject to subdivisions (a)(3) and
21 (a)(5) of this section;

22 (3) An educational institution and its administrators shall
23 maintain a campus as a marketplace of ideas for all students and all faculty
24 in which the free exchange of ideas is not suppressed because the ideas put
25 forth are thought by some or even by most members of the educational
26 institution's community to be:

27 (A) Offensive;

28 (B) Contrary to values or norms;

29 (C) Dangerous in a nonphysical manner;

30 (D) Unwise;

31 (E) Hateful;

32 (F) Immoral;

33 (G) Indecent;

34 (H) Racist;

35 (I) Ugly;

36 (J) Awful;

- 1 (K) Demeaning of others;
- 2 (L) Unacceptable;
- 3 (M) Jarring;
- 4 (N) Unwelcome;
- 5 (O) Malevolent;
- 6 (P) Disagreeable;
- 7 (Q) Conservative;
- 8 (R) Liberal;
- 9 (S) Traditional;
- 10 (T) Radical;
- 11 (U) Communist;
- 12 (V) Fascist;
- 13 (W) Wrongheaded; or
- 14 (X) Otherwise objectionable;

15 (4) An educational institution and its administrators shall not
16 interfere with the ability of individual students and individual faculty to
17 make judgments about ideas for themselves, individually;

18 (5) An educational institution and its administrators shall not
19 suppress free speech;

20 (6) An educational institution and its administrators shall not
21 attempt to shield individuals from free speech, including ideas and opinions
22 they find:

- 23 (A) Offensive;
- 24 (B) Contrary to values or norms;
- 25 (C) Dangerous in a nonphysical manner;
- 26 (D) Unwise;
- 27 (E) Hateful;
- 28 (F) Immoral;
- 29 (G) Indecent;
- 30 (H) Racist;
- 31 (I) Ugly;
- 32 (J) Awful;
- 33 (K) Demeaning of others;
- 34 (L) Unacceptable;
- 35 (M) Jarring;
- 36 (N) Unwelcome;

- 1 (O) Malevolent;
- 2 (P) Disagreeable;
- 3 (Q) Conservative;
- 4 (R) Liberal;
- 5 (S) Traditional;
- 6 (T) Radical;
- 7 (U) Communist;
- 8 (V) Fascist;
- 9 (W) Wrongheaded; or
- 10 (X) Otherwise objectionable;

11 (7) Although an educational institution should greatly value
12 civility and mutual respect, an educational institution and its
13 administrators shall not use concerns about civility and mutual respect or
14 the like as a justification for closing off a discussion of an individual or
15 counseling, reprimanding, or sanctioning an individual for expressing ideas,
16 even if some students or faculty find those ideas:

- 17 (A) Offensive;
- 18 (B) Contrary to values or norms;
- 19 (C) Dangerous in a nonphysical manner;
- 20 (D) Unwise;
- 21 (E) Hateful;
- 22 (F) Immoral;
- 23 (G) Indecent;
- 24 (H) Racist;
- 25 (I) Ugly;
- 26 (J) Awful;
- 27 (K) Demeaning of others;
- 28 (L) Unacceptable;
- 29 (M) Jarring;
- 30 (N) Unwelcome;
- 31 (O) Malevolent;
- 32 (P) Disagreeable;
- 33 (Q) Conservative;
- 34 (R) Liberal;
- 35 (S) Traditional;
- 36 (T) Radical;

1 (U) Communist;

2 (V) Fascist;

3 (W) Wrongheaded; or

4 (X) Otherwise objectionable;

5 (8) Although all students are free to state their own views on
6 campus or contest the views expressed by others on campus, including without
7 limitation speakers who are invited to express their views on campus, a
8 student shall not significantly obstruct the freedom of other speakers to do
9 the same;

10 (9) An educational institution and its administrators shall
11 provide an atmosphere that is most conducive to speculation, experimentation,
12 and creation by all students and all faculty, who shall always remain free to
13 inquire, study, evaluate, and gain new understanding;

14 (10) An educational institution and its administrators shall not
15 interfere with the responsibility of faculty to engage in open, courageous,
16 and persistent efforts to search out and communicate ideas;

17 (11) An educational institution and its administrators shall
18 maintain the generally accessible, open, outdoor areas of its campus as
19 traditional public forums for free speech by students and faculty;

20 (12) An educational institution and its administrators shall not
21 restrict the free speech of students and faculty only to particular areas of
22 the campus, sometimes known as "free speech zones";

23 (13) An educational institution and its administrators shall not
24 deny funding from student-activity fees to a student organization based on
25 the viewpoints that the student organization advocates;

26 (14) An educational institution and its administrators shall not
27 establish permitting requirements that prohibit spontaneous outdoor
28 assemblies or outdoor distribution of literature, although an educational
29 institution may maintain a policy that grants members of the educational
30 institution community the right to reserve certain outdoor spaces in advance;

31 (15) An educational institution and its administrators shall not
32 charge students security fees based on the:

33 (A) Content of the speech;

34 (B) Content of the speech of guest speakers invited by
35 students; or

1 (C) Anticipated reaction or opposition of listeners to a
2 speech;

3 (16) An educational institution and its administrators shall
4 allow all students and all faculty to invite guest speakers to campus to
5 engage in free speech regardless of the views of the guest speakers; and

6 (17) An educational institution and its administrators shall not
7 disinvite a speaker invited by a student, student organization, or faculty
8 member because the speaker's anticipated speech may be considered by
9 students, faculty, administrators, government officials, or members of the
10 public to be:

11 (A) Offensive;

12 (B) Contrary to values or norms;

13 (C) Dangerous in a nonphysical manner;

14 (D) Unwise;

15 (E) Hateful;

16 (F) Immoral;

17 (G) Indecent;

18 (H) Racist;

19 (I) Ugly;

20 (J) Awful;

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27 (Q) Conservative;

28 (R) Liberal;

29 (S) Traditional;

30 (T) Radical;

31 (U) Communist;

32 (V) Fascist;

33 (W) Wrongheaded; or

34 (X) Otherwise objectionable.

35 (b)(1) An educational institution shall adopt a policy consistent with
36 subsection (a) of this section.

1 (2) The policy adopted under subdivision (b)(1) of this section
2 shall be made available annually to students and faculty through one (1) or
3 more of the following methods:

4 (A) Published annually in the educational institution's
5 student handbook and faculty handbook, whether published in print or
6 electronically;

7 (B) Made available to students and faculty by way of a
8 prominent notice on the website of the educational institution;

9 (C) Sent annually to students and faculty to the email
10 address provided to students and faculty by the educational institution; or

11 (D) Addressed by the educational institution in
12 orientation programs for new students and new faculty.

13 (c) This subchapter does not grant students the right to disrupt
14 previously scheduled or reserved activities occurring in a traditional public
15 forum.

16 (d) This subchapter does not interfere with the prohibition on
17 activities under the Civil Rights Act of 1964, 42 U.S.C. 1981 et seq., as it
18 existed on January 1, 2019.

19 (e) Free speech is not a prohibited activity under this subchapter.

20
21 6-5-1303. Costs.

22 (a) This subchapter does not require an educational institution to
23 fund costs associated with student free speech.

24 (b) An educational institution shall not impose costs on students on
25 the basis of the anticipated reaction or opposition to a person's speech by
26 listeners.

27
28 6-5-1304. Restrictions.

29 An educational institution may impose reasonable time, place, and
30 manner restrictions as long as the restrictions do not:

31 (1) Violate the Arkansas Constitution or the First Amendment to
32 the United States Constitution; or

33 (2) Otherwise interfere with rights guaranteed in this
34 subchapter.

35
36 6-5-1305. Criminal violation - Civil cause of action.

1 (a) A person who negligently violates the free speech rights under
2 this subchapter is guilty of a Class A misdemeanor.

3 (b)(1) A person whose free speech is violated by an educational
4 institution or an administrator under the policy adopted under § 6-5-1302 may
5 bring an action in a court of competent jurisdiction to:

6 (A) Enjoin a violation of the policy; and

7 (B) Recover reasonable court costs and attorney's fees.

8 (2) In an action brought pursuant to this subchapter, if the
9 court finds that a violation occurred, the court shall award the aggrieved
10 party:

11 (A) Injunctive relief for the violation; and

12 (B) Reasonable court costs and attorney's fees.

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15 Referred requested by the Arkansas Senate

16 Prepared by: TNL/VJF

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