

1 **SENATE FLOOR VERSION**

2 April 5, 2022

3 ENGROSSED HOUSE
4 BILL NO. 3543

By: Caldwell (Chad) of the
House

5 and

6 Daniels of the Senate

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9 An Act relating to higher education; establishing the
10 Oklahoma Free Speech Committee to the Oklahoma State
11 Regents for Higher Education; specifying duties of
12 the Committee; amending 70 O.S. 2021, Section 2120,
13 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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16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

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

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

- 13 1. "Campus community" means students, administrators, faculty
14 and staff at the public institution of higher education and their
15 invited guests;
- 16 2. "Harassment" means only that expression that is unwelcome,
17 so severe, pervasive and subjectively and objectively offensive that
18 a student is effectively denied equal access to educational
19 opportunities or benefits provided by the public institution of
20 higher education;
- 21 3. "Materially and substantially disrupts" means when a person,
22 with the intent to or with knowledge of doing so, significantly
23 hinders another person's or group's expressive activity, prevents
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1 the communication of the message or prevents the transaction of the
2 business of a lawful meeting, gathering or procession by:

3 a. engaging in fighting, violent or other unlawful
4 behavior, or

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

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

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

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

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

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

1 provide for ample alternative means of expression. Any such
2 restrictions shall allow for members of the campus community to
3 spontaneously and contemporaneously assemble and distribute
4 literature.

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

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

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

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

1 4. Nothing in this section shall enable individuals to engage
2 in conduct that intentionally, materially and substantially disrupts
3 another person's expressive activity if that activity is occurring
4 in a campus space reserved for that activity under the exclusive use
5 or control of a particular group.

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

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

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

2 The information required in the report shall be:

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

9 2. The report shall include:

- 10 a. a description of any barriers to or incidents of
- 11 disruption of free expression occurring on campus,
- 12 including but not limited to attempts to block or
- 13 prohibit speakers and investigations into students or
- 14 student organizations for their speech. The
- 15 description shall include the nature of each barrier
- 16 or incident, as well as what disciplinary action, if
- 17 any, was taken against members of the campus community
- 18 determined to be responsible for those specific
- 19 barriers or incidents involving students without
- 20 revealing those students' personally identifiable
- 21 information, and
- 22 b. any other information each public institution of
- 23 higher education deems valuable for the public to
- 24 evaluate whether free expression rights for all

1 members of the campus community have been equally
2 protected and enforced consistent with this act.

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

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

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

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

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

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

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

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

1 training will be required every two (2) years, or upon hire or
2 promotion to one of the positions described by this section.

3 COMMITTEE REPORT BY: COMMITTEE ON EDUCATION
4 April 5, 2022 - DO PASS

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