

HIGHER EDUCATION SPEECH

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Todd D. Weiler

6	Cosponsors:	Phil Lyman	Norman K. Thurston
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8	Steve R. Christiansen	Candice B. Pierucci	
9	Timothy D. Hawkes	Travis M. Seegmiller	
10	Marsha Judkins	Mark A. Strong	



LONG TITLE

General Description:

This bill enacts provisions related to discriminatory harassment and expression at an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to discriminatory harassment at an institution of higher education, including provisions that:
 - prohibit an institution from sanctioning or disciplining certain acts of speech that do not constitute discriminatory harassment; and
 - create a cause of action for the attorney general related to discriminatory harassment at an institution of higher education; and
- ▶ enacts provisions related to the free expression of policies of an institution of higher education.

Money Appropriated in this Bill:

None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 ENACTS:

33 **53B-27-401**, Utah Code Annotated 1953

34 **53B-27-402**, Utah Code Annotated 1953

35 **53B-27-403**, Utah Code Annotated 1953

36 **53B-27-404**, Utah Code Annotated 1953

37 **53B-27-501**, Utah Code Annotated 1953

38

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **53B-27-401** is enacted to read:

41 **Part 4. Campus Anti-Harassment**

42 **53B-27-401. Definitions.**

43 As used in this part:

44 (1) "Discriminatory harassment" means student-on-student speech that:

45 (a) is unwelcome;

46 (b) discriminates on the basis of a classification protected under federal or state law;

47 and

48 (c) is so severe, pervasive, and objectively offensive, and that so undermines and

49 distracts from a student's educational experience, that the student is effectively denied access to

50 an institution's resource or opportunity.

51 (2) "Student" means an individual enrolled at an institution.

52 (3) (a) "Student-on-student speech" means verbal, written, or other communication that

53 is:

54 (i) communicated by a student; and

55 (ii) directed at another student.

56 (b) "Student-on-student speech" does not include an act of physical contact between a

57 student and another student.

58 Section 2. Section **53B-27-402** is enacted to read:

59 **53B-27-402. Institution duties.**

60 (1) An institution is in violation of this part if the institution:

61 (a) gains actual knowledge of discriminatory harassment in the institution's program or
62 activity; and

63 (b) acts with deliberate indifference to the discriminatory harassment.

64 (2) (a) An institution may not sanction or discipline, as discriminatory harassment,
65 student-on-student speech that does not constitute discriminatory harassment.

66 (b) An institution is not liable under this part for failing to sanction or discipline a
67 student who communicates student-on-student speech that is not discriminatory harassment.

68 (3) Nothing in this part prevents an institution from sanctioning or disciplining
69 student-on-student speech that is otherwise not protected under the First Amendment to the
70 United States Constitution.

71 (4) Nothing in this part prevents an institution from responding to student-on-student
72 speech that is not discriminatory harassment by taking nonpunitive actions designed to promote
73 a welcoming, inclusive environment.

74 (5) Nothing in this part prevents an institution from maintaining policies prohibiting
75 stalking or other criminal activity.

76 Section 3. Section **53B-27-403** is enacted to read:

77 **53B-27-403. Cause of action.**

78 The attorney general may bring an action to enjoin a violation of this part, in a state
79 court of competent jurisdiction, against an institution or an institution's agent acting in the
80 agent's official capacity.

81 Section 4. Section **53B-27-404** is enacted to read:

82 **53B-27-404. Statute of limitations.**

83 (1) Except as provided in Subsection (3)(b), the attorney general may not bring an
84 action under this part later than one year after the day on which the cause of action accrues.

85 (2) For an action alleging a violation of Subsection 53B-27-402(2)(a), the cause of
86 action accrues on the day on which the student receives final notice, from the institution, of
87 sanction or discipline that violates Subsection 53B-27-402(2)(a).

88 (3) (a) For an action alleging a violation of Subsection 53B-27-402(1), the cause of
89 action accrues on the day on which the institution gains knowledge of the discriminatory
90 harassment.

91 (b) For an action described in Subsection (3)(a), the limitation described in Subsection
92 (1) extends to one year after the day on which the most recent known act of discriminatory
93 harassment, involving the same parties as a prior known act of discriminatory harassment,
94 occurs.

95 Section 5. Section 53B-27-501 is enacted to read:

96 **Part 5. Free Expression Policies**

97 **53B-27-501. Free expression policies.**

98 (1) As used in this section, "free expression policy" means an institution's policy,
99 regulation, or other expectation related to student expression.

100 (2) An institution shall:

101 (a) publish the institution's free expression policies:

102 (i) in the institution's student handbook; and

103 (ii) on the institution's website;

104 (b) include information about the institution's free expression policies in an orientation
105 program for students enrolled in the institution; and

106 (c) develop a program, procedures, and materials to ensure that an individual who has
107 responsibility for the discipline or education of a student at the institution understands the
108 institution's free expression policies.

109 (3) An individual described in Subsection (2)(c) includes an institution:

110 (a) administrator;

111 (b) campus police officer;

112 (c) residence life official; and

113 (d) faculty member.

114 (4) An institution shall ensure that a free expression policy is consistent with the
115 provisions of this chapter.