

STATE OF NEW YORK

7529

2021-2022 Regular Sessions

IN ASSEMBLY

May 13, 2021

Introduced by M. of A. SALKA -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing first amendment and free inquiry code of conduct at all state colleges and universities; and to amend the civil practice law and rules, in relation to bringing an action for a violation of a first amendment and free inquiry code of conduct within one year

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent and findings. The legislature finds and
2 declares the following principles:

3 1. The principle of freedom of speech has from the earliest days of
4 this state been regarded as a fundamental tenet of the existence and
5 operation of all public colleges and universities in New York.

6 2. Students should have freedom to discuss any problem that presents
7 itself. The response to ideas some may oppose is through open discussion
8 rather than through inhibition or acts of intimidation. Free inquiry is
9 indispensable to the good life, public colleges and universities exist
10 for the sake of such inquiry.

11 3. The commitment to free and open inquiry is the hallmark of higher
12 education. Public postsecondary educational institutions must guarantee
13 that all members of its community retain the broadest possible latitude
14 to speak, write, listen, challenge and learn is what distinguishes high-
15 er education. Except insofar as limitations on that freedom are neces-
16 sary to the functioning of the institution, public postsecondary educa-
17 tional institutions should fully respect and support the freedom of all
18 members of its community to discuss any problem that presents itself.

19 4. The ideas of different members of public postsecondary educational
20 institutional communities will often and quite naturally conflict, but
21 it is not the proper role of public postsecondary educational insti-
22 tutions to attempt to shield individuals from ideas and opinions they

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 find unwelcome, disagreeable, or even deeply offensive. Although public
2 postsecondary educational institutions greatly value civility, and
3 although all members of its community should share in the responsibility
4 for maintaining a climate of mutual respect, concerns about civility and
5 mutual respect should never be used as a justification for closing off
6 discussion of ideas, however offensive, controversial or disagreeable
7 those ideas may be to some members of its community.

8 5. The legislature hereby declares public postsecondary educational
9 institutions shall commit and follow the principles found in the First
10 Amendment to the United States Constitution and article one, section
11 eight of the New York State Constitution. This shall be ensured through
12 this act.

13 § 2. The education law is amended by adding a new section 6438-a to
14 read as follows:

15 § 6438-a. First amendment and free inquiry code of conduct. 1. The
16 following terms when used in this section shall have the following mean-
17 ings:

18 a. "Benefit" shall mean and include the following: (i) recognition of
19 a student organization at the public institution of higher education;
20 (ii) registration of a student organization at the public institution of
21 higher education; (iii) the use of facilities at the public institution
22 of higher education for meetings or speaking purposes of a student or
23 student organization; (iv) the use of public institution of higher
24 education channels of communication to broadcast information about such
25 meetings, speakers or organizations; and (v) access to resources that
26 are otherwise available to other student organizations at the public
27 institution of higher education.

28 b. "Campus community" shall mean and include all students, administra-
29 tors, faculty and staff at the public institution of higher education
30 and any of their invited guests.

31 c. "First amendment and free inquiry code of conduct" or "code of
32 conduct" shall mean the written policies adopted by a public institution
33 of higher education governing freedom of speech, press, association,
34 assembly or petition while such student is matriculated in the institu-
35 tion and shall be subject to administrative provisions relating to codes
36 of conduct provided in this article and article one hundred
37 twenty-nine-B of this title.

38 d. "Harassment" shall mean expression that is unwelcome, so severe,
39 pervasive, and subjectively and objectively offensive that a student is
40 effectively denied equal access to educational opportunities or benefits
41 provided by the public institution of higher education.

42 e. "Materially and substantially disrupts" shall mean when a student,
43 group or student organization, with the intent to or knowingly acts in a
44 way that significantly hinders another student, group or student organ-
45 ization's expressive activity, prevents the communication of such
46 student, group or student organization's message or prevents the trans-
47 action of business in a lawful meeting, gathering or procession by: (i)
48 engaging in fighting, violence, or any other unlawful behavior; (ii)
49 physically blocking such student, group or student organization, includ-
50 ing blocking access to buildings, campus facilities or campus property;
51 (iii) triggering alarms located near such student, group or student
52 organization, including fire or other safety alarms or creating undue
53 noise intended to drown out the speech of such student, group or student
54 organization; or (iv) using threats of violence to prevent any person
55 from attending, listening to, viewing or otherwise participating in an
56 expressive activity. Conduct that "materially and substantially

1 disrupts" shall not include conduct that is protected under the first
2 amendment to the United States Constitution or section eight of article
3 one of the state constitution. For purposes of this section, protected
4 conduct shall also include, but is not limited to, lawful protests in
5 the outdoor areas of campus generally accessible to the members of the
6 public except during times when those areas have been reserved in
7 advance for other events, or minor, brief or fleeting nonviolent
8 disruptions of events that are isolated and short in duration.

9 f. "Outdoor area of a campus" shall mean any outside area of public
10 institution of higher education's camps where members of the campus
11 community are commonly allowed, such as grassy areas, walkways or simi-
12 lar common areas. "Outdoor area of a campus" shall not include outdoor
13 areas where access is restricted from a majority of the campus communi-
14 ty.

15 g. "Public institution of higher education" shall mean any public
16 technical institute, public junior college, public senior college or
17 university, law school, medical school, professional school or other
18 institution of higher education administered by the state university of
19 New York or the city university of New York.

20 h. "Student" shall mean any person who is enrolled on a full-time or
21 part-time basis in a public institution of higher education.

22 i. "Student organization" shall mean an officially recognized group at
23 a public institution of higher education, or a group seeking official
24 recognition, comprised of admitted students that receive, or are seeking
25 to receive benefits through the public institutions of higher education.

26 j. "Expelled" shall mean the immediate removal of a student from
27 attending courses or being physically present at a public institution of
28 higher education for a period of no less than five years.

29 2. a. All outdoor areas of a campus shall be deemed a public forum for
30 the campus community. No public institution of higher education shall
31 create a free speech zone or designate any outdoor area of campus where
32 expressive activities are prohibited. Expressive activities shall
33 include but are not limited to: any lawful verbal, written, audio-visu-
34 al, or electronic means by which a student or student organization may
35 communicate ideas to one another, including all forms of peaceful assem-
36 bly, protests, speeches and guest speakers, distribution of literature,
37 pamphlets, policy papers, placards, carrying signs or circulating
38 petitions.

39 b. Subject only to the requirements of this section, any student,
40 group or student organization who wishes to engage in non-commercial
41 expressive activity on a public institution of higher education's campus
42 shall be permitted to do so freely if the student or student organiza-
43 tion's conduct is not unlawful and does not materially and substantially
44 disrupt the functioning of the public institution of higher education.

45 c. Nothing in this section shall prohibit public institutions of high-
46 er education from maintaining and enforcing reasonable time, place and
47 manner restrictions that are narrowly tailored to serve a significant
48 institutional interest only when such restrictions maintain clear,
49 published content and viewpoint-neutral criteria, and provide for ample
50 alternative means of expression. Any such restrictions shall allow for
51 members of the campus community to spontaneously and contemporaneously
52 assemble and distribute literature. Nothing in this section shall be
53 interpreted as limiting the right of expressive activities elsewhere on
54 a public institution of higher education's campus.

55 d. Nothing in this section shall be interpreted as preventing public
56 institutions of higher education for prohibiting, limiting or restrict-

1 ing expression that the first amendment to the United States Constitu-
2 tion or section eight of article one of the state constitution does not
3 protect or prohibit harassment on such institution's campus.

4 e. Nothing in this section shall enable a student or student organiza-
5 tion to engage in conduct that intentionally, materially and substan-
6 tially disrupts another's expressive activity if that activity is occur-
7 ring in a campus space reserved for that activity under the exclusive
8 use or control of a particular student or student organization.

9 3. No public institution of higher education shall deny a religious,
10 political or ideological student organization any benefit or privilege
11 available to any other student organization, or otherwise discriminate
12 against such an organization, based on the expression of the organiza-
13 tion including any requirement that a leader or member of such organiza-
14 tion:

15 a. affirms and adheres to the organization's sincerely held beliefs;
16 b. complies with the organization's standards of conduct; or
17 c. furthers the organization's mission or purpose, as defined by the
18 student organization, including but not limited to its mission statement
19 or any charter filed with its respective public institution of higher
20 education.

21 4. a. Public institutions of higher education shall make public in
22 their handbooks, on their public website, and through their orientation
23 program for incoming students the policies, regulations and expectations
24 of students regarding free expression on campus consistent with this
25 section. Such policies, regulations and expectations shall be written in
26 the first amendment and free inquiry code of conduct. All students who
27 are enrolled at a public institution of higher education shall be
28 provided a copy of such code of conduct which shall be signed, dated and
29 returned to such institution prior to a student attending any student
30 orientation or educational course whether in person or through remote
31 means. Failure to sign such code of conduct shall result in a hold
32 placed on the student's account, barring him or her from attending
33 courses until such matter is remedied.

34 b. All first amendment and free inquiry code of conducts shall contain
35 the following written text in at least twelve-point font:

36 "As a student of a public institution of higher education of the State
37 University of New York or City University of New York, I
38 (the blank space to be filled with student's full legal name) will abide
39 by the following code of conduct to uphold the First Amendment guarantee
40 of right of free speech and lawful assembly and free inquiry during my
41 time as a student at this institution. As such I will not engage in any
42 behavior to harass or materially or substantially disrupt expressive
43 activity including courses, seminars, lectures, speaking events and
44 events undertaken by campus community groups, student organizations or
45 organizations invited by such groups or organizations.

46 Furthermore, I will not engage in any practices to physically disrupt
47 or prevent the dissemination of information by student organizations or
48 groups thereof including leaflets, pamphlets, policy papers, petitions,
49 bumper stickers, books and other items.

50 For purposes of this code of conduct, substantially disrupting an
51 event on the campus community includes:

52 1. Engaging in fighting, violent, or other unlawful behavior;
53 2. Physically blocking a student, group or student organization,
54 including blocking access to buildings, campus facilities or campus
55 property for the purpose of disrupting or preventing an event on campus;

1 3. Triggering alarms near a student, group or student organization,
2 including fire or other safety alarms to create undue noise intended to
3 drown out the speech of such student, group or student organization; or

4 4. Using threats of violence to prevent any person from attending,
5 listening to, viewing or otherwise participating in an expressive activ-
6 ity.

7 The use of physical force and/or violence to prevent the exercise of
8 the rights of expression guaranteed under the first amendment of the
9 United States Constitution or section eight of article one of the state
10 constitution, and those providing for free inquiry and debate will not
11 be tolerated and may subject any offender to permanent expulsion from
12 his/her public college or university.

13 I understand that failure to abide by this code of conduct will affect
14 my standing at this public college or university. Furthermore, I under-
15 stand that I will be afforded an opportunity to defend myself if I am
16 alleged to have violated the terms of this code in accordance with proc-
17 esses established by the chancellor of my respective public institution
18 of higher education."

19 c. Any student found to be in violation of such code of conduct shall
20 be suspended and prohibited from attending courses and being physically
21 present at the public institution of higher education for a period of no
22 less than one fall semester or spring semester, which ever falls imme-
23 diately after they have been found to be in violation of the code of
24 conduct. Any student found to be in violation of such code of conduct
25 after a previous violation of such code of conduct shall be expelled
26 from the public institution of higher education. All fees, including but
27 not limited to registration fees, tuition and student activity fees
28 shall continue to be the responsibility of the student in violation of
29 the code of conduct for the academic semester such violation was found.

30 d. Each public institution of higher education shall keep a copy of
31 such code of conduct agreements signed by students pursuant to this
32 section and shall provide a copy at the request of any student who is
33 facing violations against the code of conduct.

34 5. Public institutions of higher education shall develop materials,
35 programs, and procedures to ensure that all administrators, faculty and
36 staff at the public institution of higher education who have responsi-
37 bility for discipline or education of students, including but not limit-
38 ed to campus police officers, residence life officials and professors,
39 understand the policies, regulations, and duties in public institutions
40 of higher education regarding free expression on campus which are
41 consistent with this section.

42 6. a. Each public institution of higher education shall publicly post
43 on their website, as well as submit to the governor, the temporary pres-
44 ident of the senate, the minority leader of the senate, the speaker of
45 the assembly, and the minority leader of the assembly no later than
46 November thirtieth of each year a report which shall detail the course
47 of action implemented by the institution to be in compliance with the
48 requirements of this section. A report shall also be submitted when any
49 changes or updates to the chosen course of action is made by such insti-
50 tution. The information required in the report shall be:

51 (i) Accessible from the institution's Internet website home page by
52 use of not more than three links;

53 (ii) Searchable by keywords and phrases; and

54 (iii) Accessible to the public without requiring registration or use
55 of a username, a password or another user identification.

56 b. The report shall include:

(i) A description of any barriers to or incidents of free expression occurring on the public institutions of higher education's campus, including but not limited to incidents which violate the first amendment and free inquiry code of conduct provided for in subdivision four of this section and shall include incidents which attempted to block or prohibited speakers and any investigations into a student or student organization for their speech. The description shall include the nature of each barrier or incident as well as what disciplinary action, if any, were taken against the members of the campus community determined to be responsible for those specific barriers. Incidents involving a student shall be reported without revealing a student's personally identifiable information; and

(ii) 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 the provisions of this section.

7. If a public institution of higher education is sued for an alleged violation of the first amendment of the United States Constitution or section eight of article one of the state constitution, a supplementary report with a copy of the complaint, or any amended complaint, shall be submitted to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly within thirty days of receiving such complaint.

8. Any person or student association aggrieved by a violation of this section may bring an action against the public institution of higher education and its employees acting in their official capacities, responsible for the violation and seek appropriate relief, including but not limited to, injunctive relief, monetary damages, reasonable attorneys' fees and court costs. If a court of competent jurisdiction finds a violation and seeks appropriate relief against a public institution of higher education, the court shall impose a civil penalty of at least five thousand dollars. Any person or student organization aggrieved by a violation of this section may assert such violation as a defense or counter claim in any disciplinary action or in any civil or administrative proceedings brought against such student or student organization. Nothing in this section shall be interpreted to limit any other remedies available to any person or student organization.

9. A person injured by a violation of this section may bring an action in his or her own name against the public institution for higher education no more than one year after the day the cause of action accrues pursuant to section two hundred fifteen of the civil practice law and rules. For purposes of calculating the one year limitation period, each day that the violation persists, and each day that a policy in violation of this section remains in effect, shall constitute a new day that the cause of action has accrued. Nothing in this section shall be construed to prevent any criminal charges or civil penalties sought against a student of a public institution of higher education brought on by his or her alleged disruption of an assembly of persons on the property of such public institution of higher education.

§ 3. Section 215 of the civil practice law and rules is amended by adding a new subdivision 10 that reads as follows:

10. An action by a student pursuant to subdivision nine of section sixty-four hundred thirty-eight-a of the education law.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law. Effective immediately, the addition, amendment and/or

1 repeal of any rule or regulation necessary for the implementation of
2 this act on its effective date are authorized to be made and completed
3 by the commissioner of the department of education and the chancellors
4 of the state university of New York and the city university of New York
5 on or before such effective date.