STATE OF NEW YORK

1145

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. PAULIN -- read once and referred 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:

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

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

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

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

4. Nothing in this section shall be interpreted as limiting the right 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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5. a. The attorney general may bring an action in a court of competent jurisdiction to enjoin a violation of this section.

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

c. A violation of this section is established by demonstrating that an institution subject to this section maintains a policy that does not conform with the requirement herein or by demonstrating that an institution, by an action of one of its agents or by the enforcement of a policy, violated the free speech rights guaranteed under this section.

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

§ 2. This act shall take effect immediately.