WEST VIRGINIA CODE CHAPTER 18B ARTICLE 20

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§18B-20-1. Definitions.

As used in this article:

(1) “Campus community” includes students, administrators, faculty, and staff at the institution of higher education, and their invited guests.

(2) “Harassment” means an 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 state institution of higher education or sexual harassment as defined by federal law and federal regulations applicable to state institutions of higher education.

(3) “Materially and substantially disrupts” means an occurrence where a person or group significantly hinders another person’s or group’s expressive activity, prevents the communication of the message, prevents the transaction of the business of a lawful meeting, gathering, or procession, or interferes with or prevents the operations and functions of a state institution of higher education by:

(A) Engaging in fighting, violent, or other unlawful behavior;

(B) Physically blocking or using threats of violence to prevent any person from attending, listening to, viewing, or otherwise participating in an expressive activity;

(C) Using sound to drown out or muffle expressive activity; or

(D) Violating a state institution of higher education’s reasonable time, place, and manner restrictions.

(E) Conduct that “materially and substantially disrupts” shall not include conduct that is protected under the First Amendment to the United States Constitution or West Virginia Constitution. The protected conduct includes, 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.

(4) “Outdoor areas of campus” means the generally accessible outside areas of campus where members of the campus community are commonly allowed, such as grassy areas, walkways, or other similar common areas and does not include outdoor areas where access is restricted from a majority of the campus community.

(5) “State institution of higher education” means any university, college, or community and technical college under the jurisdiction of a governing board as defined in §18B-1-2 of this code.

(6) “Student” means any person who is enrolled on a full-time or part-time basis in a state

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institution of higher education.

(7) “Student organization” means an officially recognized group at a state institution of higher education, or a group seeking official recognition, comprised of admitted students that receive, or are seeking to receive, benefits through the institution of higher education as defined in this section.

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§18B-20-2. Protected expressive activities.

Expressive activities protected under the provisions of §18-1-1 *et seq*. of this code include, but are not limited to, any lawful verbal and nonverbal speech. This may include lawful and protected forms of peaceful assembly, protests, speeches and guest speakers, distribution of literature, carrying signs, and circulating petitions.

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§18B-20-3. Public forums; establishment of “free speech zones” prohibited.

The outdoor areas of campuses of state institutions of higher education shall be considered public forums for the campus community, and state institutions of higher education shall not limit free speech by creating “free speech zones” or other designated areas of campus outside of which expressive activities are prohibited. Nothing in this section shall be interpreted as limiting the right of student expression elsewhere on campus.

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§18B-20-4. Time, place, and manner restrictions.

(a) Any person who wishes to engage in protected and lawful expressive activity on campus shall be permitted to do so freely, as long as the person's conduct is not unlawful, and does not materially and substantially disrupt the functioning of the state institution of higher education.

(b) To enable the state institutions of higher education to function in a safe and secure manner and to advance their missions and objectives, the state institutions of higher education may enact reasonable time, place, and manner restrictions which are content neutral and narrowly tailored to serve a significant state institution of higher education or other governmental interest. A state institution of higher education may deny, cancel, or postpone a reservation, or immediately terminate any ongoing activity that represents a violation of its time, place, and manner restrictions. A state institution of higher education shall endeavor to allow members of the campus community to spontaneously and contemporaneously engage in protected expressive activities.

(c) Nothing in this article shall be interpreted as preventing state institutions of higher education from prohibiting, limiting, or restricting expression not protected by the First Amendment to the Constitution of the United States such as true threats, expression designed to provoke imminent lawless actions and likely to produce it or prohibiting harassment as defined in §18B-20-2 of this code, or sexual harassment as prohibited by federal law and defined by federal regulations applicable to state institutions of higher education.

(d) Nothing in this article shall be construed to authorize a person or group to intentionally, materially, and substantially disrupt another person or group'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 group.

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§18B-20-5. Freedom of association and nondiscrimination against students and student organizations.

A state institution of higher education may not deny a religious, political, or ideological student organization any benefit or privilege generally available to other student organizations, or otherwise discriminate against the organization based on a requirement of the organization that its leaders and members:

(1) Affirm and adhere to the organization's sincerely held beliefs;

(2) Comply with the organization's standards of conduct; and

(3) Further the organization's mission, expression, or purpose.

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§18B-20-6. Development of policies and procedures.

State institutions of higher education shall develop materials to educate the campus community on the institution's free speech policies.

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§18B-20-7. Accountability to the public.

(a) Each state institution of higher education shall publicly post on its website any policies it has enacted regarding protected expressive activity under the First Amendment to the United States Constitution.

(b) Each campus shall report to the Higher Education Policy Commission or the Council for Community and Technical College Education, as applicable, a description of any barriers to, or incidents of disruption of, free expression occurring on campus, including, but not limited to, attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students and shall be reported without revealing those students' personally identifiable information. Annually, by August 1, the commission and council shall report to the Legislative Oversight Commission on Education Accountability any barriers or incidents reported to them pursuant to this subsection.

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§18B-20-8. Remedies.

Any person or student organization aggrieved by a violation of this article may bring an action against the state institution of higher education and its employees acting in their official capacities, alleged to be responsible for the alleged violation. The aggrieved person or student organization may seek injunctive relief and actual damages, as well as reasonable attorney's fees, and court costs if the person or student organization substantially prevails.

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§18B-20-9. Statute of limitations.

Any action brought pursuant to this article shall be commenced not later than one year after the day the cause of action accrues.

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