

117TH CONGRESS  
1ST SESSION

# H. R. 4007

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2021

Mr. MURPHY of North Carolina (for himself, Ms. STEFANIK, Mr. STEUBE, Mr. BABIN, Mr. NORMAN, Mr. C. SCOTT FRANKLIN of Florida, Ms. TENNEY, Mr. ARRINGTON, Mr. JOYCE of Pennsylvania, Mr. CARTER of Georgia, Mr. GROTHMAN, Mr. OWENS, Mr. FITZGERALD, Mr. BANKS, Mrs. MILLER-MEEKS, Mr. FITZPATRICK, Mr. TIFFANY, Mrs. CAMMACK, Mr. JACKSON, Mr. BUDD, Ms. LETLOW, Mr. MANN, and Mr. JORDAN) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To amend the Higher Education Act of 1965 to ensure that public institutions of higher education eschew policies that improperly constrain the expressive rights of students, and to ensure that private institutions of higher education are transparent about, and responsible for, their chosen speech policies.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Campus Free Speech  
3 Restoration Act”.

4 **SEC. 2. PROTECTION OF STUDENT SPEECH AND ASSOCIA-**  
5 **TION RIGHTS.**

6 Section 112(a) of the Higher Education Act of 1965  
7 (20 U.S.C. 1011a(a)) is amended—

8 (1) by redesignating paragraph (2) as para-  
9 graph (3); and

10 (2) by inserting after paragraph (1) the fol-  
11 lowing:

12 “(2) It is the sense of Congress that—

13 “(A) every individual should be free to profess,  
14 and to maintain, the opinion of such individual in  
15 matters of religion or philosophy, and that pro-  
16 fessing or maintaining such opinion should in no  
17 way diminish, enlarge, or affect the civil liberties or  
18 rights of such individual on the campus of an insti-  
19 tution of higher education;

20 “(B) no public institution of higher education  
21 directly or indirectly receiving financial assistance  
22 under this Act should limit religious expression, free  
23 expression, or any other rights provided under the  
24 First Amendment to the Constitution of the United  
25 States;

1           “(C) free speech zones and restrictive speech  
2 codes are inherently at odds with the freedom of  
3 speech guaranteed by the First Amendment to the  
4 Constitution of the United States;

5           “(D) bias reporting systems are susceptible to  
6 abuses that may put them at odds with the freedom  
7 of speech guaranteed by the First Amendment to the  
8 Constitution of the United States; and

9           “(E) no public institution of higher education  
10 directly or indirectly receiving financial assistance  
11 under this Act should restrict the speech of such in-  
12 stitution’s students through improperly restrictive  
13 zones, codes, or bias reporting systems.”.

14 **SEC. 3. CAMPUS SPEECH POLICIES AT INSTITUTIONS OF**  
15 **HIGHER EDUCATION.**

16           Title IV of the Higher Education Act of 1965 (20  
17 U.S.C. 1070 et seq.) is amended—

18           (1) in section 487(a), by adding at the end the  
19 following:

20           “(30)(A) In the case of a public institution  
21 (other than an institution described in section  
22 494B(b)(4)), the institution will comply with the ex-  
23 pressive activity protections described in section  
24 494B.

1           “(B) In the case of a private institution (other  
2 than an institution described in section 494C(e)),  
3 the institution will comply with the expressive activ-  
4 ity requirements described in section 494C.”; and

5           (2) in part G, by adding at the end the fol-  
6 lowing:

7 **“SEC. 494B. CAMPUS SPEECH POLICIES AT PUBLIC UNIVER-**  
8 **SITIES.**

9           “(a) DEFINITION OF EXPRESSIVE ACTIVITIES.—

10           “(1) IN GENERAL.—In this section, the term  
11 ‘expressive activity’ includes—

12           “(A) peacefully assembling, protesting,  
13 speaking, or listening;

14           “(B) distributing literature;

15           “(C) carrying a sign;

16           “(D) circulating a petition; or

17           “(E) other expressive rights guaranteed  
18 under the First Amendment to the Constitution  
19 of the United States, including religious rights.

20           “(2) EXCLUSIONS.—In this section, the term  
21 ‘expressive activity’ does not include unprotected  
22 speech (as defined by the precedents of the Supreme  
23 Court of the United States).

24           “(b) EXPRESSIVE ACTIVITIES AT AN INSTITUTION.—

1           “(1) IN GENERAL.—Each public institution of  
2 higher education participating in a program under  
3 this title may not prohibit, subject to paragraph (2),  
4 a person from freely engaging in noncommercial ex-  
5 pressive activity in a generally accessible area on the  
6 institution’s campus if the person’s conduct is law-  
7 ful.

8           “(2) RESTRICTIONS.—An institution of higher  
9 education described in paragraph (1) may not main-  
10 tain or enforce time, place, or manner restrictions on  
11 an expressive activity in a generally accessible area  
12 of the institution’s campus unless the restriction—

13                   “(A) is necessary to achieve a compelling  
14 governmental interest;

15                   “(B) is the least restrictive means of fur-  
16 thering that compelling governmental interest;

17                   “(C) is based on published, content-neu-  
18 tral, and viewpoint-neutral criteria;

19                   “(D) leaves open ample alternative chan-  
20 nels for communication; and

21                   “(E) provides for spontaneous assembly  
22 and distribution of literature.

23           “(3) APPLICATION.—The protections provided  
24 under paragraph (1) do not apply to expressive ac-

1       tivity in an area on an institution’s campus that is  
2       not a generally accessible area.

3               “(4) NONAPPLICATION TO SERVICE ACAD-  
4       EMIES.—This section shall not apply to an institu-  
5       tion of higher education whose primary purpose is  
6       the training of individuals for the military services  
7       of the United States, or the merchant marine.

8       “(c) CAUSES OF ACTION.—

9               “(1) AUTHORIZATION.—The following persons  
10       may bring an action in a Federal court of competent  
11       jurisdiction to enjoin a violation of subsection (b) or  
12       to recover compensatory damages, reasonable court  
13       costs, or reasonable attorney fees:

14               “(A) The Attorney General.

15               “(B) A person claiming that the person’s  
16       expressive activity rights, as described in sub-  
17       section (b)(1), were violated.

18               “(2) ACTIONS.—Notwithstanding any other  
19       provision of law, in an action brought under this sec-  
20       tion, the Federal court shall decide de novo all rel-  
21       evant questions of fact and law, including the inter-  
22       pretation of constitutional, statutory, and regulatory  
23       provisions, unless the parties stipulate otherwise. In  
24       an action brought under this subsection, if the court  
25       finds a violation of subsection (b), the court—

1 “(A) shall—

2 “(i) enjoin the violation; and

3 “(ii) if a person whose expressive ac-  
4 tivity rights were violated brought the ac-  
5 tion, award the person—

6 “(I) not less than \$500 for an  
7 initial violation; and

8 “(II) if the person notifies the in-  
9 stitution of the violation, \$50 for each  
10 day the violation continues after the  
11 notification if the institution did not  
12 act to discontinue the cause of the  
13 violation; and

14 “(B) may award a prevailing plaintiff—

15 “(i) compensatory damages;

16 “(ii) reasonable court costs; or

17 “(iii) reasonable attorney fees.

18 “(3) BASIS FOR ENACTMENT.—This subsection  
19 is enacted as an exercise of the enforcement power  
20 of the Congress under section 5 of the Fourteenth  
21 Amendment to the Constitution to protect expressive  
22 activities.

23 “(d) STATUTE OF LIMITATIONS.—

24 “(1) IN GENERAL.—Except as provided in para-  
25 graph (3), an action under subsection (c) may not

1 be brought later than 1 year after the date of the  
2 violation.

3 “(2) CONTINUING VIOLATION.—Each day that  
4 a violation of subsection (b) continues after an ini-  
5 tial violation of subsection (b), and each day that an  
6 institution’s policy in violation of subsection (b) re-  
7 mains in effect, shall constitute a continuing viola-  
8 tion of subsection (b).

9 “(3) EXTENSION.—For a continuing violation  
10 described in paragraph (2), the limitation described  
11 in paragraph (1) shall extend to 1 year after the  
12 date on which the most recent violation occurs.

13 “(e) FEDERAL REVIEW OF SPEECH POLICIES.—

14 “(1) NO ELIGIBILITY FOR FUNDS.—

15 “(A) IN GENERAL.—No public institution  
16 of higher education shall be eligible to receive  
17 funds under this Act, including participation in  
18 any program under this title, if the Secretary  
19 determines that the institution—

20 “(i) maintains a policy that infringes  
21 upon the expressive rights of students  
22 under the First Amendment to the Con-  
23 stitution of the United States; or

24 “(ii) maintains or enforces time,  
25 place, or manner restrictions on an expres-



1           sive activity in a generally accessible area  
2           of the institution’s campus that do not  
3           comply with subparagraphs (A) through  
4           (E) of subsection (b)(2).

5           “(B) PROHIBITION.—The Secretary may  
6           not conduct an investigation for purposes of  
7           making a determination under subparagraph  
8           (A) with respect to an institution of higher edu-  
9           cation, unless such an investigation is con-  
10          ducted under paragraph (4) with respect to a  
11          complaint received under paragraph (2).

12          “(C) COURT REVIEW.—Notwithstanding  
13          any other provision of law, the Secretary’s de-  
14          terminations under this subsection shall be re-  
15          viewed de novo with respect to all relevant ques-  
16          tions of fact and law, including the interpreta-  
17          tion of constitutional, statutory, and regulatory  
18          provisions, unless the parties stipulate other-  
19          wise.

20          “(2) DESIGNATION OF AN EMPLOYEE TO RE-  
21          CEIVE COMPLAINTS.—The Secretary shall designate  
22          an employee in the Office of Postsecondary Edu-  
23          cation of the Department to receive complaints  
24          (whether electronically or by mail) from students or  
25          student organizations at a given public institution of

1 higher education, or from any other person or orga-  
2 nization, regarding policies at the institution that  
3 meet the description of clause (i) or (ii) of para-  
4 graph (1)(A).

5 “(3) COMPLAINT.—A complaint submitted  
6 under subparagraph (2)—

7 “(A) shall include the provision of the in-  
8 stitution’s policy the complainant believes meets  
9 the description of clause (i) or (ii) of paragraph  
10 (1)(A), along with any evidence regarding the  
11 operation and enforcement of such policy the  
12 complainant deems relevant; and

13 “(B) may include an argument and any  
14 other supplemental information as to why the  
15 policy in question meets such description.

16 “(4) SYSTEM OF REVIEW.—

17 “(A) FIRST STAGE REVIEW.—

18 “(i) REQUEST FOR RESPONSE.—Not  
19 later than 7 days after the date of receipt  
20 of a complaint under paragraph (2), the  
21 Secretary shall review the complaint and  
22 request a response to the complaint from  
23 the institution.

24 “(ii) INSTITUTION RESPONSE.—Not  
25 later than 30 days after the date the Sec-

1           retary requests a response under clause (i),  
2           the institution shall—

3                   “(I) certify to the Secretary that  
4                   the institution has entirely withdrawn  
5                   the policy that occasioned the com-  
6                   plaint;

7                   “(II) submit a revised policy for  
8                   review by the Secretary; or

9                   “(III) submit a defense of the  
10                  policy that occasioned the complaint.

11                 “(iii) AVAILABILITY TO COMPLAIN-  
12                 ANT.—

13                   “(I) IN GENERAL.—Not later  
14                   than 7 days after the date of receipt  
15                   of a revised policy or defense of the  
16                   original policy as submitted by the in-  
17                   stitution pursuant to clause (ii), the  
18                   Secretary shall make available to the  
19                   complainant a copy of such revised  
20                   policy or defense.

21                   “(II) RESPONSE BY COMPLAIN-  
22                   ANT.—Not later than 60 days after  
23                   the date of receipt of a revised policy  
24                   or defense of the original policy under  
25                   subclause (I), the complainant may

1 submit to the Secretary a response to  
2 the revised policy or defense of the  
3 original policy.

4 “(III) SUBMISSION TO THE IN-  
5 STITUTION OF RESPONSE.—Not later  
6 than 7 days after the date of receipt  
7 of a response under subclause (II),  
8 the Secretary shall submit to the in-  
9 stitution a copy of such response.

10 “(iv) DETERMINATIONS.—If the insti-  
11 tution declines to entirely withdraw the  
12 policy that occasioned the complaint and  
13 either submits a revised policy for review  
14 or submits a defense of the policy that oc-  
15 casioned the complaint, the Secretary shall,  
16 not later than 60 days after the date of the  
17 deadline for a response by the complaint as  
18 described in clause (iii)(II), make one of  
19 the following determinations:

20 “(I) Determine that the com-  
21 plaint in question has insufficient  
22 merit to proceed to Second Stage Re-  
23 view described in subparagraph (B).

24 “(II) Determine that the com-  
25 plaint in question has sufficient merit

1 to proceed to Second Stage Review  
2 described in subparagraph (B).

3 “(v) NOTIFICATION.—Not later than  
4 7 days after the date the Secretary makes  
5 a determination under clause (iv), the Sec-  
6 retary shall notify the institution and the  
7 complainant of such determination.

8 “(vi) END.—The determination under  
9 clause (iv) shall constitute the end of First  
10 Stage Review.

11 “(B) SECOND STAGE REVIEW.—

12 “(i) IN GENERAL.—In a Second Stage  
13 Review, the Secretary shall notify the insti-  
14 tution and the complainant of the com-  
15 mencement of the Second Stage Review,  
16 and shall give the institution the option of  
17 entirely withdrawing the policy that occa-  
18 sioned the complaint or submitting a re-  
19 vised policy for review within 30 days of  
20 the commencement of the Second Stage  
21 Review. In such notification submitted to  
22 the institution and complainant, the Sec-  
23 retary shall indicate the relevant sections  
24 of the institution’s policy in question and

1 explain why these sections may be out of  
2 compliance.

3 “(ii) DETERMINATION.—Not later  
4 than 90 days from the commencement of  
5 the Second Stage Review, the Secretary  
6 shall determine whether the policy that oc-  
7 casioned the complaint, or the revised pol-  
8 icy submitted during the First Stage Re-  
9 view, or the revised policy submitted within  
10 the first 30 days of the Second Stage Re-  
11 view, is in violation of student rights under  
12 the First Amendment to the Constitution  
13 of the United States or of the restrictions  
14 on the regulation of speech by time, place,  
15 and manner set forth in this section, there-  
16 by ending Second Stage Review.

17 “(iii) INVESTIGATION.—During Sec-  
18 ond Stage Review, the Secretary may con-  
19 duct an investigation in which further in-  
20 formation may be sought or requested  
21 from the complainant, the institution, or  
22 any other pertinent source.

23 “(iv) CERTIFICATION OF WITH-  
24 DRAWAL.—At any point during the Second  
25 Stage Review, the institution in question

1           may certify to the Secretary that it has en-  
2           tirely withdrawn the policy that occasioned  
3           the complaint, thereby ending the Second  
4           Stage Review.

5           “(v) NOTIFICATION AND JUSTIFICA-  
6           TION.—If the Secretary determines by the  
7           conclusion of Second Stage Review that  
8           the policy that occasioned the complaint or  
9           the revised policy submitted for review dur-  
10          ing First Stage Review or Second Stage  
11          Review is consistent with the expressive  
12          rights of students under the First Amend-  
13          ment to the Constitution of the United  
14          States and the restrictions on the regula-  
15          tion of speech by time, place, and manner  
16          set forth in this Act—

17                   “(I) the Secretary shall notify the  
18                   complainant and the institution of  
19                   such determination not more than 7  
20                   days after the date of the determina-  
21                   tion; and

22                   “(II) the Secretary shall explain  
23                   and justify such determination in a  
24                   written decision citing relevant legal  
25                   precedent, copies of which shall be

1 sent to the complainant, the institu-  
2 tion, the authorizing committees, and  
3 made available for public inspection,  
4 including for online reading by the  
5 public.

6 “(C) DETERMINATION THAT INSTITUTION  
7 IS OUT OF COMPLIANCE.—

8 “(i) IN GENERAL.—If, upon comple-  
9 tion of the Second Stage Review, the Sec-  
10 retary determines that the policy that occa-  
11 sioned the complaint, or the revised policy  
12 submitted for review during the First  
13 Stage Review or Second Stage Review, vio-  
14 lates the First Amendment to the Con-  
15 stitution of the United States or the re-  
16 strictions on the regulation of speech set  
17 forth in this section, the Secretary shall  
18 notify the complainant and the institution  
19 not more than 7 days after the date of  
20 completion of Second Stage Review that  
21 the institution is out of compliance with  
22 the requirements for receiving funds under  
23 this Act, including participation in any  
24 program under this title, but will be grant-  
25 ed a grace period of 120 days to return to



1 compliance before being formally stripped  
2 of eligibility.

3 “(ii) POSTING; EXPLANATION; FINAL  
4 REVIEW.—As part of the notification under  
5 clause (i), the Secretary shall—

6 “(I) require the institution to  
7 post the determination of the Sec-  
8 retary on the website of the institu-  
9 tion within 2 clicks of the homepage,  
10 without a paywall, email login, or  
11 other restriction to access;

12 “(II) explain and justify the de-  
13 termination of the Secretary in a writ-  
14 ten decision citing relevant legal  
15 precedent, copies of which shall be  
16 sent to the complainant, the institu-  
17 tion, the authorizing committees, and  
18 made available for public inspection,  
19 including for online reading by the  
20 public; and

21 “(III) inform the institution that  
22 Final Review has begun and that the  
23 institution must either certify to the  
24 Secretary that it has entirely with-  
25 drawn the policy that occasioned the

1 complaint, or submit a revised policy  
2 for review to the Secretary not later  
3 than 60 days after the date of receipt  
4 of notice of the conclusion of Second  
5 Stage Review.

6 “(D) FINAL REVIEW.—

7 “(i) IN GENERAL.—If an institution  
8 submits a revised policy for review as de-  
9 scribed in subparagraph (C)(ii)(III), the  
10 Secretary shall review such revised policy  
11 and determine not later than 120 days  
12 after the date of commencement of Final  
13 Review whether the revised policy is con-  
14 sistent with the expressive rights of stu-  
15 dents under the First Amendment to the  
16 Constitution of the United States and with  
17 the restrictions on the regulation of speech  
18 by time, place, and manner set forth in  
19 this section.

20 “(ii) DETERMINATION OF COMPLI-  
21 ANCE.—If the Secretary determines, as de-  
22 scribed in clause (i), that the revised policy  
23 is consistent with the expressive rights of  
24 students under the First Amendment to  
25 the Constitution of the United States and

1 with the restrictions on the regulation of  
2 speech by time, place, and manner set  
3 forth in this section, the Secretary shall  
4 notify the complainant and the institution  
5 of such determination not more than 7  
6 days after the date the determination is  
7 made, thereby ending the final Stage Re-  
8 view.

9 “(iii) DETERMINATION OF VIOLA-  
10 TION.—If the Secretary determines, as de-  
11 scribed in clause (i), that the revised policy  
12 violates the expressive rights of students  
13 under the First Amendment to the Con-  
14 stitution of the United States or the re-  
15 strictions on the regulation of speech by  
16 time, place, and manner set forth in this  
17 section, the Secretary shall—

18 “(I) notify the complainant and  
19 the institution of such determination  
20 not more than 7 days after the date  
21 the determination is made, thereby  
22 ending the final Stage Review; and

23 “(II) explain and justify the de-  
24 termination in a written decision cit-  
25 ing relevant legal precedent, copies of

1 which shall be sent to the complain-  
2 ant, the institution, and made avail-  
3 able for public inspection, including  
4 for online reading by the public.

5 “(E) LOSS OF ELIGIBILITY.—

6 “(i) IN GENERAL.—If the Secretary  
7 determines, during the Final Stage Review,  
8 that the institution’s policy in question vio-  
9 lates the expressive rights of students  
10 under the First Amendment to the Con-  
11 stitution of the United States or the re-  
12 strictions on the regulation of speech by  
13 time, place, and manner set forth in this  
14 section, the Secretary shall—

15 “(I) notify the complainant and  
16 the institution not more than 7 days  
17 after the date of the determination  
18 that the institution will lose eligibility  
19 to receive funds under this Act, in-  
20 cluding participation in any program  
21 under this title, in accordance with  
22 this subparagraph;

23 “(II) notify the institution that  
24 the loss of eligibility shall take effect  
25 beginning with any student notified of

1 acceptance for admission to the insti-  
2 tution during the award year subse-  
3 quent to the award year during which  
4 the determination is made, and that  
5 no restoration of eligibility for ineli-  
6 gible students in subsequent award  
7 years will occur prior to the beginning  
8 of the third award year subsequent to  
9 the award year during which the de-  
10 termination is made;

11 “(III) explain and justify the de-  
12 termination in a written decision cit-  
13 ing relevant legal precedent, copies of  
14 which shall be sent to the complain-  
15 ant, the institution, the authorizing  
16 committees, and made available for  
17 public inspection, including for online  
18 reading by the public; and

19 “(IV) require the institution to  
20 post the determination of the Sec-  
21 retary on the website of the institu-  
22 tion, within two clicks of the home-  
23 page, without a paywall, email login,  
24 or other restriction to access.

1           “(ii) CONTINUED ELIGIBILITY.—Each  
2 student enrolled at the institution during  
3 the award year in which eligibility is lost  
4 as described in this subparagraph, and  
5 each student notified of acceptance for ad-  
6 mission to the institution during the award  
7 year in which eligibility is lost as described  
8 in this subparagraph, shall continue to be  
9 eligible to participate, through the institu-  
10 tion, in programs funded under this Act  
11 during the 3-year period after the date of  
12 the loss of eligibility.

13           “(F) RESTORATION OF ELIGIBILITY.—

14           “(i) IN GENERAL.—Not later than 7  
15 days after the loss of eligibility under sub-  
16 paragraph (E), the Secretary shall inform  
17 the institution that the institution may re-  
18 store eligibility, either by certifying to the  
19 Secretary that the institution has entirely  
20 withdrawn the policy that precipitated loss  
21 of eligibility, or by submitting a revised  
22 policy for review at any time following the  
23 failure of the Final Review.

24           “(ii) REVIEW OF REVISED POLICY.—  
25 The Secretary shall review a revised policy

1 submitted for review after the loss of eligi-  
2 bility and determine not later than 120  
3 days after the date the revised policy is  
4 submitted whether such policy is consistent  
5 with the expressive rights of students  
6 under the First Amendment to the Con-  
7 stitution of the United States and with the  
8 restrictions on the regulation of speech by  
9 time, place, and manner set forth in this  
10 Act.

11 “(iii) INVESTIGATION.—While con-  
12 ducting a review to restore eligibility under  
13 this subparagraph, the Secretary may con-  
14 duct an investigation in which further in-  
15 formation may be sought or requested  
16 from the institution, or any other source  
17 the Secretary determines pertinent.

18 “(iv) WRITTEN DECISION.—In making  
19 a determination of whether a revised policy  
20 submitted for review after the loss of eligi-  
21 bility is either consistent or inconsistent  
22 with the expressive rights of students  
23 under the First Amendment to the Con-  
24 stitution of the United States and with the  
25 restrictions on the regulation of speech by

1 time, place, and manner set forth in this  
2 Act, the Secretary shall explain and justify  
3 the determination in a written decision cit-  
4 ing relevant legal precedent, copies of  
5 which shall be sent to the complainant, the  
6 institution, the authorizing committees,  
7 and made available for public inspection,  
8 including for online reading by the public.

9 “(v) LIMIT ON REVIEW.—The Sec-  
10 retary may conduct not more than 1 review  
11 to restore eligibility for a single institution  
12 in any given award year.

13 “(vi) RESTORATION.—If an institu-  
14 tion certifies to the Secretary that the pol-  
15 icy that precipitated the loss of eligibility  
16 has been entirely withdrawn, or if Sec-  
17 retary determines that the revised policy  
18 submitted for review is consistent with the  
19 expressive rights of students under the  
20 First Amendment to the Constitution of  
21 the United States and with the restrictions  
22 on the regulation of speech by time, place,  
23 and manner set forth in this section, the  
24 institution’s eligibility to receive funds  
25 under this Act, including participation in



1 any program under this title, shall be re-  
2 stored not earlier than the beginning of the  
3 third award year following the year in  
4 which notification of loss of eligibility was  
5 received.

6 “(G) GOOD FAITH REPRESENTATION.—

7 “(i) IN GENERAL.—The Secretary  
8 shall inform any institution undergoing re-  
9 view of its campus speech policies that it  
10 expects the institution to represent its poli-  
11 cies, along with any proposed revisions in  
12 such policies, in good faith.

13 “(ii) MISREPRESENTATION.—

14 “(I) COMPLAINTS.—A student,  
15 student organization, or any other  
16 person or organization may file, with  
17 the employee in the Office of Postsec-  
18 ondary Education of the Department  
19 designated by the Secretary under  
20 paragraph (2) to receive complaints, a  
21 complaint that an institution has sub-  
22 stantially misrepresented its speech  
23 policies, or withheld information re-  
24 quested by the Secretary during an  
25 investigation, or attempted to cir-

1            cumvent the review process by reinsti-  
2            tuting a policy under review in a sub-  
3            stantially similar form without inform-  
4            ing the Secretary.

5                    “(II) LOSS OF ELIGIBILITY.—If  
6            the Secretary determines upon inves-  
7            tigation, or after receiving a complaint  
8            under subclause (I), that an institu-  
9            tion has substantially misrepresented  
10           its speech policies, or withheld infor-  
11           mation requested by the Secretary  
12           during an investigation, or attempted  
13           to circumvent the review process by  
14           reinstating a policy under review in  
15           a substantially similar form without  
16           informing the Secretary, the institu-  
17           tion shall lose eligibility to receive  
18           funds under this Act, including par-  
19           ticipation in any program under this  
20           title.

21                   “(iii) LOSS OF ELIGIBILITY.—If an in-  
22           stitution loses eligibility under clause (ii),  
23           the Secretary shall notify the institution,  
24           not later than 7 days after the determina-  
25           tion, that the loss of eligibility shall take

1 effect beginning with any student notified  
2 of acceptance for admission to the institu-  
3 tion during the award year subsequent to  
4 the award year during which the deter-  
5 mination is made, and that no restoration  
6 of eligibility for students admitted in sub-  
7 sequent award years will occur prior to the  
8 beginning of the third award year subse-  
9 quent to the award year during which the  
10 determination is made.

11 “(f) RETALIATION PROHIBITED.—

12 “(1) IN GENERAL.—No person may intimidate,  
13 threaten, coerce, or discriminate against any indi-  
14 vidual because the individual has made a report or  
15 complaint, testified, assisted, or participated or re-  
16 fused to participate in any manner in an investiga-  
17 tion, proceeding, or hearing under this section.

18 “(2) SPECIFIC CIRCUMSTANCES.—

19 “(A) EXERCISE OF FIRST AMENDMENT  
20 RIGHTS.—The exercise of rights protected  
21 under the First Amendment to the Constitution  
22 of the United States does not constitute retalia-  
23 tion prohibited under paragraph (1).

24 “(B) CODE OF CONDUCT VIOLATION FOR  
25 MATERIALLY FALSE STATEMENT.—Charging an

1 individual with a code of conduct violation for  
2 making a materially false statement in bad  
3 faith in the course of a grievance proceeding  
4 under this section does not constitute retalia-  
5 tion prohibited under paragraph (1). A deter-  
6 mination regarding responsibility, alone, is not  
7 sufficient to conclude that any party made a  
8 materially false statement in bad faith.

9 “(g) JUDICIAL REVIEW.—A public institution of  
10 higher education participating in a program under this  
11 title may seek judicial review of an agency action under  
12 this section in accordance with chapter 7 of title 5, United  
13 States Code.

14 **“SEC. 494C. CAMPUS SPEECH POLICIES AT PRIVATE UNI-**  
15 **VERSITIES.**

16 “(a) IN GENERAL.—Each private institution of high-  
17 er education eligible to receive funds under this Act, in-  
18 cluding any program under this title, shall—

19 “(1) post in one place on the website of the in-  
20 stitution all policies that pertain to the protection  
21 and regulation of the expressive rights of students,  
22 including the right to submit a complaint under this  
23 section, within 2 clicks of the homepage, without a  
24 paywall, email login, or other restriction to access;  
25 and

1           “(2) include a copy of such policies in a hand-  
2           book distributed to new students.

3           “(b) RESPONSIBILITY FOR FULL POLICY DISCLO-  
4           SURE.—Each private institution of higher education de-  
5           scribed in subsection (a) shall include with the copy of the  
6           policies described in subsection (a)—

7           “(1) a statement affirming that all policies per-  
8           tinent to the protection and regulation of the expres-  
9           sive rights of students have been disclosed in the  
10          manner required by this section; and

11          “(2) a statement affirming that publication of  
12          such policies as required by this section and instruc-  
13          tions for students on how to contact the employee  
14          designated in the Office of Postsecondary Education  
15          in the Department under subsection (d)(1) to file a  
16          complaint.

17          “(c) CAUSE OF ACTION.—

18          “(1) AUTHORIZATION.—A student claiming  
19          that a private institution of higher education in  
20          which the student is enrolled has violated published  
21          policy regarding expressive rights imposed by this  
22          section may bring an action in a Federal court of  
23          competent jurisdiction to enjoin such violation or to  
24          recover compensatory damages, reasonable court  
25          costs, or reasonable attorney fees.

1           “(2) ACTIONS.—Notwithstanding any other  
2 provision of law, in an action brought under this  
3 subsection, the Federal court shall decide de novo all  
4 relevant questions of fact and law, including the in-  
5 terpretation of constitutional, statutory, and regu-  
6 latory provisions, unless the parties stipulate other-  
7 wise. In an action brought under this subsection, if  
8 the court finds a violation of subsection (b), the  
9 court—

10           “(A) shall—

11                   “(i) enjoin the violation; and

12                   “(ii) award the student—

13                           “(I) not less than \$500 for an  
14 initial violation; and

15                           “(II) if the student notifies the  
16 institution of the violation, \$50 for  
17 each day the violation continues after  
18 the notification if the institution did  
19 not act to discontinue the cause of the  
20 violation; and

21           “(B) may award a prevailing plaintiff—

22                   “(i) compensatory damages;

23                   “(ii) reasonable court costs; or

24                   “(iii) reasonable attorney fees.

25           “(d) SECRETARIAL REQUIREMENTS.—

1           “(1) DESIGNATION OF AN EMPLOYEE.—The  
2 Secretary shall designate an employee in the Office  
3 of Postsecondary Education in the Department who  
4 shall—

5           “(A) receive copies of all complaints per-  
6 taining to the protection and regulation of the  
7 expressive rights of students at private institu-  
8 tions of higher education that receive funds  
9 under this section, including any programs  
10 under this title;

11           “(B) preserve all records of such policies  
12 for a period of not less than 10 years;

13           “(C) receive complaints from students, stu-  
14 dent organizations, or from any other person or  
15 organization, that believes a private institution  
16 of higher education has not disclosed a policy  
17 pertaining to the protection and regulation of  
18 the expressive rights of students as required by  
19 this section, is enforcing a policy pertaining to  
20 the expressive rights of students that has not  
21 been disclosed as required by this section, or  
22 has failed to make a full policy disclosure, for  
23 the enforcement of speech policies, as required  
24 by this section;

1           “(D) not more than 7 days after the date  
2 of receipt of a complaint under subparagraph  
3 (C), review the complaint and request a re-  
4 sponse from the institution;

5           “(E) undertake an investigation, in re-  
6 sponse to a complaint under subparagraph (C),  
7 to determine whether a private institution of  
8 higher education has failed to disclose a policy  
9 pertaining to the protection and regulation of  
10 the expressive rights of students as required by  
11 this section or is enforcing a policy pertaining  
12 to the expressive rights of students that has not  
13 been disclosed as required by this section; and

14           “(F) determine, not later than 120 days  
15 after the date of receipt of a complaint, whether  
16 the private institution of higher education in  
17 question has failed to disclose a policy per-  
18 taining to the protection and regulation of the  
19 expressive rights of students as required by this  
20 section or is enforcing a policy pertaining to the  
21 expressive rights of students that has not been  
22 disclosed as required by this section.

23           “(2) LOSS OF ELIGIBILITY.—

24           “(A) IN GENERAL.—If the Secretary deter-  
25 mines that a private institution of higher edu-



1 cation has failed to disclose a policy pertaining  
2 to the protection and regulation of the expres-  
3 sive rights of students as required by this sec-  
4 tion or is enforcing a policy pertaining to the  
5 expressive rights of students that has not been  
6 disclosed as required by this section, the Sec-  
7 retary shall notify the institution and the com-  
8 plainant, not more than 7 days after the date  
9 of such determination, that the institution is  
10 out of compliance with the requirements for re-  
11 ceiving funds under this Act, including partici-  
12 pation in any program under this title, but will  
13 be granted a grace period of 60 days to return  
14 to compliance before formally losing eligibility  
15 for receiving funds under this Act, including  
16 participation in any program under this title.

17 “(B) SPECIFICATIONS IN NOTIFICATION.—

18 As part of the notification under subparagraph  
19 (A), the Secretary shall specify which policies  
20 need to be disclosed and published in order for  
21 eligibility to be restored.

22 “(C) NOTIFICATION OF LOSS OF ELIGI-  
23 BILITY.—

24 “(i) IN GENERAL.—If the Secretary  
25 determines that, 60 days after being noti-

1           fied that the institution is out of compli-  
2           ance as described in subparagraph (A), the  
3           institution has failed to return to compli-  
4           ance by making the appropriate speech  
5           policy disclosures, the Secretary shall no-  
6           tify the institution and the complainant,  
7           not more than 7 days after the date of  
8           such determination—

9                   “(I) that the institution will lose  
10                   eligibility to receive funds under this  
11                   Act, including participation in any  
12                   program under this title;

13                   “(II) that the loss of eligibility  
14                   shall take effect beginning with any  
15                   student notified of acceptance for ad-  
16                   mission to the institution during the  
17                   award year subsequent to the award  
18                   year during which the determination  
19                   is made, and that no restoration of  
20                   eligibility for ineligible students in  
21                   subsequent years will occur prior to  
22                   the beginning of the third award year  
23                   subsequent to the award year during  
24                   which the determination is made; and

1                   “(III) that the institution shall  
2                   post the determination of the Sec-  
3                   retary on the website of the institu-  
4                   tion, within two clicks of the home-  
5                   page, without a paywall, email login,  
6                   or other restriction to access.

7                   “(ii) CONTINUED ELIGIBILITY.—Each  
8                   student enrolled at the institution during  
9                   the award year in which eligibility is lost  
10                  as described in this subparagraph, and  
11                  each student notified of acceptance for ad-  
12                  mission to the institution during the award  
13                  year in which eligibility is lost as described  
14                  in this subparagraph, shall continue to be  
15                  eligible to participate, through the institu-  
16                  tion, in programs funded under this Act  
17                  during the 3-year period after the date of  
18                  the loss of eligibility.

19                  “(3) RESTORATION OF ELIGIBILITY.—

20                  “(A) IN GENERAL.—Not later than 7 days  
21                  after the loss of eligibility under paragraph (2),  
22                  the Secretary shall inform the institution that  
23                  the institution may restore eligibility by making  
24                  the appropriate speech policy disclosures, as di-

1           rected by the Secretary in conformity with this  
2           section.

3           “(B) REVIEW.—The Secretary shall review  
4           any policy disclosures and determine whether  
5           the policy disclosures are sufficient to restore  
6           eligibility for receiving funds under this Act, in-  
7           cluding participation in any program under this  
8           title, not later than 120 days after the date of  
9           receipt of such disclosures or statement.

10          “(C) INVESTIGATION.—While conducting a  
11          review to restore eligibility under this para-  
12          graph, the Secretary may conduct an investiga-  
13          tion in which further information may be  
14          sought or requested from the institution, or  
15          other source pertinent to the case.

16          “(D) RESTORATION.—If the Secretary de-  
17          termines that the institution under review to re-  
18          store eligibility under this paragraph has made  
19          the policy disclosures as required by this sec-  
20          tion, the institution’s eligibility to receive funds  
21          under this Act, including participation in any  
22          program under this title, shall be restored not  
23          earlier than the beginning of the third award  
24          year following the year in which notification of  
25          loss of eligibility was received.

1           “(E) LIMIT ON REVIEW.—The Secretary  
2           may conduct not more than 1 review to restore  
3           eligibility for a single institution in any given  
4           award year.

5           “(4) PROHIBITION.—The Secretary may not  
6           conduct an investigation under this subsection for  
7           purposes of making a determination under para-  
8           graph (2)(A) with respect to an institution of higher  
9           education, unless such an investigation is conducted  
10          with respect to a complaint received under para-  
11          graph (1).

12          “(e) NONAPPLICATION TO CERTAIN INSTITUTIONS.—  
13          This section shall not apply to an institution of higher  
14          education that is controlled by a religious organization.

15          “(f) JUDICIAL REVIEW.—A private institution of  
16          higher education participating in a program under this  
17          title may seek judicial review of an agency action under  
18          this section in accordance with chapter 7 of title 5, United  
19          States Code.”.

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