

ASSEMBLY, No. 5731

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED AUGUST 23, 2019

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Co-Sponsored by:

Assemblyman McGuckin

SYNOPSIS

Requires public institutions of higher education to adopt policies on freedom of expression.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/8/2019)

1 AN ACT requiring public institutions of higher education to adopt
2 policies on freedom of expression and supplementing chapter 3B
3 of Title 18A of the New Jersey Statutes

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 “Benefit” means the recognition, registration, use of facilities of
10 a public institution of higher education for meetings or speaking
11 purposes, use of channels of communications, and funding sources
12 that are available to student organizations at the public institution of
13 higher education.

14 “Campus community” means a public institution of higher
15 education’s students, administrators, faculty, and staff, as well as
16 those individuals’ invited guests.

17 “Free speech zone” means an area on campus of a public
18 institution of higher education that is designated for the purpose of
19 engaging in an expressive activity.

20 “Harassment” means expression that is so severe, pervasive, and
21 subjectively and objectively offensive that it effectively denies
22 access to an educational opportunity or benefit provided by the
23 public institution of higher education.

24 “Materially and substantially disrupts” means disruption that
25 occurs when a person:

26 a. Significantly hinders the protected expressive activity of
27 another person or group;

28 b. Prevents the communication of a message of another person
29 or group;

30 c. Prevents the transaction of the business of a lawful meeting,
31 gathering, or procession by engaging in fighting, violence, or other
32 unlawful behavior; or

33 d. Physically blocks or uses threats of violence to prevent any
34 person from attending, listening to, viewing, or otherwise
35 participating in an expressive activity.

36 “Outdoor area of the campus” means the generally accessible
37 outside areas of the campus of a public institution of higher
38 education, where members of the campus community are commonly
39 allowed including, but not limited to, grassy areas, walkways, and
40 other common areas.

41 “Protected expressive activity” means speech and other conduct
42 protected by the First Amendment to the United States Constitution
43 or Article I, paragraph 6 of the New Jersey Constitution, to the
44 extent that the activity is lawful and does not significantly and
45 substantially disrupt the functioning of the institution or materially
46 and substantially disrupt the rights of others to engage in or listen to
47 expressive activity, including all of the following:

- 1 a. Communication through any lawful verbal, written, or
- 2 electronic means;
- 3 b. Participating in peaceful assembly;
- 4 c. Protesting;
- 5 d. Making speeches;
- 6 e. Distributing literature;
- 7 f. Making comments to the media;
- 8 g. Carrying signs or hanging posters; and
- 9 h. Circulating petitions.

10 “Public institution of higher education” means Rutgers, The
11 State University, the New Jersey Institute of Technology, Rowan
12 University, Montclair State University, the State colleges or
13 universities established pursuant to chapter 64 of Title 18A of the
14 New Jersey Statutes, the county colleges, and any other public
15 university or college now or hereafter established or authorized by
16 State law.

17 “Student” means any person who is enrolled in a class at a public
18 institution of higher education.

19 “Student organization” means an officially recognized group at a
20 public institution of higher education or a group seeking official
21 recognition, composed of admitted students that receive or are
22 seeking to receive benefits through the institution.

23

24 2. Each public institution of higher education shall develop,
25 adopt, and enforce a written policy concerning freedom of
26 expression in accordance with section 3 of this act. The policy shall
27 include reasonable provisions for the time, place, and manner of
28 student freedom of expression. The policy may include limitations
29 on speech that may be defined as profane, harassing, threatening, or
30 intimidating.

31

32 3. a. The written policy required pursuant to section 2 of this
33 act shall provide that:

34 (1) the primary function of the public institution of higher
35 education is the discovery, improvement, transmission, and
36 dissemination of knowledge by means of research, teaching,
37 discussion, and debate, and that, to fulfill that function, the
38 institution shall, to the fullest degree possible, strive to ensure
39 intellectual freedom and free expression;

40 (2) it is not the proper role of the institution to shield individuals
41 from speech protected by the First Amendment to the United States
42 Constitution or Article I, paragraph 6 of the New Jersey
43 Constitution;

44 (3) students and faculty are free to take positions on public
45 issues, to engage in expressive activity protected by the First
46 Amendment to the United States Constitution or Article I,
47 paragraph 6 of the New Jersey Constitution in outdoor areas of the

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1 campus of the institution, and to spontaneously and
2 contemporaneously assemble, speak, and distribute literature;

3 (4) the outdoor areas of the campus shall be deemed to be a
4 public forum for members of the campus community and their
5 invited guests, and the institution shall not create free speech zones
6 or other designated outdoor areas of the campus in order to limit or
7 prohibit protected expressive activities;

8 (5) the campus of the institution shall be open to any speaker
9 invited by students, student groups, or members of the faculty, take
10 all reasonable measures to make available sufficient resources to
11 ensure the safety of the campus community and invited guests, and
12 not charge security fees based on the protected expressive activity
13 of the member of the campus community or the member's
14 organization, on the content of the invited guest's speech, or on the
15 anticipated reaction or opposition of the listeners to the speech;

16 (6) the institution shall not permit members of the campus
17 community to engage in conduct that materially and substantially
18 disrupts another person's expressive activity or infringes on the
19 rights of others to engage in or listen to expressive activity and shall
20 adopt a range of disciplinary sanctions for anyone under the
21 jurisdiction of the institution who materially and substantially
22 disrupts the free expression of others;

23 (7) the institution may maintain and enforce reasonable time,
24 place and manner restrictions for outdoor areas of the campus only
25 when the restrictions are narrowly tailored to serve a significant
26 institutional interest and when the restrictions employ clear,
27 published, content-neutral, and viewpoint-neutral criteria, and
28 provide for ample alternative means of expression;

29 (8) the institution shall support free association and shall not
30 deny a student organization any benefit or privilege available to any
31 other student organization or otherwise discriminate against an
32 organization based on the expression of the organization, including
33 any requirement of the organization that the leaders or members of
34 the organization affirm and adhere to an organization's sincerely
35 held beliefs or statement of principles, comply with the
36 organization's standard of conduct, or further the organization's
37 mission or purpose, as defined by the student organization;

38 (9) the institution shall strive to remain neutral, as an institution,
39 on current public policy issues, except as far as administrative
40 decisions on the issues are essential to the day-to-day functioning of
41 the university, and that the institution shall not require students,
42 faculty, or staff to publicly express a given view regarding a public
43 policy issue;

44 (10) if a member of the campus community has twice been
45 determined to have materially and substantially disrupted the
46 expressive rights of others, a minimum punishment of a one-term
47 suspension during the regular academic year may be appropriate;
48 and

1 (11) if a punishment less than a one-term suspension is issued
2 upon a second offense as defined in paragraph (10) of this
3 subsection, the institution shall submit an explanation in writing to
4 the institution's Committee on Free Expression, established
5 pursuant to section 5 of this act, within two weeks of the
6 determination to impose the lesser punishment.

7 b. The policy developed pursuant to this section shall supersede
8 and nullify any prior provisions in the policies of the institution that
9 restrict speech on campus and are, therefore, inconsistent with the
10 policy. The institution shall remove or revise any of these
11 provisions in its policies to ensure compatibility with the policy
12 established pursuant to this section.

13 c. Each public institution of higher education shall distribute the
14 policy developed pursuant to this section to each new student, new
15 faculty member, and new staff member, and shall make the policy
16 available on its Internet website.

17 d. This section shall not authorize or protect expression by a
18 student that:

- 19 (1) is libelous or slanderous;
20 (2) constitutes an unwarranted invasion of privacy;
21 (3) violates federal or State law; or
22 (4) so incites students as to create a clear and present danger of
23 the commission of an unlawful act, the violation of policies of the
24 public institution of higher education, or the material and
25 substantial disruption of the orderly operation of the institution.

26
27 4. Within 90 days of the effective date of this act, each public
28 institution of higher education shall submit to the Governor, and to
29 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-
30 19.1), a report that details the institution's strategies and actions
31 taken to develop, adopt, and implement the written policy
32 concerning student freedom of expression required pursuant to
33 section 2 of this act.

34
35 5. a. Each public institution of higher education shall appoint an
36 independent Committee on Free Expression consisting of no less
37 than five members. A minimum of 50 percent of the members of
38 each institution's Committee on Free Expression shall be selected
39 from among the recognized alumni of the institution.

40 b. On September 1 of each year, the Committee on Free
41 Expression shall submit to the institution, to the Governor, and to
42 the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-
43 19.1), a report regarding issues related to the policy concerning
44 freedom of expression required pursuant to section 2 of this act.
45 The report shall include the following:

- 46 (1) a description of any barriers to or disruptions of free
47 expression within the institution;

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1 (2) a description of the administrative handling and discipline
2 relating to these disruptions or barriers;

3 (3) a description of substantial difficulties, controversies, or
4 successes in maintaining a posture of administrative and
5 institutional neutrality; and

6 (4) any assessments, criticisms, commendations, or
7 recommendations the committee sees fit to include.

8 The institution shall annually make the Committee on Free
9 Expression's report available on its Internet website.

10

11 6. The following persons may bring an action in a court of
12 competent jurisdiction to enjoin any violation of this act or a policy
13 adopted pursuant to this act:

14 a. The Attorney General; and

15 b. A person whose expressive rights are violated by a violation
16 of this act or a violation of the policy required pursuant to section 2
17 of this act.

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19 7. This act shall take effect immediately and shall first apply to
20 the first full academic year following the date of enactment.

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STATEMENT

24

25 This bill requires public institutions of higher education in the
26 State to adopt written policies on freedom of expression. The
27 policy will include reasonable provisions for the time, place, and
28 manner of student freedom of expression. The policy may include
29 limitations on speech that may be defined as profane, harassing,
30 threatening, or intimidating.

31 Specifically, the bill requires that each public institution of
32 higher education's policy will provide, among other things, that: the
33 institution will strive to ensure intellectual freedom and free
34 expression; the institution will not shield students from
35 constitutionally protected speech or ideas with which the students
36 may disagree; students and faculty are free to take positions on
37 public issues and that they may engage in expressive activity
38 protected by the constitution in outdoor areas of the campus, with
39 certain exceptions; outdoor areas of the institution's campus will be
40 a public forum for members of the campus community and invited
41 guests; the institution will be open to any speaker that members of
42 the campus community invite to speak and that the institution will
43 make reasonable efforts to ensure the security of invited speakers;
44 the institution will not permit members of the campus community to
45 materially and substantially disrupt others' protected expressive
46 activity; the institution may only maintain and enforce reasonable
47 restrictions on student freedom of expression when such restrictions
48 are narrowly tailored to serve a significant institutional interest; the

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1 institution will support free association and will not deny a student
2 organization any benefit or privilege available to any other student
3 organization; and the institution will strive to remain neutral on
4 current public policy issues.

5 The policy will also permit a minimum punishment of one
6 academic term in the event that an individual has twice been
7 determined to have materially and substantially disrupted the
8 expressive rights of other. If a punishment less than a one-term
9 suspension is issued upon a second offense, the institution will
10 submit an explanation in writing to the institution's Committee on
11 Free Expression within two weeks of the determination to impose
12 the lesser punishment. Under the bill, each public institution of
13 higher education will appoint an independent Committee on Free
14 Expression, which will issue an annual report on the handling of
15 issues related to freedom of expression.

16 The bill requires each public institution of higher education to
17 submit to the Governor and to the Legislature a report that details
18 the institution's strategies and actions taken to develop, adopt, and
19 implement the written policy concerning student freedom of
20 expression.

21 Various states throughout the country have already taken action
22 to protect freedom of expression and free speech on campuses of
23 institutions of higher education. As of January 2019, lawmakers in
24 at least 23 states had introduced or adopted legislation similar to
25 this bill. States that have enacted similar protections include
26 Arizona, Colorado, North Carolina, Tennessee, Utah, and Virginia.