

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 CONFERENCE COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL 372

By: Daniels of the Senate

and

Lepak of the House

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9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to higher education; amending Section
11 1 of Enrolled Senate Bill No. 361 of the 1st Session
12 of the 57th Oklahoma Legislature, which relates to
13 protection for certain expressive activities in
14 certain areas; and modifying certain definition to
15 not include technology center schools.

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

17 SECTION 1. AMENDATORY Section 1 of Enrolled Senate Bill
18 No. 361 of the 1st Session of the 57th Oklahoma Legislature, is
19 amended to read as follows:

20 Section 1. A. As used in this act:

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

24 2. "Harassment" means only that expression that is unwelcome,
so severe, pervasive and subjectively and objectively offensive that

1 a student is effectively denied equal access to educational
2 opportunities or benefits provided by the public institution of
3 higher education;

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

9 a. engaging in fighting, violent or other unlawful
10 behavior, or

11 b. physically blocking or using threats of violence to
12 prevent any person from attending, listening to,
13 viewing or otherwise participating in an expressive
14 activity. Conduct that "materially disrupts" shall
15 not include conduct that is protected under the First
16 Amendment to the United States Constitution or Section
17 22 of Article 2 of the Oklahoma Constitution. Such
18 protected conduct includes but is not limited to
19 lawful protests in the outdoor areas of campus
20 generally accessible to the members of the public,
21 except during times when those areas have been
22 reserved in advance for other events, or minor, brief
23 or fleeting nonviolent disruptions of events that are
24 isolated and short in duration;

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

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

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

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

21 C. 1. The outdoor areas of campuses of public institutions of
22 higher education in this state shall be deemed public forums for the
23 campus community, and public institutions of higher education shall
24 not create "free speech zones" or other designated areas of campus

1 outside of which expressive activities are prohibited. Public
2 institutions of higher education may maintain and enforce reasonable
3 time, place and manner restrictions narrowly tailored in service of
4 a significant institutional interest only when such restrictions
5 employ clear, published, content- and viewpoint-neutral criteria and
6 provide for ample alternative means of expression. Any such
7 restrictions shall allow for members of the campus community to
8 spontaneously and contemporaneously assemble and distribute
9 literature.

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

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

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

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

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

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

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

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1 G. 1. Each public institution of higher education shall
2 publicly post on its website, as well as submit to the Governor and
3 the Legislature annually by December 31, a report that details the
4 course of action implemented to be in compliance with the
5 requirements of this section. A report shall also be given in the
6 instance of any changes or updates to the chosen course of action.

7 The information required in the report shall be:

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

14 2. The report shall include:

- 15 a. a description of any barriers to or incidents of
16 disruption of free expression occurring on campus,
17 including but not limited to attempts to block or
18 prohibit speakers and investigations into students or
19 student organizations for their speech. The
20 description shall include the nature of each barrier
21 or incident, as well as what disciplinary action, if
22 any, was taken against members of the campus community
23 determined to be responsible for those specific
24 barriers or incidents involving students without

1 revealing those students' personally identifiable
2 information, and

3 b. any other information each public institution of
4 higher education deems valuable for the public to
5 evaluate whether free expression rights for all
6 members of the campus community have been equally
7 protected and enforced consistent with this act.

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

13 H. Any person or student organization aggrieved by a violation
14 of this section may bring an action against the public institution
15 of higher education and its employees acting in their official
16 capacities responsible for the violation and seek appropriate
17 relief, including but not limited to injunctive relief, monetary
18 damages, reasonable attorneys' fees and court costs. Any person or
19 student organization aggrieved by a violation of this section may
20 assert such violation as a defense or counter claim in any
21 disciplinary action or in any civil or administrative proceedings
22 brought against such student or student organization. Nothing in
23 this subsection shall be interpreted to limit any other remedies
24 available to any person or student organization.

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

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

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