

Representative Jordan D. Teuscher proposes the following substitute bill:

HIGHER EDUCATION SPEECH

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill enacts provisions related to discriminatory harassment and expression at an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts provisions related to discriminatory harassment at an institution of higher education, including provisions that:
 - prohibit an institution from sanctioning or disciplining certain acts of speech that do not constitute discriminatory harassment; and
 - create a cause of action for the attorney general related to discriminatory harassment at an institution of higher education; and
- ▶ enacts provisions related to the free expression of policies of an institution of higher education.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **53B-27-401**, Utah Code Annotated 1953

29 **53B-27-402**, Utah Code Annotated 1953

30 **53B-27-403**, Utah Code Annotated 1953

31 **53B-27-404**, Utah Code Annotated 1953

32 **53B-27-501**, Utah Code Annotated 1953



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **53B-27-401** is enacted to read:

36 **Part 4. Campus Anti-Harassment**

37 **53B-27-401. Definitions.**

38 As used in this part:

39 (1) "Discriminatory harassment" means student-on-student speech that:

40 (a) is unwelcome;

41 (b) discriminates on the basis of a classification protected under federal or state law;

42 and

43 (c) is so severe, pervasive, and objectively offensive, and that so undermines and

44 distracts from a student's educational experience, that the student is effectively denied access to

45 an institution's resource or opportunity.

46 (2) "Student" means an individual enrolled at an institution.

47 (3) (a) "Student-on-student speech" means verbal, written, or other communication that

48 is:

49 (i) communicated by a student; and

50 (ii) directed at another student.

51 (b) "Student-on-student speech" does not include an act of physical contact between a

52 student and another student.

53 Section 2. Section **53B-27-402** is enacted to read:

54 **53B-27-402. Institution duties.**

55 (1) An institution is in violation of this part if the institution:

56 (a) gains actual knowledge of discriminatory harassment in the institution's program or

57 activity; and

58 (b) acts with deliberate indifference to the discriminatory harassment.

59 (2) (a) An institution may not sanction or discipline, as discriminatory harassment,
60 student-on-student speech that does not constitute discriminatory harassment.

61 (b) An institution is not liable under this part for failing to sanction or discipline a
62 student who communicates student-on-student speech that is not discriminatory harassment.

63 (3) Nothing in this part prevents an institution from sanctioning or disciplining
64 student-on-student speech that is otherwise not protected under the First Amendment to the
65 United States Constitution.

66 (4) Nothing in this part prevents an institution from responding to student-on-student
67 speech that is not discriminatory harassment by taking nonpunitive actions designed to promote
68 a welcoming, inclusive environment.

69 (5) Nothing in this part prevents an institution from maintaining policies prohibiting
70 stalking or other criminal activity.

71 Section 3. Section **53B-27-403** is enacted to read:

72 **53B-27-403. Cause of action.**

73 The attorney general may bring an action to enjoin a violation of this part, in a state
74 court of competent jurisdiction, against an institution or an institution's agent acting in the
75 agent's official capacity.

76 Section 4. Section **53B-27-404** is enacted to read:

77 **53B-27-404. Statute of limitations.**

78 (1) Except as provided in Subsection (3)(b), the attorney general may not bring an
79 action under this part later than one year after the day on which the cause of action accrues.

80 (2) For an action alleging a violation of Subsection [53B-27-402\(2\)\(a\)](#), the cause of
81 action accrues on the day on which the student receives final notice, from the institution, of
82 sanction or discipline that violates Subsection [53B-27-402\(2\)\(a\)](#).

83 (3) (a) For an action alleging a violation of Subsection [53B-27-402\(1\)](#), the cause of
84 action accrues on the day on which the institution gains knowledge of the discriminatory
85 harassment.

86 (b) For an action described in Subsection (3)(a), the limitation described in Subsection
87 (1) extends to one year after the day on which the most recent known act of discriminatory

88 harassment, involving the same parties as a prior known act of discriminatory harassment,
89 occurs.

90 Section 5. Section **53B-27-501** is enacted to read:

91 **Part 5. Free Expression Policies**

92 **53B-27-501. Free expression policies.**

93 (1) As used in this section, "free expression policy" means an institution's policy,
94 regulation, or other expectation related to student expression.

95 (2) An institution shall:

96 (a) publish the institution's free expression policies:

97 (i) in the institution's student handbook; and

98 (ii) on the institution's website;

99 (b) include information about the institution's free expression policies in an orientation
100 program for students enrolled in the institution; and

101 (c) develop a program, procedures, and materials to ensure that an individual who has
102 responsibility for the discipline or education of a student at the institution understands the
103 institution's free expression policies.

104 (3) An individual described in Subsection (2)(c) includes an institution:

105 (a) administrator;

106 (b) campus police officer;

107 (c) residence life official; and

108 (d) faculty member.

109 (4) An institution shall ensure that a free expression policy is consistent with the
110 provisions of this chapter.