

1 ENGROSSED HOUSE
2 BILL NO. 3543

By: Caldwell (Chad) of the
House

3 and

4 Daniels of the Senate
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8 An Act relating to higher education; establishing the
9 Oklahoma Free Speech Committee to the Oklahoma State
10 Regents for Higher Education; specifying duties of
11 the Committee; amending 70 O.S. 2021, Section 2120,
12 which relates to regional education services and
schools; modifying reporting requirement; directing
the Committee to provide or approve training
materials; directing for collection of complaints;
requiring training; and providing for codification.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3205.11 of Title 70, unless
18 there is created a duplication in numbering, reads as follows:

19 There is hereby created the Oklahoma Free Speech Committee to
20 the Oklahoma State Regents for Higher Education.

21 SECTION 2. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3205.12 of Title 70, unless
23 there is created a duplication in numbering, reads as follows:

24 The duties of the Oklahoma Free Speech Committee shall be to:

- 1 1. Review the free speech policies of Oklahoma public
2 universities;
- 3 2. Review any free speech complaints filed with the Committee
4 following Section 4 of this act;
- 5 3. Review university training on free speech for improvements;
6 and
- 7 4. Make recommendations to the universities on improvements to
8 free speech policies and training.

9 SECTION 3. AMENDATORY 70 O.S. 2021, Section 2120, is
10 amended to read as follows:

11 Section 2120. A. As used in this act:

12 1. "Campus community" means students, administrators, faculty
13 and staff at the public institution of higher education and their
14 invited guests;

15 2. "Harassment" means only that expression that is unwelcome,
16 so severe, pervasive and subjectively and objectively offensive that
17 a student is effectively denied equal access to educational
18 opportunities or benefits provided by the public institution of
19 higher education;

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

- 1 a. engaging in fighting, violent or other unlawful
2 behavior, or
- 3 b. physically blocking or using threats of violence to
4 prevent any person from attending, listening to,
5 viewing or otherwise participating in an expressive
6 activity. Conduct that "materially disrupts" shall
7 not include conduct that is protected under the First
8 Amendment to the United States Constitution or Section
9 22 of Article 2 of the Oklahoma Constitution. Such
10 protected conduct includes but is not limited to
11 lawful protests in the outdoor areas of campus
12 generally accessible to the members of the public,
13 except during times when those areas have been
14 reserved in advance for other events, or minor, brief
15 or fleeting nonviolent disruptions of events that are
16 isolated and short in duration;

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

22 5. "Public institution of higher education" means any
23 institution within The Oklahoma State System of Higher Education or
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1 technology center schools overseen by the State Board of Career and
2 Technology Education; and

3 6. "Student organization" means an officially recognized group
4 at a public institution of higher education, or a group seeking
5 official recognition, comprised of admitted students that receive or
6 are seeking to receive benefits through the public institution of
7 higher education.

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

14 C. 1. The outdoor areas of campuses of public institutions of
15 higher education in this state shall be deemed public forums for the
16 campus community, and public institutions of higher education shall
17 not create "free speech zones" or other designated areas of campus
18 outside of which expressive activities are prohibited. Public
19 institutions of higher education may maintain and enforce reasonable
20 time, place and manner restrictions narrowly tailored in service of
21 a significant institutional interest only when such restrictions
22 employ clear, published, content- and viewpoint-neutral criteria and
23 provide for ample alternative means of expression. Any such
24 restrictions shall allow for members of the campus community to

1 spontaneously and contemporaneously assemble and distribute
2 literature.

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

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

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

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

23 4. Nothing in this section shall enable individuals to engage
24 in conduct that intentionally, materially and substantially disrupts

1 another person's expressive activity if that activity is occurring
2 in a campus space reserved for that activity under the exclusive use
3 or control of a particular group.

4 E. Public institutions of higher education shall make public in
5 their handbooks, on their websites and through their orientation
6 programs for students the policies, regulations and expectations of
7 students regarding free expression on campus consistent with this
8 section.

9 F. Public institutions of higher education shall develop
10 materials, programs and procedures to ensure that those persons who
11 have responsibility for discipline or education of students,
12 including but not limited to administrators, campus police officers,
13 residence life officials and professors, understand the policies,
14 regulations and duties of public institutions of higher education
15 regarding free expression on campus consistent with this section.

16 G. 1. Each public institution of higher education shall
17 publicly post on its website, as well as submit to the Governor ~~and,~~
18 the Legislature, and the Chancellor of The Oklahoma State System of
19 Higher Education annually by December 31, a report that details the
20 course of action implemented to be in compliance with the
21 requirements of this section. A report shall also be given in the
22 instance of any changes or updates to the chosen course of action.
23 The information required in the report shall be:

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

2. The report shall include:

- a. a description of any barriers to or incidents of disruption of free expression occurring on campus, including but not limited to attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students without revealing those students' personally identifiable information, and
- b. any other information each public institution of higher education deems valuable for the public to evaluate whether free expression rights for all members of the campus community have been equally protected and enforced consistent with this act.

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

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

18 I. A person shall be required to bring suit for violation of
19 this section no later than one year after the day the cause of
20 action occurs. For purposes of calculating the one-year limitation
21 period, each day that the violation persists and each day that a
22 policy in violation of this section remains in effect shall
23 constitute a new day that the cause of action has occurred.

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1 J. If any provision of this section or any application of such
2 provision to any person or circumstance is held to be
3 unconstitutional, the remainder of the section and the application
4 of the provision to any other person or circumstance shall not be
5 affected.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3205.13 of Title 70, unless
8 there is created a duplication in numbering, reads as follows:

9 The Oklahoma Free Speech Committee shall develop a process of
10 collecting complaints of free speech violations on public university
11 campuses and advise complainants of their rights. Universities
12 shall publish contact information on how to report free speech
13 concerns to the Oklahoma Free Speech Committee on their website.

14 SECTION 5. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3205.14 of Title 70, unless
16 there is created a duplication in numbering, reads as follows:

17 The Oklahoma Free Speech Committee shall either develop a First
18 Amendment training or approve of an outside First Amendment training
19 that shall be required for all college deans, heads of departments,
20 and individuals responsible for establishing university free speech
21 policies or handling free speech complaints. The Committee shall
22 either revise or reapprove the training every two (2) years. The
23 training will be required every two (2) years, or upon hire or
24 promotion to one of the positions described by this section.

1 Passed the House of Representatives the 9th day of March, 2022.

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4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2022.

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9 Presiding Officer of the Senate