

1 AN ACT relating to freedom of speech at public postsecondary education
2 institutions.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 164.348 is amended to read as follows:

5 (1) For purposes of this section:

6 (a) **"Institution" means a public postsecondary education institution in the**
7 **Commonwealth of Kentucky;**

8 (b) "Faculty" means any person tasked by ~~an~~[a public postsecondary education
9 institution] with providing scholarship, academic research, or teaching,
10 regardless of whether the person is compensated by the ~~public postsecondary~~
11 ~~education~~]institution; ~~and~~

12 (c)~~(b)~~ **"Public" means all individuals that are not a faculty member, student,**
13 **staff, or otherwise affiliated with an institution;**

14 (d) **"Staff" means an individual who is employed by an institution but is not**
15 **faculty, including but not limited to a student worker, graduate student**
16 **worker, or other non-faculty staff; and**

17 (e) "Student" means an individual currently enrolled in at least one (1) credit hour
18 at ~~an~~[a public postsecondary education] institution or a student organization
19 registered pursuant to the policies of ~~an~~[a public postsecondary education]
20 institution.

21 (2) Consistent with its obligations to respect the rights secured by the Constitutions of
22 the United States and the Commonwealth of Kentucky, a governing board of ~~an~~[a
23 ~~public postsecondary education~~] institution shall adopt policies to ensure that:

24 (a) The institution protects the fundamental and constitutional right of all
25 students, ~~and~~ ~~faculty,~~ **staff, and the public** to freedom of expression, **as**
26 **protected by the First Amendment to the Constitution of the United States**
27 **and Section 1 of the Constitution of Kentucky;**

- 1 (b) The institution grants students, ~~and~~ faculty, staff, and the public the
2 broadest possible latitude to speak, write, listen, challenge, learn, and discuss
3 any issue;
- 4 (c) The institution does not restrict, regulate, or punish speech or conduct that
5 is protected speech or expression that occurs off-campus, whether it be in-
6 person or online, except conduct that is prohibited under Title IX of the
7 Education Amendments of 1972, 20 U.S.C. secs. 1681 et seq., applicable
8 federal regulations, binding federal judicial precedent, or state or federal
9 law;
- 10 (d) The institution commits to maintaining a marketplace of ideas where the free
11 exchange of ideas is not suppressed because an idea put forth is considered by
12 some or even most of the members of the institution's community to be
13 offensive, unwise, disagreeable, conservative, liberal, traditional, or radical;
- 14 (e)~~(d)~~ Students, ~~and~~ faculty, staff, and the public do not substantially
15 obstruct or otherwise substantially interfere with the freedom of others to
16 express views they reject so that a lively and fearless freedom of debate and
17 deliberation is promoted and protected;
- 18 (f)~~(e)~~ The expression of a student's religious or political viewpoints in
19 classroom, homework, artwork, and other written and oral assignments is free
20 from discrimination or penalty based on the religious or political content of
21 the submissions;
- 22 (g)~~(f)~~ 1. The selection of students to speak at official events is made in a
23 viewpoint-neutral manner;
- 24 2. The prepared remarks of the student are not altered before delivery,
25 except in a viewpoint-neutral manner, unless requested by the student.
26 However, student speakers shall not engage in speech that is obscene,
27 vulgar, offensively lewd, or indecent; and

1 3. If the content of the student's speech is such that a reasonable observer
 2 may perceive affirmative institutional sponsorship or endorsement of the
 3 student speaker's religious or political viewpoint, the institution shall
 4 communicate, in writing, orally, or both, that the student's speech does
 5 not reflect the endorsement, sponsorship, position, or expression of the
 6 institution;

7 **(h)**~~(g)~~ Student religious and political organizations are allowed equal access to
 8 public forums, **room reservations, facilities, or other institutional grounds**
 9 on the same basis as nonreligious and nonpolitical organizations;

10 **(i)**~~(h)~~ No recognized religious or political student organization is hindered or
 11 discriminated against in the ordering of its internal affairs, selection of leaders
 12 and members, defining of doctrines and principles, and resolving of
 13 organizational disputes in the furtherance of its mission, or in its
 14 determination that only persons committed to its mission should conduct such
 15 activities;

16 **(j)**~~1.~~~~(i)~~ Student activity ~~{fee }~~funding to a student organization is not
 17 **impacted by**~~{denied based on}~~ the viewpoints that the student
 18 organization advocates;

19 **2. Any authority to distribute any institutional funding among student**
 20 **organizations vested with the student government, or any other**
 21 **student organization, shall be contingent upon a viewpoint-neutral**
 22 **distribution of funds, in accordance with the First Amendment to the**
 23 **Constitution of the United States and this subsection;**

24 **(k)**~~(j)~~ The generally accessible, open, outdoor areas of the campus be
 25 maintained as traditional public forums for students, ~~{and }~~**staff, and**
 26 **the public** to express their views, so that the free expression of students, ~~{and }~~
 27 ~~{faculty, staff, and the public}~~ is not limited to particular areas of the campus

1 often described as "free speech zones";

2 ~~(l)(k)~~ **There shall be no buffer to any area of a building or residence hall**
 3 **that is immediately adjacent to a generally accessible, open, outdoor area of**
 4 **the campus and used as a traditional public forum for students, faculty,**
 5 **staff, and the public to express their views;**

6 **(m)** There shall be no restrictions on the time, place, and manner of student speech
 7 that occurs in the outdoor areas of campus or is protected by the First
 8 Amendment of the United States Constitution, except for restrictions that are:

- 9 1. Reasonable;
- 10 2. Justified without reference to the content of the regulated speech;
- 11 3. Narrowly tailored to serve a compelling governmental interest; and
- 12 4. Limited to provide ample alternative options for the communication of
 13 the information;

14 **(n)** ~~1.(4)~~ Permit requirements do not prohibit:

15 **a.** Spontaneous outdoor assemblies or outdoor distribution of
 16 literature, **in generally accessible outdoor areas, including but**
 17 **not limited to generally accessible courtyards between residence**
 18 **halls or the generally accessible outdoor areas immediately**
 19 **adjacent to residence halls; and**

20 **b.** **Spontaneous use of tables, stationary displays, or yard signs, or**
 21 **the exhibition of images in the generally accessible, open,**
 22 **outdoor areas of the campus;**

23 **2.** **The expressive activity protected by subparagraph 1. of this paragraph**
 24 **shall be permitted by the institution if the expressive activity would**
 25 **not:**

26 **a.** **Interfere with the normal operations of the institution, including**
 27 **but not limited to classes, scheduled meetings, events,**

1 ceremonies, and other educational processes;

2 b. Prevent or substantially restrict vehicular or pedestrian traffic;

3 or

4 c. Interfere with the use or delivery of emergency services; and

5 3. Any ~~[although an institution may adopt a]~~policy adopted by an

6 institution that grants members of the university community the right to

7 reserve certain outdoor spaces in advance may not restrict the

8 expressive activity protected by subparagraph 1.a. of this paragraph;

9 ~~(o)(m)~~ All students and faculty are allowed to invite guest speakers to campus
10 to engage in free speech regardless of the views of the guest speakers;

11 ~~(p)(n)~~ Students are not charged fees based on the content of their speech, the
12 content of the speech of guest speakers invited by students, or the anticipated
13 reaction or opposition of listeners to the speech;~~and~~

14 ~~(q)(o)~~ The institution does not disinvite a speaker invited by a student, student
15 organization, or faculty member because the speaker's anticipated speech may
16 be considered offensive, unwise, disagreeable, conservative, liberal,
17 traditional, or radical by students, faculty, administrators, government
18 officials, or members of the public; and

19 (r) The institution defines student-on-student harassment to mean unwelcome
20 conduct directed toward a student that is discriminatory on a basis
21 prohibited by federal or state law, and that is so severe, pervasive, and
22 objectively offensive that it effectively denies equal access to an educational
23 opportunity or benefit.

24 (3) (a) Any person aggrieved by a violation of any policy adopted or required to have
25 been adopted pursuant to subsection (2) of this section shall have a cause of
26 action against the institution, or any of its agents acting in their official
27 capacities, for damages arising from the violation, including reasonable

1 attorney's fees and litigation costs.

2 (b) A claim brought pursuant to this subsection may be asserted in any court of
3 competent jurisdiction within one (1) year of the date the cause of action
4 accrued. The cause of action shall be deemed to have accrued at the point in
5 time the violation ceases or is cured by the institution.

6 (c) Excluding reasonable attorney's fees and litigation costs, any prevailing
7 claimant shall be awarded no less than one thousand dollars (\$1,000) but no
8 more than two hundred fifty thousand dollars (\$250,000)~~one hundred~~
9 ~~thousand dollars (\$100,000)~~ cumulatively per action. If multiple claimants
10 prevail and the damages awarded would exceed two hundred fifty thousand
11 dollars (\$250,000)~~one hundred thousand dollars (\$100,000)~~, the court shall
12 divide two hundred fifty thousand dollars (\$250,000)~~one hundred thousand~~
13 ~~dollars (\$100,000)~~ amongst all prevailing claimants equally.

14 (d) The Commonwealth waives immunity for prospective equitable and
15 declaratory relief only, under the Eleventh Amendment to the Constitution
16 of the United States, for cases brought against any institution in federal
17 jurisdictions by any person aggrieved by a violation of any policy adopted or
18 required to have been adopted pursuant to subsection (2) of this section
19 against the institution, or any of its agents acting in their official capacities,
20 for damages arising from the violation, including but not limited to
21 reasonable attorney's fees and litigation costs.

22 (4) If it is determined, after a final decision in an action brought pursuant to
23 subsection (3) of this section, that:

24 (a) A faculty member or administrator knowingly and intentionally restricted
25 the protected speech or otherwise penalized an individual in violation of any
26 policy adopted or required to have been adopted pursuant to subsection (2)
27 of this section, the faculty member or administrator shall be subject to

1 discipline by the institution through the normal disciplinary processes of the
2 institution, and such discipline may include termination if supported by the
3 totality of the circumstances; and

4 (b) Any student organization empowered to distribute institutional funding
5 among other student organizations, knowingly and intentionally violated
6 any policy adopted or required to have been adopted pursuant to subsection
7 (2) of this section, the institution shall suspend the student government
8 organization's authority to distribute institutional funding for a period of at
9 least one (1) year. During this period, all institutional funding for student
10 organizations shall be distributed by the institution.

11 (5) (a) An institution shall not retaliate against any member of the campus
12 community who:

13 1. Files a complaint for an alleged violation of any policy adopted or
14 required to have been adopted pursuant to subsection (2) of this
15 section, including but not limited to any individual who brings an
16 action in accordance with subsection (3) of this section; and

17 2. Acts to protect, or refuses to infringe upon, the free expression of
18 another as protected by any policy adopted or required to have been
19 adopted pursuant to subsection (2) of this section, the First
20 Amendment to the Constitution of the United States, or Section I of
21 the Constitution of Kentucky.

22 (b) For the purposes of this section, "retaliation" includes but is not limited to
23 a dismissal, suspension, expulsion, reassignment of job duties, job transfer,
24 decrease in funding, termination or nonrenewal of a teaching contract or
25 an extracurricular contract, or other disciplinary act that is intended to
26 punish, embarrass, or harm the individual.

27 (6) (a) The policies adopted pursuant to subsection (2) of this section shall be made

1 available to students and faculty using the following methods:

- 2 1. Publishing in the institution's student handbook and faculty handbook,
 3 whether paper or electronic; ~~and~~
 4 2. Posting to a prominent location on the institution's Web site; and
 5 3. Presenting and distributing the information in orientation programs
 6 for all new students, faculty, and staff.

7 (b) The policies adopted pursuant to subsection (2) of this section may also be
 8 mailed~~made available to students and faculty using the following methods:~~

- 9 ~~1. Mailing~~ electronically to students,~~and~~ and staff annually
 10 using their institutionally provided e-mail addresses~~; or~~
 11 ~~2. Including in orientation programs for new students and new faculty.~~

12 ~~(7)(5)~~ (a) The Council on Postsecondary Education shall develop instructional
 13 materials and model trainings for institutions to ensure that members of the
 14 campus community understand the role of the institution in preserving the
 15 fundamental and constitutional rights of all students, faculty, staff, and the
 16 public to freedom of expression, as protected by the First Amendment to the
 17 Constitution of the United States, and Section 1 of the Constitution of
 18 Kentucky;

19 (b) An institution shall present instructional materials and trainings to the
 20 following members of the campus community to ensure that those
 21 individuals understand the role of the institution, and the individual when
 22 acting on behalf of the institution, in preserving the fundamental and
 23 constitutional rights of all students, faculty, staff, and members of the
 24 public to freedom of expression, as protected by the institution's policies
 25 adopted pursuant to subsection (2) of this section, the First Amendment to
 26 the Constitution of the United States, and Section 1 of the Constitution of
 27 Kentucky;

- 1 1. All faculty members and any student responsible for the instruction of
2 another student, including but not limited to teaching assistants;
3 2. Any student, staff, or administrator of the institution responsible for
4 the discipline or management of any other member of the campus
5 community;
6 3. Any student, staff, or administrator responsible for campus security
7 and safety, including but not limited to campus police officers;
8 4. Any student, staff, or administrator with any oversight of or authority
9 over student government organizations; and
10 5. Any student, staff, or administrator responsible for the distribution of
11 student organization or activity funding, including but not limited to
12 members of a student government organization authorized to
13 distribute institutional funds among student organizations.
- 14 (8) No later than September 1 and February 1 of each year, an institution shall
15 publish a semiannual report on the institution's student organizations and
16 activity funding to a prominent location on the institution's Web site that is
17 relevant to the contents of the report and readily accessible to the public without a
18 password. The report shall include:
- 19 (a) A summary of the policies and procedures of the institution for the
20 distribution of funds to student organizations, including but not limited to
21 any policies or procedures adopted to ensure that student organization
22 funding is not impacted by the viewpoints of a student organization;
- 23 (b) The total number of institutional funds budgeted for student organizations
24 during the current fiscal year and the total amount of funds distributed by
25 or on behalf of the institution to student organizations during the period of
26 time since the last report;
- 27 (c) An itemization of the specific amount of funds budgeted for each student

1 organization during the current fiscal year, the total number of funds
 2 distributed by or on behalf of the institution to each student organization
 3 during the period of time since the last report, and the dates of each
 4 distribution;

5 (d) The minutes of any meeting held to determine the distribution of student
 6 organization and activity funding held during the period of time since the
 7 last report, which shall include a clear statement of the rationale behind
 8 any decision to increase, decrease, or deny funding to a student
 9 organization; and

10 (e) All budgets, budget proposals or requests, itemizations of spending, or other
 11 financial documents submitted by or on behalf of a student organization to
 12 the institution, or student government when acting on behalf of the
 13 institution, with regard to the distribution of student organization funding.

14 (9) (a) Nothing in this section shall be construed to grant students the right to engage
 15 in conduct that intentionally, materially, and substantially disrupts another's
 16 expressive activity if that activity is occurring in a campus space previously
 17 scheduled or reserved for that activity or under the exclusive use or control of
 18 a particular group.

19 (b) Conduct intentionally, materially, and substantially disrupts another's
 20 expressive activity if it significantly hinders the expressive activity of another
 21 person or group, or prevents the communication of a message or the
 22 transaction of a lawful meeting, gathering, or procession by:

23 1. Being of a violent or seriously disruptive nature; or
 24 2. Physically blocking or significantly hindering any person from
 25 attending, hearing, viewing, or otherwise participating in an expressive
 26 activity.

27 (c) Conduct does not intentionally, materially, and substantially disrupt another's

1 expressive activity if the conduct:

- 2 1. Is protected under the First Amendment to the United States
3 Constitution or the Constitution of the Commonwealth of Kentucky,
4 including but not limited to lawful protests and counter-protests in the
5 outdoor areas of campus generally accessible to the public, except
6 during times when those areas have been reserved in advance for other
7 events; or
8 2. Is an isolated occurrence that causes minor, brief, and nonviolent
9 disruptions of expressive activity.