STATE OF NEW YORK

8342

2021-2022 Regular Sessions

IN ASSEMBLY

October 20, 2021

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

AN ACT to amend the education law, in relation to ensuring all students enrolled at state university of New York and city university of New York institutions are able to express themselves freely without fear of intimidation or harm

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

Section 1. This act shall be known and may be cited as the "college and university free speech act".

§ 2. Legislative findings and intent. Section 8 of article 1 of the New York State Constitution states that "every citizen may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech".

The legislature views freedom of speech as an important, fundamental right enjoyed by all Americans and institutions of higher learning should be places of information sharing and learning, productive discourse, and free expression.

The legislature is tasked with ensuring everyone in this state has access to the highest quality of life, including their higher education experience. Therefore, immediate, effective action is necessary to protect all students, who would like to be able to express themselves without fear of intimidation or harm.

The legislature has determined that all state university of New York and city university of New York institutions shall adhere to a policy officially recognizing freedom of speech as a fundamental right.

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

§ 6438-a. College and university free speech. 1. Within one hundred twenty days of the effective date of this section, the regents shall adopt a policy on free speech that applies at all state university of New York and city university of New York institutions. Such policy shall include, but not be limited to:

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

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(a) all state and city colleges and universities shall be places of information sharing and learning, productive discourse and free expression;

(b) it is not the proper role of a college or university to shield individuals from speech protected by the first amendment of the United States constitution and section eight of article one of the New York state constitution;

(c) students and faculty have the freedom to share ideas and views as permitted by the first amendment and section eight of article one of the New York state constitution;

(d) any person lawfully present on a college or university campus may protest or demonstrate, unless that protest or demonstration interferes with the expressive rights of others;

(e) college and university campuses are open to invited speakers by faculty or students, regardless of their viewpoints as protected by the first amendment of the United States constitution and section eight of article one of the New York state constitution;

(f) public areas at the college or university are public forums and open on the same terms to any speaker; and

(g) colleges and universities shall remain neutral on political or public policy controversies.

2. The policy on free speech shall establish disciplinary procedures, including a formal investigation and a hearing for faculty or students who engage in conduct that materially and substantially disrupts the free expression of others. Such policy shall include, but not be limited to, penalties for:

(a) students found guilty of any violation thereof, equal to a one-week suspension for a first offense, a minimum two-week suspension for a second offense, a minimum suspension equal to a full semester for a third offense, and expulsion for a fourth offense; and

(b) faculty found guilty of any violation thereof.

3. Each college and university shall inform incoming students about the policy on free speech through programs which may include workshops, seminars, discussion groups, and film presentations, in order to disseminate information about free speech, promote discussion, encourage reporting of violations of free speech, and facilitate prevention of such violations. Such information shall include, but not be limited to, the:

(a) policy adopted on free speech;

(b) penalties for violations of free speech; and

(c) procedures in effect at the college or university for dealing with violations of free speech.

4. A person whose expressive rights are infringed upon by a violation of this section or the policy adopted under subdivision one 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, court costs, and attorney's fees.

5. Within one year of the adoption of the policy pursuant to subdivision one of this section and annually thereafter, the regents shall issue a report to the governor, the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the assembly concerning the effectiveness of the policy on free speech, number of violations, disciplinary procedures and outcomes of reported violations and any other relevant information the regents deem necessary.

§ 4. This act shall take effect immediately.