

# STATE OF NEW YORK

6126

2017-2018 Regular Sessions

## IN SENATE

May 11, 2017

Introduced by Sen. MURPHY -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to the right to use campus for free speech activities

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

1 Section 1. The education law is amended by adding a new section 6438-a  
2 to read as follows:

3 § 6438-a. Right to use campus for free speech activities. 1. Expres-  
4 sive activities protected under the provisions of this section include,  
5 but are not limited to, all forms of peaceful assembly, protests,  
6 speeches, distribution of literature, carrying signs, and circulating  
7 petitions.

8 2. The outdoor areas of college campuses covered by this article shall  
9 be deemed traditional public forums. A college may maintain and enforce  
10 reasonable time, place, and manner restrictions that are narrowly  
11 tailored and in service of a significant institutional interest only  
12 when such restrictions employ clear, published, content and viewpoint-  
13 neutral criteria and provide for ample alternative means of expression.  
14 Any such restrictions must allow for members of the university community  
15 to spontaneously and contemporaneously distribute literature and assem-  
16 ble.

17 3. Any person who wishes to engage in noncommercial expressive activ-  
18 ity on campus shall be permitted to do so freely, as long as their  
19 conduct is not unlawful and does not materially and substantially  
20 disrupt the functioning of the institution, subject to the requirements  
21 of subdivision two of this section. Nothing in this section grants any  
22 person the right to materially disrupt previously scheduled or reserved  
23 activities in a portion or section of the campus at that scheduled time.

24 4. Nothing in this section shall be interpreted as limiting the right  
25 of student expression elsewhere on campus.

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

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1 5. a. The attorney general or county attorney having jurisdiction may  
2 bring an action in a court of competent jurisdiction to enjoin a  
3 violation of this section.

4 b. Persons whose expressive rights were violated through the violation  
5 of this section may bring an action in a court of competent jurisdiction  
6 to enjoin a violation of this section and to recover compensatory  
7 damages, reasonable court costs, and attorneys' fees. In an action  
8 brought pursuant to this paragraph, if the court finds a violation of  
9 this section, the court shall award an aggrieved person damages of no  
10 less than five hundred dollars for the initial violation, plus fifty  
11 dollars for each day the violation remains ongoing, which shall accrue  
12 starting on the day after the complaint is served on the institution of  
13 higher education. The total damages, excluding court costs and attor-  
14 ney's fees, available to a plaintiff or set of plaintiffs, in a case or  
15 cases stemming from a single controversy shall not exceed two hundred  
16 fifty thousand dollars in total. In violations harming multiple plain-  
17 tiffs, the court shall divide the damages equally among them until the  
18 maximum award is exhausted, if applicable.

19 c. A violation of this section is established by demonstrating that an  
20 institution subject to this section maintains a policy that does not  
21 conform with the requirement herein or by demonstrating that an institu-  
22 tion, by an action of one of its agents or by the enforcement of a poli-  
23 cy, violated the free speech rights guaranteed under this section.

24 d. A person must bring suit for a violation of this section not later  
25 than one year after the day the cause of action accrues. For purposes of  
26 calculating the one-year limitation period, each day that the violation  
27 of this section persists, and each day that a policy in violation of  
28 this section remains in effect, shall constitute a new violation of this  
29 section and, therefore, a new day that the cause of action has accrued.

30 § 2. This act shall take effect immediately.