

Campus Free Speech Policy Executive Summary

Act 666 of the 2018 Regular Session of the Louisiana Legislature is intended to protect the free speech rights of students, employees and invited guests of Louisiana public postsecondary institutions under the First Amendment of the U.S. Constitution. Act 666 requires each of the four management boards, in collaboration with the Board of Regents (BoR), to adopt a policy on campus free speech containing, at a minimum, certain statements; it also requires the institutions to adopt policies and regulations consistent with the law and with the management board policy.

BoR staff met with representatives of the four systems and with any institution that requested to be included in meetings and discussions. The discussions addressed the minimum requirements of the law as well as other issues such as strategies and best practices for effective implementation of the law.

The attached draft policy was developed collaboratively by the system representatives and BoR staff as a template to be presented to each management board for consideration and approval. The provisions of the draft policy meet the requirements of Act 666. The institutions are then expected to adapt the policy's general provisions with appropriate attention to the particulars of their campus and provide the particulars necessary for implementation.

BoR will continue to collaborate with the systems, the institutions and other stakeholders to support hazing prevention efforts, through organized events and workshops.

Staff Recommendation

The draft policy is intended for the management boards' use and is presented to the Board of Regents for informational purposes only.

[Name of management board] **POLICY ON CAMPUS FREE SPEECH**

I. POLICY STATEMENT

[Name of management board] deems the free and open inquiry into all matters fundamental to the mission of higher education and is committed to the preservation of the lawful, free expression of ideas at all public postsecondary education institutions in the state, subject only to reasonable time, place and manner restrictions. All postsecondary institutions under the management and control of **[Name of management board]** shall allow and protect expressive activities by students, administrators, faculty members, staff members and invited guests in accordance with all applicable laws and this Policy.

II. INTRODUCTION

In accordance with Act 666 of the 2018 Regular Session of the Louisiana Legislature, codified at R.S. 17:3399.31 through 3399.37 ("Louisiana Campus Free Expression Law"), **[Name of management board]** hereby adopts this policy on Campus Free Expression ("Policy"). This Policy was developed in collaboration with the Louisiana Board of Regents (BoR) and applies to all postsecondary education institutions under the management and control of **[Name of management board]**. All institutions subject to this Policy shall adopt an institutional policy in accordance with all applicable laws and this Policy. Each institution's policy must comply with applicable laws and regulations, and must be amended to reflect any subsequent changes to laws and regulations. Each institution (or a management board for each of its member institutions) shall begin establishing policies and procedures in full compliance with this Policy no later than the beginning of AY 2018-19. The institutional policy of each of member institution shall be forwarded to the **[Name of management board]** and BoR by September 15, 2018.

For purposes of this Policy, the definitions of key terms and other mandatory provisions shall remain consistent with those in Act 666 of 2018, codified at R.S. 17:3399.31 through 3399.37. **[Name of management board]** will amend this Policy to reflect any subsequent changes to these statutes. In cases of any inconsistency, the statutory provisions shall supersede any such inconsistent provision in this Policy. The statutory provisions and this Policy shall supersede any inconsistent provision in an institution's policy.

III. COMPLIANCE WITH LAWS

Each institution's policy must comply with applicable laws and regulations, and must be amended to reflect any changes to such laws and regulations. Each institution's policy must contain, at a minimum, the following:

- (1) A statement that each institution shall strive to ensure the fullest degree of intellectual freedom and free expression.
- (2) A statement that it is not the proper role of an institution to shield individuals from speech protected by the First Amendment of the Constitution of the United States of America and Article I, Section 7 of the Constitution of Louisiana, and other applicable laws, including without limitation ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.
- (3) A provision that students and faculty have the freedom to discuss any topic that presents itself, as provided under the First Amendment of the Constitution of the United States of America and Article I, Section 7 of the Constitution of Louisiana and other applicable laws permit and within the limits on time, place, and manner of expression that are consistent with this Part and that are necessary to achieve a significant institutional interest; such restrictions shall be published and provide ample alternative means of expression.
- (4) A provision that students and faculty may 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 Part.

- (5) A provision that any person lawfully present on a campus may protest or demonstrate there. Protests and demonstrations that infringe upon the constitutional rights of others to engage in or listen to expressive activity by creating a substantial and material disruption to the functioning of the institution or to someone's expressive activity shall not be permitted.
- (6) A provision that the public areas of campuses of each institution are traditional public forums that are open on the same terms to any speaker.
- (7) A provision that the policy supersedes and nullifies any provision in the policies and regulations of any institution that restricts speech on campus and that any such provision is therefore inconsistent with this policy on free expression. Each institution shall remove or revise any such provision in its policies and regulations to ensure compatibility with this policy on free expression.

Failure to comply with any applicable laws and regulations, including those listed above, shall constitute a failure to comply with this Policy. Each member institution shall make all due diligence efforts to comply with applicable laws and regulations, including those listed above. While the provisions of the laws listed above are mandatory components of the institutional policy, institutions may supplement the provisions of this Policy as necessary, but any such supplemental provision shall comply with the laws and this Policy.

SENATE BILL NO. 364

BY SENATORS WARD, ALARIO, BOUDREAUX, CARTER, CLAITOR, CORTEZ,
DONAHUE, ERDEY, FANNIN, GATTI, HEWITT, JOHNS, LONG,
LUNEAU, MARTINY, MILKOVICH, MILLS, MIZELL, PEACOCK,
PERRY, GARY SMITH, JOHN SMITH, THOMPSON, WALSWORTH
AND WHITE

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AN ACT

To enact Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 17:3399.31 through 3399.37, relative to free expression on college campuses; to provide for the authority of the management boards of public postsecondary education institutions; to provide for the adoption of policies on free expression; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XIV of Chapter 26 of Title 17 of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3399.31 through 3399.37, is hereby enacted to read as follows:

PART XIV. CAMPUS FREE EXPRESSION

§3399.31. Definitions

For the purposes of this Part, the following words, terms, and phrases shall have the following meanings, unless the context clearly requires otherwise:

(1) "Expressive activities" include but are not limited to any lawful verbal or written means by which individuals or groups communicate ideas to one another, as provided by the First Amendment of the Constitution of the United States of America and by the Constitution of Louisiana, including all forms of peaceful assembly, protest, speech, distribution of literature, carrying

1 signs, and circulating petitions. This expressly excludes commercial activities
2 where individuals or groups are being compensated or attempting to advertise,
3 market, or accrue financial gain to any individual, corporation, business, or
4 organization.

5 (2) "Outdoor areas" are outside areas generally accessible to the
6 majority of students, administrators, faculty, and staff, such as grassy areas,
7 walkways, or other similar common areas, and do not include areas where
8 access is restricted.

9 (3) "Student organization" means an officially recognized group at a
10 public postsecondary education institution, or a group seeking official
11 recognition, comprised of admitted students.

12 §3399.32. Expressive activities; public postsecondary education institutions;
13 protected

14 A. Expressive activities at public postsecondary education institutions by
15 students, administrators, faculty members, staff members, and invited guests
16 are protected.

17 B. Any person who wishes to engage in noncommercial expressive
18 activity on the campus of a public postsecondary education institution shall be
19 permitted to do so freely, as long as the person's conduct is not unlawful and
20 does not materially and substantially disrupt the functioning of the institution.

21 C. The outdoor areas of a public postsecondary education institution
22 shall be deemed traditional public forums and open to expressive activities.
23 Nothing in this Part shall be interpreted as limiting the right of student
24 expression elsewhere on campus.

25 D. A public postsecondary education institution may maintain and
26 enforce reasonable time, place, and manner restrictions narrowly tailored in
27 service of a significant institutional interest only when such restrictions employ
28 clear, published, and content- and viewpoint-neutral criteria and provide for
29 ample alternative means of expression. Any such restrictions shall allow for
30 spontaneous and contemporaneous assembly and distribution of literature.

1 E. Nothing in this Part shall be interpreted as preventing institutions
2 from prohibiting, limiting, or restricting expression that the First Amendment
3 of the Constitution of the United States of America does not protect, such as
4 threats and expressions directed to provoke and likely to produce imminent
5 lawless actions, or from prohibiting harassment.

6 §3399.33. Freedom of association; student organizations

7 No public postsecondary education institution shall deny a belief-based
8 student organization any benefit or privilege available to any other student
9 organization, or otherwise discriminate against a belief-based organization,
10 based on the expression of the organization, including any requirement that the
11 leaders or members of the organization:

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

13 (2) Comply with the organization's standards of conduct.

14 (3) Further the organization's mission or purpose, as defined by the
15 organization.

16 §3399.34. Institutional policies on free expression

17 Each public postsecondary education institution shall develop policies,
18 regulations, and expectations of students regarding free expression and
19 association on campus that are consistent with this Part and the policies of its
20 management board. The policies shall outline the rights of students,
21 administrators, faculty, and staff and shall:

22 (1) Be made public in the institution's handbook, on its website, and
23 through student orientation programs.

24 (2) Be incorporated in the materials, programs, and procedures provided
25 to all employees and students.

26 (3) Provide information regarding the procedures whereby a person
27 aggrieved by a violation of this Part or the institution's policies on free
28 expression may seek relief.

29 §3399.35. Management boards; policy on free expression

30 Each public postsecondary education management board, in

1 collaboration with the Board of Regents, shall develop and adopt policies on free
2 expression that contain at least the following:

3 (1) A statement that each institution shall strive to ensure the fullest
4 degree of intellectual freedom and free expression.

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

10 (3) A provision that students and faculty have the freedom to discuss any
11 topic that presents itself, as provided under the First Amendment of the
12 Constitution of the United States of America and Article I, Section 7 of the
13 Constitution of Louisiana and other applicable laws permit and within the
14 limits on time, place, and manner of expression that are consistent with this
15 Part and that are necessary to achieve a significant institutional interest; such
16 restrictions shall be published and provide ample alternative means of
17 expression.

18 (4) A provision that students and faculty may assemble and engage in
19 spontaneous expressive activity as long as such activity is not unlawful and does
20 not materially and substantially disrupt the functioning of the institution,
21 subject to the requirements of this Part.

22 (5) A provision that any person lawfully present on a campus may
23 protest or demonstrate there. Protests and demonstrations that infringe upon
24 the constitutional rights of others to engage in or listen to expressive activity by
25 creating a substantial and material disruption to the functioning of the
26 institution or to someone's expressive activity shall not be permitted.

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

29 (7) A provision that the policy supersedes and nullifies any provision in
30 the policies and regulations of any institution that restricts speech on campus

1 and that any such provision is therefore inconsistent with this policy on free
2 expression. Each institution shall remove or revise any such provision in its
3 policies and regulations to ensure compatibility with this policy on free
4 expression.

5 **§3399.36. Reports**

6 **A. Each public postsecondary education institution shall submit a report**
7 **to the governor and the legislature by January 1, 2019, on the implementation**
8 **of the provisions of this Part.**

9 **B. Each institution shall annually submit a report to the governor and**
10 **the legislature regarding any barriers to or incidents against free expression**
11 **that occurred at the institution. The report shall detail the barrier or incident**
12 **as well as actions taken in response to the barrier or incident.**

13 **C. If an institution is sued for an alleged violation of a right guaranteed**
14 **by the First Amendment of the Constitution of the United States of America, the**
15 **institution shall submit a supplementary report with a copy of the complaint to**
16 **the governor and the state legislature within thirty days of receipt of the**
17 **complaint.**

18 **D. Each institution shall post all reports pursuant to this Section on its**
19 **website.**

20 **§3399.37. Regulations**

21 **Each postsecondary public education management board shall adopt**
22 **policies to implement the provisions of this Part. Nothing in this Part shall be**
23 **construed to prevent institutions from regulating student speech or activity that**
24 **is prohibited by law. Except as further limited by this Part, institutions may**
25 **restrict student expression only for expressive activity not protected by the First**
26 **Amendment of the Constitution of the United States of America and Article I,**
27 **Section 7 of the Constitution of Louisiana and other applicable laws.**

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature
30 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

SB NO. 364

ENROLLED

- 1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____