

CHAPTER 169

(HB 254)

AN ACT relating to freedom of speech at public postsecondary education institutions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 164.348 is amended to read as follows:

(1) *For purposes of this section:*

- (a) *"Faculty" means any person tasked by a public postsecondary education institution with providing scholarship, academic research, or teaching, regardless of whether the person is compensated by the public postsecondary education institution; and*
- (b) *"Student" means an individual currently enrolled in at least one (1) credit hour at a public postsecondary education institution or a student organization registered pursuant to the policies of a public postsecondary education institution.*

(2) Consistent with its obligations to respect the rights secured by the Constitutions of the United States and the Commonwealth of Kentucky, a governing board of a public postsecondary education institution shall *adopt policies to* ensure that:

- (a)~~{(1)}~~ *The institution protects the fundamental and constitutional right of all students and faculty to freedom of expression;*
- (b) *The institution grants students and faculty the broadest possible latitude to speak, write, listen, challenge, learn, and discuss any issue;*
- (c) *The institution commits to maintaining a marketplace of ideas where the free exchange of ideas is not suppressed because an idea put forth is considered by some or even most of the members of the institution's community to be offensive, unwise, disagreeable, conservative, liberal, traditional, or radical;*
- (d) *Students and faculty do not substantially obstruct or otherwise substantially interfere with the freedom of others to express views they reject so that a lively and fearless freedom of debate and deliberation is promoted and protected;*
- (e) The expression of a student's religious or political viewpoints in classroom, homework, artwork, and other written and oral assignments is free from discrimination or penalty based on the religious or political content of the submissions;
- (f) ~~1. {(2) (a)}~~ The selection of students to speak at official events is made in a viewpoint-neutral manner;
- ~~2. {(b)}~~ The prepared remarks of the student are not altered before delivery, except in a viewpoint-neutral manner, unless requested by the student. However, student speakers shall not engage in speech that is obscene, vulgar, offensively lewd, or indecent; and
- ~~3. {(c)}~~ If the content of the student's speech is such that a reasonable observer may perceive affirmative institutional sponsorship or endorsement of the student speaker's religious or political viewpoint, the institution shall communicate, in writing, orally, or both, that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the institution;
- (g)~~{(3)}~~ *Student* religious and political organizations are allowed equal access to public forums on the same basis as nonreligious and nonpolitical organizations;
- (h)~~{(4)}~~ No recognized religious or political student organization is hindered or discriminated against in the ordering of its internal affairs, selection of leaders and members, defining of doctrines and principles, and resolving of organizational disputes in the furtherance of its mission, or in its determination that only persons committed to its mission should conduct such activities;~~{and}~~
- (i) *Student activity fee funding to a student organization is not denied based on the viewpoints that the student organization advocates;*

- (j) *The generally accessible, open, outdoor areas of the campus be maintained as traditional public forums for students and faculty to express their views, so that the free expression of students and faculty is not limited to particular areas of the campus often described as "free speech zones";*
- (k)~~(5)~~ There shall be no restrictions on the time, place, and manner of student speech that occurs in the outdoor areas of campus or is protected by the First Amendment of the United States Constitution, except for restrictions that are:
- 1.~~(a)~~ Reasonable;
 - 2.~~(b)~~ Justified without reference to the content of the regulated speech;
 - 3.~~(c)~~ Narrowly tailored to serve a compelling governmental interest; and
 - 4.~~(d)~~ Limited to provide ample alternative options for the communication of the information;~~;~~
- (l) *Permit requirements do not prohibit spontaneous outdoor assemblies or outdoor distribution of literature, although an institution may adopt a policy that grants members of the university community the right to reserve certain outdoor spaces in advance;*
- (m) *All students and faculty are allowed to invite guest speakers to campus to engage in free speech regardless of the views of the guest speakers;*
- (n) *Students are not charged 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 the speech; and*
- (o) *The institution does not disinvite a speaker invited by a student, student organization, or faculty member because the speaker's anticipated speech may be considered offensive, unwise, disagreeable, conservative, liberal, traditional, or radical by students, faculty, administrators, government officials, or members of the public.*
- (3) (a) *Any person aggrieved by a violation of any policy adopted or required to have been adopted pursuant to subsection (2) of this section shall have a cause of action against the institution, or any of its agents acting in their official capacities, for damages arising from the violation, including reasonable attorney's fees and litigation costs.*
- (b) *A claim brought pursuant to this subsection may be asserted in any court of competent jurisdiction within one (1) year of the date the cause of action accrued. The cause of action shall be deemed to have accrued at the point in time the violation ceases or is cured by the institution.*
- (c) *Excluding reasonable attorney's fees and litigation costs, any prevailing claimant shall be awarded no less than one thousand dollars (\$1,000) but no more than one hundred thousand dollars (\$100,000) cumulatively per action. If multiple claimants prevail and the damages awarded would exceed one hundred thousand dollars (\$100,000), the court shall divide one hundred thousand dollars (\$100,000) amongst all prevailing claimants equally.*
- (4) (a) *The policies adopted pursuant to subsection (2) of this section shall be made available to students and faculty using the following methods:*
1. *Publishing in the institution's student handbook and faculty handbook, whether paper or electronic; and*
 2. *Posting to a prominent location on the institution's Web site.*
- (b) *The policies adopted pursuant to subsection (2) of this section may also be made available to students and faculty using the following methods:*
1. *Mailing electronically to students and faculty annually using their institutionally provided e-mail addresses; or*
 2. *Including in orientation programs for new students and new faculty.*
- (5) (a) *Nothing in this section shall be construed to grant students the right to engage in conduct that intentionally, materially, and substantially disrupts another's expressive activity if that activity is occurring in a campus space previously scheduled or reserved for that activity or under the exclusive use or control of a particular group.*

- (b) *Conduct intentionally, materially, and substantially disrupts another's expressive activity if it significantly hinders the expressive activity of another person or group, or prevents the communication of a message or the transaction of a lawful meeting, gathering, or procession by:*
 - 1. *Being of a violent or seriously disruptive nature; or*
 - 2. *Physically blocking or significantly hindering any person from attending, hearing, viewing, or otherwise participating in an expressive activity.*
- (c) *Conduct does not intentionally, materially, and substantially disrupt another's expressive activity if the conduct:*
 - 1. *Is protected under the First Amendment to the United States Constitution or the Constitution of the Commonwealth of Kentucky, including but not limited to lawful protests and counter-protests in the outdoor areas of campus generally accessible to the public, except during times when those areas have been reserved in advance for other events; or*
 - 2. *Is an isolated occurrence that causes minor, brief, and nonviolent disruptions of expressive activity.*

➔Section 2. This Act may be cited as the Campus Free Speech Protection Act.

Signed by Governor March 26, 2019.