



CAMPUS FREE SPEECH ACT

WHEREAS, [free speech provision of state constitution] recognizes that “[quote]”; and

WHEREAS, the state institutions of higher education have historically embraced a commitment to freedom of expression in policy; and

WHEREAS, in recent years, state institutions of higher education have abdicated their responsibility to uphold free-speech principles, and these failures make it appropriate for all state institutions of higher education to restate and confirm their commitment in this regard; and

WHEREAS, in 1974, the Committee on Free Expression at Yale issued a statement known as the Woodward Report that stands as a classic defense of free expression on campuses; in 2015, the Committee on Freedom of Expression at the University of Chicago issued a similar and widely respected report; and in 1967, the Kalven Committee Report of the University of Chicago articulated the principle of institutional neutrality regarding political and social issues and the essential role of such neutrality in protecting freedom of thought and expression at universities. The principles affirmed by these three highly regarded reports are inspiring articulations of the critical importance of free expression in higher education; and

WHEREAS, this legislature views freedom of expression as being of critical importance and requires that each state institution of higher education ensure free, robust, and

uninhibited debate and deliberation by students of state institutions whether on or off campus; and

WHEREAS, this legislature has determined that it is a matter of statewide concern that all state institutions of higher education officially recognize freedom of speech as a fundamental right; now, therefore,

BE IT ENACTED:

Section 1.

The Board of Trustees of the state university system shall develop and adopt a policy on free expression that contains, at least, the following:

(A) A statement that the primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. This statement shall provide that, to fulfill this function, the institution must strive to ensure the fullest degree of intellectual freedom and free expression.

(B) A statement that it is not the proper role of the institution to shield individuals from speech protected by the First Amendment, including, without limitation, ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.

(C) Students and faculty have the freedom to discuss any problem that presents itself, as

the First Amendment permits and within the limits of reasonable viewpoint- and content-neutral restrictions on time, place, and manner of expression that are consistent with this act and that are necessary to achieve a compelling institutional interest; provided that these restrictions are clear, published, and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of this subsection.

(D) Any person lawfully present on campus may protest or demonstrate there. Such statement shall make clear that protests and demonstrations that materially and substantially infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction. This does not prohibit professors or other instructors from maintaining order in the classroom.

(E) The public areas of campuses of the institution are traditional public forums, open on the same terms to any speaker.

(F) The campuses of the institution are open to any speaker whom students, student groups, or members of the faculty have invited.

(G) The institution shall make all reasonable efforts and make available all reasonable

resources to ensure the safety of invited speakers. An institution shall not charge security fees based on the content of the inviter's speech or the content of the speech of invited speakers. The institution may restrict the use of its non-public facilities to invited individuals.

(H) The policy shall include a range of disciplinary sanctions for anyone under the jurisdiction of the institution who materially and substantially interferes with the free expression of others.

(I) In all disciplinary cases involving expressive conduct, students are entitled to a disciplinary hearing under published procedures, including, at minimum (1) the right to receive advanced written notice of the charges, (2) the right to review the evidence in support of the charges, (3) the right to confront witnesses against them, (4) the right to present a defense, (5) the right to call witnesses, (6) a decision by an impartial arbiter or panel, and (7) the right of appeal.

When suspension for longer than 30 days or expulsion are potential penalties, students are entitled to a disciplinary hearing under published procedures, including, at minimum, all of the above procedures, plus the right to active assistance of counsel.

(J) Any student who has twice been found responsible for infringing the expressive rights of others will be suspended for a minimum of one year, or expelled.

(K) Individual students, faculty, and staff of the university shall be free to take positions on the public controversies of the day, but the institution itself should attempt to remain neutral, as an institution, on the public policy controversies of the day, except insofar as administrative decisions on such issues are essential to the day-to-day functioning of the university. The institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or staff to publicly express a given view of a public controversy.

(L) No institution may deny a student organization any benefit or privilege available to any other student organization, or otherwise discriminate against a student organization, based on the content of the organization's expression, including any requirement that the leaders or members of such organization:

(1) Affirm and adhere to the organization's sincerely held beliefs;

(2) Comply with the organization's standards of conduct; or

(3) Further the organization's mission or purpose, as defined by the student organization

(M) This statement supersedes and nullifies any prior provisions in the policies and regulations of the institution that restrict speech on campus and are, therefore, inconsistent with this statement on free expression. The institution will remove or

revise any such provisions in its policies and regulations to ensure compatibility with the above statement on free expression.

Section 2.

The Board of Trustees of the state university system shall create a single Committee on Free Expression consisting of no less than 15 members. The Committee on Free Expression shall report to the public, the board of trustees, the governor, and the state legislature on September 1 of every year. The report shall include:

(A) A description of any barriers to or disruptions of free expression within state institutions of higher education.

(B) A description of the administrative handling and discipline relating to these disruptions or barriers.

(C) A description of substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues.

(D) Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

Section 3.

State institutions of higher education shall include in freshman orientation programs a section describing to all students the policies and regulations regarding free expression consistent with this act.

Section 4.

The university system board of trustees is authorized to adopt regulations to further the purposes of the policies adopted pursuant to this Act. Nothing in this Act shall be construed to prevent institutions from regulating student speech or activity that is prohibited by law. Except as further limited by this Act, institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including:

(A) Violations of state or federal law.

(B) Expression that a court has deemed unprotected defamation.

(C) Harassment.

(1) "Peer-on-peer harassment," which is defined as conduct directed by a student towards another individual student, on the basis of that student's membership or perceived membership in a protected class, that is so severe, pervasive, and objectively offensive that it effectively deprives the victim of access to the educational opportunities or benefits provided by the university.

(2) "Quid pro quo sexual harassment," which is defined as explicitly or implicitly conditioning a student's participation in an education program or activity or basing an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors,

or other verbal, nonverbal, or physical conduct of a sexual nature.

(D) True threats, which are defined as statements meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(E) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.

(F) An action that unlawfully disrupts the function of the university.

(G) Reasonable time, place, and manner restrictions on expressive activities consistent with Section 1.3 herein.

Section 5.

(A) A state institution of higher education may restrict expressive conduct in the public areas of campus only if it demonstrates that the restriction:

(1) Is necessary to achieve a compelling governmental interest;

(2) Is the least restrictive means of furthering that compelling governmental interest;

(3) Leaves open ample other opportunities to engage in the expressive conduct; and

(4) Provides for spontaneous assembly and distribution of literature.

(B) The following persons may bring an action in a court of competent jurisdiction to enjoin any violation of this section or to recover reasonable court costs and reasonable attorney fees:

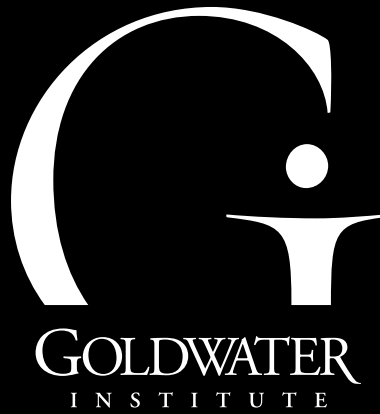
(1) The attorney general.

(2) A person whose expressive rights are violated by a violation of this section.

(C) In an action brought under subsection B of this section, if the court finds that a violation of this section occurred, the court shall award the aggrieved person injunctive relief for the violation and shall award reasonable court costs and reasonable attorney fees. The court shall also award damages of \$1,000 or actual damages, whichever is higher.

(D) A person shall bring an action for a violation of this section within one year after the date the cause of action accrues. For the purpose of calculating the one-year limitation period, each day that the violation persists or each day that a policy in violation of this section remains in effect constitutes a new violation of this section and shall be considered a day that the cause of action has accrued.

(E) The state waives sovereign immunity and consents to suit in state and federal court for lawsuits arising out of this act. A public institution of higher education that violates this act is not immune from suit or liability for the violation.



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