

2018 Regular Session

SENATE BILL NO. 364

BY SENATOR WARD

COLLEGES/UNIVERSITIES. Provides relative to free speech on college campuses. (gov sig)

1 AN ACT

2 To enact Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to

3 be comprised of R.S. 17:3399.31 through 3399.35, relative to free expression on

4 college campuses; to provide for the authority of the management boards of public

5 postsecondary education institutions; to provide for the adoption of a policy on free

6 expression; to provide for the authority of the Board of Regents; to provide for the

7 creation and duties of a committee on free expression; to provide relative to

8 freshman orientation programs; to provide for the adoption of regulations; to provide

9 for the adoption of restrictions on expressive conduct; and to provide for related

10 matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of
13 1950, comprised of R.S. 17:3399.31 through 3399.35, is hereby enacted to read as follows:

14 PART XIV. CAMPUS FREE EXPRESSION

15 §3399.31. Policy on free expression

16 The Board of Regents, in consultation with the public postsecondary
17 education management boards, shall develop and adopt policies on free

1 expression that contain at least the following:

2 (1) A statement that the primary function of an institution of
3 postsecondary education is the discovery, improvement, transmission, and
4 dissemination of knowledge by means of research, teaching, discussion, and
5 debate. This statement shall provide that, to fulfill this function, each institution
6 must strive to ensure the fullest degree of intellectual freedom and free
7 expression.

8 (2) A statement that it is not the proper role of an institution to shield
9 individuals from speech protected by the First Amendment of the Constitution
10 of the United States of America and Article I, Section 7 of the Constitution of
11 Louisiana, including without limitation ideas and opinions they find unwelcome,
12 disagreeable, or even deeply offensive.

13 (3) A provision that students and faculty have the freedom to discuss any
14 topic that presents itself, as the First Amendment of the Constitution of the
15 United States of America and Article I, Section 7 of the Constitution of
16 Louisiana permit and within the limits on time, place, and manner of expression
17 that are consistent with this Part and that are necessary to achieve a significant
18 institutional interest; such restrictions shall be published and provide ample
19 alternative means of expression. Students and faculty shall be permitted to
20 assemble and engage in spontaneous expressive activity as long as such activity
21 is not unlawful and does not materially and substantially disrupt the
22 functioning of the institution, subject to the requirements of this Part.

23 (4) A provision that any person lawfully present on a campus may
24 protest or demonstrate there. Protests and demonstrations that infringe upon
25 the constitutional rights of others to engage in or listen to expressive activity by
26 creating a substantial and material disruption to the functioning of the
27 institution or to someone's expressive activity shall not be permitted and shall
28 be subject to sanction. Professors or other instructors shall not be prohibited
29 from maintaining order in the classroom. An institution shall not be prohibited

1 from maintaining order on a campus or restricting the time and location of a
2 protest or demonstration so that the protest or demonstration does not interfere
3 with regularly scheduled campus events.

4 (5) A provision that the campuses of each institution are open to any
5 speaker whom students, student groups, or members of faculty have invited.

6 (6) A provision that the public areas of campuses of each institution are
7 traditional public forums, open on the same terms to any speaker.

8 (7) A range of disciplinary sanctions for anyone under the jurisdiction
9 of an institution who substantially and materially disrupts the functioning of the
10 institution or the free expression of others.

11 (8) A provision that in all disciplinary cases involving expressive conduct
12 students are entitled to a disciplinary hearing in accordance with published
13 procedures which shall include at least:

14 (a) The right to receive written notice of charges in advance.

15 (b) The right to review the evidence in support of the charges.

16 (c) The right to confront witnesses against them.

17 (d) The right to present a defense.

18 (e) The right to call witnesses.

19 (f) A decision by an impartial arbiter or panel.

20 (g) The right of appeal.

21 (9) A provision that the policy supersedes and nullifies any provision in
22 the policies and regulations of any institution that restrict speech on campus
23 and that any such provision is therefore inconsistent with this statement on free
24 expression. Each institution shall remove or revise any such provision in its
25 policies and regulations to ensure compatibility with the statement on free
26 expression.

27 §3399.32. Committee on free expression

28 The Board of Regents shall create a committee on free expression
29 consisting of no less than fifteen members. The committee shall report to the

1 public, the management boards, the governor, and the legislature on September
2 first of every year. The report shall include:

3 (1) A description of any barriers to or disruptions of free expression
4 within state institutions of postsecondary education.

5 (2) A description of the administrative handling and discipline relating
6 to these disruptions or barriers.

7 (3) A description of substantial difficulties, controversies, or successes in
8 maintaining a posture of administrative and institutional neutrality with regard
9 to political or social issues.

10 (4) Any assessments, criticisms, commendations, or recommendations
11 that the committee determines necessary, including but not limited to
12 deficiencies and inconsistencies among the institutions' application of the
13 policies and procedures developed pursuant to this Part.

14 §3399.33. Regulations

15 The postsecondary education management boards may adopt regulations
16 to further the purposes of the policies adopted pursuant to this Part. Nothing
17 in this Part shall be construed to prevent institutions from regulating student
18 speech or activity that is prohibited by law. Except as further limited by this
19 Part, institutions may restrict student expression only for expressive activity not
20 protected by the First Amendment of the Constitution of the United States of
21 America and Article I, Section 7 of the Constitution of Louisiana, including:

22 (1) Violations of state or federal law.

23 (2) Expression that a court has deemed unprotected defamation.

24 (3) Harassment, including but not limited to:

25 (a) Conduct directed by a student toward another individual student, on
26 the basis of that student's membership or perceived membership in a protected
27 class, that is so severe, pervasive, and objectively offensive that it effectively
28 deprives the victim of access to the educational opportunities or benefits
29 provided by the university.

1 **(b) Explicitly or implicitly conditioning a student's participation in an**
2 **education program or activity or basing an educational decision on the student's**
3 **submission to unwelcome sexual advances, requests for sexual favors, or other**
4 **verbal, nonverbal, or physical conduct of a sexual nature.**

5 **(4) Statements meant by the speaker to communicate a serious**
6 **expression of an intent to commit an act of unlawful violence against a**
7 **particular individual or group of individuals.**

8 **(5) An unjustifiable invasion of privacy or confidentiality not involving**
9 **a matter of public concern.**

10 **(6) An action that unlawfully and substantially disrupts the function of**
11 **the university.**

12 **(7) Violations of reasonable time, place, and manner restrictions on**
13 **expressive activities consistent with R.S. 17:3399.31, including restrictions on**
14 **protests and demonstrations necessary to prevent any interference with**
15 **regularly scheduled campus events.**

16 **§3399.34. Freshman orientation programs**

17 **State institutions of postsecondary education shall include in freshman**
18 **orientation programs a section describing to all students the policies and**
19 **regulations pursuant to this Part regarding free expression.**

20 **§3399.35. Restrictions on expressive conduct**

21 **A state institution of postsecondary education may restrict expressive**
22 **conduct in the public areas of campus only if the restriction:**

23 **(1) Is necessary to achieve a significant governmental interest.**

24 **(2) Is the least restrictive means of furthering that significant**
25 **governmental interest.**

26 **(3) Leaves open ample other opportunities to engage in the expressive**
27 **conduct.**

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

29 **(5) Is necessary to prevent any interference by a protest or**

policies and regulations of any institution.

Proposed law requires the Board of Regents to create a committee on free expression to issue annual reports of the status of free expression on college campuses based upon various metrics.

Proposed law authorizes the postsecondary education management boards to adopt regulations to further the purposes of the adopted policy.

Proposed law requires state institutions of postsecondary education to include in freshman orientation programs a description of the free expression policies and regulations.

Proposed law authorizes state institutions of postsecondary education to restrict expressive conduct within certain limitations.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 17:3399.31-3399.35)