

CHAPTER 2021-159

Committee Substitute for Committee Substitute for House Bill No. 233

An act relating to postsecondary education; amending ss. 1001.03 and 1001.706, F.S.; defining the terms “intellectual freedom and viewpoint diversity” and “shield”; requiring the State Board of Education and the Board of Governors, respectively, to annually assess intellectual freedom and viewpoint diversity at certain institutions; providing requirements for the assessment; authorizing the State Board of Education to adopt rules; prohibiting the State Board of Education and the Board of Governors, respectively, from shielding certain students, faculty, or staff from certain speech; amending s. 1004.097, F.S.; defining the term “shield”; providing that certain faculty communications are protected expressive activity; prohibiting specified entities from shielding students, faculty, or staff from certain speech; authorizing students at public postsecondary institutions to record video and audio in classrooms for specified purposes; prohibiting the publication of certain video or audio recordings; providing exception; revising available remedies for certain causes of action to include damages; providing that such damages and specified costs and fees must be paid from nonstate funds; providing a cause of action against a person who publishes certain video or audio recordings; providing a limitation on the amount that can be recovered; amending s. 1004.26, F.S.; requiring university student governments to adopt certain internal procedures; providing requirements for such procedures; amending s. 1006.60, F.S.; requiring the State Board of Education and the Board of Governors to require certain institutions to adopt codes of conduct; providing requirements for such codes of conduct; providing that such codes of conduct include certain due process rights; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (19) is added to section 1001.03, Florida Statutes, to read:

1001.03 Specific powers of State Board of Education.—

(19) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY ASSESSMENT.—

(a) For the purposes of this subsection, the term:

1. “Intellectual freedom and viewpoint diversity” means the exposure of students, faculty, and staff to, and the encouragement of their exploration of, a variety of ideological and political perspectives.

2. “Shield” means to limit students’, faculty members’, or staff members’ access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

(b) The State Board of Education shall require each Florida College System institution to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution. The State Board of Education shall select or create an objective, nonpartisan, and statistically valid survey to be used by each institution which considers the extent to which competing ideas and perspectives are presented and members of the college community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom. The State Board of Education shall annually compile and publish the assessments by September 1 of each year, beginning on September 1, 2022. The State Board of Education may adopt rules to implement this paragraph.

(c) The State Board of Education may not shield students, faculty, or staff at Florida College System institutions from free speech protected under the First Amendment to the United States Constitution, Art. I of the State Constitution, or s. 1004.097.

Section 2. Subsection (13) is added to section 1001.706, Florida Statutes, to read:

1001.706 Powers and duties of the Board of Governors.—

(13) INTELLECTUAL FREEDOM AND VIEWPOINT DIVERSITY ASSESSMENT.—

(a) For the purposes of this subsection, the term:

1. “Intellectual freedom and viewpoint diversity” means the exposure of students, faculty, and staff to, and the encouragement of their exploration of, a variety of ideological and political perspectives.

2. “Shield” means to limit students’, faculty members’, or staff members’ access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

(b) The Board of Governors shall require each state university to conduct an annual assessment of the intellectual freedom and viewpoint diversity at that institution. The Board of Governors shall select or create an objective, nonpartisan, and statistically valid survey to be used by each state university which considers the extent to which competing ideas and perspectives are presented and members of the university community, including students, faculty, and staff, feel free to express their beliefs and viewpoints on campus and in the classroom. The Board of Governors shall annually compile and publish the assessments by September 1 of each year, beginning on September 1, 2022.

(c) The Board of Governors may not shield students, faculty, or staff at state universities from free speech protected under the First Amendment to the United States Constitution, Art. I of the State Constitution, or s. 1004.97.

Section 3. Paragraph (a) of subsection (3) and subsection (4) of section 1004.097, Florida Statutes, are amended, paragraph (f) is added to subsection (2), and paragraphs (f) and (g) are added to subsection (3) of that section, to read:

1004.097 Free expression on campus.—

(2) DEFINITIONS.—As used in this section, the term:

(f) “Shield” means to limit students’, faculty members’, or staff members’ access to, or observation of, ideas and opinions that they may find uncomfortable, unwelcome, disagreeable, or offensive.

(3) RIGHT TO FREE-SPEECH ACTIVITIES.—

(a) Expressive activities protected under the First Amendment to the United States Constitution and Art. I of the State Constitution include, but are not limited to, any lawful oral or written communication of ideas, including all forms of peaceful assembly, protests, and speeches; distributing literature; carrying signs; circulating petitions; faculty research, lectures, writings, and commentary, whether published or unpublished; and the recording and publication, including the Internet publication, of video or audio recorded in outdoor areas of campus. Expressive activities protected by this section do not include defamatory or commercial speech.

(f) A Florida College System institution or a state university may not shield students, faculty, or staff from expressive activities.

(g) Notwithstanding s. 934.03 and subject to the protections provided in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. s. 1232g and ss. 1002.22 and 1002.225, a student may record video or audio of class lectures for their own personal educational use, in connection with a complaint to the public institution of higher education where the recording was made, or as evidence in, or in preparation for, a criminal or civil proceeding. A recorded lecture may not be published without the consent of the lecturer.

(4) CAUSE OF ACTION.—A person injured by a violation of whose expressive rights are violated by an action prohibited under this section may bring an action;

(a) Against a public institution of higher education based on the violation of the individual’s expressive rights in a court of competent jurisdiction to obtain declaratory and injunctive relief and may be entitled to damages plus court costs and reasonable attorney fees, which may only be paid from nonstate funds, reasonable court costs, and attorney fees.

(b) Against a person who has published video or audio recorded in a classroom in violation of paragraph (3)(g) in a court of competent jurisdiction to obtain declaratory and injunctive relief and may be entitled to damages plus court costs and reasonable attorney fees, with the total recovery not to exceed \$200,000.

Section 4. Paragraph (d) is added to subsection (4) of section 1004.26, Florida Statutes, to read:

1004.26 University student governments.—

(4)

(d) Notwithstanding any other provision of law, each student government shall adopt internal procedures providing an elected or appointed officer of the student government who has been disciplined, suspended, or removed from office, the right to directly appeal such decision to the vice president of student affairs or other senior university administrator designated to hear such appeals. The internal procedures shall not condition the exercise of such right on the consideration or decision of any student panel, including, but not limited to, any student judiciary, or place any condition precedent on the exercise of such right granted by this paragraph.

Section 5. Section 1006.60, Florida Statutes, is amended to read:

1006.60 Codes of conduct; disciplinary measures; ~~authority~~ to adopt rules or regulations.—

(1) The State Board of Education and the Board of Governors, respectively, shall require, each Florida College System institution to may adopt, by rule, and each state university to may adopt, by regulation, codes of conduct and appropriate penalties for violations of rules or regulations by students, to be administered by the institution. Such penalties, unless otherwise provided by law, may include: reprimand; restitution; fines; withholding of diplomas or transcripts pending compliance with rules or regulations, completion of any student judicial process or sanction, or payment of fines; restrictions on the use of or removal from campus facilities; community service; educational requirements; and the imposition of probation, suspension, dismissal, or expulsion.

(2) The State Board of Education and the Board of Governors, respectively, shall require, each Florida College System institution to may adopt, by rule, and each state university to may adopt, by regulation, a code of conduct and appropriate penalties for violations of rules or regulations by student organizations, to be administered by the institution. Such penalties, unless otherwise provided by law, may include: reprimand; restitution; suspension, cancellation, or revocation of the registration or official recognition of a student organization; and restrictions on the use of, or removal from, campus facilities.

(3) The codes of conduct shall be published on the Florida College System institution's or state university's website, protect the rights of all students, and, at minimum, provide the following due process protections to students and student organizations:

(a) The right to timely written notice. The code must require that the institution or university provide a student or student organization with timely written notice of the student's or student organization's alleged violation of the code of conduct. The notice must include sufficient detail and be provided with sufficient time to prepare for any disciplinary proceeding.

1. The written notice must include the allegations to be investigated, the citation to the specific provision of the code of conduct at issue, the process to be used in determining whether a violation has occurred and associated rights, and the date, time, and location of the disciplinary proceeding.

2. The written notice is considered timely if it is provided at least 7 business days before the disciplinary proceeding and may be provided by delivery to the student's institutional e-mail address, and if the student is under 18 years of age, to the student's parent or to the student organization's e-mail address.

3. At least 5 business days before the disciplinary proceeding, the institution or university must provide the student or student organization with:

a. A listing of all known witnesses that have provided, or will provide, information against the student or student organization.

b. All known information relating to the allegation, including inculpatory and exculpatory information.

(b) The right to a presumption that no violation occurred. The institution has the burden to prove, by a preponderance of the evidence, that a violation has taken place. Preponderance of the evidence means that the information presented supports the finding that it is more likely than not that the violation of the code of conduct was committed by the student or student organization.

(c) The right to an impartial hearing officer.

(d) The right against self-incrimination and the right to remain silent. Such silence may not be used against the student or student organization.

(e) The right to present relevant information and question witnesses.

(f) The right to an advisor or advocate who may not serve in any other role, including as an investigator, decider of fact, hearing officer, member of a committee or panel convened to hear or decide the charge, or any appeal.

(g) The right to have an advisor, advocate, or legal representative, at the student's or student organization's own expense, present at any proceeding, whether formal or informal. Such person may directly participate in all aspects of the proceeding, including the presentation of relevant information and questioning of witnesses.

(h) The right to appeal the final decision of the hearing officer, or any committee or panel, directly to the vice president of student affairs, or any other senior administrator designated by the code of conduct, who must hear the appeal and render a final decision. The vice president of student affairs or person designated by the code of conduct to hear the appeal may not have directly participated in any other proceeding related to the charged violation.

(i) The right to an accurate and complete record of every disciplinary proceeding relating to the charged violation of the code, including record of any appeal, to be made, preserved, and available for copying upon request by the charged student or student organization.

(j) A provision setting a time limit for charging a student or student organization with a violation of the code of conduct, and a description of those circumstances in which that time limit may be extended or waived.

~~(4)~~(3) Sanctions authorized by such codes of conduct may be imposed only for acts or omissions in violation of rules or regulations adopted by the institution, including rules or regulations adopted under this section, rules of the State Board of Education, rules or regulations of the Board of Governors regarding the State University System, county and municipal ordinances, and the laws of this state, the United States, or any other state.

~~(5)~~(4) Each Florida College System institution may establish and adopt, by rule, and each state university may establish and adopt, by regulation, codes of appropriate penalties for violations of rules or regulations governing student academic honesty. Such penalties, unless otherwise provided by law, may include: reprimand; reduction of grade; denial of academic credit; invalidation of university credit or of the degree based upon such credit; probation; suspension; dismissal; or expulsion. In addition to any other penalties that may be imposed, an individual may be denied admission or further registration, and the institution may invalidate academic credit for work done by a student and may invalidate or revoke the degree based upon such credit if it is determined that the student has made false, fraudulent, or incomplete statements in the application, residence affidavit, or accompanying documents or statements in connection with, or supplemental to, the application for admission to or graduation from the institution.

~~(6)~~(5) Each Florida College System institution shall adopt rules and each state university shall adopt regulations for the lawful discipline of any student who intentionally acts to impair, interfere with, or obstruct the orderly conduct, processes, and functions of the institution. Said rules or

regulations may apply to acts conducted on or off campus when relevant to such orderly conduct, processes, and functions.

Section 6. This act shall take effect July 1, 2021.

Approved by the Governor June 22, 2021.

Filed in Office Secretary of State June 22, 2021.