

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

SENATE BILL 118

By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO REQUIRE CAMPUS FREE SPEECH POLICIES; AND
FOR OTHER PURPOSES.

Subtitle

TO REQUIRE CAMPUS FREE SPEECH POLICIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 6, Chapter 5, is amended to add an additional subchapter to read as follows:

Subchapter 13 – Campus Free Speech Policies

6-5-1301. Definitions.

As used in this subchapter:

(1) “Constitutional time, place, and manner restrictions” means restrictions on the time, place, and manner of free speech that do not violate the Arkansas Constitution or the First Amendment to the United States Constitution that:

(A) Are reasonable and necessary;

(B) Are content- and viewpoint-neutral;

(C) Are narrowly tailored to satisfy a substantial institutional purpose; and

(D) Leave open significant alternative channels for the communication of the information or message to its intended audience;

(2) "Educational institution" means a:

(A) Public high school; or

(B) State-supported institution of higher education;



(3)(A) "Faculty" means any person, whether or not the person is compensated by an educational institution, and regardless of political affiliation, who is tasked with providing scholarship, academic research, or teaching.

(B) "Faculty" includes without limitation:

- (i) Tenured and nontenured professors;
- (ii) Adjunct professors;
- (iii) Visiting professors;
- (iv) Lecturers;
- (v) Graduate student instructors;
- (vi) High school teachers; and
- (vii) Other individuals in comparable positions,

however titled.

(C) "Faculty" does not include individuals whose primary responsibilities are administrative or managerial;

(4)(A) "Free speech" means all verbal or written forms of speech, all verbal or written forms of expression, and all forms of assembly, including without limitation:

- (i) Peaceful assembly;
- (ii) A protest;
- (iii) A demonstration;
- (iv) A rally;
- (v) A vigil;
- (vi) A march;
- (vii) The delivery of a public speech;
- (viii) A publication;
- (ix) A statement;
- (x) An article;
- (xi) A comment to the media;
- (xii) The distribution of printed material;
- (xiii) The carrying of signs;
- (xiv) A display; and
- (xv) The circulation of a petition.

(B) "Free speech" does not include speech primarily designed for the explicit sale or distribution of any product or service; and

(5) "Student" means:

(A) An individual currently enrolled in a course of study at an educational institution; or

(B) An organization that is:

(i) Comprised entirely of individuals currently enrolled in a course of study at an educational institution; and

(ii) Registered with an educational institution pursuant to policies of the educational institution.

6-5-1302. Requirements of educational institution.

(a) An educational institution and its administrators shall operate in accordance with the following guarantees of free speech, which is the public policy of this state:

(1) Students and faculty have a fundamental right to free speech;

(2) An educational institution and its administrators shall give students and faculty the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue, subject to subdivisions (a)(3) and (a)(5) of this section;

(3) An educational institution and its administrators shall maintain a campus as a marketplace of ideas for all students and all faculty in which the free exchange of ideas is not suppressed because the ideas put forth are thought by some or even by most members of the educational institution's community to be:

(A) Offensive;

(B) Contrary to values or norms;

(C) Dangerous in a nonphysical manner;

(D) Unwise;

(E) Hateful;

(F) Immoral;

(G) Indecent;

(H) Racist;

(I) Ugly;

(J) Awful;

(K) Demeaning of others;

(L) Unacceptable;

(M) Jarring;

- (N) Unwelcome;
- (O) Malevolent;
- (P) Disagreeable;
- (Q) Conservative;
- (R) Liberal;
- (S) Traditional;
- (T) Radical;
- (U) Communist;
- (V) Fascist;
- (W) Wrongheaded; or
- (X) Otherwise objectionable;

(4) An educational institution and its administrators shall not interfere with the ability of individual students and individual faculty to make judgments about ideas for themselves, individually;

(5) An educational institution and its administrators shall not suppress free speech;

(6) An educational institution and its administrators shall not attempt to shield individuals from free speech, including ideas and opinions they find:

- (A) Offensive;
- (B) Contrary to values or norms;
- (C) Dangerous in a nonphysical manner;
- (D) Unwise;
- (E) Hateful;
- (F) Immoral;
- (G) Indecent;
- (H) Racist;
- (I) Ugly;
- (J) Awful;
- (K) Demeaning of others;
- (L) Unacceptable;
- (M) Jarring;
- (N) Unwelcome;
- (O) Malevolent;
- (P) Disagreeable;
- (Q) Conservative;

- (R) Liberal;
- (S) Traditional;
- (T) Radical;
- (U) Communist;
- (V) Fascist;
- (W) Wrongheaded; or
- (X) Otherwise objectionable;

(7) Although an educational institution should greatly value civility and mutual respect, an educational institution and its administrators shall not use concerns about civility and mutual respect or the like as a justification for closing off a discussion of an individual or counseling, reprimanding, or sanctioning an individual for expressing ideas, even if some students or faculty find those ideas:

- (A) Offensive;
- (B) Contrary to values or norms;
- (C) Dangerous in a nonphysical manner;
- (D) Unwise;
- (E) Hateful;
- (F) Immoral;
- (G) Indecent;
- (H) Racist;
- (I) Ugly;
- (J) Awful;
- (K) Demeaning of others;
- (L) Unacceptable;
- (M) Jarring;
- (N) Unwelcome;
- (O) Malevolent;
- (P) Disagreeable;
- (Q) Conservative;
- (R) Liberal;
- (S) Traditional;
- (T) Radical;
- (U) Communist;
- (V) Fascist;
- (W) Wrongheaded; or

(X) Otherwise objectionable;

(8) Although all students are free to state their own views on campus or contest the views expressed by others on campus, including without limitation speakers who are invited to express their views on campus, a student shall not significantly obstruct the freedom of other speakers to do the same;

(9) An educational institution and its administrators shall provide an atmosphere that is most conducive to speculation, experimentation, and creation by all students and all faculty, who shall always remain free to inquire, study, evaluate, and gain new understanding;

(10) An educational institution and its administrators shall not interfere with the responsibility of faculty to engage in open, courageous, and persistent efforts to search out and communicate ideas;

(11) An educational institution and its administrators shall maintain the generally accessible, open, outdoor areas of its campus as traditional public forums for free speech by students and faculty;

(12) An educational institution and its administrators shall not restrict the free speech of students and faculty only to particular areas of the campus, sometimes known as "free speech zones";

(13) An educational institution and its administrators shall not deny funding from student-activity fees to a student organization based on the viewpoints that the student organization advocates;

(14) An educational institution and its administrators shall not establish permitting requirements that prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although an educational institution may maintain a policy that grants members of the educational institution community the right to reserve certain outdoor spaces in advance;

(15) An educational institution and its administrators shall not charge students security fees based on the:

(A) Content of the speech;

(B) Content of the speech of guest speakers invited by students; or

(C) Anticipated reaction or opposition of listeners to a speech;

(16) An educational institution and its administrators shall allow all students and all faculty to invite guest speakers to campus to

engage in free speech regardless of the views of the guest speakers; and

(17) An educational institution and its administrators shall not disinvite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered by students, faculty, administrators, government officials, or members of the public to be:

- (A) Offensive;
- (B) Contrary to values or norms;
- (C) Dangerous in a nonphysical manner;
- (D) Unwise;
- (E) Hateful;
- (F) Immoral;
- (G) Indecent;
- (H) Racist;
- (I) Ugly;
- (J) Awful;
- (K) Demeaning of others;
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- (Q) Conservative;
- (R) Liberal;
- (S) Traditional;
- (T) Radical;
- (U) Communist;
- (V) Fascist;
- (W) Wrongheaded; or
- (X) Otherwise objectionable.

(b)(1) An educational institution shall adopt a policy consistent with subsection (a) of this section.

(2) The policy adopted under subdivision (b)(1) of this section shall be made available annually to students and faculty through one (1) or more of the following methods:

- (A) Published annually in the educational institution's

student handbook and faculty handbook, whether published in print or electronically;

(B) Made available to students and faculty by way of a prominent notice on the website of the educational institution;

(C) Sent annually to students and faculty to the email address provided to students and faculty by the educational institution; or

(D) Addressed by the educational institution in orientation programs for new students and new faculty.

(c) This subchapter does not grant students the right to disrupt previously scheduled or reserved activities occurring in a traditional public forum.

(d) This subchapter does not interfere with the prohibition on activities under the Civil Rights Act of 1964, 42 U.S.C. 1981 et seq., as it existed on January 1, 2019.

(e) Free speech is not a prohibited activity under this subchapter.

6-5-1303. Costs.

(a) This subchapter does not require an educational institution to fund costs associated with student free speech.

(b) An educational institution shall not impose costs on students on the basis of the anticipated reaction or opposition to a person's speech by listeners.

6-5-1304. Restrictions.

An educational institution may impose reasonable time, place, and manner restrictions as long as the restrictions do not:

(1) Violate the Arkansas Constitution or the First Amendment to the United States Constitution; or

(2) Otherwise interfere with rights guaranteed in this subchapter.

6-5-1305. Criminal violation - Civil cause of action.

(a) A person who negligently violates the free speech rights under this subchapter is guilty of a Class A misdemeanor.

(b)(1) A person whose free speech is violated by an educational institution or an administrator under the policy adopted under § 6-5-1302 may

bring an action in a court of competent jurisdiction to:

(A) Enjoin a violation of the policy; and

(B) Recover reasonable court costs and attorney's fees.

(2) In an action brought pursuant to this subchapter, if the court finds that a violation occurred, the court shall award the aggrieved party:

(A) Injunctive relief for the violation; and

(B) Reasonable court costs and attorney's fees.