

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 718

Introduced by Halloran, 33.

Read first time January 03, 2018

Committee:

- 1 A BILL FOR AN ACT relating to education; to adopt the Higher Education
- 2 Free Speech Accountability Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Higher Education Free Speech Accountability Act.

3 Sec. 2. For purposes of the Higher Education Free Speech
4 Accountability Act, campus means the campus of a postsecondary
5 educational institution governed by the Board of Regents.

6 Sec. 3. The Board of Regents of the University of Nebraska shall
7 develop, adopt, and promulgate a policy governing free expression within
8 its campuses. Such policy shall contain at least the following
9 provisions:

10 (1) A statement that the primary function of each campus is the
11 discovery, improvement, transmission, and dissemination of knowledge by
12 means of research, teaching, discussion, and debate. This statement shall
13 provide that, to fulfill this function, the campus must strive to ensure
14 the fullest degree of intellectual freedom and free expression;

15 (2) A statement that it is not the proper role of the campus to
16 shield individuals from speech protected by the First Amendment to the
17 Constitution of the United States, including, without limitation, ideas
18 and opinions individuals find unwelcome, disagreeable, or even deeply
19 offensive;

20 (3) A campus shall not take action, as a campus, on the public
21 policy controversies of the day in such a way as to require students,
22 faculty, or administrators to publicly express a given view on such
23 controversies;

24 (4) Students and faculty have the freedom to discuss any problem
25 that presents itself, as permitted by the First Amendment and within the
26 limits of reasonable viewpoint and content-neutral restrictions on time,
27 place, and manner of expression that are consistent with the Higher
28 Education Free Speech Accountability Act and that are necessary to
29 achieve a compelling campus interest. Any such restrictions shall be
30 clear, published, and provide ample alternative means of expression.
31 Students and faculty shall be permitted to assemble and engage in

1 spontaneous expressive activity as long as such activity is not unlawful
2 and does not materially and substantially disrupt the functioning of the
3 campus, subject to the requirements of this subdivision;

4 (5) Access to campuses for purposes of free speech and expression
5 shall be consistent with First Amendment jurisprudence regarding
6 traditional public forums, designated public forums, and nonpublic forums
7 and subject to reasonable time, place, and manner restrictions;

8 (6) The public areas of a campus are traditional public forums, open
9 on the same terms to any speaker;

10 (7) A campus shall be open to any speaker whom students, student
11 groups, or members of the faculty have invited;

12 (8) Protests and demonstrations that materially and substantially
13 infringe upon the rights of others to engage in or listen to expressive
14 activity shall not be permitted. Any student or university employee who
15 engages in such protests or demonstrations shall be subject to sanction;
16 and

17 (9) A series of sanctions for persons violating the policy governing
18 free expression, including increased sanctions for repeat violators, and
19 the rights afforded to persons accused of such violations.

20 Sec. 4. (1) The Board of Regents of the University of Nebraska
21 shall create a Committee on Free Expression to consist of nine members.
22 The membership shall consist of three members from the Board of Regents,
23 three faculty members, and three student members. The committee shall
24 elect one of its members as chairperson. Members shall serve for terms of
25 one year. Members shall serve without compensation but shall be
26 reimbursed for their actual and necessary expenses incurred in the
27 performance of their duties as provided in sections 81-1174 to 81-1177.

28 (2) Each year, the committee shall provide a report to the public,
29 the Board of Regents, the Governor, and the Legislature. The report shall
30 be submitted at least thirty days prior to the beginning of the
31 legislative session for the following year. The annual report shall

1 include:

2 (a) A description of any barriers to or incidents of disruption of
3 free expression occurring on any campus, including, but not limited to,
4 attempts to block or prohibit speakers and investigations into students
5 or student organizations for their speech. The description shall include
6 the nature of each barrier or incident, as well as what disciplinary
7 action, if any, was taken against members of the campus community
8 determined to be responsible for such specific barriers or incidents. The
9 description shall not reveal any student's personally identifiable
10 information; and

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

13 (3) The annual report shall be:

14 (a) Accessible from the home page of each campus' web site by use of
15 not more than three links;

16 (b) Searchable by keywords and phrases; and

17 (c) Accessible to the public without requiring registration or use
18 of a user name, a password, or another user identification.

19 (4) If a campus or one of its officials, schools, or colleges is
20 sued for an alleged violation of the First Amendment of the Constitution
21 of the United States or of Article I, section 5 of the Constitution of
22 Nebraska, the committee shall submit a report of the incident, together
23 with a copy of the complaint, to the Governor and the Legislature. The
24 report shall be submitted on or before thirty days after the lawsuit is
25 filed.

26 (5) A report under this section submitted to the Legislature shall
27 be submitted electronically.

28 Sec. 5. Each campus shall publicly post on its web site a report
29 which will detail the course of action implemented in order to comply
30 with the Higher Education Free Speech Accountability Act and the policy
31 governing free speech adopted pursuant to section 3 of this act. Each

1 campus shall publicly post on its web site any changes or updates to the
2 chosen course of action.

3 Sec. 6. All campus employees and all state departments and agencies
4 shall cooperate with the Committee on Free Expression by providing
5 information requested by the committee.

6 Sec. 7. (1) The Board of Regents of the University of Nebraska may
7 adopt additional policies and guidelines to further the purposes of the
8 policy adopted pursuant to section 3 of this act.

9 (2) Nothing in the Higher Education Free Speech Accountability Act
10 shall be construed to prevent a campus from regulating student speech or
11 activity that is prohibited by law. Unless otherwise prohibited by the
12 act, a campus may only restrict student expressive activity if such
13 expressive activity is not protected by the First Amendment, including:

14 (a) Violations of state or federal law;

15 (b) Expressive activity that a court has deemed unprotected
16 defamation;

17 (c) Unlawful harassment;

18 (d) True threats, which are defined as statements intended by the
19 speaker to communicate a serious expression of intent to commit an act of
20 unlawful violence to a particular individual or group of individuals;

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

23 (f) Expressive activity that substantially disrupts the functions of
24 a campus;

25 (g) Expressive activity that violates reasonable time, place, and
26 manner restrictions that are consistent with section 3 of this act; and

27 (h) Speech that interferes with the treatment of patients.

28 Sec. 8. The Board of Regents of the University of Nebraska shall
29 develop a policy that requires each campus to identify the person,
30 office, or department with responsibility for ensuring compliance with
31 the Higher Education Free Speech Accountability Act and for answering any

1 related questions or concerns. This policy shall require that such
2 person, office, or department receive training in ensuring compliance
3 with the act. Such training shall be developed and provided by the
4 University of Nebraska College of Law.