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:

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

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

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

3. The commitment to free and open inquiry is the hallmark of higher education. Public postsecondary educational institutions must guarantee that all members of its community retain the broadest possible latitude to speak, write, listen, challenge and learn is what distinguishes higher education. Except insofar as limitations on that freedom are necessary to the functioning of the institution, public postsecondary educational institutions should fully respect and support the freedom of all members of its community to discuss any problem that presents itself.

4. The ideas of different members of public postsecondary educational institutional communities will often and quite naturally conflict, but it is not the proper role of public postsecondary educational institutions 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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find unwelcome, disagreeable, or even deeply offensive. Although public postsecondary educational institutions greatly value civility, and although all members of its community should share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect should never be used as a justification for closing off discussion of ideas, however offensive, controversial or disagreeable those ideas may be to some members of its community.

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

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

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

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

b. "Campus community" shall mean and include all students, administrators, faculty and staff at the public institution of higher education and any of their invited guests.

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

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

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

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

f. "Outdoor area of a campus" shall mean any outside area of public institution of higher education's camps where members of the campus community are commonly allowed, such as grassy areas, walkways or similar common areas. "Outdoor area of a campus" shall not include outdoor areas where access is restricted from a majority of the campus community.

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

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

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

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

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

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

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

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

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

e. Nothing is this section shall enable a student or student organization to engage in conduct that intentionally, materially and substantially disrupts another's expressive activity if that activity is occurring in a campus space reserved for that activity under the exclusive use or control of a particular student or student organization.

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

a. affirms and adheres to the organization's sincerely held beliefs;

b. complies with the organization's standards of conduct; or

c. furthers the organization's mission or purpose, as defined by the student organization, including but not limited to its mission statement or any charter field with its respective public institution of higher education.

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

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

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

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

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

1. Engaging in fighting, violent, or other unlawful behavior;

2. Physically blocking a student, group or student organization, including blocking access to buildings, campus facilities or campus property for the purpose of disrupting or preventing an event on campus;

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

4. Using threats of violence to prevent any person from attending, listening to, viewing or otherwise participating in an expressive activity.

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

I understand that failure to abide by this code of conduct will affect my standing at this public college or university. Furthermore, I understand that I will be afforded an opportunity to defend myself if I am alleged to have violated the terms of this code in accordance with processes established by the chancellor of my respective public institution of higher education."

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

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

5. Public institutions of higher education shall develop materials, programs, and procedures to ensure that all administrators, faculty and staff at the public institution of higher education who have responsibility for discipline or education of students, including but not limited to campus police officers, residence life officials and professors, understand the policies, regulations, and duties in public institutions of higher education regarding free expression on campus which are consistent with this section.

6. a. Each public institution of higher education shall publicly post on their website, as well as submit 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 no later than November thirtieth of each year a report which shall detail the course of action implemented by the institution to be in compliance with the requirements of this section. A report shall also be submitted when any changes or updates to the chosen course of action is made by such institution. The information required in the report shall be:

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

(ii) Searchable by keywords and phrases; and

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

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

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