HB 159
HIGHER EDUCATION SPEECH

INSTITUTIONS OF HIGHER EDUCATION ARE LEGALLY AND MORALLY RESPONSIBLE FOR ADDRESSING DISCRIMINATORY STUDENT-ON-STUDENT HARASSMENT. BUT THEY ALSO HAVE A CONSTITUTIONAL OBLIGATION TO DO SO WITHOUT INFRINGING ON THE FREE SPEECH RIGHTS OF STUDENTS.

TO BALANCE THESE TWIN OBLIGATIONS THE SUPREME COURT CAREFULLY DEFINED THE TEST OF WHEN SPEECH CROSSES THE LINE TO UNPROTECTED DISCRIMINATORY CONDUCT. UNFORTUNATELY, INSTITUTIONS, INCLUDING MANY IN UTAH, DO NOT USE THE SUPREME COURT'S DEFINITION. HB 159 ENSURES THAT PUBLIC INSTITUTIONS OF HIGHER EDUCATION USE THE SUPREME COURT'S DEFINITION.

KEY HIGHLIGHTS:

- Defines discriminatory harassment as severe, pervasive, objectively offensive, and prohibits the student from accessing their education (consistent with Davis v. Monroe)
- Overbroad anti-harassment policies are one of the single most common ways universities punish free speech of students.
- Alabama, Arizona, Arkansas, Ohio, Oklahoma, and Tennessee have all passed legislation to codify each of the key elements of the Davis definition.
- Courts across the country have struck down university policies that were inconsistent with the Davis definition.
- The Davis standard does not allow for harassment with impunity. Courts across the country have often cited Davis in rulings favorable to victims of harassment too!
- The definition is consistent with the Department of Education's Title IX regulations which went into effect in September.
- The bill harmonizes the standard for all forms of discriminatory student-on-student harassment.