

1 AN ACT relating to constitutional freedoms at public postsecondary education
2 institutions.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 164.348 is amended to read as follows:

5 (1) For purposes of this section:

6 (a) "Faculty" means any person tasked by ~~an~~[a public postsecondary education]
7 institution with providing scholarship, academic research, or teaching,
8 regardless of whether the person is compensated by the ~~public postsecondary~~
9 ~~education~~]institution; ~~and~~

10 **(b) "Institution" means a public postsecondary education institution in the**
11 **Commonwealth of Kentucky;**

12 **(c)**~~(b)~~ **"Public" means any individual that is not a faculty member, student,**
13 **staff, or otherwise affiliated with an institution;**

14 **(d) "Staff" means an individual who is employed by an institution but is not**
15 **faculty, including but not limited to a student worker or graduate student**
16 **worker when that individual is acting in an official capacity as an employee**
17 **of the institution; and**

18 **(e)** "Student" means an individual currently enrolled in at least one (1) credit hour
19 at ~~an~~[a public postsecondary education] institution or a student organization
20 registered pursuant to the policies of ~~an~~[a public postsecondary education]
21 institution.

22 (2) Consistent with its obligations to respect the rights secured by the Constitutions of
23 the United States and the Commonwealth of Kentucky, a governing board of ~~an~~[a
24 ~~public postsecondary education~~] institution shall adopt policies to ensure that:

25 (a) The institution protects the fundamental and constitutional right of all
26 students, ~~and~~]faculty, **and the public** to freedom of expression, **as protected**
27 **by the First Amendment to the Constitution of the United States and Section**

1 *1 of the Constitution of Kentucky:*

2 (b) The institution grants students, ~~and~~ faculty, *and the public* the broadest
3 possible latitude to speak, write, listen, challenge, learn, and discuss any issue;

4 (c) *The institution does not restrict, regulate, or punish speech or conduct that*
5 *is protected speech or expression that occurs off-campus, whether it be in-*
6 *person or online, except conduct that is prohibited by applicable state or*
7 *federal law;*

8 (d) The institution commits to maintaining a marketplace of ideas where the free
9 exchange of ideas is not suppressed because an idea put forth is considered by
10 some or even most of the members of the institution's community to be
11 offensive, unwise, disagreeable, conservative, liberal, traditional, or radical;

12 (e) Students, ~~and~~ faculty, *and the public* do not substantially obstruct or
13 otherwise substantially interfere with the freedom of others to express views
14 they reject so that a lively and fearless freedom of debate and deliberation is
15 promoted and protected;

16 (f) The expression of a student's religious or political viewpoints in
17 classroom, homework, artwork, and other written and oral assignments is free
18 from discrimination or penalty based on the religious or political content of
19 the submissions;

20 (g) 1. The selection of students to speak at official events is made in a
21 viewpoint-neutral manner;

22 2. The prepared remarks of the student are not altered before delivery,
23 except in a viewpoint-neutral manner, unless requested by the student.
24 However, student speakers shall not engage in speech that is obscene,
25 vulgar, offensively lewd, or indecent; and

26 3. If the content of the student's speech is such that a reasonable observer
27 may perceive affirmative institutional sponsorship or endorsement of the

1 student speaker's religious or political viewpoint, the institution shall
 2 communicate, in writing, orally, or both, that the student's speech does
 3 not reflect the endorsement, sponsorship, position, or expression of the
 4 institution;

5 ~~(h)(g)~~ ~~{Student }~~Religious and political *student* organizations are allowed
 6 equal access to public forums, room reservations, facilities, or other
 7 institutional grounds on the same basis as nonreligious and nonpolitical
 8 *student* organizations;

9 ~~(i)(h)~~ No recognized religious or political student organization is hindered or
 10 discriminated against in the ordering of its internal affairs, selection of leaders
 11 and members, defining of doctrines and principles, and resolving of
 12 organizational disputes in the furtherance of its mission, or in its
 13 determination that only persons committed to its mission should conduct such
 14 activities;

15 ~~(j) 1.(i)~~ Student activity ~~{fee }~~funding to a student organization is not
 16 impacted by~~{denied based on}~~ the viewpoints that the student
 17 organization advocates; and

18 2. Any authority to distribute any institutional funding among student
 19 organizations vested with the student government, or any other student
 20 organization, shall be contingent upon a viewpoint-neutral
 21 distribution of funds, in accordance with the First Amendment to the
 22 Constitution of the United States and this subsection;

23 ~~(k)(j)~~ The generally accessible, open, outdoor areas of the campus be
 24 maintained as traditional public forums for students, ~~{and }~~faculty, and the
 25 public to express their views, so that the free expression of students, ~~{and }~~
 26 ~~{faculty, and the public~~ is not limited to particular areas of the campus often
 27 described as "free speech zones";

1 ~~(l)(k)~~ There shall be no restrictions on the time, place, and manner of student
 2 speech that occurs in the outdoor areas of campus or is protected by the First
 3 Amendment of the United States Constitution, except for restrictions that are:

- 4 1. Reasonable;
- 5 2. Justified without reference to the content of the regulated speech;
- 6 3. Narrowly tailored to serve a compelling governmental interest; and
- 7 4. Limited to provide ample alternative options for the communication of
 8 the information;

9 ~~(m) 1.(1)~~ Permit requirements do not prohibit:

10 a. Spontaneous outdoor assemblies or outdoor distribution of
 11 literature~~[-];~~ and

12 b. *Spontaneous use of tables, stationary displays, or yard signs, or*
 13 *the exhibition of images in the generally accessible, open,*
 14 *outdoor areas of the campus.*

15 2. Any ~~[although an institution may adopt a]~~policy *adopted by an*
 16 *institution* that grants members of the university community the right to
 17 reserve certain outdoor spaces in advance *may not restrict the*
 18 *expressive activity protected by subparagraph 1.a. of this paragraph;*

19 ~~(n)(m)~~ All students and faculty are allowed to invite guest speakers to campus
 20 to engage in free speech regardless of the views of the guest speakers;

21 ~~(o)(n)~~ Students are not charged fees based on the content of their speech, the
 22 content of the speech of guest speakers invited by students, or the anticipated
 23 reaction or opposition of listeners to the speech;~~[-and]~~

24 ~~(p)(o)~~ The institution does not disinvite a speaker invited by a student, student
 25 organization, or faculty member because the speaker's anticipated speech may
 26 be considered offensive, unwise, disagreeable, conservative, liberal,
 27 traditional, or radical by students, faculty, administrators, government

1 officials, or members of the public; and

2 (g) The institution defines student-on-student harassment to mean unwelcome
3 conduct directed toward a student that is so severe, pervasive, and
4 objectively offensive that it effectively denies equal access to an educational
5 opportunity or benefit.

6 (3) (a) Any person aggrieved by a violation of any policy adopted or required to have
7 been adopted pursuant to subsection (2) of this section shall have a cause of
8 action against the institution, or any of its agents acting in their official
9 capacities, for damages arising from the violation, including reasonable
10 attorney's fees and litigation costs.

11 (b) A claim brought pursuant to this subsection may be asserted in any court of
12 competent jurisdiction within one (1) year of the date the cause of action
13 accrued. The cause of action shall be deemed to have accrued at the point in
14 time the violation ceases or is cured by the institution.

15 (c) Excluding reasonable attorney's fees and litigation costs, any prevailing
16 claimant shall be awarded no less than one thousand dollars (\$1,000) but no
17 more than two hundred fifty thousand dollars (\$250,000)~~one hundred~~
18 ~~thousand dollars (\$100,000)~~ cumulatively per action. If multiple claimants
19 prevail and the damages awarded would exceed two hundred fifty thousand
20 dollars (\$250,000)~~one hundred thousand dollars (\$100,000)~~, the court shall
21 divide two hundred fifty thousand dollars (\$250,000)~~one hundred thousand~~
22 ~~dollars (\$100,000)~~ amongst all prevailing claimants equally.

23 (d) Notwithstanding any other statute to the contrary, the Commonwealth
24 waives any claim for civil immunity for any case brought against any
25 institution by a person aggrieved by a violation of any policy adopted or
26 required to have been adopted pursuant to subsection (2) of this section
27 against the institution, or any of its agents acting in their official capacities,

1 for injunctive relief and all equitable damages arising from the violation,
2 including but not limited to reasonable attorney's fees and litigation costs.

3 (4) If it is determined, after a final decision in an action brought pursuant to
4 subsection (3) of this section, that:

5 (a) A faculty member or administrator knowingly and intentionally restricted
6 the protected speech or otherwise penalized an individual in violation of any
7 policy adopted or required to have been adopted pursuant to subsection (2)
8 of this section, the faculty member or administrator shall be subject to
9 discipline by the institution through the normal disciplinary processes of the
10 institution, and such discipline may include termination if supported by the
11 totality of the circumstances; and

12 (b) Any student organization empowered to distribute institutional funding
13 among other student organizations, knowingly and intentionally violated
14 any policy adopted or required to have been adopted pursuant to subsection
15 (2) of this section, the institution shall suspend the student organization's
16 authority to distribute institutional funding for a period of at least one (1)
17 year. During this period, all institutional funding for student organizations
18 shall be distributed by the institution.

19 (5) (a) An institution shall not retaliate against any member of the campus
20 community who:

21 1. Files a complaint for an alleged violation of any policy adopted or
22 required to have been adopted pursuant to subsection (2) of this
23 section, including but not limited to any individual who brings an
24 action in accordance with subsection (3) of this section; and

25 2. Acts to protect, or refuses to infringe upon, the free expression of
26 another as protected by any policy adopted or required to have been
27 adopted pursuant to subsection (2) of this section, the First

1 *Amendment to the Constitution of the United States, or Section 1 of*
 2 *the Constitution of Kentucky.*

3 *(b) For the purposes of this section, "retaliation" includes but is not limited to*
 4 *a dismissal, suspension, expulsion, reassignment of job duties, job transfer,*
 5 *decrease in funding, termination or nonrenewal of a teaching contract or*
 6 *an extracurricular contract, or other disciplinary act that is intended to*
 7 *punish, embarrass, or harm the individual.*

8 **(6)** (a) The policies adopted pursuant to subsection (2) of this section shall be made
 9 available to students and faculty using the following methods:

- 10 1. Publishing in the institution's student handbook and faculty handbook,
 11 whether paper or electronic; ~~and~~
- 12 2. Posting to a prominent location on the institution's website~~[Web site]~~;
- 13 and
- 14 3. Presenting and distributing the information in orientation programs
 15 for all new students, faculty, and staff.

16 (b) The policies adopted pursuant to subsection (2) of this section may also be
 17 mailed~~[made available to students and faculty using the following methods:~~

- 18 ~~1. Mailing~~ electronically to students, ~~and~~ faculty, and staff annually
 19 using their institutionally provided e-mail addresses~~;~~ ~~or~~
- 20 ~~2. Including in orientation programs for new students and new faculty].~~

21 ~~(7)~~~~(5)~~ *(a) The Council on Postsecondary Education shall develop instructional*
 22 *materials and model trainings for institutions to ensure that members of the*
 23 *campus community understand the role of the institution in preserving the*
 24 *fundamental and constitutional rights of all students, faculty, and the public*
 25 *to freedom of expression, as protected by the First Amendment to the*
 26 *Constitution of the United States, and Section 1 of the Constitution of*
 27 *Kentucky;*

- 1 (b) By October 1 each year, an institution shall present an annual training and
2 provide instructional materials to the following members of the campus
3 community to ensure that those individuals understand the role of the
4 institution, and the individual when acting on behalf of the institution, in
5 preserving the fundamental and constitutional rights of all students, faculty,
6 and members of the public to freedom of expression, as protected by the
7 institution's policies adopted pursuant to subsection (2) of this section, the
8 First Amendment to the Constitution of the United States, and Section 1 of
9 the Constitution of Kentucky:
- 10 1. All faculty members and any student responsible for the instruction of
11 another student, including but not limited to teaching assistants;
- 12 2. Any student, staff, or administrator of the institution responsible for
13 the discipline or management of any other member of the campus
14 community;
- 15 3. Any student, staff, or administrator responsible for campus security
16 and safety, including but not limited to campus police officers;
- 17 4. Any student, staff, or administrator with any oversight of or authority
18 over student organizations; and
- 19 5. Any student, staff, or administrator responsible for the distribution of
20 student organization or activity funding, including but not limited to
21 members of a student government organization authorized to
22 distribute institutional funds among student organizations.
- 23 (8) No later than September 1 and February 1 of each year, an institution shall
24 publish a semiannual report on the institution's student organizations and
25 activity funding to a prominent location on the institution's website that is
26 relevant to the contents of the report and readily accessible to the public without a
27 password. The report shall include:

1 (a) A summary of the policies and procedures of the institution for the
2 distribution of funds to student organizations, including but not limited to
3 any policies or procedures adopted to ensure that student organization
4 funding is not impacted by the viewpoints of a student organization;

5 (b) The total number of institutional funds budgeted for student organizations
6 during the current fiscal year and the total amount of funds distributed by
7 or on behalf of the institution to student organizations during the period of
8 time since the last report;

9 (c) An itemization of the specific amount of funds budgeted for each student
10 organization during the current fiscal year, the total number of funds
11 distributed by or on behalf of the institution to each student organization
12 during the period of time since the last report, and the dates of each
13 distribution;

14 (d) The minutes of any meeting held to determine the distribution of student
15 organization and activity funding held during the period of time since the
16 last report, which shall include a clear statement of the rationale behind any
17 decision to increase, decrease, or deny funding to a student organization;
18 and

19 (e) All budgets, budget proposals or requests, itemizations of spending, or other
20 financial documents submitted by or on behalf of a student organization to
21 the institution, or student government when acting on behalf of the
22 institution, with regard to the distribution of student organization funding.

23 (9) (a) Nothing in this section shall be construed to:

24 1. Grant students the right to engage in conduct that intentionally,
25 materially, and substantially disrupts another's expressive activity if that
26 activity is occurring in a campus space previously scheduled or reserved
27 for that activity or under the exclusive use or control of a particular

1 group; or

2 **2. Impair the ability of an institution or law enforcement to enforce any**
 3 **state law, including but not limited to KRS 525.090.**

4 (b) Conduct intentionally, materially, and substantially disrupts another's
 5 expressive activity if it significantly hinders the expressive activity of another
 6 person or group, or prevents the communication of a message or the
 7 transaction of a lawful meeting, gathering, or procession by:

- 8 1. Being of a violent or seriously disruptive nature; or
- 9 2. Physically blocking or significantly hindering any person from
 10 attending, hearing, viewing, or otherwise participating in an expressive
 11 activity.

12 (c) Conduct does not intentionally, materially, and substantially disrupt another's
 13 expressive activity if the conduct:

- 14 1. Is protected under the First Amendment to the United States
 15 Constitution or the Constitution of the Commonwealth of Kentucky,
 16 including but not limited to lawful protests and counter-protests in the
 17 outdoor areas of campus generally accessible to the public, except
 18 during times when those areas have been reserved in advance for other
 19 events; or
- 20 2. Is an isolated occurrence that causes minor, brief, and nonviolent
 21 disruptions of expressive activity.

22 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO
 23 READ AS FOLLOWS:

24 **(1) An institution does not have jurisdiction or authority over any association, group,**
 25 **or organization that is not registered or affiliated with the institution, regardless**
 26 **of whether (1) one or more of its members is a student of the institution, and shall**
 27 **not restrict the free speech or freedom of association of the members of the**

1 association, group, or organization beyond the restrictions permitted to the
2 general public under Section 1 of this Act and the United States Constitutions
3 and the Constitution of Commonwealth of Kentucky.

4 (2) An institution shall not restrict the freedom of a registered student organization
5 to associate with a lawful association, group, or organization that is not
6 registered or affiliated with the institution.

7 (3) Nothing in this subsection shall be construed to require an institution to extend
8 the same privileges afforded to registered student organizations to an association,
9 group, or organization that is not registered or affiliated with the institution or to
10 impair the institution's ability to suspend or revoke a student organization's
11 registration or affiliation with the institution or ability to deny registration to a
12 student organization that continued to operate as an apparent student
13 organization during a suspension of a registration or affiliation with the
14 institution.