



Protecting Students from Bias Reporting Systems -- Model Legislation

The following model legislation may be adopted as standalone language to protect against the implementation of campus “Bias Reporting Systems” or paired with the Goldwater Institute’s [Campus Free Speech Act](#) to ensure the protection of students’ First Amendment rights, the elimination of restrictive campus speech codes, and the guarantee of due process in any challenge to student expression.

WHEREAS public universities and community colleges have an obligation to uphold students’ First Amendment rights of free speech, and

WHEREAS the opportunity for disagreements, differences of opinion, and even heated arguments, unless threatening or otherwise unlawful, are vital to a climate of inquiry, and

WHEREAS some universities have recently adopted “bias reporting systems,” which are defined as formal or explicit processes for, or solicitation of, reports from students, faculty, staff, or the community concerning “offensive” or “unwanted” speech, including satire or speech labeled as a “microaggression,” that is protected by the First Amendment or principles of expressive or academic freedom, and

WHEREAS the use of “bias reporting systems” threatens to chill students’ speech by investigating and threatening student speech on or off campus that is deemed “bias,” and

WHEREAS it is the intent of the state legislature to ensure that no state-operated university or community colleges accepting public funding create or utilize a “bias reporting system.” Now therefore, be it enacted by the [state legislature]

SECTION 1:

A public university or community college of this state shall not establish nor use public resources to support any office, position, or system whose function is to:

- A) Investigate, threaten disciplinary action, or otherwise punish enrolled students for expressions of speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion; political beliefs or affiliations; or perceived bias, prejudice, stereotypes, or intolerance.
- B) Solicit the reporting of incidents of student speech protected by state or federal law, including but not limited to speech pertaining to disagreements of opinion; political beliefs or affiliations; or perceived bias, prejudice, stereotypes, or intolerance.

SECTION 2 [These provisions adapted from the Goldwater Institute [Campus Free Speech Act](#)]

Nothing in this Act shall be construed to prevent institutions from regulating student speech or activity that is prohibited by law or from investigating or soliciting information about potentially illegal speech

or speech associated with potentially illegal activity or incidents in which speech rights were potentially curtailed. Except as further limited by this Act, institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including:

- (A) Violations of state or federal law.
- (B) Expression that a court has deemed unprotected defamation.
- (C) Harassment:
 - (1) "Peer-on-peer harassment," which is defined as conduct directed by a student towards another individual student, on the basis of that student's membership or perceived membership in a protected class, that is so severe, pervasive, and objectively offensive that it effectively deprives the victim of access to the educational opportunities or benefits provided by the university.
 - (2) "Quid pro quo sexual harassment," which is defined as explicitly or implicitly conditioning a student's participation in an education program or activity or basing an educational decision on the student's submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature.
- (D) True threats, which are defined as statements meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.
- (E) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern.
- (F) An action that unlawfully disrupts the function of the university.
- (G) Reasonable time, place, and manner restrictions on expressive activities

SECTION 3 [These provisions adapted from the Goldwater Institute [Campus Free Speech Act](#)]

- A) The following persons may bring an action in a court of competent jurisdiction to enjoin any violation of this section or to recover reasonable court costs and reasonable attorney fees:
 - (1) The attorney general.
 - (2) A person whose expressive rights are violated by a violation of this section.
- (B) In an action brought under subsection A of this section, if the court finds that a violation of this section occurred, the court shall award the aggrieved person injunctive relief for the violation and shall award reasonable court costs and reasonable attorney fees. The court shall also award damages of \$1,000 or actual damages, whichever is higher.
- (C) A person shall bring an action for a violation of this section within one year after the date the cause of action accrues. For the purpose of calculating the one-year limitation period, each day that the violation persists or each day that a policy in violation of this section remains in effect constitutes a new violation of this section and shall be considered a day that the cause of action has accrued.
- (D) The state waives sovereign immunity and consents to suit in state and federal court for lawsuits arising out of this act. A public institution of higher education that violates this act is not immune from suit or liability for the violation.

[OPTIONAL ADDITION] (E) Notwithstanding any other law, the [governor] may direct the [treasurer] to withhold up to [X percent] of the monthly apportionment of state aid that would otherwise be due to a public university or community college during any period in which the university or community college is not in compliance with [Sections 1 and 2].

