

118TH CONGRESS
1ST SESSION

H. R. 2508

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2023

Mr. MURPHY (for himself, Mr. GROTHMAN, Mr. BABIN, Mr. FITZGERALD, and Mr. TIFFANY) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Campus Free Speech
5 Restoration Act”.

1 **SEC. 2. PROTECTION OF STUDENT SPEECH AND ASSOCIA-**
2 **TION RIGHTS.**

3 Section 112(a) of the Higher Education Act of 1965
4 (20 U.S.C. 1011a(a)) is amended—

5 (1) by redesignating paragraph (2) as para-
6 graph (3); and

7 (2) by inserting after paragraph (1) the fol-
8 lowing:

9 “(2) It is the sense of Congress that—

10 “(A) every individual should be free to profess,
11 and to maintain, the opinion of such individual in
12 matters of religion or philosophy, and that pro-
13 fessing or maintaining such opinion should in no
14 way diminish, enlarge, or affect the civil liberties or
15 rights of such individual on the campus of an insti-
16 tution of higher education;

17 “(B) no public institution of higher education
18 directly or indirectly receiving financial assistance
19 under this Act should limit religious expression, free
20 expression, or any other rights provided under the
21 First Amendment to the Constitution of the United
22 States;

23 “(C) free speech zones and restrictive speech
24 codes are inherently at odds with the freedom of
25 speech guaranteed by the First Amendment to the
26 Constitution of the United States;

1 “(D) bias reporting systems are susceptible to
2 abuses that may put them at odds with the freedom
3 of speech guaranteed by the First Amendment to the
4 Constitution of the United States; and

5 “(E) no public institution of higher education
6 directly or indirectly receiving financial assistance
7 under this Act should restrict the speech of such in-
8 stitution’s students through improperly restrictive
9 zones, codes, or bias reporting systems.”.

10 **SEC. 3. CAMPUS SPEECH POLICIES AT INSTITUTIONS OF**
11 **HIGHER EDUCATION.**

12 Title IV of the Higher Education Act of 1965 (20
13 U.S.C. 1070 et seq.) is amended—

14 (1) in section 487(a), by adding at the end the
15 following:

16 “(30)(A) In the case of a public institution
17 (other than an institution described in section
18 494A(b)(4)), the institution will comply with the ex-
19 pressive activity protections described in section
20 494A.

21 “(B) In the case of a private institution (other
22 than an institution described in section 494B(e)),
23 the institution will comply with the expressive activ-
24 ity requirements described in section 494B.”; and

1 (2) in part G, by adding at the end the fol-
2 lowing:

3 **“SEC. 494A. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**
4 **SITIES.**

5 “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

6 “(1) IN GENERAL.—In this section, the term
7 ‘expressive activity’ includes—

8 “(A) peacefully assembling, protesting,
9 speaking, or listening;

10 “(B) distributing literature;

11 “(C) carrying a sign;

12 “(D) circulating a petition; or

13 “(E) other expressive rights guaranteed
14 under the First Amendment to the Constitution
15 of the United States, including religious rights.

16 “(2) EXCLUSIONS.—In this section, the term
17 ‘expressive activity’ does not include unprotected
18 speech (as defined by the precedents of the Supreme
19 Court of the United States).

20 “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

21 “(1) IN GENERAL.—Each public institution of
22 higher education participating in a program under
23 this title may not prohibit, subject to paragraph (2),
24 a person from freely engaging in noncommercial ex-
25 pressive activity in a generally accessible area on the

1 institution’s campus if the person’s conduct is law-
2 ful.

3 “(2) RESTRICTIONS.—An institution of higher
4 education described in paragraph (1) may not main-
5 tain or enforce time, place, or manner restrictions on
6 an expressive activity in a generally accessible area
7 of the institution’s campus unless the restriction—

8 “(A) is necessary to achieve a compelling
9 governmental interest;

10 “(B) is the least restrictive means of fur-
11 thering that compelling governmental interest;

12 “(C) is based on published, content-neu-
13 tral, and viewpoint-neutral criteria;

14 “(D) leaves open ample alternative chan-
15 nels for communication; and

16 “(E) provides for spontaneous assembly
17 and distribution of literature.

18 “(3) APPLICATION.—The protections provided
19 under paragraph (1) do not apply to expressive ac-
20 tivity in an area on an institution’s campus that is
21 not a generally accessible area.

22 “(4) NONAPPLICATION TO SERVICE ACAD-
23 EMIES.—This section shall not apply to an institu-
24 tion of higher education whose primary purpose is

1 the training of individuals for the military services
2 of the United States, or the merchant marine.

3 “(c) CAUSES OF ACTION.—

4 “(1) AUTHORIZATION.—The following persons
5 may bring an action in a Federal court of competent
6 jurisdiction to enjoin a violation of subsection (b) or
7 to recover compensatory damages, reasonable court
8 costs, or reasonable attorney fees:

9 “(A) The Attorney General.

10 “(B) A person claiming that the person’s
11 expressive activity rights, as described in sub-
12 section (b)(1), were violated.

13 “(2) ACTIONS.—Notwithstanding any other
14 provision of law, in an action brought under this sec-
15 tion, the Federal court shall decide de novo all rel-
16 evant questions of fact and law, including the inter-
17 pretation of constitutional, statutory, and regulatory
18 provisions, unless the parties stipulate otherwise. In
19 an action brought under this subsection, if the court
20 finds a violation of subsection (b), the court—

21 “(A) shall—

22 “(i) enjoin the violation; and

23 “(ii) if a person whose expressive ac-
24 tivity rights were violated brought the ac-
25 tion, award the person—

1 “(I) not less than \$500 for an
2 initial violation; and

3 “(II) if the person notifies the in-
4 stitution of the violation, \$50 for each
5 day the violation continues after the
6 notification if the institution did not
7 act to discontinue the cause of the
8 violation; and

9 “(B) may award a prevailing plaintiff—

10 “(i) compensatory damages;

11 “(ii) reasonable court costs; or

12 “(iii) reasonable attorney fees.

13 “(3) BASIS FOR ENACTMENT.—This subsection
14 is enacted as an exercise of the enforcement power
15 of the Congress under section 5 of the Fourteenth
16 Amendment to the Constitution to protect expressive
17 activities.

18 “(d) STATUTE OF LIMITATIONS.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (3), an action under subsection (c) may not
21 be brought later than 1 year after the date of the
22 violation.

23 “(2) CONTINUING VIOLATION.—Each day that
24 a violation of subsection (b) continues after an ini-
25 tial violation of subsection (b), and each day that an

1 institution’s policy in violation of subsection (b) re-
2 mains in effect, shall constitute a continuing viola-
3 tion of subsection (b).

4 “(3) EXTENSION.—For a continuing violation
5 described in paragraph (2), the limitation described
6 in paragraph (1) shall extend to 1 year after the
7 date on which the most recent violation occurs.

8 “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

9 “(1) NO ELIGIBILITY FOR FUNDS.—

10 “(A) IN GENERAL.—No public institution
11 of higher education shall be eligible to receive
12 funds under this Act, including participation in
13 any program under this title, if the Secretary
14 determines that the institution—

15 “(i) maintains a policy that infringes
16 upon the expressive rights of students
17 under the First Amendment to the Con-
18 stitution of the United States; or

19 “(ii) maintains or enforces time,
20 place, or manner restrictions on an expres-
21 sive activity in a generally accessible area
22 of the institution’s campus that do not
23 comply with subparagraphs (A) through
24 (E) of subsection (b)(2).

1 “(B) PROHIBITION.—The Secretary may
2 not conduct an investigation for purposes of
3 making a determination under subparagraph
4 (A) with respect to an institution of higher edu-
5 cation, unless such an investigation is con-
6 ducted under paragraph (4) with respect to a
7 complaint received under paragraph (2).

8 “(C) COURT REVIEW.—Notwithstanding
9 any other provision of law, the Secretary’s de-
10 terminations under this subsection shall be re-
11 viewed de novo with respect to all relevant ques-
12 tions of fact and law, including the interpreta-
13 tion of constitutional, statutory, and regulatory
14 provisions, unless the parties stipulate other-
15 wise.

16 “(2) DESIGNATION OF AN EMPLOYEE TO RE-
17 CEIVE COMPLAINTS.—The Secretary shall designate
18 an employee in the Office of Postsecondary Edu-
19 cation of the Department to receive complaints
20 (whether electronically or by mail) from students or
21 student organizations at a given public institution of
22 higher education, or from any other person or orga-
23 nization, regarding policies at the institution that
24 meet the description of clause (i) or (ii) of para-
25 graph (1)(A).

1 “(3) COMPLAINT.—A complaint submitted
2 under subparagraph (2)—

3 “(A) shall include the provision of the in-
4 stitution’s policy the complainant believes meets
5 the description of clause (i) or (ii) of paragraph
6 (1)(A), along with any evidence regarding the
7 operation and enforcement of such policy the
8 complainant deems relevant; and

9 “(B) may include an argument and any
10 other supplemental information as to why the
11 policy in question meets such description.

12 “(4) SYSTEM OF REVIEW.—

13 “(A) FIRST STAGE REVIEW.—

14 “(i) REQUEST FOR RESPONSE.—Not
15 later than 7 days after the date of receipt
16 of a complaint under paragraph (2), the
17 Secretary shall review the complaint and
18 request a response to the complaint from
19 the institution.

20 “(ii) INSTITUTION RESPONSE.—Not
21 later than 30 days after the date the Sec-
22 retary requests a response under clause (i),
23 the institution shall—

24 “(I) certify to the Secretary that
25 the institution has entirely withdrawn

1 the policy that occasioned the com-
2 plaint;

3 “(II) submit a revised policy for
4 review by the Secretary; or

5 “(III) submit a defense of the
6 policy that occasioned the complaint.

7 “(iii) AVAILABILITY TO COMPLAIN-
8 ANT.—

9 “(I) IN GENERAL.—Not later
10 than 7 days after the date of receipt
11 of a revised policy or defense of the
12 original policy as submitted by the in-
13 stitution pursuant to clause (ii), the
14 Secretary shall make available to the
15 complainant a copy of such revised
16 policy or defense.

17 “(II) RESPONSE BY COMPLAIN-
18 ANT.—Not later than 60 days after
19 the date of receipt of a revised policy
20 or defense of the original policy under
21 subclause (I), the complainant may
22 submit to the Secretary a response to
23 the revised policy or defense of the
24 original policy.

1 “(III) SUBMISSION TO THE IN-
2 STITUTION OF RESPONSE.—Not later
3 than 7 days after the date of receipt
4 of a response under subclause (II),
5 the Secretary shall submit to the in-
6 stitution a copy of such response.

7 “(iv) DETERMINATIONS.—If the insti-
8 tution declines to entirely withdraw the
9 policy that occasioned the complaint and
10 either submits a revised policy for review
11 or submits a defense of the policy that oc-
12 casioned the complaint, the Secretary shall,
13 not later than 60 days after the date of the
14 deadline for a response by the complaint as
15 described in clause (iii)(II), make one of
16 the following determinations:

17 “(I) Determine that the com-
18 plaint in question has insufficient
19 merit to proceed to Second Stage Re-
20 view described in subparagraph (B).

21 “(II) Determine that the com-
22 plaint in question has sufficient merit
23 to proceed to Second Stage Review
24 described in subparagraph (B).

1 “(v) NOTIFICATION.—Not later than
2 7 days after the date the Secretary makes
3 a determination under clause (iv), the Sec-
4 retary shall notify the institution and the
5 complainant of such determination.

6 “(vi) END.—The determination under
7 clause (iv) shall constitute the end of First
8 Stage Review.

9 “(B) SECOND STAGE REVIEW.—

10 “(i) IN GENERAL.—In a Second Stage
11 Review, the Secretary shall notify the insti-
12 tution and the complainant of the com-
13 mencement of the Second Stage Review,
14 and shall give the institution the option of
15 entirely withdrawing the policy that occa-
16 sioned the complaint or submitting a re-
17 vised policy for review within 30 days of
18 the commencement of the Second Stage
19 Review. In such notification submitted to
20 the institution and complainant, the Sec-
21 retary shall indicate the relevant sections
22 of the institution’s policy in question and
23 explain why these sections may be out of
24 compliance.

1 “(ii) DETERMINATION.—Not later
2 than 90 days from the commencement of
3 the Second Stage Review, the Secretary
4 shall determine whether the policy that oc-
5 casioned the complaint, or the revised pol-
6 icy submitted during the First Stage Re-
7 view, or the revised policy submitted within
8 the first 30 days of the Second Stage Re-
9 view, is in violation of student rights under
10 the First Amendment to the Constitution
11 of the United States or of the restrictions
12 on the regulation of speech by time, place,
13 and manner set forth in this section, there-
14 by ending Second Stage Review.

15 “(iii) INVESTIGATION.—During Sec-
16 ond Stage Review, the Secretary may con-
17 duct an investigation in which further in-
18 formation may be sought or requested
19 from the complainant, the institution, or
20 any other pertinent source.

21 “(iv) CERTIFICATION OF WITH-
22 DRAWAL.—At any point during the Second
23 Stage Review, the institution in question
24 may certify to the Secretary that it has en-
25 tirely withdrawn the policy that occasioned

1 the complaint, thereby ending the Second
2 Stage Review.

3 “(v) NOTIFICATION AND JUSTIFICA-
4 TION.—If the Secretary determines by the
5 conclusion of Second Stage Review that
6 the policy that occasioned the complaint or
7 the revised policy submitted for review dur-
8 ing First Stage Review or Second Stage
9 Review is consistent with the expressive
10 rights of students under the First Amend-
11 ment to the Constitution of the United
12 States and the restrictions on the regula-
13 tion of speech by time, place, and manner
14 set forth in this Act—

15 “(I) the Secretary shall notify the
16 complainant and the institution of
17 such determination not more than 7
18 days after the date of the determina-
19 tion; and

20 “(II) the Secretary shall explain
21 and justify such determination in a
22 written decision citing relevant legal
23 precedent, copies of which shall be
24 sent to the complainant, the institu-
25 tion, the authorizing committees, and

1 made available for public inspection,
2 including for online reading by the
3 public.

4 “(C) DETERMINATION THAT INSTITUTION
5 IS OUT OF COMPLIANCE.—

6 “(i) IN GENERAL.—If, upon comple-
7 tion of the Second Stage Review, the Sec-
8 retary determines that the policy that occa-
9 sioned the complaint, or the revised policy
10 submitted for review during the First
11 Stage Review or Second Stage Review, vio-
12 lates the First Amendment to the Con-
13 stitution of the United States or the re-
14 strictions on the regulation of speech set
15 forth in this section, the Secretary shall
16 notify the complainant and the institution
17 not more than 7 days after the date of
18 completion of Second Stage Review that
19 the institution is out of compliance with
20 the requirements for receiving funds under
21 this Act, including participation in any
22 program under this title, but will be grant-
23 ed a grace period of 120 days to return to
24 compliance before being formally stripped
25 of eligibility.

1 “(ii) POSTING; EXPLANATION; FINAL
2 REVIEW.—As part of the notification under
3 clause (i), the Secretary shall—

4 “(I) require the institution to
5 post the determination of the Sec-
6 retary on the website of the institu-
7 tion within 2 clicks of the homepage,
8 without a paywall, email login, or
9 other restriction to access;

10 “(II) explain and justify the de-
11 termination of the Secretary in a writ-
12 ten decision citing relevant legal
13 precedent, copies of which shall be
14 sent to the complainant, the institu-
15 tion, the authorizing committees, and
16 made available for public inspection,
17 including for online reading by the
18 public; and

19 “(III) inform the institution that
20 Final Review has begun and that the
21 institution must either certify to the
22 Secretary that it has entirely with-
23 drawn the policy that occasioned the
24 complaint, or submit a revised policy
25 for review to the Secretary not later

1 than 60 days after the date of receipt
2 of notice of the conclusion of Second
3 Stage Review.

4 “(D) FINAL REVIEW.—

5 “(i) IN GENERAL.—If an institution
6 submits a revised policy for review as de-
7 scribed in subparagraph (C)(ii)(III), the
8 Secretary shall review such revised policy
9 and determine not later than 120 days
10 after the date of commencement of Final
11 Review whether the revised policy is con-
12 sistent with the expressive rights of stu-
13 dents under the First Amendment to the
14 Constitution of the United States and with
15 the restrictions on the regulation of speech
16 by time, place, and manner set forth in
17 this section.

18 “(ii) DETERMINATION OF COMPLI-
19 ANCE.—If the Secretary determines, as de-
20 scribed in clause (i), that the revised policy
21 is consistent with the expressive rights of
22 students under the First Amendment to
23 the Constitution of the United States and
24 with the restrictions on the regulation of
25 speech by time, place, and manner set

1 forth in this section, the Secretary shall
2 notify the complainant and the institution
3 of such determination not more than 7
4 days after the date the determination is
5 made, thereby ending the final Stage Re-
6 view.

7 “(iii) DETERMINATION OF VIOLA-
8 TION.—If the Secretary determines, as de-
9 scribed in clause (i), that the revised policy
10 violates the expressive rights of students
11 under the First Amendment to the Con-
12 stitution of the United States or the re-
13 strictions on the regulation of speech by
14 time, place, and manner set forth in this
15 section, the Secretary shall—

16 “(I) notify the complainant and
17 the institution of such determination
18 not more than 7 days after the date
19 the determination is made, thereby
20 ending the final Stage Review; and

21 “(II) explain and justify the de-
22 termination in a written decision cit-
23 ing relevant legal precedent, copies of
24 which shall be sent to the complain-
25 ant, the institution, and made avail-

1 able for public inspection, including
2 for online reading by the public.

3 “(E) LOSS OF ELIGIBILITY.—

4 “(i) IN GENERAL.—If the Secretary
5 determines, during the Final Stage Review,
6 that the institution’s policy in question vio-
7 lates the expressive rights of students
8 under the First Amendment to the Con-
9 stitution of the United States or the re-
10 strictions on the regulation of speech by
11 time, place, and manner set forth in this
12 section, the Secretary shall—

13 “(I) notify the complainant and
14 the institution not more than 7 days
15 after the date of the determination
16 that the institution will lose eligibility
17 to receive funds under this Act, in-
18 cluding participation in any program
19 under this title, in accordance with
20 this subparagraph;

21 “(II) notify the institution that
22 the loss of eligibility shall take effect
23 beginning with any student notified of
24 acceptance for admission to the insti-
25 tution during the award year subse-

1 quent to the award year during which
2 the determination is made, and that
3 no restoration of eligibility for ineli-
4 gible students in subsequent award
5 years will occur prior to the beginning
6 of the third award year subsequent to
7 the award year during which the de-
8 termination is made;

9 “(III) explain and justify the de-
10 termination in a written decision cit-
11 ing relevant legal precedent, copies of
12 which shall be sent to the complain-
13 ant, the institution, the authorizing
14 committees, and made available for
15 public inspection, including for online
16 reading by the public; and

17 “(IV) require the institution to
18 post the determination of the Sec-
19 retary on the website of the institu-
20 tion, within two clicks of the home-
21 page, without a paywall, email login,
22 or other restriction to access.

23 “(ii) CONTINUED ELIGIBILITY.—Each
24 student enrolled at the institution during
25 the award year in which eligibility is lost

1 as described in this subparagraph, and
2 each student notified of acceptance for ad-
3 mission to the institution during the award
4 year in which eligibility is lost as described
5 in this subparagraph, shall continue to be
6 eligible to participate, through the institu-
7 tion, in programs funded under this Act
8 during the 3-year period after the date of
9 the loss of eligibility.

10 “(F) RESTORATION OF ELIGIBILITY.—

11 “(i) IN GENERAL.—Not later than 7
12 days after the loss of eligibility under sub-
13 paragraph (E), the Secretary shall inform
14 the institution that the institution may re-
15 store eligibility, either by certifying to the
16 Secretary that the institution has entirely
17 withdrawn the policy that precipitated loss
18 of eligibility, or by submitting a revised
19 policy for review at any time following the
20 failure of the Final Review.

21 “(ii) REVIEW OF REVISED POLICY.—

22 The Secretary shall review a revised policy
23 submitted for review after the loss of eligi-
24 bility and determine not later than 120
25 days after the date the revised policy is

1 submitted whether such policy is consistent
2 with the expressive rights of students
3 under the First Amendment to the Con-
4 stitution of the United States and with the
5 restrictions on the regulation of speech by
6 time, place, and manner set forth in this
7 Act.

8 “(iii) INVESTIGATION.—While con-
9 ducting a review to restore eligibility under
10 this subparagraph, the Secretary may con-
11 duct an investigation in which further in-
12 formation may be sought or requested
13 from the institution, or any other source
14 the Secretary determines pertinent.

15 “(iv) WRITTEN DECISION.—In making
16 a determination of whether a revised policy
17 submitted for review after the loss of eligi-
18 bility is either consistent or inconsistent
19 with the expressive rights of students
20 under the First Amendment to the Con-
21 stitution of the United States and with the
22 restrictions on the regulation of speech by
23 time, place, and manner set forth in this
24 Act, the Secretary shall explain and justify
25 the determination in a written decision cit-

1 ing relevant legal precedent, copies of
2 which shall be sent to the complainant, the
3 institution, the authorizing committees,
4 and made available for public inspection,
5 including for online reading by the public.

6 “(v) LIMIT ON REVIEW.—The Sec-
7 retary may conduct not more than 1 review
8 to restore eligibility for a single institution
9 in any given award year.

10 “(vi) RESTORATION.—If an institu-
11 tion certifies to the Secretary that the pol-
12 icy that precipitated the loss of eligibility
13 has been entirely withdrawn, or if Sec-
14 retary determines that the revised policy
15 submitted for review is consistent with the
16 expressive rights of students under the
17 First Amendment to the Constitution of
18 the United States and with the restrictions
19 on the regulation of speech by time, place,
20 and manner set forth in this section, the
21 institution’s eligibility to receive funds
22 under this Act, including participation in
23 any program under this title, shall be re-
24 stored not earlier than the beginning of the
25 third award year following the year in

1 which notification of loss of eligibility was
2 received.

3 “(G) GOOD FAITH REPRESENTATION.—

4 “(i) IN GENERAL.—The Secretary
5 shall inform any institution undergoing re-
6 view of its campus speech policies that it
7 expects the institution to represent its poli-
8 cies, along with any proposed revisions in
9 such policies, in good faith.

10 “(ii) MISREPRESENTATION.—

11 “(I) COMPLAINTS.—A student,
12 student organization, or any other
13 person or organization may file, with
14 the employee in the Office of Postsec-
15 ondary Education of the Department
16 designated by the Secretary under
17 paragraph (2) to receive complaints, a
18 complaint that an institution has sub-
19 stantially misrepresented its speech
20 policies, or withheld information re-
21 quested by the Secretary during an
22 investigation, or attempted to cir-
23 cumvent the review process by reinsti-
24 tuting a policy under review in a sub-

1 stantially similar form without inform-
2 ing the Secretary.

3 “(II) LOSS OF ELIGIBILITY.—If
4 the Secretary determines upon inves-
5 tigation, or after receiving a complaint
6 under subclause (I), that an institu-
7 tion has substantially misrepresented
8 its speech policies, or withheld infor-
9 mation requested by the Secretary
10 during an investigation, or attempted
11 to circumvent the review process by
12 reinstating a policy under review in
13 a substantially similar form without
14 informing the Secretary, the institu-
15 tion shall lose eligibility to receive
16 funds under this Act, including par-
17 ticipation in any program under this
18 title.

19 “(iii) LOSS OF ELIGIBILITY.—If an in-
20 stitution loses eligibility under clause (ii),
21 the Secretary shall notify the institution,
22 not later than 7 days after the determina-
23 tion, that the loss of eligibility shall take
24 effect beginning with any student notified
25 of acceptance for admission to the institu-

1 tion during the award year subsequent to
2 the award year during which the deter-
3 mination is made, and that no restoration
4 of eligibility for students admitted in sub-
5 sequent award years will occur prior to the
6 beginning of the third award year subse-
7 quent to the award year during which the
8 determination is made.

9 “(f) RETALIATION PROHIBITED.—

10 “(1) IN GENERAL.—No person may intimidate,
11 threaten, coerce, or discriminate against any indi-
12 vidual because the individual has made a report or
13 complaint, testified, assisted, or participated or re-
14 fused to participate in any manner in an investiga-
15 tion, proceeding, or hearing under this section.

16 “(2) SPECIFIC CIRCUMSTANCES.—

17 “(A) EXERCISE OF FIRST AMENDMENT
18 RIGHTS.—The exercise of rights protected
19 under the First Amendment to the Constitution
20 of the United States does not constitute retalia-
21 tion prohibited under paragraph (1).

22 “(B) CODE OF CONDUCT VIOLATION FOR
23 MATERIALLY FALSE STATEMENT.—Charging an
24 individual with a code of conduct violation for
25 making a materially false statement in bad

1 faith in the course of a grievance proceeding
2 under this section does not constitute retalia-
3 tion prohibited under paragraph (1). A deter-
4 mination regarding responsibility, alone, is not
5 sufficient to conclude that any party made a
6 materially false statement in bad faith.

7 “(g) JUDICIAL REVIEW.—A public institution of
8 higher education participating in a program under this
9 title may seek judicial review of an agency action under
10 this section in accordance with chapter 7 of title 5, United
11 States Code.

12 **“SEC. 494B. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**
13 **VERSITIES.**

14 “(a) IN GENERAL.—Each private institution of high-
15 er education eligible to receive funds under this Act, in-
16 cluding any program under this title, shall—

17 “(1) post in one place on the website of the in-
18 stitution all policies that pertain to the protection
19 and regulation of the expressive rights of students,
20 including the right to submit a complaint under this
21 section, within 2 clicks of the homepage, without a
22 paywall, email login, or other restriction to access;
23 and

24 “(2) include a copy of such policies in a hand-
25 book distributed to new students.

1 “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-
2 SURE.—Each private institution of higher education de-
3 scribed in subsection (a) shall include with the copy of the
4 policies described in subsection (a)—

5 “(1) a statement affirming that all policies per-
6 tinent to the protection and regulation of the expres-
7 sive rights of students have been disclosed in the
8 manner required by this section; and

9 “(2) a statement affirming that publication of
10 such policies as required by this section and instruc-
11 tions for students on how to contact the employee
12 designated in the Office of Postsecondary Education
13 in the Department under subsection (d)(1) to file a
14 complaint.

15 “(c) CAUSE OF ACTION.—

16 “(1) AUTHORIZATION.—A student claiming
17 that a private institution of higher education in
18 which the student is enrolled has violated published
19 policy regarding expressive rights imposed by this
20 section may bring an action in a Federal court of
21 competent jurisdiction to enjoin such violation or to
22 recover compensatory damages, reasonable court
23 costs, or reasonable attorney fees.

24 “(2) ACTIONS.—Notwithstanding any other
25 provision of law, in an action brought under this

1 subsection, the Federal court shall decide de novo all
2 relevant questions of fact and law, including the in-
3 terpretation of constitutional, statutory, and regu-
4 latory provisions, unless the parties stipulate other-
5 wise. In an action brought under this subsection, if
6 the court finds a violation of subsection (b), the
7 court—

8 “(A) shall—

9 “(i) enjoin the violation; and

10 “(ii) award the student—

11 “(I) not less than \$500 for an
12 initial violation; and

13 “(II) if the student notifies the
14 institution of the violation, \$50 for
15 each day the violation continues after
16 the notification if the institution did
17 not act to discontinue the cause of the
18 violation; and

19 “(B) may award a prevailing plaintiff—

20 “(i) compensatory damages;

21 “(ii) reasonable court costs; or

22 “(iii) reasonable attorney fees.

23 “(d) SECRETARIAL REQUIREMENTS.—

24 “(1) DESIGNATION OF AN EMPLOYEE.—The
25 Secretary shall designate an employee in the Office

1 of Postsecondary Education in the Department who
2 shall—

3 “(A) receive copies of all complaints per-
4 taining to the protection and regulation of the
5 expressive rights of students at private institu-
6 tions of higher education that receive funds
7 under this section, including any programs
8 under this title;

9 “(B) preserve all records of such policies
10 for a period of not less than 10 years;

11 “(C) receive complaints from students, stu-
12 dent organizations, or from any other person or
13 organization, that believes a private institution
14 of higher education has not disclosed a policy
15 pertaining to the protection and regulation of
16 the expressive rights of students as required by
17 this section, is enforcing a policy pertaining to
18 the expressive rights of students that has not
19 been disclosed as required by this section, or
20 has failed to make a full policy disclosure, for
21 the enforcement of speech policies, as required
22 by this section;

23 “(D) not more than 7 days after the date
24 of receipt of a complaint under subparagraph

1 (C), review the complaint and request a re-
2 sponse from the institution;

3 “(E) undertake an investigation, in re-
4 sponse to a complaint under subparagraph (C),
5 to determine whether a private institution of
6 higher education has failed to disclose a policy
7 pertaining to the protection and regulation of
8 the expressive rights of students as required by
9 this section or is enforcing a policy pertaining
10 to the expressive rights of students that has not
11 been disclosed as required by this section; and

12 “(F) determine, not later than 120 days
13 after the date of receipt of a complaint, whether
14 the private institution of higher education in
15 question has failed to disclose a policy per-
16 taining to the protection and regulation of the
17 expressive rights of students as required by this
18 section or is enforcing a policy pertaining to the
19 expressive rights of students that has not been
20 disclosed as required by this section.

21 “(2) LOSS OF ELIGIBILITY.—

22 “(A) IN GENERAL.—If the Secretary deter-
23 mines that a private institution of higher edu-
24 cation has failed to disclose a policy pertaining
25 to the protection and regulation of the expres-

1 sive rights of students as required by this sec-
2 tion or is enforcing a policy pertaining to the
3 expressive rights of students that has not been
4 disclosed as required by this section, the Sec-
5 retary shall notify the institution and the com-
6 plainant, not more than 7 days after the date
7 of such determination, that the institution is
8 out of compliance with the requirements for re-
9 ceiving funds under this Act, including partici-
10 pation in any program under this title, but will
11 be granted a grace period of 60 days to return
12 to compliance before formally losing eligibility
13 for receiving funds under this Act, including
14 participation in any program under this title.

15 “(B) SPECIFICATIONS IN NOTIFICATION.—

16 As part of the notification under subparagraph
17 (A), the Secretary shall specify which policies
18 need to be disclosed and published in order for
19 eligibility to be restored.

20 “(C) NOTIFICATION OF LOSS OF ELIGI-
21 BILITY.—

22 “(i) IN GENERAL.—If the Secretary
23 determines that, 60 days after being noti-
24 fied that the institution is out of compli-
25 ance as described in subparagraph (A), the

1 institution has failed to return to compli-
2 ance by making the appropriate speech
3 policy disclosures, the Secretary shall no-
4 tify the institution and the complainant,
5 not more than 7 days after the date of
6 such determination—

7 “(I) that the institution will lose
8 eligibility to receive funds under this
9 Act, including participation in any
10 program under this title;

11 “(II) that the loss of eligibility
12 shall take effect beginning with any
13 student notified of acceptance for ad-
14 mission to the institution during the
15 award year subsequent to the award
16 year during which the determination
17 is made, and that no restoration of
18 eligibility for ineligible students in
19 subsequent years will occur prior to
20 the beginning of the third award year
21 subsequent to the award year during
22 which the determination is made; and

23 “(III) that the institution shall
24 post the determination of the Sec-
25 retary on the website of the institu-

1 tion, within two clicks of the home-
2 page, without a paywall, email login,
3 or other restriction to access.

4 “(ii) CONTINUED ELIGIBILITY.—Each
5 student enrolled at the institution during
6 the award year in which eligibility is lost
7 as described in this subparagraph, and
8 each student notified of acceptance for ad-
9 mission to the institution during the award
10 year in which eligibility is lost as described
11 in this subparagraph, shall continue to be
12 eligible to participate, through the institu-
13 tion, in programs funded under this Act
14 during the 3-year period after the date of
15 the loss of eligibility.

16 “(3) RESTORATION OF ELIGIBILITY.—

17 “(A) IN GENERAL.—Not later than 7 days
18 after the loss of eligibility under paragraph (2),
19 the Secretary shall inform the institution that
20 the institution may restore eligibility by making
21 the appropriate speech policy disclosures, as di-
22 rected by the Secretary in conformity with this
23 section.

24 “(B) REVIEW.—The Secretary shall review
25 any policy disclosures and determine whether

1 the policy disclosures are sufficient to restore
2 eligibility for receiving funds under this Act, in-
3 cluding participation in any program under this
4 title, not later than 120 days after the date of
5 receipt of such disclosures or statement.

6 “(C) INVESTIGATION.—While conducting a
7 review to restore eligibility under this para-
8 graph, the Secretary may conduct an investiga-
9 tion in which further information may be
10 sought or requested from the institution, or
11 other source pertinent to the case.

12 “(D) RESTORATION.—If the Secretary de-
13 termines that the institution under review to re-
14 store eligibility under this paragraph has made
15 the policy disclosures as required by this sec-
16 tion, the institution’s eligibility to receive funds
17 under this Act, including participation in any
18 program under this title, shall be restored not
19 earlier than the beginning of the third award
20 year following the year in which notification of
21 loss of eligibility was received.

22 “(E) LIMIT ON REVIEW.—The Secretary
23 may conduct not more than 1 review to restore
24 eligibility for a single institution in any given
25 award year.

1 “(4) PROHIBITION.—The Secretary may not
2 conduct an investigation under this subsection for
3 purposes of making a determination under para-
4 graph (2)(A) with respect to an institution of higher
5 education, unless such an investigation is conducted
6 with respect to a complaint received under para-
7 graph (1).

8 “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—
9 This section shall not apply to an institution of higher
10 education that is controlled by a religious organization.

11 “(f) JUDICIAL REVIEW.—A private institution of
12 higher education participating in a program under this
13 title may seek judicial review of an agency action under
14 this section in accordance with chapter 7 of title 5, United
15 States Code.”.

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