

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

A Bill

SENATE BILL 118

4
5 By: Senator K. Hammer

For An Act To Be Entitled

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

Subtitle

12 TO REQUIRE CAMPUS FREE SPEECH POLICIES.

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11
13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

Subchapter 13 – Campus Free Speech Policies

6-5-1301. Definitions.

As used in this subchapter:

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23
24 (1) “Constitutional time, place, and manner restrictions” means
25 restrictions on the time, place, and manner of free speech that do not
26 violate the Arkansas Constitution or the First Amendment to the United States
27 Constitution that:

28 (A) Are reasonable and necessary;

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

30 (C) Are narrowly tailored to satisfy a substantial
31 institutional purpose; and

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

34 (2) "Educational institution" means a:

35 (A) Public high school; or

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



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

5 (B) "Faculty" includes without limitation:

6 (i) Tenured and nontenured professors;

7 (ii) Adjunct professors;

8 (iii) Visiting professors;

9 (iv) Lecturers;

10 (v) Graduate student instructors;

11 (vi) High school teachers; and

12 (vii) Other individuals in comparable positions,

13 however titled.

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

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

19 (i) Peaceful assembly;

20 (ii) A protest;

21 (iii) A demonstration;

22 (iv) A rally;

23 (v) A vigil;

24 (vi) A march;

25 (vii) The delivery of a public speech;

26 (viii) A publication;

27 (ix) A statement;

28 (x) An article;

29 (xi) A comment to the media;

30 (xii) The distribution of printed material;

31 (xiii) The carrying of signs;

32 (xiv) A display; and

33 (xv) The circulation of a petition.

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

36 (5) "Student" means:

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

3 (B) An organization that is:

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

6 (ii) Registered with an educational institution
 7 pursuant to policies of the educational institution.

8
 9 6-5-1302. Requirements of educational institution.

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

13 (1) Students and faculty have a fundamental right to free
 14 speech;

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

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

24 (A) Offensive;

25 (B) Contrary to values or norms;

26 (C) Dangerous in a nonphysical manner;

27 (D) Unwise;

28 (E) Hateful;

29 (F) Immoral;

30 (G) Indecent;

31 (H) Racist;

32 (I) Ugly;

33 (J) Awful;

34 (K) Demeaning of others;

35 (L) Unacceptable;

36 (M) Jarring;

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

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

15 (5) An educational institution and its administrators shall not
 16 suppress free speech;

17 (6) An educational institution and its administrators shall not
 18 attempt to shield individuals from free speech, including ideas and opinions
 19 they find;

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

- 1 (R) Liberal;
- 2 (S) Traditional;
- 3 (T) Radical;
- 4 (U) Communist;
- 5 (V) Fascist;
- 6 (W) Wrongheaded; or
- 7 (X) Otherwise objectionable;

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

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

1 (X) Otherwise objectionable;

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

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

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

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

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

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

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

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

30 (A) Content of the speech;

31 (B) Content of the speech of guest speakers invited by
32 students; or

33 (C) Anticipated reaction or opposition of listeners to a
34 speech;

35 (16) An educational institution and its administrators shall
36 allow all students and all faculty to invite guest speakers to campus to

1 engage in free speech regardless of the views of the guest speakers; and
2 (17) An educational institution and its administrators shall not
3 disinvite a speaker invited by a student, student organization, or faculty
4 member because the speaker’s anticipated speech may be considered by
5 students, faculty, administrators, government officials, or members of the
6 public to be:

- 7 (A) Offensive;
- 8 (B) Contrary to values or norms;
- 9 (C) Dangerous in a nonphysical manner;
- 10 (D) Unwise;
- 11 (E) Hateful;
- 12 (F) Immoral;
- 13 (G) Indecent;
- 14 (H) Racist;
- 15 (I) Ugly;
- 16 (J) Awful;
- 17 (K) Demeaning of others;
- 18 (L) Unacceptable;
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- 21 (O) Malevolent;
- 22 (P) Disagreeable;
- 23 (Q) Conservative;
- 24 (R) Liberal;
- 25 (S) Traditional;
- 26 (T) Radical;
- 27 (U) Communist;
- 28 (V) Fascist;
- 29 (W) Wrongheaded; or
- 30 (X) Otherwise objectionable.

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

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

- 36 (A) Published annually in the educational institution’s

1 student handbook and faculty handbook, whether published in print or
2 electronically;

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

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

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

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

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

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

16
17 6-5-1303. Costs.

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

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

23
24 6-5-1304. Restrictions.

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

27 (1) Violate the Arkansas Constitution or the First Amendment to
28 the United States Constitution; or

29 (2) Otherwise interfere with rights guaranteed in this
30 subchapter.

31
32 6-5-1305. Criminal violation - Civil cause of action.

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

35 (b)(1) A person whose free speech is violated by an educational
36 institution or an administrator under the policy adopted under § 6-5-1302 may

1 bring an action in a court of competent jurisdiction to:

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

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

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

7 (A) Injunctive relief for the violation; and

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

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