

UNICAMERAL YOUTH LEGISLATURE OF NEBRASKA
EIGHTEENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 718

Introduced by: [TBD]
Read first time June 11, 2018
Committee: General Affairs

A BILL

FOR AN ACT relating to education; to adopt the Higher Education Free Speech Accountability
Act.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

(4) Students and faculty have the freedom to discuss any problem that presents itself, as permitted by the First Amendment and within the limits of reasonable viewpoint and content-neutral restrictions on time, place and manner of expression that are consistent with the Higher Education Free Speech Accountability Act and that are necessary to achieve a compelling campus interest. Any such restrictions shall be clear, published and provide ample alternative means of expression. Students and faculty shall be permitted to assemble and engage in spontaneous expressive activity as long as such activity is not unlawful and does not materially and substantially disrupt the functioning of the campus, subject to the requirements of this subdivision;

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

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

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

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

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

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

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

(a) A description of any barriers to or incidents of disruption of free expression occurring on any campus, including, but not limited to, attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was

taken against members of the campus community determined to be responsible for such specific barriers or incidents. The description shall not reveal any student's personally identifiable information; and

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

(3) The annual report shall be:

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

(b) Searchable by keywords and phrases; and

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

(4) If a campus or one of its officials, schools or colleges is sued for an alleged violation of the First Amendment of the Constitution of the United States or of Article I, section 5 of the Constitution of Nebraska, the committee shall submit a report of the incident, together with a copy of the complaint, to the Governor and the Legislature. The report shall be submitted on or before 30 days after the lawsuit is filed.

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

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

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

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

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

(a) Violations of state or federal law;

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

(c) Unlawful harassment;

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

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

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

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

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

Sec. 8. The Board of Regents of the University of Nebraska shall develop a policy that requires each campus to identify the person, office or department with responsibility for ensuring compliance with the Higher Education Free Speech Accountability Act and for answering any related questions or concerns. This policy shall require that such person, office or department receive training in ensuring compliance with the act. Such training shall be developed and provided by the University of Nebraska College of Law.

Statement of Intent

LB718 would provided for the protection of free speech rights, as granted by the United States Constitution, of students, institutional employees, and invited guests on the campuses of higher education within the state. LB718 would direct the governing boards of the University of Nebraska, Nebraska State Colleges and community colleges to adopt a detailed policy governing free speech on its campuses.

LB718 also would require that each governing board create a Committee on Free Expression. The committee shall provide an annual report to the public, its own governing body, the Governor, and the Legislature. The report shall include any barriers to or incidents of disruption of free expression on campus and what disciplinary action, if any, was taken against members of the campus community.

Fiscal Note

	FY2018-19		FY2019-20	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

No fiscal impact.