

An Act

ENROLLED HOUSE
BILL NO. 3543

By: Caldwell (Chad) of the
House

and

Daniels of the Senate

An Act relating to higher education; establishing the Oklahoma Free Speech Committee to the Oklahoma State Regents for Higher Education; specifying duties of the Committee; amending 70 O.S. 2021, Section 2120, which relates to regional education services and schools; modifying reporting requirement; directing the Committee to provide or approve training materials; providing for collection of complaints; requiring training; and providing for codification.

SUBJECT: Higher education

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.11 of Title 70, unless there is created a duplication in numbering, reads as follows:

There is hereby created the Oklahoma Free Speech Committee to the Oklahoma State Regents for Higher Education.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.12 of Title 70, unless there is created a duplication in numbering, reads as follows:

The duties of the Oklahoma Free Speech Committee shall be to:

1. Review the free speech policies of Oklahoma public universities;

2. Review any free speech complaints filed with the Committee following Section 4 of this act;

3. Review university training on free speech for improvements; and

4. Make recommendations to the universities on improvements to free speech policies and training.

SECTION 3. AMENDATORY 70 O.S. 2021, Section 2120, is amended to read as follows:

Section 2120. A. As used in this act:

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

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

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

- a. engaging in fighting, violent or other unlawful behavior, or
- b. physically blocking or using threats of violence to prevent any person from attending, listening to, viewing or otherwise participating in an expressive activity. Conduct that "materially disrupts" shall not include conduct that is protected under the First Amendment to the United States Constitution or Section 22 of Article 2 of the Oklahoma Constitution. Such protected conduct includes but is not limited to lawful protests in the outdoor areas of campus generally accessible to the members of the public, except during times when those areas have been reserved in advance for other events, or minor, brief

or fleeting nonviolent disruptions of events that are isolated and short in duration;

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

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

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

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

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

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

D. 1. Any person who wishes to engage in noncommercial expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the public institutions of higher education, subject only to the requirements of subsection C of this section.

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

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

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

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

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

G. 1. Each public institution of higher education shall publicly post on its website, as well as submit to the Governor ~~and~~, the Legislature, and the Chancellor of The Oklahoma State System of Higher Education annually by December 31, a report that details the

course of action implemented to be in compliance with the requirements of this section. A report shall also be given in the instance of any changes or updates to the chosen course of action. The information required in the report shall be:

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

2. The report shall include:

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

3. If a public institution of higher education is sued for an alleged violation of First Amendment rights, a supplementary report with a copy of the complaint, or any amended complaint, shall be submitted to the Governor and the Legislature within thirty (30) days.

H. Any person or student organization aggrieved by a violation of this section may bring an action against the public institution of higher education and its employees acting in their official capacities responsible for the violation and seek appropriate

relief, including but not limited to injunctive relief, monetary damages, reasonable attorneys' fees and court costs. Any person or student organization aggrieved by a violation of this section may assert such violation as a defense or counter claim in any disciplinary action or in any civil or administrative proceedings brought against such student or student organization. Nothing in this subsection shall be interpreted to limit any other remedies available to any person or student organization.

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

J. If any provision of this section or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of the section and the application of the provision to any other person or circumstance shall not be affected.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.13 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Free Speech Committee shall develop a process of collecting complaints of free speech violations on public university campuses and advise complainants of their rights. Universities shall publish contact information on how to report free speech concerns to the Oklahoma Free Speech Committee on its website.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3205.14 of Title 70, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Free Speech Committee shall either develop a First Amendment training or approve of an outside First Amendment training that shall be required for all college deans, heads of departments, and individuals responsible for establishing university free speech policies or handling free speech complaints. The Committee shall either revise or reapprove the training every two (2) years. The training will be required every two (2) years, or upon hire or promotion to one of the positions described by this section.

Passed the House of Representatives the 9th day of March, 2022.

Presiding Officer of the House
of Representatives

Passed the Senate the 18th day of April, 2022.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____