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February 19, 2018

**AS AMENDED**

SENATE BILL NO. 1202

By: Dahm

[ higher education - Oklahoma State Regents for  
Higher Education - policy - report - freshman  
orientation programs - regulations - construction -  
circumstances - court - relief, costs, fees and  
damages upon certain finding - time limit -  
codification - ~~effective date~~ -  
emergency ]

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 2120 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma State Regents for Higher Education shall develop and adopt a policy on free expression that states at least the following:

1. The primary function of each institution within The Oklahoma State System of Higher Education is the discovery, improvement, transmission and dissemination of knowledge by means of research, teaching, discussion and debate. To fulfill this function, the institution shall strive to ensure the fullest degree of intellectual freedom and free expression;

1        2. It is not the proper role of any institution within The  
2 Oklahoma State System of Higher Education to shield individuals from  
3 speech protected by the First Amendment including, without  
4 limitation, ideas and opinions they find unwelcome, disagreeable or  
5 deeply offensive;

6        3. Students and faculty have the freedom to discuss any problem  
7 that presents itself, as the First Amendment permits and within the  
8 limits of reasonable viewpoint and content-neutral restrictions on  
9 time, place and manner of expression that are consistent with this  
10 section and that are necessary to achieve a significant  
11 institutional interest, provided that the restrictions are clear,  
12 published and provide ample alternative means of expression.

13 Students and faculty shall be permitted to assemble and engage in  
14 spontaneous expressive activity as long as such activity is not  
15 unlawful and does not materially and substantially disrupt the  
16 functioning of the institution, subject to the requirements of this  
17 section;

18        4. Any person lawfully present on an institution's campus may  
19 protest or demonstrate on the campus. The statement shall make  
20 clear that protests and demonstrations that infringe upon the rights  
21 of others to engage in or listen to expressive activity shall not be  
22 permitted and shall be subject to sanction. Professors and other  
23 instructors shall not be prohibited from maintaining order in the  
24 classroom;

1        5. An institution's campus is open to any speaker whom  
2 students, student groups or members of the faculty have invited;

3        6. The public areas on an institution's campus are traditional  
4 public forums, open on the same terms to any speaker;

5        7. An institution shall implement a range of disciplinary  
6 sanctions for anyone under the jurisdiction of the institution who  
7 interferes with the free expression of others;

8        8. In all student disciplinary cases involving expressive  
9 conduct, students shall be entitled to a disciplinary hearing under  
10 published procedures including, at a minimum:

11            a. the right to receive advance written notice of the  
12 charges,

13            b. the right to review the evidence in support of the  
14 charges,

15            c. the right to confront witnesses against them,

16            d. the right to present a defense,

17            e. the right to call witnesses,

18            f. a decision by an impartial arbiter or panel, and

19            g. the right of appeal.

20 When suspension for longer than thirty (30) days or expulsion are  
21 potential penalties, students shall be entitled to a disciplinary  
22 hearing under published procedures, including, at a minimum, the  
23 provisions of subparagraphs a through g of this paragraph and the  
24 right to active assistance of counsel;

1        9. Any student enrolled in an institution who has twice been  
2 found responsible for infringing the expressive rights of others  
3 shall be suspended for a minimum of one year, or expelled;

4        10. That the institution shall strive to remain neutral, as an  
5 institution, on the public policy controversies of the day and may  
6 not take action, as an institution, on the public policy  
7 controversies of the day in such a way as to require students or  
8 faculty to publicly express a given view of social policy; and

9        11. That this statement supersedes and nullifies any prior  
10 provisions in the policies and regulations of the institution that  
11 restrict speech on campus and are, therefore, inconsistent with this  
12 statement on free expression. The institution shall remove or  
13 revise any such provisions in its policies and regulations to ensure  
14 compatibility with the provisions of this subsection.

15        B. The State Regents shall submit a report to the Governor, the  
16 President Pro Tempore of the Senate and the Speaker of the House of  
17 Representatives by September 1 of each year. The report shall also  
18 be posted on the website for the State Regents. The report shall  
19 include:

20            a. a description of any barriers to or disruptions of  
21 free expressions within the institutions,

22            b. a description of the administrative handling and  
23 discipline relating to the disruptions or barriers,  
24

- 1           c.    a description of substantial difficulties,  
2                   controversies or successes in maintaining a posture of  
3                   administrative and institutional neutrality with  
4                   regard to political or social issues, and  
5           d.    any assessments, criticisms, commendations or  
6                   recommendations the State Regents sees fit to include.

7           C.   All institutions within The Oklahoma State System of Higher  
8 Education shall include in freshmen orientation programs a section  
9 describing the policies regarding free expression established  
10 pursuant to this section.

11          D.   The State Regents and institutions within The Oklahoma State  
12 System of Higher Education, subject to the approval of the State  
13 Regents, may adopt regulations to further the purposes of the  
14 policies adopted pursuant to this section. Nothing in this section  
15 shall be construed to prevent institutions from regulating student  
16 speech or activity that is prohibited by law. Except as further  
17 limited by this section, institutions shall be allowed to restrict  
18 student expression only for expressive activity not protected by the  
19 First Amendment, including:

- 20          1.   Violations of state or federal law;  
21          2.   Expression that a court has deemed unprotected defamation;  
22          3.   Harassment, including:  
23               a.   "peer-on-peer harassment," which means conduct  
24                   directed by a student towards another individual

1 student on the basis of the student's membership or  
2 perceived membership in a protected class that is so  
3 severe, pervasive and objectively offensive that it  
4 effectively deprives the victim of access to the  
5 educational opportunities or benefits provided by the  
6 university,

7 b. "quid pro quo sexual harassment," which means  
8 explicitly or implicitly conditioning a student's  
9 participation in an education program or activity or  
10 basing an educational decision on the student's  
11 submission to unwelcome sexual advances, requests for  
12 sexual favors or other verbal, nonverbal or physical  
13 conduct of a sexual nature,

14 c. "true threats," which means statements meant by the  
15 speaker to communicate a serious expression of an  
16 intent to commit an act of unlawful violence to a  
17 particular individual or group of individuals,

18 d. an unjustifiable invasion of privacy or  
19 confidentiality not involving a matter of public  
20 concern,

21 e. an action that unlawfully disrupts the function of the  
22 institutions, and  
23  
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1           f.    Reasonable time, place and manner restrictions on  
2               expressive activities consistent with subsection A of  
3               this section.

4           E.   An institution within The Oklahoma State System of Higher  
5 Education may restrict expressive conduct in the public areas of its  
6 campus only if it demonstrates that the restriction:

7           1.   Is necessary to achieve a compelling governmental interest;

8           2.   Is the least restrictive means of furthering the compelling  
9 governmental interest;

10          3.   Leaves open ample other opportunities to engage in the  
11 expressive conduct; and

12          4.   Provides for spontaneous assembly and distribution of  
13 literature.

14          F.   1.   The following persons may bring action in a court of  
15 competent jurisdiction to enjoin any violation of this section or to  
16 recover reasonable court costs and reasonable attorney fees:

17           a.   the Attorney General of the State of Oklahoma, or

18           b.   a person whose expressive rights have been violated  
19               due to a violation of this section.

20          2.   In an action brought pursuant to this subsection, if the  
21 court finds that a violation of this section occurred, the court  
22 shall award the aggrieved person injunctive relief for the violation  
23 and shall award reasonable court costs and reasonable attorney fees.  
24

1 The court shall also award damages of One Thousand Dollars  
2 (\$1,000.00) or actual damages, whichever is higher.

3 3. A person shall bring an action for a violation of this  
4 section within one year after the date the cause of action accrues.  
5 For the purpose of calculating the one-year limitation period, each  
6 day that the violation persists or each day that a policy in  
7 violation of this section remains in effect constitutes a new  
8 violation of this section and shall be considered a day that the  
9 cause of action has accrued.

10 ~~SECTION 2. This act shall become effective July 1, 2018.~~

11 ~~SECTION 3. It being immediately necessary for the preservation~~  
12 ~~of the public peace, health or safety, an emergency is hereby~~  
13 ~~declared to exist, by reason whereof this act shall take effect and~~  
14 ~~be in full force from and after its passage and approval.~~

15 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION  
16 February 19, 2018 - DO PASS AS AMENDED  
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