



State Board of Education

Marva Johnson, *Chair*
Andy Tuck, *Vice Chair*
Members
Gary Chartrand
Ben Gibson
Tom Grady
Michael Olenick
Joe York

Pam Stewart
Commissioner of Education

Madeline Pumariega
Chancellor, Florida College System

MEMORANDUM

TO: Florida College System Presidents

FROM: Madeline Pumariega, Chancellor

DATE: May 24, 2018

SUBJECT: The Campus Free Expression Act

Contact Information:

Sean White

Sean.White@fldoe.org

Alexander Jordan

Alexander.Jordan@fldoe.org

DFC Memo: 2018-03

Legislation passed during the 2018 regular session may impact Florida College System institutional policies and operations related to free-speech activities on campus. The Campus Free Expression Act (Act) passed as part of an omnibus Higher Education package that became effective on March 11, 2018, when Governor Scott signed it into law as Chapter 2018-4, Laws of Florida. The newly created section of law, section (s.) 1004.097, Florida Statutes (F.S.), specifically authorizes the right to free-speech activities at public institutions of higher education, prohibits certain policies related to free-speech zones, authorizes restrictions under specified conditions and authorizes a cause of action against a public institution of higher education.

The Act states that outdoor areas on campus are considered traditional public forums for individuals, organizations and guest speakers. Public institutions of higher education may not designate any area of campus as a free-speech zone, or otherwise create a policy restricting expressive activities to a particular outdoor area on campus. However, institutions may create and enforce restrictions that are reasonable and content-neutral on the time, place and manner of expression, and narrowly tailored to a significant institutional interest. All restrictions must be clear, published and provide for ample alternative means of expression.

Some of the constitutionally protected expressive activities contemplated by the Act include any lawful, oral or written communication of ideas, all forms of peaceful assembly, protests, speeches, distribution of literature, carrying of signs, circulating of petitions, and the recording, publishing and Internet-publishing of video or audio from outdoor areas of campus. A person who wishes to engage in expressive activity in outdoor areas of campus may do so freely, spontaneously and contemporaneously, as long as the person's conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education. It shall also not inhibit or infringe upon the rights of other individuals or organizations to engage in expressive activities.

Additionally, the Act states that students, faculty and staff "may not materially disrupt previously scheduled or reserved activities on campus occurring at the same time." Furthermore, a "material and substantial disruption," is defined as "any conduct that intentionally and significantly hinders another person's or groups' expressive rights." However, a material and substantial disruption "does not include conduct that is protected under the First Amendment to the United States Constitution and Article I of the State Constitution, including, but not limited to, lawful protests and counter-protests in the outdoor areas of campus or minor, brief, or fleeting nonviolent disruptions that are isolated or brief in duration."

Any individual whose expressive rights are violated by a prohibited action is provided with a cause of action against the institution in a court of competent jurisdiction to obtain declaratory and injunctive relief, along with reasonable court costs and attorney fees, but not compensatory, punitive or other damages.

At a minimum, each institution is encouraged to review and update policies, procedures, student code of conduct handbooks, manuals and event registration forms, as needed. Communicating the statutory definition of a “material and substantial disruption” to students, faculty and staff may help them understand expectations under the Act. Because each free-expression activity is unique, colleges may wish to consult with their general counsel, local law enforcement agency and any private security contractors to ensure any necessary agreements are in place. Colleges should consult with their general counsel about budgeting for expenses that emerge, including the hiring of additional security. Lastly, FCS institutions are encouraged to share best practices with each other as they continue to ensure the right of free expression on campus guaranteed by the First Amendment.

MP

cc: Dr. Carrie Henderson, Executive Vice Chancellor, DFC
Mr. Scott Kittel, Associate Vice Chancellor for Financial Policy, DFC
Mr. Eric Godin, Associate Vice Chancellor for Research and Analytics, DFC
Dr. Karinda Barrett, Associate Vice Chancellor for Academic and Student Affairs, DFC
Mr. Alexander Jordan, Deputy Director, Facilities Planning & Budgeting, DFC
Ms. Jhenai Chandler, Director of Student and Administrative Affairs, DFC
FCS General Counsels
FCS Council of Business Affairs
FCS Council of Student Affairs
FCS Campus Safety and Security Directors