

Senate Bill 339

By: Senators Ligon, Jr. of the 3rd, Shafer of the 48th, McKoon of the 29th, Tippins of the 37th, Miller of the 49th and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to the board of regents and university system, so as to provide for the establishment of free speech policies for institutions of the university system; to provide for a cause of action and remedies; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to the board of regents and university system, is amended by adding a new part to read as follows:

"Part 1D

20-3-48.

The board of regents shall develop and adopt a policy on free expression that contains, at least, the following statements:

(1) That the primary function of an institution of higher education is the discovery, improvement, transmission, and dissemination of knowledge by means of research, teaching, discussion, and debate. This statement shall provide that, to fulfill this function, the institution must strive to ensure the fullest degree of intellectual freedom and free expression;

(2) That it is not the proper role of the institution to shield individuals from speech protected by the First Amendment of the United States Constitution, including, without limitation, ideas and opinions which they find unwelcome, disagreeable, or even deeply offensive;

(3) That students and faculty have the freedom to discuss any problem that presents itself, as the First Amendment permits and within the limits of reasonable viewpoint

neutral and content neutral restrictions on time, place, and manner of expression that are consistent with this part and that are necessary to achieve a compelling institutional interest; provided, however, that these restrictions are clear, published, and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity, as long as such activity is not unlawful and does not materially and substantially disrupt the functioning of the institution, subject to the requirements of this subparagraph;

(4) That any person lawfully present on campus may protest or demonstrate there, provided that protests and demonstrations that infringe upon the rights of others to engage in or listen to expressive activity shall not be permitted and shall be subject to sanction. This policy does not prohibit professors or other instructors from maintaining order in the classroom;

(5) That the campuses of the institution are open to any speaker whom students, student groups, or members of the faculty have invited;

(6) That the public areas of campuses of the institution are traditional public forums, open on the same terms to any speaker;

(7) That a range of disciplinary sanctions shall be established for anyone under the jurisdiction of the institution who materially and substantially interferes with the free expression of others;

(8) That in all disciplinary cases involving expressive conduct, students shall be entitled to a disciplinary hearing under published procedures, including, at minimum, the right:

(A) To receive advanced written notice of the charges;

(B) To review the evidence in support of the charges;

(C) To confront witnesses against them;

(D) To present a defense;

(E) To call witnesses;

(F) To a decision by an impartial arbiter or panel; and

(G) Of appeal.

When suspension for longer than 30 days or expulsion is a potential penalty, students shall be entitled to a disciplinary hearing under published procedures, including, at minimum, all of the above procedures, plus the right to active assistance of legal counsel;

(9) That any student who has twice been found responsible for infringing upon the expressive rights of others shall be suspended for a minimum of one year or expelled;

(10) That the institution shall make all reasonable efforts and make available all reasonable resources to ensure the safety of invited speakers. An institution shall not charge a security fee based on the content of the inviter's speech or the content of the

speech of the invited speakers and may restrict the use of its nonpublic facilities to invited individuals;

(11) That no institution may deny a student organization any benefit or privilege available to other campus student organizations, or otherwise discriminate against a student organization, based on the content of that organization's expression, including any requirement that the leaders or members of such organization:

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

(B) Comply with the organization's standards of conduct; or

(C) Further the organization's mission or purpose, as defined by the student organization;

(12) That individual students, faculty, and staff of the institution shall be free to take positions on the public controversies of the day, but the institution itself should attempt to remain neutral, as an institution, on the public policy controversies of the day, except insofar as administrative decisions on such issues are essential to the day-to-day functioning of the institution. The institution may not take action, as an institution, on the public policy controversies of the day in such a way as to require students, faculty, or staff to publicly express a given view of a public controversy; and

(13) That this policy supersedes and nullifies any prior provisions in the policies and regulations of the board of regents that restrict speech on campus and are, therefore, inconsistent with this statement on free expression. The board of regents shall remove or revise any such provisions in its policies and regulations to ensure compatibility with the above policy on free expression.

20-3-48.1.

The board of regents shall create a Committee on Free Expression, consisting of no fewer than 15 members. The Committee on Free Expression shall report to the public, the board of regents, the Governor, and the General Assembly on September 1 of every year. The report shall include descriptions of the following:

(1) Any barriers to or disruptions of free expression within state institutions of higher education;

(2) Administrative handling and discipline relating to these disruptions or barriers;

(3) Substantial difficulties, controversies, or successes in maintaining a posture of administrative and institutional neutrality with regard to political or social issues; and

(4) Any assessments, criticisms, commendations, or recommendations the committee sees fit to include.

20-3-48.2.

Institutions of the University System of Georgia shall include in freshman orientation programs a section describing all policies and regulations regarding free expression consistent with this part.

20-3-48.3.

(a) The board of regents is authorized to adopt regulations to further the purposes of the policies adopted pursuant to this part. Nothing in this part shall be construed to prevent institutions from regulating student speech or activity that is prohibited by law.

(b) Except as further limited by this part, institutions shall be allowed to restrict student expression only for expressive activity not protected by the First Amendment, including the following:

(1) Violations of state or federal law;

(2) Expression that a court has deemed unprotected defamation;

(3) Harassment, as described below:

(A) Peer-on-peer harassment, to be defined as conduct directed by a student toward another student on the basis of such 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 institution; or

(B) Quid pro quo sexual harassment, to be defined as explicitly or implicitly conditioning a student's participation in an educational 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;

(4) True threats, to be defined as statements meant by the speaker to communicate a serious expression of an intent to commit an act of unlawful violence toward a particular individual or group of individuals;

(5) An unjustifiable invasion of privacy or confidentiality not involving a matter of public concern;

(6) An action that unlawfully disrupts the function of the institution; and

(7) Reasonable time, place, and manner restrictions on expressive activities consistent with paragraph (3) of Code Section 20-3-48.

20-3-48.4.

(a) Institutions of the University System of Georgia may restrict expressive conduct in the public areas of campus only upon providing evidence that the restriction:

(1) Is necessary to achieve a compelling governmental interest;

(2) Is the least disruptive means of furthering that compelling governmental interest;

(3) Leaves open other ample opportunities to engage in the expressive conduct; and

(4) Provides for spontaneous assembly and distribution of literature.

(b) The following persons may bring an action in a court of competent jurisdiction to enjoin any violation of this Code section or to recover reasonable court costs and reasonable attorney fees:

(1) The Attorney General; or

(2) A person whose expressive rights are violated in accordance with this Code section.

(c) In an action brought under subsection (b) of this Code section, if the court finds that a violation occurred, the court shall award the aggrieved person injunctive relief for the violation in addition to reasonable court costs and reasonable attorney fees. The court shall also award damages of \$1,000.00 or actual damages, whichever is higher.

(d) A person shall bring an action for a violation of this Code 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 Code section remains in effect constitutes a new violation of this Code section and shall be considered a day that the cause of action has accrued."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.