

21.0929.02002

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1503

Introduced by

Representatives K. Koppelman, Becker, M. Johnson, Satrom

Senators Dever, Dwyer, Holmberg

(Approved by the Delayed Bills Committee)

1 A BILL for an Act to create and enact section 15-10.4-03 of the North Dakota Century Code,
2 relating to higher education student and faculty free speech; to amend and reenact section
3 15-10.4-02 of the North Dakota Century Code, relating to free speech policies of institutions
4 under the control of the state board of higher education; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 15-10.4-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **15-10.4-02. Adoption of campus free speech policy.**

9 ~~By August 27, 2019, the~~

10 The state board of higher education and each institution shall adopt a policy that:

- 11 1. Protects students' rights to free speech, assembly, and expression;
- 12 2. Permits institutions to establish and enforce reasonable and constitutional time, place,
13 and manner restrictions on free speech, assembly, and expression;
- 14 3. ~~Permits students, faculty, or student organizations to invite guest speakers or groups~~
15 ~~to present regardless of the viewpoint or content of the anticipated speech of the guest~~
16 ~~speaker or group; and~~
- 17 4. Protects the academic freedom and free speech rights of faculty ~~while adhering to~~
18 ~~guidelines established by the American association of university professors.~~

19 ~~Upon adoption of the policies under this section, the state board of higher education shall~~
20 ~~provide a copy of the policies to the legislative management.~~ by guaranteeing, at a minimum, no
21 faculty member will face adverse employment action for classroom speech, unless the speech
22 is not reasonably germane to the subject matter of the class as broadly construed and
23 comprises a substantial portion of classroom instruction; and

*Note - This "and" belongs
on pg. 2, line 20, not here.
LC will fix after adoption of
21.0929.02002 amendment*

1 4. Prohibits student-on-student discriminatory harassment consistent with the following
2 requirements:

3 a. An institution may not enforce the student-on-student discriminatory harassment
4 policy by disciplining or otherwise imposing any sanction on a student for a
5 violation of the policy stemming from expression unless:

6 (1) The speech or expression is unwelcome, targets the victim on a basis
7 protected under federal, state, or local law, and is so severe, pervasive, and
8 objectively offensive that a student effectively is denied equal access to
9 educational opportunities or benefits provided by the institution; or

10 (2) The speech or expression explicitly or implicitly conditions a student's
11 participation in an education program or activity or bases an educational
12 decision on the student's submission to unwelcome sexual advances or
13 requests for sexual favors.

14 b. An institution may sanction or discipline student-on-student speech or expression
15 that does not meet the definition of student-on-student harassment only when the
16 speech or expression is not protected under the first amendment to the United
17 States Constitution or section 4 of article I of the Constitution of North Dakota.

18 c. An institution may respond to student-on-student speech that is not
19 discriminatory harassment by taking nonpunitive actions designed to promote a
20 welcoming, inclusive environment.

21 5. Complies with the following principles of free speech:

22 a. An institution shall maintain the generally accessible, open, outdoor areas of the
23 institution's campus as traditional public forums for free speech by students,
24 faculty, and invited guests, subject to reasonable time, place, and manner
25 restrictions on free speech, assembly, and expression which are applicable to the
26 publicly accessible outdoor areas of campus, do not violate the first amendment
27 to the United States Constitution or section 4 of article I of the Constitution of
28 North Dakota, and are clear, published, reasonable, content-neutral,
29 viewpoint-neutral, and narrowly tailored to satisfy a significant institutional
30 interest, and leave open alternative channels for the communication of
31 information or a message;

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- 1 **b.** An institution may not restrict students' free speech to particular areas of campus,
2 sometimes known as "free speech zones";
- 3 **c.** An institution may not deny student activity fee funding to a student organization
4 based on the viewpoints the student organization advocates;
- 5 **d.** An institution may not establish permitting requirements prohibiting spontaneous
6 outdoor assemblies or outdoor distribution of literature, except an institution may
7 maintain a policy granting an individual or organization the right to reserve the
8 exclusive use of certain outdoor spaces, and may prohibit spontaneous
9 assemblies or distribution of literature inside reserved outdoor spaces;
- 10 **e.** An institution may not charge students or student organizations security fees
11 based on the content of the student's or student organization's speech, the
12 content of the speech of guest speakers invited by students, or the anticipated
13 reaction or opposition of listeners to the speech. Any security fees charged to a
14 student or student organization may not exceed the actual costs incurred by the
15 institution, and the institution shall refund any overpayment. Institutions shall set
16 forth empirical and objective criteria for calculating security fees and shall make
17 the criteria available to the public;
- 18 **f.** An institution shall allow students, student organizations, and faculty to invite
19 guest speakers to campus to engage in free speech regardless of the views of
20 the guest speakers or viewpoint or content of the anticipated speech;
- 21 **g.** An institution may not retract or compel a student, student organization, or faculty
22 member to retract a guest speaker's invitation to speak at the institution based on
23 the guest speaker's viewpoints or the content of the anticipated speech; and
- 24 **h.** An institution may not discriminate against a student organization with respect to
25 a benefit available to any other student organization based on a requirement of
26 the organization that leaders or voting members of the organization:
27 (1) Adhere to the organization's viewpoints or sincerely held beliefs; or
28 (2) Be committed to furthering the organization's beliefs or religious missions.

29 **SECTION 2.** Section 15-10.4-03 of the North Dakota Century Code is created and enacted
30 as follows:

1 **15-10.4-03. Cause of action.**

2 The attorney general or a person whose expressive rights are violated by an action that is
3 not compliant with the law may bring an action ~~against an institution of higher education and the~~
4 institution's agents acting in their official capacities in a court of competent jurisdiction to recover
5 compensatory damages and reasonable court costs. If the court finds a violation of the law, the
6 court shall award the aggrieved party a minimum of five thousand dollars. Excluding reasonable
7 court costs, the total compensatory damages in a case arising from a single violation of this
8 section may not exceed ~~twenty-five~~ fifty thousand dollars, regardless of the number of plaintiffs
9 awarded damages. If there are multiple plaintiffs in an action under this section, the court shall
10 divide any compensatory damages equally among the plaintiffs.