

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1200

By: Stanislawski

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5
6 AS INTRODUCED

7 An Act relating to higher education; providing
8 legislative intent; providing definitions; directing
9 institutions of higher education to adopt certain
10 policy; providing principles to be included in
11 policy; requiring policy to be made available to
12 students and faculty annually; providing methods for
13 policy to be made available; directing institutions
14 to adopt certain policy; defining term; providing
15 certain construction; prohibiting an institution from
16 imposing certain costs on certain basis; allowing the
Attorney General of the State of Oklahoma or certain
other persons to bring action in court; providing for
awards for violations; providing limitation on
compensatory damages excluding certain costs and
fees; providing for division of damages; requiring
action to be brought within certain time frame;
providing for severability; providing for
codification; providing an effective date; and
declaring an emergency.

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

20 SECTION 1. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 2120 of Title 70, unless there
22 is created a duplication in numbering, reads as follows:

23 A. 1. It is the intent of the Oklahoma Legislature that the
24 institutions within The Oklahoma State System of Higher Education

1 embrace a commitment to the freedom of speech, expression and
2 assembly for all students and faculty.

3 2. It is further the intent that institutions of higher
4 education, including their faculty, shall not require students or
5 other faculty to adopt or to indicate their adherence to beliefs or
6 orthodoxies on any particular political, philosophical, religious,
7 social or other subject; provided, however, institutions may require
8 students and faculty to conform their conduct to the requirements of
9 law and policy.

10 3. It is further the intent of the Legislature that
11 institutions of higher education not stifle freedom of speech and
12 expression by implementing vague or overbroad speech codes,
13 establishing free speech zones, imposing unconstitutional prior
14 restraints on speech or disinviting speakers based on the
15 anticipated reaction or opposition of others to the content of
16 speech.

17 B. As used in this section:

18 1. "Constitutional time, place and manner restrictions" means
19 restrictions on the time, place and manner of free speech that do
20 not violate the First Amendments to the United States Constitution
21 or Sections 3 and 22 of Article II of the Oklahoma Constitution that
22 are reasonable, content- and viewpoint-neutral, narrowly tailored to
23 satisfy a significant institutional interest and leave open ample
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1 alternative channels for the communication of the information or
2 message to its intended audience;

3 2. "Faculty" or "faculty member" means any person, regardless
4 of whether the person is compensated by the institution of higher
5 education and regardless of political affiliation, who is tasked
6 with providing scholarship, academic research or teaching. For
7 purposes of this section, the term "faculty" shall include tenured
8 and non-tenured professors, adjunct professors, visiting professors,
9 lecturers, graduate student instructors and those in comparable
10 positions, however titled. For purposes of this section, "faculty"
11 shall not include persons whose primary responsibilities are
12 administrative or managerial;

13 3. "Free speech" means speech, expression or assemblies
14 protected by the First Amendment to the United States Constitution
15 or Article I and Sections 3 and 22 of Article II of the Oklahoma
16 Constitution, verbal or written, including but not limited to all
17 forms of peaceful assembly, protests, demonstrations, rallies,
18 vigils, marches, public speaking, distribution of printed materials,
19 carrying signs, displays or circulating petitions and the recording
20 and publication, including online publication, of video or audio
21 recorded in outdoor areas of an institution's campus generally
22 accessible to the members of the public. "Free speech" shall not
23 include the promotion, sale or distribution of any product or
24 service;

1 4. "Student" means:

- 2 a. an individual currently enrolled in a course of study
3 at the institution of higher education, and
4 b. an organization that is comprised entirely of
5 individuals currently enrolled in a course of study at
6 the institution of higher education that is registered
7 with the institution pursuant to its rules;

8 5. "Institution" means any institution within The Oklahoma
9 State System of Higher Education pursuant to Section 3201 of Title
10 70 of the Oklahoma Statutes; and

11 6. a. "Substantially obstruct" and "substantially interfere"
12 means when a person, with the intent or with knowledge
13 of doing so, materially and substantially hinders
14 another person's or group's expressive activity,
15 prevents the communication of the message or prevents
16 the transaction of the business of a lawful meeting,
17 gathering or procession by:

18 (1) engaging in fighting, violent or seriously
19 disruptive behavior, or

20 (2) making any protracted commotion, utterance or
21 other action, or

22 (3) physically blocking, preventing or materially and
23 substantially hindering any person from
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1 attending, listening to, viewing or otherwise
2 participating in an expressive activity;

- 3 b. Conduct that "substantially obstructs" or
4 "substantially interferes" shall not include conduct
5 that is protected under the First Amendment to the
6 United States Constitution or Sections 3 and 22 of
7 Article II of the Oklahoma Constitution. Such
8 protected conduct includes but is not limited to
9 lawful protests and counter protests in the outdoor
10 areas of an institution's campus generally accessible
11 to the members of the public, except during times when
12 those areas have been reserved in advance for other
13 events or minor, brief or fleeting nonviolent
14 disruptions of events that are isolated and short in
15 duration.

16 C. 1. The governing body of each institution shall adopt a
17 policy that affirms the following principles of free speech, which
18 are the public policy of this state:

- 19 a. students and faculty have a fundamental constitutional
20 right to free speech,
21 b. an institution shall be committed to giving students
22 the broadest possible latitude to speak, write,
23 listen, challenge, learn and discuss any issue,
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1 subject to measures permissible under subsection F of
2 this section,

3 c. an institution shall be committed to maintaining a
4 campus as a marketplace of ideas for all students and
5 all faculty in which the free exchange of ideas is not
6 to be suppressed because the ideas put forth are
7 thought by some or even by most members of the
8 institution's community to be offensive, unwise,
9 immoral, indecent, disagreeable, conservative,
10 liberal, traditional, radical or wrong-headed,

11 d. it is for an institution's individual students and
12 faculty to make judgments about ideas for themselves
13 and to act on those judgments not by seeking to
14 suppress free speech but by openly and vigorously
15 contesting the ideas that they oppose,

16 e. it is not the proper role of an institution to attempt
17 to shield individuals from free speech, including
18 ideas and opinions they find offensive, unwise,
19 immoral, indecent, disagreeable, conservative,
20 liberal, traditional, radical or wrong-headed,

21 f. although an institution should greatly value civility
22 and mutual respect, concerns about civility and mutual
23 respect shall never be used by an institution as a
24 justification for closing off the discussion of ideas,

1 however offensive, unwise, immoral, indecent,
2 disagreeable, conservative, liberal, traditional,
3 radical or wrong-headed those ideas may be to some
4 students or faculty,

5 g. although all students and all faculty are free to
6 state their own views about and contest the views
7 expressed on campus and to state their own views about
8 and contest speakers who are invited to express their
9 views on the institution's campus, no one may
10 substantially obstruct or otherwise substantially
11 interfere with the freedom of others to express views
12 they reject or even loathe. To this end, an
13 institution has a responsibility to promote a lively
14 and fearless freedom of debate and deliberation and
15 protect that freedom,

16 h. an institution shall be committed to providing an
17 atmosphere that is most conducive to speculation,
18 experimentation and creation by all students and all
19 faculty, who shall always remain free to inquire, to
20 study and to evaluate and to gain new understanding,

21 i. the primary responsibility of faculty is to engage an
22 honest, courageous and persistent effort to search out
23 and communicate the truth that lies in the areas of
24 their competence,

- j. although faculty are free in the classroom to discuss subjects within areas of their competence, faculty should be cautious in expressing personal views in the classroom and should be careful not to introduce matters that have no relationship to the subject taught, and especially matters in which they have no special competence or training and in which, therefore, faculty's views cannot claim the authority accorded statements they make about subjects within areas of their competence; provided, however, that no faculty shall face adverse employment action for classroom speech, unless it is not reasonably germane to the subject matter of the class as broadly construed and comprises a substantial portion of classroom instruction. This provision shall not be interpreted to limit the free speech rights of faculty in any manner that is inconsistent with the First Amendment to the United States Constitution, Sections 3 and 22 of Article II of the Oklahoma Constitution or any applicable collective bargaining agreement,
- k. an institution shall maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students and faculty,

1. an institution shall not restrict students' free speech only to particular areas of the campus, sometimes known as "free speech zones",
- m. an institution shall not deny student activity fee funding to a student organization based on the viewpoints that the student organization advocates,
- n. an institution shall not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although an institution may maintain a policy that grants members of the college or university community the right to reserve certain outdoor spaces in advance,
- o. an institution shall not charge students security fees based on the content of their speech, the content of the speech of guest speakers invited by students or the anticipated reaction or opposition of listeners to speech,
- p. an institution shall allow all students and all faculty to invite guest speakers to campus to engage in free speech regardless of the views of guest speakers, and
- q. an institution shall not disinvite a speaker invited by a student, student organization or faculty member

1 because the speaker's anticipated speech may be
2 considered offensive, unwise, immoral, indecent,
3 disagreeable, conservative, liberal, traditional,
4 radical or wrong-headed by students, faculty,
5 administrators, government officials or members of the
6 public.

7 2. The policy adopted pursuant to paragraph 1 of this
8 subsection shall be made available to students and faculty annually
9 through one or more of the following methods:

- 10 a. published annually in the institution's student
11 handbook and faculty handbook, whether in paper or
12 electronic form,
- 13 b. made available to students and faculty by way of a
14 prominent notice on the institution's website other
15 than through electronic publication of the policy in
16 the student or faculty handbooks,
- 17 c. sent annually to students and employees to their
18 institutionally provided email address, or
- 19 d. addressed by the institution in orientation programs
20 for new students and new faculty.

21 3. Nothing in this subsection shall be construed to grant
22 students the right to materially or substantially disrupt previously
23 scheduled or reserved activities occurring in a traditional public
24 forum.

1 D. 1. With respect to disciplining students for their speech,
2 expression or assemblies, an institution shall adopt a policy on
3 "peer-on-peer harassment," defining the term consistent with and no
4 more expansively than the language contained in paragraph 2 of this
5 subsection.

6 2. As used in this section, "peer-on-peer harassment" means
7 unwelcome conduct directed toward a person that is discriminatory on
8 a basis prohibited by federal, state or local law and that is so
9 severe, pervasive and objectively offensive that it effectively bars
10 the victim's access to an educational opportunity or benefit.

11 E. Nothing in this act shall require an institution to fund
12 costs associated with student speech or expression. An institution
13 shall not impose costs on students or student organizations on the
14 basis of the anticipated reaction or opposition to a person's speech
15 by listeners.

16 F. Nothing contained in this act shall be construed as
17 prohibiting an institution from imposing measures such as:

18 1. Constitutional time, place and manner restrictions;
19 2. Reasonable and viewpoint-neutral restrictions in nonpublic
20 forums;

21 3. Restricting the use of the institution's property to protect
22 the free speech rights of students and faculty and preserve the use
23 of the property for the advancement of the institution's mission;
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1 4. Prohibiting or limiting speech, expression or assemblies
2 that are not protected by the First Amendment to the United States
3 Constitution or Sections 3 and 22 of Article II of the Oklahoma
4 Constitution; or

5 5. Content restrictions on speech that are reasonably related
6 to a legitimate pedagogical purpose, such as classroom rules enacted
7 by faculty.

8 G. 1. The Attorney General of the State of Oklahoma or a
9 person whose expressive rights are violated by an action prohibited
10 under this section may bring an action in a court of competent
11 jurisdiction to recover compensatory damages, reasonable court costs
12 and attorney fees. If the court finds that a violation of this act
13 occurred, the court shall award the aggrieved party a minimum of One
14 Thousand Dollars (\$1,000.00). Excluding reasonable court costs and
15 attorney fees, the total compensatory damages available to a
16 plaintiff in a case arising from a single violation of this act may
17 not exceed One Hundred Thousand Dollars (\$100,000.00). If there are
18 multiple plaintiffs, the court shall divide the damages equally
19 among the plaintiffs until the maximum award is exhausted.

20 2. A person aggrieved by a violation of this act must bring
21 suit no later than one (1) year after the date the cause of action
22 accrues. For the purpose of calculating the one-year limitation
23 period, each day that a violation of this act persists or each day
24 that a policy in violation of this act remains in effect constitutes

1 a new violation and, therefore, a new day that the cause of action
2 accrues.

3 H. 1. All laws and parts of laws in conflict with this act
4 shall be considered null and void.

5 2. The provisions in this act shall be severable. If any part
6 or provision of this act, or the application of this act to any
7 person, entity or circumstance, is held invalid, the remainder of
8 this act, including the application of such part or provision to
9 other persons, entities or circumstances, shall not be affected by
10 such holding and shall remain in full force and effect.

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

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

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