

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SENATE BILL 1202

By: Dahm

AS INTRODUCED

An Act relating to higher education; directing the Oklahoma State Regents for Higher Education to adopt certain policy; requiring policy to contain certain elements; directing the State Regents to submit certain report; requiring certain institutions of higher education to include certain description in freshman orientation programs; allowing the State Regents to adopt certain other regulations; providing certain construction; allowing an institution to restrict certain conduct under certain circumstances; providing for action to be brought in court; requiring a court to award certain relief, costs, fees and damages upon certain finding; providing time limit on court action; providing for codification; providing an effective date; and declaring an 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 1. The primary function of each institution within The Oklahoma
2 State System of Higher Education is the discovery, improvement,
3 transmission and dissemination of knowledge by means of research,
4 teaching, discussion and debate. To fulfill this function, the
5 institution shall strive to ensure the fullest degree of
6 intellectual freedom and free expression;

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

12 3. Students and faculty have the freedom to discuss any problem
13 that presents itself, as the First Amendment permits and within the
14 limits of reasonable viewpoint and content-neutral restrictions on
15 time, place and manner of expression that are consistent with this
16 section and that are necessary to achieve a significant
17 institutional interest, provided that the restrictions are clear,
18 published and provide ample alternative means of expression.
19 Students and faculty shall be permitted to assemble and engage in
20 spontaneous expressive activity as long as such activity is not
21 unlawful and does not materially and substantially disrupt the
22 functioning of the institution, subject to the requirements of this
23 section;

1 4. Any person lawfully present on an institution's campus may
2 protest or demonstrate on the campus. The statement shall make
3 clear that protests and demonstrations that infringe upon the rights
4 of others to engage in or listen to expressive activity shall not be
5 permitted and shall be subject to sanction. Professors and other
6 instructors shall not be prohibited from maintaining order in the
7 classroom;

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

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

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

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

- 18 a. the right to receive advance written notice of the
19 charges,
- 20 b. the right to review the evidence in support of the
21 charges,
- 22 c. the right to confront witnesses against them,
- 23 d. the right to present a defense,
- 24 e. the right to call witnesses,

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

2 g. the right of appeal.

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

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

11 10. That the institution shall strive to remain neutral, as an
12 institution, on the public policy controversies of the day and may
13 not take action, as an institution, on the public policy
14 controversies of the day in such a way as to require students or
15 faculty to publicly express a given view of social policy; and

16 11. That this statement supersedes and nullifies any prior
17 provisions in the policies and regulations of the institution that
18 restrict speech on campus and are, therefore, inconsistent with this
19 statement on free expression. The institution shall remove or
20 revise any such provisions in its policies and regulations to ensure
21 compatibility with the provisions of this subsection.

22 B. The State Regents shall submit a report to the Governor, the
23 President Pro Tempore of the Senate and the Speaker of the House of
24 Representatives by September 1 of each year. The report shall also

1 be posted on the website for the State Regents. The report shall
2 include:

- 3 a. a description of any barriers to or disruptions of
4 free expressions within the institutions,
- 5 b. a description of the administrative handling and
6 discipline relating to the disruptions or barriers,
- 7 c. a description of substantial difficulties,
8 controversies or successes in maintaining a posture of
9 administrative and institutional neutrality with
10 regard to political or social issues, and
- 11 d. any assessments, criticisms, commendations or
12 recommendations the State Regents sees fit to include.

13 C. All institutions within The Oklahoma State System of Higher
14 Education shall include in freshmen orientation programs a section
15 describing the policies regarding free expression established
16 pursuant to this section.

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

- 3 1. Violations of state or federal law;
- 4 2. Expression that a court has deemed unprotected defamation;
- 5 3. Harassment, including:

- 6 a. "peer-on-peer harassment," which means conduct
7 directed by a student towards another individual
8 student on the basis of the student's membership or
9 perceived membership in a protected class that is so
10 severe, pervasive and objectively offensive that it
11 effectively deprives the victim of access to the
12 educational opportunities or benefits provided by the
13 university,

- 14 b. "quid pro quo sexual harassment," which means
15 explicitly or implicitly conditioning a student's
16 participation in an education program or activity or
17 basing an educational decision on the student's
18 submission to unwelcome sexual advances, requests for
19 sexual favors or other verbal, nonverbal or physical
20 conduct of a sexual nature,

- 21 c. "true threats," which means statements meant by the
22 speaker to communicate a serious expression of an
23 intent to commit an act of unlawful violence to a
24 particular individual or group of individuals,

- d. an unjustifiable invasion of privacy or confidentiality not involving a matter of public concern,
- e. an action that unlawfully disrupts the function of the institutions, and
- f. Reasonable time, place and manner restrictions on expressive activities consistent with subsection A of this section.

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

1. Is necessary to achieve a compelling governmental interest;
2. Is the least restrictive means of furthering the compelling governmental interest;
3. Leaves open ample other opportunities to engage in the expressive conduct; and
4. Provides for spontaneous assembly and distribution of literature.

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

- a. the Attorney General of the State of Oklahoma, or
- b. a person whose expressive rights have been violated due to a violation of this section.

1 2. In an action brought pursuant to this subsection, if the
2 court finds that a violation of this section occurred, the court
3 shall award the aggrieved person injunctive relief for the violation
4 and shall award reasonable court costs and reasonable attorney fees.
5 The court shall also award damages of One Thousand Dollars
6 (\$1,000.00) or actual damages, whichever is higher.

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

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

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

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