
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 179 Session of
2023

INTRODUCED BY D'ORSIE, GLEIM, JAMES, HAMM, M. JONES, ROWE,
LEADBETER, ZIMMERMAN, KEEFER AND SCIALABBA, MARCH 8, 2023

REFERRED TO COMMITTEE ON EDUCATION, MARCH 8, 2023

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," providing for free speech in higher
6 education.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
10 as the Public School Code of 1949, is amended by adding an
11 article to read:

12 ARTICLE XX-L

13 FREE SPEECH IN HIGHER EDUCATION

14 Section 2001-L. Definitions.

15 The following words and phrases when used in this article
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Benefit." A privilege granted to a student organization,
19 including the use of a facility, the use of a channel of
20 communication or a funding source that is available to all

1 student organizations at a public institution of higher
2 education.

3 "Bias reporting system." The formal or explicit process for
4 the reporting or solicitation of a bias incident from a campus
5 community member concerning offensive or unwanted speech,
6 including satire or speech labeled as a microaggression,
7 regardless of whether the speech occurs on or off the campus of
8 a public institution of higher education.

9 "Campus community member." Any student, student
10 organization, administrator, faculty member, staff member or
11 invited guest at a public institution of higher education.

12 "Invited guest." An invited guest of any student, student
13 organization, administrator, faculty member or staff member at a
14 public institution of higher education.

15 "Protected expressive activity." An expression of speech by
16 a campus community member that is protected by Federal or State
17 law, including speech pertaining to an opinion or a political
18 belief or affiliation, through the use of verbal, written,
19 audio-visual or electronic means to communicate an idea to
20 another, regardless of whether the expression occurs on or off
21 the campus of a public institution of higher education. The term
22 includes a form of peaceful assembly, a protest, a speech, a
23 guest speaker, the distribution of literature, carrying a sign
24 or circulating a petition.

25 "Public institution of higher education." Any of the
26 following:

27 (1) A community college operating under Article XIX-A.

28 (2) A rural regional college established under Article
29 XIX-G.

30 (3) A university within the State System of Higher

1 Education under Article XX-A.

2 (4) A State-related institution as defined in section
3 2001-C.

4 (5) The Thaddeus Stevens College of Technology.

5 (6) The Pennsylvania College of Technology.

6 "Quid pro quo sexual harassment." Explicitly or implicitly
7 conditioning a student's participation in an education program
8 or activity or basing an educational decision on the student's
9 submission to unwelcome sexual advances, requests for sexual
10 favours or other verbal, nonverbal or physical conduct of a
11 sexual nature.

12 "Student." An individual who is enrolled on a full-time or
13 part-time basis as an undergraduate or graduate student in a
14 public institution of higher education.

15 "Student-on-student harassment." Conduct directed by a
16 student or student organization toward another student or
17 student organization that is so unwelcome, severe, pervasive and
18 subjectively and objectively offensive that the student or
19 student organization is effectively denied equal access to an
20 educational opportunity or benefit provided by a public
21 institution of higher education.

22 "Student organization." Any of the following:

23 (1) An officially recognized group, comprised of
24 students, at a public institution of higher education.

25 (2) A group seeking official recognition that receives,
26 or is seeking to receive, a benefit.

27 "True threat." A statement by a speaker that communicates a
28 serious expression of an intent to commit an act of violence
29 against a particular individual or group of individuals.

30 Section 2002-L. Prohibition on bias reporting system.

1 A public institution of higher education may not establish,
2 maintain or otherwise implement a bias reporting system.

3 Section 2003-L. Prohibition on punishment for protected speech.

4 A public institution of higher education may not investigate,
5 threaten disciplinary action or otherwise punish a campus
6 community member for a protected expressive activity.

7 Section 2004-L. Establishment of student-on-student harassment
8 policy.

9 A public institution of higher education shall establish and
10 maintain a policy that prohibits student-on-student harassment.

11 The public institution of higher education may not threaten
12 disciplinary action or otherwise punish a student or student
13 organization's expression as student-on-student harassment if
14 the expression does not constitute student-on-student
15 harassment.

16 Section 2005-L. Prohibition on excessive security fee.

17 A public institution of higher education may not charge a
18 security fee in excess of the standard fee to secure an event
19 for a student or student organization based on any of the
20 following:

21 (1) The content of the student or student organization's
22 expression.

23 (2) The content of an invited guest's expression.

24 (3) The anticipated reaction to an invited guest's
25 expression.

26 Section 2006-L. Construction.

27 Nothing in this article shall be construed to prevent a
28 public institution of higher education from doing any of the
29 following:

30 (1) Investigating or soliciting information about

1 potentially illegal speech, speech associated with a
2 potentially illegal activity or an incident when protected
3 expressive activity may have been potentially curtailed.

4 (2) Imposing a reasonable time, place and manner
5 restriction on a protected expressive activity that is
6 narrowly tailored to serve a significant institutional
7 interest.

8 (3) Restricting speech that is not protected by the
9 First Amendment to the Constitution of the United States,
10 including:

11 (i) A violation of Federal or State law.

12 (ii) An expression that a court has deemed
13 unprotected defamation.

14 (iii) Student-on-student harassment.

15 (iv) Quid pro quo sexual harassment.

16 (v) A true threat.

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

19 Section 2007-L. Remedies.

20 (a) Actions.--A current or former campus community member
21 aggrieved by a violation of this article may bring an action in
22 a court of competent jurisdiction to enjoin a violation of this
23 article or to seek appropriate relief, including reasonable
24 court costs, reasonable attorney fees and actual damages.

25 (b) Awards.--If a court finds that a current or former
26 campus community member is aggrieved by a violation of this
27 article, the court shall award the aggrieved person damages of
28 at least \$5,000, or actual damages, whichever is greater.

29 (c) Defenses or counterclaims.--A current or former campus
30 community member aggrieved by a violation of this article may

1 assert the violation as a defense or counterclaim in a
2 disciplinary action or in a civil or administrative proceeding
3 involving the current or former campus community member.

4 (d) Limitations.--A current or former campus community
5 member shall bring an action for a violation of this article
6 within one year after the date the cause of action accrues. For
7 the purpose of calculating the one-year limitation period, each
8 day that the violation persists, or each day that a policy in
9 violation of this article remains in effect, constitutes a new
10 violation of this article and shall be considered a day that the
11 cause of action has accrued.

12 (e) Immunity.--A public institution of higher education that
13 violates this article shall not be immune from suit or liability
14 for the violation.

15 (f) Construction.--Nothing in this article shall be
16 interpreted to limit other remedies available to a current or
17 former campus community member.

18 Section 2. This act shall take effect in 60 days.